IN THE COURT OF THE MUNSIFF, KARUNAGAPPALLY

Present: Smt. Aswathy Nair, Munsiff

Friday, the 04th day of April, 2025/14th day of Chaithram -1947.

<u>IA(RP) 01/2024 in OS.178/2024</u>

Between

Petitioner: Anil Kumar, S/o. Bandhavan,
Akhil Bhavanam Veedu,
Kallelibhagom P.O,
Kallelibhagom Muri, Kallelibhagom village,
Karunagappally Taluk.

(By Adv.Sri.Rajan Elavinal)

And

Counter Petitioners :

1. Ramjith, aged-34,
(Business), S/o.Radhakrishnan,
Radhalayom Veedu, Kallelibhagom P.O,
Kallelibhagom Muri,
Kallelibhagom village,
Karunagappally Taluk.

2. Radhakrishnan, S/o.Paramu,
Radhalayom Veedu, Kallelibhagom P.O,
Kallelibhagom Muri,
Kallelibhagom village,
Karunagappally Taluk.
(By Adv.Smt.R.Maya)

This petition filed under Order 38 Rule 5 of Code of Civil Procedure for conditional attachment.

This petition having been final heard on 21.03.2025 and on 4.4.2025 the court passed the following.

<u>ORDER</u>

This application has been filed by the petitioner/plaintiff under Order 38

Rule 5 of CPC. Respondents in the application are the defendants in the original suit.

2. Brief facts of the petition is that, petitioner is the plaintiff in this case and the respondents are the defendants in this case. Respondents are the acquaintance of the petitioner. On the basis of the said acquaintance, on 02.05.2022, 2nd respondent approached the petitioner and offered a job for his son in a private company at Dubai and he demanded money. Accordingly, the amount has been given as installments. Respondents demanded Rs.75,000/- as the 1st installment for the said purpose. Further, on 08.05.2023 as per the direction of the 1st respondent he has given Rs.25,000/- to 2nd respondent at his residence and later Rs.50,000/- as the remaining balance of the 1st installment has been given to 1st respondent through his google pay account on 09.05.2023 and on 22.05.2023 he has given Rs.1,42,000/- to the 2nd respondent. Further on 23.05.2023 petitioner’s son went to Dubai through a job visa. However, the petitioner's son did not get the job as offered by the respondents and did not get the salary as offered by the respondents. Subsequently, on 06.01.2024 the petitioner's son returned to Kerala. After that only, the petitioner came to know that respondents have cheated them and they have obtained money from several people similarly by offering jobs in Dubai. Further on 29.01.2024 petitioner filed a complaint before the Karunagappally Police Station against the respondents. Accordingly on 03.02.2024 respondents assured the petitioner that they will return the amount within four months. But they did not repay the amount. Hence he issued a

registered notice to the respondents on 02.05.2024. Even after the receipt of the notice, they did not repay any amount. Respondents are now trying to alienate the property owned by them. If the same is alienated it will cause irreparable injury and loss to the petitioner. Petitioner has a prima facie case and there is every possibility that he will obtain a decree in favour of him. Hence filed this petition.

3. Respondents filed an objection stating that petition is not maintainable. Petitioner has filed this suit suppressing the material facts. Respondents did not receive any amount from the petitioner as alleged by him. Petitioner’s brother Rahul got a job in Thailand through one Mr.Shorn at Mangalore. Accordingly, the petitioner approached the defendant and requested him to introduce the petitioner to said Shorn. Further, respondents introduced the petitioner to said agent and as per the direction of the said agent petitioner has sent an amount of Rs.50,000/- to the 2nd respondent through Google Pay and using the said amount he had booked ticket twice. Since there was a change in the date of going, the 1st ticket was canceled, but they did not get a refund for the same. Further as per the agreement the agent has given a job to the petitioner's son at Dubai. But the petitioner's son did not like the job, hence he returned to Kerala. Petitioner has directly contacted this agent and respondents have no role in said transaction. He has only introduced the petitioner to said agent. Agent has purchased an air ticket and visa for the amount given by the petitioner. But the petitioner's son has purposefully returned to Kerala by quitting his job. Respondents are not a necessary party to the suit. Petitioner has filed a complaint

before the police against the respondents. Further police realized the real facts on inquiry hence, they did not take any action against the respondents, instead the police suggested the plaintiff file a case against the said agent. On receipt of the legal notice from the plaintiff, the defendant inquired the same with the plaintiff, that time the plaintiff informed him that respondents shall reimburse him with the amount lost. But respondents are not liable to pay any amount to the petitioner. They have not received any amount from the petitioner. Respondents have no liability to pay any amount. Hence attachment may not be allowed. The alleged transaction between the plaintiff and the defendants is a not secured debt. Hence the property is not liable to be attached.

4. On the basis of the above pleadings the only point is raised for consideration.

Is the petition allowable?

5. Heard the learned counsel for both sides .

6. The Point :- The specific contention of the petitioner is that respondents offered a job for the petitioner's son at Dubai. Accordingly, respondents demanded money from the petitioner for that purpose and the petitioner gave money via installments. Respondents have demanded Rs.75,000/- as 1st installment. Hence, Rs.25,000/- has been given to the 2nd respondent directly at his residence on 08.05.2023 and the remaining Rs.50,000/- has been given to the Google Pay account of the 1st respondent on 09.05.2023. Further on 22.05.2023 petitioner has given the 2nd installment Rs.1,43,000/- directly to the 2nd respondent

by cash at the house of the 2nd respondent. Further on 23.05.2023 petitioner’s son was taken to Dubai for the job. However, he has not been given the job and the salary as offered by the respondents. Further petitioner’s son was compelled to return to Kerala on 06.05.2024. Later, the petitioner realized that respondents had cheated them. On the flip side, respondents argued that they never received any amount from the petitioner by offering a job at Dubai and instead, respondents took the contention that the petitioner has approached respondents and requested them to introduce him to an agent who offers a job at Dubai. Accordingly, respondents introduced the petitioner to that agent. Subsequently as per the direction of the agent, petitioner has given Rs.50,000/- to the account of the respondents for booking tickets. Petitioner's son has also received the job at Dubai through that agent. But he did not like the job, hence he returned to Kerala. Respondents are not liable to pay any amount to the petitioner, since they have no role in the transaction between the petitioner and the agent.

7. On perusal of the rival contentions, it is seen that according to the petitioner, he has given around Rs.2,18,000/- to the respondents for the job of his son. But his son did not get the job as offered by the respondents. Petitioner produced the tickets and passport to prove that petitioner’s son has been taken to Dubai. Though the petitioner contended that he has given Rs.2,18,000/- to the petitioner, he has only submitted the document showing that he has given Rs.50,000/- to 2nd respondent through Google Pay. No document is seen produced to prove the transaction of the remaining amount. Learned counsel for the plaintiff

contended that the remaining amount has been given to respondents directly by cash. If that be the case such a contention can be proved only through adducing evidence and cannot be considered at this stage. At present the petitioner could only prove the transaction of an amount of Rs.50,000/- with the respondents. At the same time the respondent admitted the transaction of Rs.50,000/- to him. But he took out a contention that said amount has been transferred as per the direction of an agent for booking tickets and accordingly he booked tickets for the son of the petitioner. Petitioner admitted that his son was taken to Dubai on the proposed date and subsequently he returned to Kerala. Since plaintiff could not prove the other amounts at this stage, I could not say there is a prima facie case in favour of the petitioner. Though he transferred the amount of Rs.50,000//- to the respondents, admittedly the petitioner's son was taken to Dubai for his job. Hence, on considering the entire facts and circumstances of the case, I am of the view that if the attachment is allowed it will cause irreparable injury and loss to the respondents than the petitioner. The facts adduced by the petitioner is a matter of evidence and cannot be considered at this stage without adducing any evidence. Hence the point is answered against the petitioner.

In the result, the petition is dismissed.

(Dictated to the confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court on this the 04th day of April, 2025)

Sd/-
Aswathy Nair,
Munsiff.

Appendix : -NIL-

Id/-
Munsiff.

// True Copy //

Munsiff.

Typed By: Nadarsha.Y,
Compared By: