IN THE COURT OF THE SECOND ADDITIONAL SUB JUDGE, THIRUVANANTHAPURAM

Present : Smt. Asha Devi. V.S., Second Addl. Sub Judge

Friday, 31st October, 2025 / 09th Karthika, 1947

IA No. 1/2025
in
OS No. 221/2025

PETITIONER / PLAINTIFF :

Nandu. V., aged 44 years,
S/o. Vijayakumar, residing at 'Kalakrishna',
No. 24, CSM Nagar, Edapazhinji, Sasthamangalam. P.O.,
Thiruvananthapuram – 695010.

By Advs. Sri. Rajasekharan. R. & Sri. Karthik. R.S.

RESPONDENT / DEFENDANT :

Vijayakumar. R.P., aged 61 years,
S/o. Raveendran, residing at 'Karuna Mandiram',
Shanthi Garden II Street, Kamaleswaram. P.O.,
Muttathara, Thiruvananthapuram – 695009.

By Advs. Sri. Aji Gopinath & Smt. Deepa Gopinath.

This petition having been finally heard on 31-10-2025 and the court on the same day passed the following.

O R D E R

1) This petition is filed under Order XXVIII Rule 5 CPC for allowing order of attachment before judgment.

2) **Brief facts :** The plaintiff alleged that the defendant had obtained from him ₹ 14,00,000/- (Rupees Fourteen Lakhs only) and in consideration of his debt of ₹ 14,00,000/- (Rupees Fourteen Lakhs only) and interest of ₹ 98,00,000/- (Rupees Ninety Eight Lakhs only). He executed a cheque in favour of the plaintiff for ₹ 14,00,000/- (Rupees Fourteen Lakhs only). The cheque, when presented for payment in the bank, it got dishonored for the reason that funds insufficient in the account of the defendant. The plaintiff alleged that now the defendant is trying to dispose of his property with an intent to defeat the plaintiff from obtaining a realizable decree against the defendant. Hence this IFL has to obtain an order of attachment before judgment.

3) The defendant did not owe any debt to the plaintiff and he did not issue any cheque in favour of the plaintiff. The plaintiff failed in producing a prima facie case before the court to invoke the provisions under Order 38 rule 5 CPC. The remedy provided under the said section is an extreme and exceptional one. The attachment schedule property is 23 cents and the residential building therein having more than 5,500 square feet. The

property is having a market value of more than ₹5. The defendant is residing in the said building. The defendant is having other immovable properties in the same village and it is very well aware to the plaintiff. Instead of that, a false statement is made in the petition, that the scheduled property is the only property of the defendant. The defendant is a registered contractor with PWD. The plaintiff joined with the defendant about 20 years back and was working under the defendant as a helper to supervise the work. As part of the said job and to pay different amount to the workers and labourers on several occasions, this defendant had entrusted cheques to the plaintiff to withdraw money from the bank. The alleged story of ₹10,00,000/- (Rupees Ten Lakhs only) in para 6 of the plaint was really the amount that was withdrawn by the defendant through the plaintiff. The plaintiff has no financial capacity to raise such an amount and has no source for the same. The plaintiff fraudulently obtained the signed cheque of this defendant and forged it with false entries and thereafter filed this suit with a false statement. The attachment schedule property is the residential property of the defendant and the defendant has no intention to dispose of the property as alleged by the plaintiff.

4) **<u>The following points arose for decision</u> :-**

1]. Does the plaintiff has a prima facie case in his favour?

2]. Is the plaintiff entitled to get an order of attachment before judgment?

3]. Order and costs.

5) For the purpose of this IA, the documents produced from the side of plaintiff marked as Exhibits A1 to A8. The defendant did not produce any documents.

6) **<u>Point Nos.1 and 2</u> :-** The suit is for realisation of money based on dishonoured cheque. The cheque is said to have been issued by the defendant for the debt he owed to the plaintiff. According to the plaintiff, the defendant has borrowed from him ₹14,00,000/- (Rupees Fourteen Lakhs only) and in consideration of the said debt and interest thereof he executed Exhibit A1 cheque in favour of the plaintiff for a consideration of ₹14,98,000/- (Rupees Fourteen Lakhs Ninety Eight Thousand only). The cheque when presented for collection, it returned with

endorsement that funds insufficient in the account of the defendant. Hence the plaintiff issued legal notice to the defendant. Even thereafter no payment was made by the defendant. Hence the suit is filed. The plaintiff further alleged that on knowing that this plaintiff is about to file the suit, the defendant is taking steps to dispose of his property with an intention to defeat the plaintiff from obtaining the fruits of the decree. Then there will be no other source for the realization of the amount of money from the defendant. Hence the attachment is sought for.

7) The learned counsel for the plaintiff argued that the defendant admitted in his objection that the cheque is from his account and it contains his signature. Hence the presumption under Section 139 of the Negotiable Instruments Act came into play. It is a mandatory presumption in favour of the Negotiable Instrument. Unless the contrary is proved, the court should find in favour of the holder of the cheque. In support of his argument, the Learned Counsel relied on the decision of the ***Hon'ble Supreme Court in Hithan P. Dalal v. Bradrinath Banerji reported in (2001) 6 SCC 16.***

8) The learned counsel for the plaintiff further argued that the sole object behind the order levying attachment before judgment is to give an assurance to the plaintiff that his decree if made would be satisfied. It is a sort of guarantee against decree within infrastructures for want of property available from which the plaintiff can satisfy the decree. ***Reliance based on the decision in Sardar, Govindrao, Mahadik and Another V Dewi Sahal and Others, reported in AIR 1982 SC 989***.

9) The defendant contended that there was no debt for the defendant with the plaintiff. The defendant is a registered contractor with PWD. The plaintiff was working under him and during those times the defendant used to entrust with the plaintiff, signed cheques, for payment to the labourers and for meeting other expenses. One of such cheques has been misused by the plaintiff and the entries in the said cheque was forged in order to initiate the false litigation against the defendant. It is also contented that the plaintiff has not specifically stated the date on which the alleged amount was borrowed by the defendant. The defendant further contented that the plaintiff has not stated the

true facts in court. The petition schedule property is a property having an extent of 23 cents with a residential building having 5,500 square feet. It has market value of more than ₹5,00,00,000/- (Rupees Five Crores only). The defendant is also having other immovable properies in this city and plaintiff with ill motive stated in the affidavit that the petition schedule property is the only property owned by the defendant. Being the residential property, the defendant has no intention to sell or dispose of the said property. Thus the necessary ingredients that is to be proved by a plaintiff in a petition under Order 38 Rule 5 CPC is not present in this case and the case as well as the petition is false and is made out of the ill will of the defendant. The further argument of the learned counsel for the defendant was that when the particulars of the claim in the plaint were not specifically stated, no relief can be granted in favour of the plaintiffs. In support of his argument, the learned counsel for the defendant relied on the decision on the ***Raman Tech and Process Engineering Company and Another v. Solangi Traders [reported in [2008] 2 SCC 302***.

10) The plaintiff filed the suit based on a dishonored cheque. The cheque said to have issued by the 1st defendant for the debt of ₹ 14,00,000/- (Rupees Fourteen Lakhs only) he owed with the plaintiff. The consideration shown in the plaint is the debt amount with interest of ₹ 98,000/-(Rupees Ninety Eight Thousand only). The defendant totally denied any debt with the plaintiff. According to him, the plaintiff is a worker under him and he used and does with the plaintiff signed cheques for meeting the expenses of the work including payment to labourers and for purchasing building materials etc. The said cheque was said to have misused by the plaintiff. Thus the defendant admitted that the cheque based on which the suit file is issued from his account and it contains his signature. So the primary requirement for drawing a presumption under Section 139 of the Negotiable Instruments Act is present in this case. Then the rebuttal of such presumption is a matter of evidence which need not be considered at this stage. Moreover, it is unable to imbibe that the defendant who is a government contractor and who knows the consequence of issuing a signed blank cheque had issued a signed blank cheque to a person.

When he issued the cheque, it would definitely be with the amount required to meet the purpose for which the cheque is issued. Hence the contention of the defendant that signed blank cheques were entrusted with the plaintiff is not believable.

11) The other contention raised by the defendant is that the petition schedule property is a property having extent of 23 cents with a residential building of 5,500 square feet and it is worth ₹5,00,00,000/- (Rupees Five Crore only). The attachment that is passed in this petition is not an absolute one. The defendant can produce security sufficient to satisfy the plaint claim, then the attachment will be lifted. Apart from saying that the property is worth ₹ 5,00,00,000/- (Rupees Five Crores only), the defendant did not make any assurance that the property is free of any other liability. It is also his case that he has other immovable property in the city. It may not be a fact within the knowledge of this plaintiff. The defendant who is the owner of the property can very well put in clear words in the objection or in other statements about the properties he owned and that are sufficient to be given as security for the plaint claim. It was not done by the defendant.

Hence it is found that the suit is based on a negotiable instrument issued by the defendant and it is dishonoured for the reason of insufficient funds. There is sufficient material to find that the plaintiff possess a prima facie case in his favour. The plaintiff has also in his affidavit vouched that he has got reliable information regarding the fact that the defendant is about to dispose of his property. If it is happened, it will badly affects the plaintiff's right to get realised the decree if passed in the suit. Points 1 and 2 thus found in favour of the plaintiff.

In the light of discussion, points 1 and 2, IA No. 1/25 is allowed.

In the result,

1) An order of interim attachment is hereby passed in respect of petition schedule property till the defendant produce sufficient security for the plaint amount of ₹14,98,000/- with interest till the date of filing of the suit.

2) The plaintiff is also entitled to the costs of attachment.

Dictated to the CA, transcribed and typed by her, corrected by me and pronounced in Open Court on this, the 31st day of October, 2025.

Sd/-
Asha Devi. V.S.
Second Addl. Sub Judge

APPENDIX

Exhibits for the Petitioner :

A1	-	22-03-2024	Copy of cheque
A2	-	30-12-2024	Original cheque no. 588425695048012
A3	-	02-01-2025	Return memo
A4	-	26-07-2025	Copy of legal notice
A5		-	Postal receipt
A6		-	Acknowledgment card
A7	-	05-08-2025	Reply notice
A8	-	22-05-2025	Encumbrance certificate

Exhibits for the Respondent : Nil

Court Exhibits : Nil

Witness for the Petitioner : Nil

Witness for the Respondent : Nil

Id/-
Second Addl. Sub Judge

// True copy //

Second Addl. Sub Judge

AJ / Compd by : FCS :

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Copy of Order
in IA No. 1/2025
in OS No. 221/2025
Dtd. 31-10-2025
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