



C.M.A.No.1617 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23 .01.2026

CORAM

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

C.M.A.No.1617 of 2025

and

C.M.P.No.14244 of 2025

Bala Sri Lakshmi

...Appellant/Respondent/Defendant

vs.

M.Venkatesh

...Respondent/Petitioner/Plaintiff

PRAYER: Civil Miscellaneous Appeal is filed under Order XLIII Rule 1 of Code of Civil Procedure, 1908, to set aside the order dated 20.02.2025 passed in I.A.No.2 of 2023 in O.S.No.391 of 2023 on the file Special District Court for SC/ST cases, Namakkal.

For Appellant : Mr.P.Raja

For Respondent : Mr.R.Vivek

JUDGMENT

This Civil Miscellaneous Appeal is filed against the fair and decreetal order dated 20.02.2025 passed in I.A.No.2 of 2023 in O.S.No.391 of 2023 on the file of the Special District Court for SC/ST cases, Namakkal. The defendant is the appellant herein.



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2. Parties are indicated herein as per their litigative status and ranking as before the Trial Court.

3. One M.Venkatesh/Plaintiff had filed a suit against the appellant/defendant herein before the Special District Court for SC/ST cases, Namakkal, in O.S.No.391 of 2023 for recovery of money of Rs.30,00,000/- with interest based on a promissory note said to have been executed by the father of the defendant in promissory note dated 21.09.2020.

4. On behalf of the defendant/appellant, it was contended that she has no knowledge of the execution of suit pro-note by her father.

5. Meanwhile, while the suit is pending, the plaintiff has taken out an application in I.A.No.2 of 2023 under Order XXXVIII Rule 5 of CPC, to order for furnishing security, failing which to attach 1/3rd share in the petition-mentioned property before judgment.

6. The Trial Court allowed the said application as prayed for. Aggrieved, defendant has preferred this Civil Miscellaneous Appeal.

7. Attachment Before Judgment (ABJ) is an extraordinary power. The Court has to satisfy itself on the basis of materials before passing the

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order under Order XXXVIII Rule 5 of Civil Procedure Code. So also, the Court has to be satisfied that the defendant is about to dispose of the whole or any part of her property, and to remove the whole or any part of her property from the jurisdiction of the Court. For a better understanding, Order XXXVIII Rule 5 of CPC is extracted hereunder:

" 5. Where defendant may be called upon to furnish security for production of property.

(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,-

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value thereof."



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(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

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8. As per the Order XXXVIII Rule 5 of CPC, when the plaintiff makes out a *prima facie* case, then the defendant should be directed to furnish the security.

9. The plaintiff took out an application in I.A.No.2 of 2023 by stating that the defendant's father, Ramalingam on 21.09.2020 borrowed Rs.30,00,000/- from the plaintiff for his urgent family and business purposes and on the same day, executed promissory note for the said amount in favour of the plaintiff. The petition mentioned property belonged to the mother of the defendant. Attachment Before Judgment (ABJ) is sought for to the extent of 1/3 share of the suit property, which belongs to the deceased Ramalingam. It is alleged that the defendant is taking steps to sell away the property. Hence, the petitioner/plaintiff prayed the Trial Court to pass an Order of Attachment Before Judgment, as it may not be possible for him to recover the money payable by the father of the respondent/defendant.



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10. On behalf of the respondent/defendant, the execution of promissory note is not admitted and further, it was stated that her father did not have any right over the property purchased by her mother.

11. On perusal of the docket entries of I.A.No.2 of 2023, it appears that on 03.11.2023, the said interim application was taken on file and notice was ordered to respondent/defendant. Thereafter, on behalf of the respondent/defendant, counsel entered appearance and after filing counter by the respondent, the matter was posted for enquiry. During enquiry on the plaintiff's side, eight documents were marked and sixteen documents were marked on the defendant's side. After hearing both sides, the impugned order was passed by the Trial Court on 20.02.2025.

12. As per Order XXXVIII Rule 5 of CPC, once the petitioner makes out a *prima facie* case, then the Court has to order to furnish the security by the respondent. But on perusal of the docket entries, no direction was given to furnish security to the respondent/defendant. As per Order XXXVIII Rule 5(1) of CPC, an Order of Attachment can be made only after complying with all the provisions contained in Sub-Rule 1 of Rule 5 of CPC, which necessitates a direction to the defendant to furnish security and show cause why they should not furnish the security. Sub-Rule 1 of Rule 5 of CPC envisages that the respondent/defendant should be



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directed to furnish the security. Without ordering to furnish the security by the respondent/defendant, the matter has been heard and Order of Attachment Before Judgment has been passed by the Trial Court, which has to be necessarily interfered with and the order of the Trial Court, for the abovesaid reasons, stands set aside.

13. Based on the aforestated discussions and observations, this Civil Miscellaneous Appeal stands allowed. Sequel to this, fair and decreetal order passed in I.A.No.2 of 2023 in O.S.No.391 of 2023 dated 20.02.2025 on the file of the Special District Court for SC/ST cases, Namakkal stands set aside.

14. The suit filed in the year 2023. The Trial Court shall take all endeavour to dispose of the case preferably within eight (8) months from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

23.01.2026

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1.The Judge,
Special District Court for SC/ST cases,
Namakkal.

2. The Section Officer,
VR Section,
High Court, Madras.



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R.KALAIMATHI, J.

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