

**IN THE COURT OF THE SUB JUDGE, MUVATTUPUZHA**

Present:- Sri. Aravind B. Edayodi, Sub Judge  
Tuesday, the 19<sup>th</sup> day of March 2024/29<sup>th</sup> Phalgun 1945

**I.A. 2/2024 in O.S. 21/2024**

**Applicant/Plaintiff:-**

Shajahan, aged 69 years, S/o Aliyar and residing at Naicy House, Perumattam Kara, Market P.O, Velloorkunnam Village, Muvattupuzha Taluk. Pin-686673.

By Advs. Jijo Joseph, Viju Chakkalackan, Nisa Mol P H  
& Meera Raju

**Respondent/Defendant :-**

Shani Makkar, aged about 42 years, S/o. Makkar, and residing at Keecheri @ Keecheriyil House, Kavumkara Kara, Market P.O, Velloorkunnam Village, Muvattupuzha Taluk. Pin-686673.

By Adv. G Suresh

This petition is filed under Order XXXVIII Rule 5 and Section 151 of the CPC 1908 to pass an order of attachment before judgment of attachment of schedule item No. 1 property and one-half share of the defendant in the attachment schedule item No. 2 property scheduled in the attachment schedule and order to show cause or to furnish security of Rs. 42,30,000/-. This petition coming on for final hearing on 07.03.2024 and the court on this day passed the following:-

**ORDER**

This is a petition filed by the plaintiff under Order 38 Rule 5, read with Section 151 of the Code of Civil Procedure, for an order of conditional attachment against the respondent/defendant.

2. Averments in the petition in brief are as follows:- Petitioner is the plaintiff and respondent is the defendant. Plaintiff and defendant are friends. On 10.01.2023 defendant borrowed an amount of ₹30 lakh, from

the plaintiff, executing promissory note, agreeing to repay the amount with 18% interest per annum, on demand. In spite of repeated demands defendant did not repay the amount or interest.

3. Defendant is trying to transfer his  $\frac{1}{2}$  right over petition schedule property to defeat or delay the decree that may be passed against him.

4. In the above circumstance, petitioner sought for an order of conditional attachment of petition schedule property as a security for the suit claim of ₹30,00,000/- (Rupees thirty lakh only).

5. The respondent/defendant filed counter stating that he has no friendship with plaintiff and he did not not borrow ₹30 lakh from plaintiff on 10.01.2023, executing promissory note. Because of urgency for money, he borrowed an amount of ₹5 lakh from the plaintiff on 15.7.2019, by furnishing original RC book of his Innova car with registration No.KL-08 BB 353, blank signed stamp papers, blank signed papers, blank cheques of respondent and blank cheque of wife of respondent, as security. The vehicle was hypothecated and it was closed on 27.11.2020. The defendant repaid entire amount with interest to the plaintiff. But the plaintiff demanded ₹1,00,000/- more towards interest and also demanded to settle the amount due to one T.E Abhilash. When the defendant insisted to return his RC book, plaintiff said that it was lost from his custody. As a pressure tactic, plaintiff gave a statement before Muvattupuzha Police alleging that an amount of ₹30,00,000/- was given to the defendant for business and defendant agreed to pay share of profit. The plaintiff further alleged that a promissory note also executed in his favour and defendant cheated the plaintiff by changing the RC book. The police filed final report against the defendant. During the investigation, witnesses in the promissory note stated before police that

they were unaware about the alleged pro-note. In respect of execution of agreement for sale of Innova car, plaintiff instituted OS 388/2023 before the Munisff court. In that suit nothing stated about borrowal of ₹30 lakh from the plaintiff. Plaintiff fraudulently executed alleged promissory note either by forgery or by using defendant's blank signed paper handed over towards security in another loan transaction. There is no material to show that plaintiff transferred an amount of ₹30 lakh to the defendant. It is relevant for the reason that as per law, only upto ₹2 lakh can be transferred by cash. In the First Information Statement given by the plaintiff in the criminal case he stated that plaintiff gave an amount of ₹30 lakh for business purpose, for getting share of profit and plaintiff received an amount of ₹2 lakh from the defendant towards share of profit. The version of the plaintiff that he paid ₹7,00,000/- towards the entire sale consideration of vehicle without delivery of vehicle is not believable. Hence the petition is liable to be dismissed.

6. Ext.A1 to Ext.A3 documents were marked from the side of plaintiff. Ext.B1 to B4 document were marked from the side of defendant. No other evidence adduced.

7. Heard both sides.

8. Now the points that arise for consideration are :

1. Is the petitioner/plaintiff entitled to an order of conditional attachment, as that sought for?

2. What is the order as to costs?

9. Point No.1:- According to the plaintiff on 10.1.2023, the defendant borrowed ₹30 lakh from the plaintiff, agreeing to repay the

amount with interest @ 18% per annum and executed Ext.A1 promissory note. According to the defendant this is a false case filed misusing his signed blank papers handed over to the plaintiff when he borrowed an amount of ₹5 lakh from plaintiff, though he repaid the amount. Defendant also suspects that this is a suit instituted using forged document. Defendant showed readiness to furnish payment details later. Defendant further contended that there is no proof of transfer of ₹30 lakh and cash transaction above ₹2 lakh is not permissible under law. The witnesses in Ext.A1 promissory note gave statement to the police in the crime registered against the defendant based on the complaint filed by the plaintiff, that they did not witness the execution of promissory note.

10. In the petition or in the plaint there is no whisper regarding the place and time of payment of ₹30 lakh to the defendant and execution of promissory note in favour of the plaintiff. Plaintiff could not explain why did he pay ₹30 lakh in cash, though single cash transaction above ₹2 lakh is prohibited under Section 269 ST of the Income Tax Act. It is notable that as per the case of plaintiff he handed over ₹30 lakh to the defendant on the same day in a single transaction.

11. From Ext.B1 First Information Statement of plaintiff it could be seen that he put a different version than what he stated in this petition regarding payment of ₹30 lakh to the defendant. In Ext.B1 First information statement plaintiff stated that on 10.1.2023 defendant borrowed ₹30 lakh for vehicle business, agreeing to repay the principal amount on 01.09.2023 with share of profit. The above version is contradictory with the plaintiff's case and recital in Ext.A1 promissory note in which it is stated that defendant agreed to repay the amount of ₹30 lakh received from plaintiff, with 'ഒന്നര വീതം കൂടുതലായ പലിശ' interest @ 18% to the plaintiff or his order.

12. According to the defendant this is a suit instituted misusing the document handed over to the plaintiff as security when he borrowed ₹5 lakh from plaintiff on 15.7.2019 or above document is forged. Considering the inconsistency arose in Ext.A1 promissory note regarding the transaction, from Ext.B1 first information statement of plaintiff and the fact that the transaction described by the plaintiff was in violation of 269 ST of Income Tax Act, which prohibits receipt of an amount of ₹2 lakh or more in a single transaction except through the account payee cheque or account payee bank draft or other electronic clearing system. It is relevant to note that plaintiff could not produce any documentary evidence other than Ext.A1 promissory note showing transfer of ₹30 lakh to the defendant and from Ext.B2 final report it could be seen that the witnesses cited in Ext.A1 promissory note stated to the investigation officer that they did not witness execution of Ext.A1 promissory note and their knowledge regarding the above transaction is what they heard from the plaintiff. The above evidence prima facie creates doubt on the transaction relied by the plaintiff.

13. It is settled position of law that unless veracity and genuineness of claim advanced by the petitioner is probable, the court shall not grant an order of conditional attachment (relied dictum laid down by the Division Bench of Hon'ble High Court in Krishna Prasad V. Vrindaraj and Others reported in 2019(1) KHC 677). The above dictum is applicable to the facts and circumstance of this case.

14. The learned counsel for plaintiff argued that at this stage Ext.B2 final report and 161 statement of witnesses in Ext.A1 promissory note should not be considered. The above contention is not sustainable for the reason that Ext.B1 First Information Statement of plaintiff and Ext.B2 final report based on Ext.B1 First Information Statement of the

plaintiff could be considered to verify the veracity and genuineness of plaintiff's claim.

15. The learned counsel for the plaintiff further argued that the defendant admitted borrowal of ₹5 lakh from plaintiff and there is no evidence regarding repayment of the above amount and defendant did not specifically deny his signature in Ext.A1 promissory note and for that reason this is a fit case to order a conditional attachment in favour of the plaintiff. The above contention is not sustainable for the reason that for granting an order of conditional attachment, plaintiff should raise a consistent prima face case and in this case plaintiff failed to put up a consistent prima facie case that defendant borrowed an amount of ₹30 lakh from him on execution of Ext.A1 promissory note.

16. From the above discussion the only possible finding is that plaintiff could not raise a prima facie case that he advanced ₹30 lakh to the defendant based on Ext.A1 promissory note and I find the point against the petitioner/plaintiff.

17. Point No.2:- Considering the facts and circumstance of the case, each party shall bear their respective costs.

In the result, Interlocutory application No.2/2024 in OS 21/2024 is dismissed.

Dictated to the Confidential Assistant, typed by her directly into computer, corrected by me and pronounced in the Open Court on this the 19<sup>th</sup> day of March 2024.

Sd/-  
Aravind B. Edayodi  
Sub Judge

**APPENDIX****Petitioner's Exhibits :**

A1	10.01.2023	Original promissory note executed by the defendant in favour of the plaintiff
A2	08.09.2015	Certified copy of Sale Deed No. 3175/15 of SRO, Muvattupuzha
A3	05.09.2011	Certified copy of Sale Deed No. 4466/11 of SRO, Muvattupuzha

**Respondent's Exhibits :**

B1	05.10.2023	Photocopy of FIR 1745/23 of Muvattupuzha Police Station
B2	22.11.2023	Certified copy of Final Report (Charge Sheet) in FIR 1745/23 of Muvattupuzha Police Station.
B3	21.12.2023	Copy of plaint in O.S.388/2023 in Munsiff's Court, Muvattupuzha
B4	06.03.2023	Affidavit of C.H. Nassar

//True Copy//

Id/-  
Sub Judge  
  
(By Order)  
  
Sheristadar

Copied by : stn/-  
Compd by : svb/-

Copy of Order in  
I.A. 2/2024 in  
O.S. 21/2024  
Dated:- 19.03.2024