

17/01/2019

For orders,

**ORDERS ON IA NO.I UNDER ORDER
XXXVIII RULE 5 R/W SEC.151 OF CPC**

The plaintiff counsel filed the above application praying to pass an order of attachment (2nd charge after Central Bank of India, a deed of deposit of title deeds made by the plaintiff in favour of the bank) before judgment of the schedule immoveable property belongs to defendant in the interest of justice.

2. In the annexed affidavit, it is stated that he has filed the suit against the defendant for recovery of amount due under on demand promissory notes and for other reliefs. The defendant has approached the plaintiff at Bangalore city and to meet his urgent and immediate business requirements borrowed from the plaintiff, a sum of Rs.8,00,000/- on various dates on 12/05/2015 by executing on demand promissory note and consideration receipt in favour of the plaintiff for valuable consideration he had. Further, defendant agreed to repay the same alongwith interest at 12%p.a from the date

of borrowal till the date of realisation. Subsequent to borrowal, the defendant has paid interest upto October, 2017 and failed to pay any amount from November, 2017 inspite of repeated requests and demands. The defendant has heavily borrowed from various persons. All the activities and movements of the defendant has become secret to everybody. Often and often the defendant is changing the address. Whenever with great difficulty, met the defendant, he is giving evasive replies and avoiding creditors. The defendant is making efforts to dispose all moveable and immoveable and secret the proceeds beyond the reach of the plaintiff and other creditors and once for all leave the jurisdiction of this Court. The defendant has intentionally withholding the amount due to the plaintiff with malafide intention only to harass and to defraud. If he is successful in his illegal attempts, the plaintiff will be not be in a position to realise the fruits of the decree which may be obtained in the above suit. The plaintiff has good case on merits. Hence, prayed that allow the application.

3. On 11/09/2018, the defendant counsel filed memo stating that contents of written statement may be treated as objections to I.A. No.I. The contents of the written statement is as under:

The entire averments denied as false except the admitted facts. The defendant was one of the partner in M/s.Shiva Shakti Associates Pharmacy business. Due to his illhealth and in the absence of Smt.Uma Shivakumar are run the said business. These facts are all known by the plaintiff. The plaintiff and his wife Smt.Radha Ramesh, plaintiff sister Smt.Uma Shivakumar and plaintiff brother-in-law K.Shivakumar colluded together and misuse the possession, Further, brother and sister created so many problems in the said partnership business. Whenever the defendant intends to go out of the said partnership business, the said other partner in the said partnership business colluded with plaintiff and others in one or the other way, are pressurizing the defendant to continue in the said business and also obtain the blank signatures on demand promissory notes, cheques and other papers. On this aspect, the defendant got mental agony and also suffering mental

neuron problems. At that point of time, the other partners of the said business plaintiff and others have colluded and gave Alprocontin Tablets to the defendant. Due to the said drug addict used by the defendant, he always gone to mental disorder, they have put the defendant and his family members to great trouble. Due to mismanagement made by other partners, the defendant is facing so many financial problems which are created by the partners in aid and support of the plaintiff, his wife and others. Due to the above said drug addict, he was treated by Neuron Surgeons from 2013 to as on date and also the defendant was also treated as outpatient at National Institute of Mental Health and Neuron Science, Bangalore and other hospitals. The defendant is facing the suits in O.S.No.3732/2018 and O.S.No.3740/2018 and other proceedings initiated by the various persons due to misrepresentation and fraud played by the plaintiff and his brother-in-law, sister and his wife. The proceedings are initiated by the plaintiff and other persons against the defendant. The Shiva shakti Associates partnership firm have obtained the huge amount

of mortgage loan of Rs.65,00,000/- mortgaging the defendant property to Central Bank of India, Basavangudi and they have not repaid the said amount. The Shiva Shakti Associates partnership firm have obtained the chit amount of Rs.12,00,000/- from M/s.Shivaharsh chits pvt. Ltd., they have filed dispute before the Registrar of Chits, in DRB-1/125/2017-18 for recovery of Rs.22,91,806/- and in DRB-1/124/2017-18 for recovery of Rs.18,18,613/-, in CC No.2621/2018, CC No.2623/2018, CC No.2624/2018, CC No.2625/2018 pending before XXII Addl.CMM, Bangalore for Rs.3,00,000/-, Rs.2,50,000/-, Rs.3,00,000/- and Rs.2,50,000/- respectively. Due to entering into partnership business with his sister-in-law, Smt.Uma Shivakumar, said Shivashakti Associates partnership business was originally handled by the plaintiff and his brother-in-law Shivakuar, they colluded with each other and destroyed the whole life of not only defendant, but also the entire family of the defendant. The plaintiff has colluded with the said persons and filed this suit. Hence, prayed that dismiss the application.

4. Having heard the learned counsel, the following points arise for my consideration:

1. Whether the application I.A. No.I filed by plaintiff deserves to be allowed ?

2. What Order?

5. My answer to the above points are as under ;

Point No.1: In the Affirmative

Point No.2: As per final order

for the following:

REASONS

6. **Point No.1:** The plaintiff has filed the suit for recovery of money against the defendant. According to plaintiff, the defendant is trying to dispose all moveable and immoveable and secret the proceeds beyond the reach of the plaintiff and also other creditors. The on demand promissory note reveals that there is money transaction in between plaintiff and defendant. To prove the said contention is to be considered on merit only and not at this stage. The defendant in his objection statement taken specific contention that plaintiff and his relatives have created the documents. But same is to be

considered on merit only. If plaintiff will succeed in the suit without attachment order, the plaintiff will not be in a position to realise the fruits of the decree because the defendant in his written statement taken contention that about 5-6 cases are pending, which are filed by the plaintiff and his relatives against the defendant. In my view, if the attachment order is passed against the defendant, it would meet with the justice. Moreover, already Central Bank of India has created the charge. In this case also the plaintiff has sought the attachment order as the 2nd charge after Central Bank of India before judgment of the schedule immoveable properties belongs to the defendant. Accordingly, I answer point No.1 in the Affirmative.

7. **Point No.2** : In the result for the foregoing reasons, I pass the following :

ORDER

I.A. No.I under Order XXXVIII Rule 5 of Code of Civil Procedure filed by the plaintiff is herewith allowed.

The order of attachment passed against the defendant before judgment of schedule immoveable property belongs to defendant i.e.,

O.S.No.3740/2018

the 2nd charge after Central Bank of India.

The defendant has to comply with the said order.

Call on 24/01/2019.

(Dictated to the Judgment Writer, transcribed by her, transcribed by her, corrected and then pronounced by me in open court this the 17th day of January, 2019.).

**(NAGAVENI)
V ADDL.CITY CIVIL JUDGE
BANGALORE**