



WEB COPY

A No. 5973 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-01-2026

CORAM

THE HONOURABLE DR.JUSTICE R.N.MANJULA

A Nos. 5973 to 5975 of 2025

in

CS No. 68 OF 2016

Exertion Technology Pvt Ltd and 3
Others
No.17, Club Road, Chetpet,
Chennai-600 031.

Applicant(s)

Vs

N.Sharadha And Another
W/o.B.Nanjundan, Terrace House, Door
No.170-D, Peaytons Road,
Ootachamund, The Nilgiris 643 001.

Respondent(s)

For Applicant(s): Mr. S. Vasudevan
For Respondent: Mr. T. Mahendran

ORDER

These Applications have been filed seeking issuance of summons to K.B. Vijay, K.B. Vishal and K.B. Bojan.

2. The applicants are the defendants 1, 2, 4 & 5. The suit has been filed by the plaintiff for recovery of money basing on memorandum of agreements dated 17.03.2011 and 31.08.2011. The defence taken by the defendants is that they have paid the money as per the MOU through one Bojan who was representing



the 'B' party of the MOU. Mr.K.B.Vijay and Mrs.N.Sharadha are the persons shown as 'B' party in the MOU. There is a recital in the MOU that the father of Mr.K.B.Bojan would represent 'B' party and Mr.Karuppiah would represent 'A' party, comprising N.Jayashankar, N.Jaikumar, V.S.M.Mohan and G.Vimalraj.

3. The plaintiff has filed the suit on the allegation that as per the MOU 'A' party had agreed to pay a sum of Rs.77,55,000/- @ 14% interest per annum from the date of receipt, not later than three months from 10.09.2011. It is further alleged that the 'A' party failed to make the payment as agreed under the MOU. In the very same MOU, 'B' party also agreed to make a one time settlement of Rs.1,18,00,000/- in two parts.

4. Now the contention of the learned counsel for the applicants is that Mr.K.B.Bojan, who was representing the 'B' party, was in charge of the company and had received payments from the 'A' party and all such transactions are within his knowledge. It is further alleged that even the 'B' party, failed to make payments as agreed to the 'A' party and without fulfilling the obligations agreed by the 'B' party, they have proceeded to file the suit against the defendants by making false allegations. Mr.K.B.Bojan, who represented the 'B' party under the agreement is not a party to the suit. However, the plaintiff who is the member of 'B' party, have filed the suit. The agreement does not disclose the mode of payment, whether by cash or through



bank transaction.

WEB COPY

5. It is submitted by the learned counsel for the applicants that there has been a practice of making payments by cash and even the plaintiff has alleged in the plaint that she has infused a sum of Rs.1,29,00,000/- by cash only.

6. No doubt, there is an allegation in the plaint that the plaintiff, over a period of time, had lent a sum of Rs.1,29,00,000/- towards the working capital of the 1st defendant's company and that the said amount was received by defendants 2 to 5. However, that is not the matter presently in dispute, as several transactions followed subsequent to that and the parties subsequently agreed to settle the dispute among themselves by executing MOUs. Therefore, the issue that arises for consideration in the suit revolves around whether the parties have honoured their promise as agreed in the MOU. If the defendants claim to have made cash payments of such a huge amount directly to K.B.Bojan, they have assumed the burden and risk of proving the same.

7. As K.B.Bojan was the representative of the 'B' party, it would not be possible for the defendants to expect a positive answer from K.B.Bojan that he has received a cash payments. The MOU between the parties is not an oral agreement but a written agreement. The parties are required to prove their respective payments only if such payments were made in the manner known to



law, particularly when the amounts involved exceed the permissible limits for cash transactions.

WEB COPY

8. It is submitted that K.B.Bojan is in Coimbatore and K.B.Vijay is in Singapore. The other son of Bojan by name Vishal, is also in Coimbatore. In fact, Sharadha alone is the plaintiff. Sharadha, who is one of the members of 'B' party has filed the suit without impleading her sons, K.B.Vijay and K.B.Vishal as parties. As Vishal is not a party to the MOU, it is unnecessary to claim that Vishal should be a party or he is the person who is involved in the transactions involved in the MOUs.

9. It is submitted by the learned counsel for the applicants that the plaintiff herself did not enter the witness box and that her husband, B.Nanjundan alone has deposed as PW.1. If the plaintiff withholds examination of the best witness and fails to adduce the best evidence before the Court, the risk goes with the plaintiff. Further, if the defendant is not given with any opportunity to cross examine the plaintiff on matters within her exclusive knowledge, the defendant would be entitled to draw an adverse presumption in respect of those matters. As the money transactions between the parties could be proved by producing documentary evidence, summoning the witnesses mentioned in the affidavit filed by the applicant is not only unnecessary but also time consuming.



10. Since the burden lies on the plaintiff to prove liability on the defendants and the defendants have already cross examined PW1, the plaintiff is at liberty to produce any documents or adduce any further evidence on her side to discharge the burden and establish that payments were made.

11. In view of the above said reasons, the applications are dismissed.

22-01-2026

AT

Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No



A No. 5973 of 2025



To

1.N.Sharadha And Another
W/o.B.Nanjundan, Terrace House, Door
No.170-D, Peaytons Road,
Ootachamund, The Nilgiris 643 001.

2.N.Jaikumar
No.72, 1st Floor 4th Trust Cross Street,
Mandaveli, Chennai 600 028.



WEB COPY

A No. 5973 of 2025



Dr. R.N.MANJULA, J.

AT

**A No. 5973 of 2025
A NO. 5974 OF 2025,CS
NO. 68 OF 2016,A NO.
5975 OF 2025**

22-01-2026