

IN THE COURT OF JUDGE, COMMERCIAL COURT (SENIOR CIVIL JUDGE
CADRE), COIMBATORE

PRESENT: THIRU.C.B.VEDAGIRI, B.PHARM, MS-IT (AUS)., L.L.M., Judge
Commercial Court, (Senior Civil Judge Cadre)
Coimbatore

Dated this the 25th Day of October 2025, Saturday

IA. No. 1 of 2025

in

C.OS No.797 of 2024

(CNR.No.TNCB23-001884-2024)

M/s. The Apple Health Services,
Rep by its proprietor Mr. R. M. Vijay Alangaram

... Petitioner/Plaintiff

//Vs//

M/s. Sree Sai Medicals,
Rep by its Proprietor Mr. R. Sasikumar

... Respondent/Defendant

This Petition coming on this day for final hearing before me in the presence of Mr. A. Ashokkumar, Advocate for the Petitioner/Plaintiff and Mr. P Jayaseelan, Advocate for the Respondent/Defendant. Upon hearing the counsels and on perusal of records, having stood over till this day for consideration, this Court passed the following:-

ORDER

The Petition has been filed by the Petitioner/Plaintiff under Order 38 Rule 5 of Civil Procedure Code may be pleased to order that the schedule mentioned property in the accompanying affidavit which stands jointly in the name of Respondent be attached before Judgement until the satisfaction of the Decree and thus render justice.

1. The sum and substance of the Petition:

The Petitioner/Plaintiff is the deponent herein and the plaintiff in the above suit and well acquainted with the facts of the case. The main plaint may be read as part and parcel of this affidavit. The petitioner/plaintiff has filed the above suit for recovery of money against the respondent along with other claims. The petitioner/plaintiff is a wholesale supplier of medicines for the past two decades and the Respondent is one of my customers. The Respondent is conducting retail medical shop in Hosur approached me for supply of medicines. Initially the Respondent was not extended any credit period and hence the Respondent paid for all the invoices then and there and purchased goods. Subsequently the Respondent was awarded a credit period of 7 days from the date of invoice. The Respondent had adhered to the same during the initial transactions and at a later stage the Respondent began to accumulate payments against various invoices after receiving the goods.

The Petitioner/Plaintiff submit that the Respondent had purchased goods over a period of time from my company vide invoice No's: 7341 dated 24.02.2024, 7340 dated 24.02.2024, 7336 dated 24.02.2024, 7436 dated 27.02.2024 and withheld payment to the tune of Rs.14,59,124/- (Fourteen Lakhs Fifty Nine Thousand One Hundred and Twenty Four only). Despite persistent follow-ups from myself, the Respondent kept delaying the payment under one pretext or another. The Respondent on his own volition, during March, 2024 had issued the duly filled following cheques and instructed me to deposit the cheque No's: 001299 for an amount of Rs.3,34,314/-,

001300 for an amount of Rs.3,09,846/- and cheque No: 001305 for an amount of Rs.5,89,678/- on 15.04.2024. Further the Respondent sought some more time to deposit the cheque No: 001298 for its realization. The cheque bearing No's: 001299, 001300 and 001305 were deposited as per the instructions of the Respondent on 15.04.2024 for its realization but the cheques were dishonoured under the caption 'Payment Stopped by the Drawer' and when petitioner/plaintiff informed the Respondent about the dishonour of cheques, the Respondent without offering any plausible explanation for the dishonour of cheque under the caption 'Payment stopped by the Drawer', the Respondent instructed me to deposit all the above mentioned cheques along with cheque No: 001298 for its realization on 04.06.2024. When all the cheques were deposited for its realization on 04.06.2024, all the 4 cheques issued by the Respondent were dishonoured again on 04.06.2024 under the caption 'Payment stopped by the Drawer'.

The Petitioner/Plaintiff submit that a statutory notice dated 06.06.2024 under Section 138 of NI Act was issued to the Respondent in respect of the above mentioned cheques totally amounting to Rs.14,59,124/-, the Respondent after the receipt of the statutory notice voluntarily handed over the photocopy of a residential property vide Doc No: 2900/2024 as security for the liability of Rs.14,59,124 /- and assured to handover the original within a week's time. But the Respondent with an ulterior motive had entered into an unregistered agreement for sale in respect of the above mentioned residential property with one V.Vijaykumar. The petitioner/plaintiff reliably acquired knowledge that the Respondent is making hectic attempts to encumber the property with an intention to defraud the Plaintiff's legitimate claim of Rs.14,59,124/- and hence I initiated Pre-Suit Mediation as mandated under Section 12A of the Commercial Courts Act but the Respondent did not appear before the Hon'ble District Legal Services Authority on 19.07.2024 despite receiving the notice. The Respondent had hastily availed loan, after receiving the Pre-suit mediation notice, with ICICI Bank Ltd., for an amount of Rs.1,50,00,000 /-. The encumbrance

certificate reflects the registered mortgage. The commercial value of the said property is more than the loan amount.

The Petitioner/Plaintiff has also submit that the petition mentioned property is to be necessarily attached as subsequent attachment, since the Respondent with an intention to defeat the legitimate claim may alienate the property. The Respondent possesses no other immovable property and hence the petitioner/plaintiff may not be able to recover my legitimate claim if this Hon'ble Court passes a decree in my favour. Therefore it is humbly prayed that this Hon'ble Court may be pleased to direct the Respondent to furnish security for Rs.14,59,124 /- of the suit mentioned property within a specified time as may be sufficient to satisfy the Decree that may be passed in the above suit and on their failure to furnish security this Hon'ble court may kindly be pleased to order that the schedule mentioned property hereunder, which stands Jointly in the name of Respondent and his wife Mrs. Ramya Sasikumar be attached before judgment until the satisfaction of the Decree and thus render justice.

2.The crux of the Counter:

The Respondent/Defendant submits that this Respondent is the deponent herein and defendant in the above said main case and well acquainted with the facts of the case. The suit is herein is false, incorrect, vexatious and unsustainable both in law and on facts. The plaintiff has filed a suit against the defendant recovery of a sum of Rs.14,59,124/-. This Respondent pray leave that the averments contained in the plaint may be read as pear and parcel of this affidavit. Myself and on behalf of my legal heirs give undertake that I will ensure the property is maintained in its warrant condition until the completion of the disposal of this suit or legal proceeding, and further undertake that I will no transfer ownership or create any encumbrances on the property during the pendency of the suit and I will not encumbrance are alienated the schedule of property till the disposal of the above suit. Therefore, it is humbly prayed that this Hon'ble Court may be pleased to accept and thus render justice.

3. Heard both sides. Perused the record.

4. Point of determination:

The point for consideration is that whether the present petition by the petitioner / plaintiff to order that the schedule mentioned property in the accompanying affidavit which stands jointly in the name of Respondent be attached before Judgement is to be allowed or not?

5. The case of the petitioner / plaintiff is that the Respondent having a retail medical shop in Hosur approached the petitioner for supply of medicines. The business transaction with the respondent was initially without credit and later credit period of 7 days from the date of invoice was awarded. Though the Respondent had adhered to the same during the initial transactions and at a later stage the Respondent began to accumulate payments against various invoices after receiving the goods.

6. The petitioner counsel contended that the Respondent had purchased goods over a period of time from the petitioner vide Invoice No's: 7341 dated 24.02.2024, 7340 dated 24.02.2024, 7336 dated 24.02.2024, 7436 dated 27.02.2024 and withheld payment to the tune of Rs.14,59,124/-. The Respondent during March, 2024 had issued the duly filled following cheques bearing cheque No's: 001299 for an amount of Rs.3,34,314/-, Cheque No.001300 for an amount of Rs.3,09,846/- and cheque No: 001305 for an amount of Rs.5,89,678/-, but when presented on 15.04.2024 returned as 'Payment Stopped by the Drawer'. The Respondent sought some more time to deposit the cheque No: 001298 for its realization. Upon instruction from the respondent, to deposit all the above mentioned cheques along with cheque No: 001298 for its realization on 04.06.2024, the petitioner deposited all the 4 cheques issued by the Respondent and the same were dishonoured again on 04.06.2024 under the caption 'Payment stopped by the Drawer'.

7. The Petitioner counsel urged that when the petitioner had issued a statutory notice dated 06.06.2024 (*alleged notice not filed with the plaint*) under Section 138 of NI Act to the Respondent for the above mentioned total outstanding amount of

Rs.14,59,124/- (Cheque amount), the Respondent voluntarily handed over the photocopy of a residential property vide Doc No: 2900/2024 as security for the liability of Rs.14,59,124 /- and assured to handover the original within a week's time. But the Respondent with an ulterior motive had entered into an unregistered agreement for sale in respect of the above mentioned residential property with one V.Vijaykumar. The petitioner/plaintiff reliably acquired knowledge that the Respondent is making hectic attempts to encumber the property with an intention to defraud the Plaintiff's legitimate claim of Rs.14,59,124/-.

8. The petitioner counsel also contended that the Respondent did not appear before the Hon'ble District Legal Services Authority despite receiving the notice for the Pre-Suit Mediation as mandated under Section 12A of the Commercial Courts Act and it ended in a Nonstarter dated 19.07.2024. It is also brought to the notice of this court that the Respondent had availed loan for an amount of Rs.1,50,00,000 /- and had mortgaged the petition mentioned property on 08.07.2024 with ICICI Bank Ltd with an intention to defeat the legitimate claim may alienate the property. The Respondent possesses no other immovable property and hence the petitioner/plaintiff may not be able to recover my legitimate claim if this Hon'ble Court passes a decree in my favour and thus the present petition to furnish security for Rs.14,59,124 /- of the suit mentioned property within a specified time as may be sufficient to satisfy the Decree that may be passed in the above suit and on their failure to furnish security this Hon'ble court may kindly be pleased to order that the schedule mentioned property hereunder, which stands Jointly in the name of Respondent and his wife Mrs. Ramya Sasikumar be attached before judgment until the satisfaction of the Decree and prayed to allow this petition.

9. **Per contra**, the respondent / defendant counsel contended that the present suit has been filed by the petitioner / plaintiff against the respondent / defendant for the recovery of a sum of Rs.14,59,124/- for supply of medicines. It is the contention of the respondent that they had settled the entire outstanding amount due to the

respondent and is evident from the bank statement adduced. The alleged cheques were given to the petitioner / plaintiff only as a security purpose and that the respondent / defendant have settled the entire outstanding and have informed the petitioner to hand over the alleged cheques which the petitioner has misused and has presented the same.

10. The respondent counsel contended that that the present respondent has given an undertaking on behalf of the respondent and of his legal heirs that the respondent will ensure the property is maintained in its good condition and that the respondent will not transfer the ownership or alienate or deal with the petition mentioned property until the completion of the disposal of this suit or legal proceeding and prayed to accept the undertaking and to dismiss the present petition.

11. It is from the record that the present suit is being filed by the petitioner /plaintiff on 01.08.2024 against the respondent / defendant for recovery of money due from the respondent / defendant for the supplies of the medicines and allied products and that the petitioner / plaintiff is before this court seeking the petitioner to furnish security for Rs.14,59,124 /- of the suit/petition mentioned property within a specified time or on failure to attach the petition mentioned property standing jointly in the name of the respondent and his wife upon the petition being numbered on 07.01.2025(though filed along with the plaint). It is also from the record that the respondent/defendant was served with the suit summons on 13.09.2024 and has made appearance through counsel on 24.09.2024 before this court. It is also from the record that the respondent was served in the present petition through private notice on 06.06.2025.

12. It is the contention of the petitioner that the respondent having failed to honour his payments vide the cheques given by him to the petitioner for the supplies of the medicines made by him and having given stop payment instruction to the bank with the intention to defeat the petitioner's claim, is now seeking relief through this petition.

13. It is the contention of the respondent that there is no outstanding amount due to be paid by the respondent / defendant to the petitioner / plaintiff for the purchases of the medicines and its products as claimed by the petitioner. Though the defendant admitted each and every supply made through the invoices as alleged by the petitioner / plaintiff, the respondent specifically denies the issuance of the cheque for the payment against the invoices. It is the specific stand of the respondent / defendant that the alleged cheques were given only as security and are not meant for collection and that the petitioner has misused the alleged cheques and has presented for collection without the knowledge of the respondent. It is also the specific contention of the respondent that he has made all the payments for the purchases to the petitioner through bank transfer, that too, exactly for the invoice amount and that the same being reflected in the bank account statement, thus contended that there the respondent is not liable for the alleged suit claim amount.

14. This court is conscious of the object and purpose of the Commercial Courts Act, 2015 which aims for speedy disposal of the suits and act in stipulated timelines, levying cost on parties if the same is not adhered to.

15. With a view to appreciate the aforesaid issues, I may first refer to the relevant provisions which have direct bearing on the question on hand:

Order 38 Rule 5 of the C.P.C., reads as under:

"5.(1) Where at any stage of a suit, the court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,-

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdictions of the court, the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(4) If an order of attachment is made without complying with the provisions of Sub-rule (1) of this rule, such attachment shall be void."

16. This court is remindful of the decision of the Hon'ble Apex Court in **Raman Tech. & Process Engg. Co. vs Solanki Traders** wherein it was held that "The power under Order 38 Rule 5 CPC is drastic and extraordinary power. Such power should not be exercised mechanically or merely for the asking. It should be used sparingly and strictly in accordance with the Rule. The purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt."

17. This court relied on the decision of the **Hon'ble High Court of Madras in M.Padmini Vs M.Anandhan 2014 3 CTC 792** wherein it was emphasized that the affidavit should allege that the defendant was making arrangement to dispose of her property but the very affidavit lacks the *bonafide*. In the case on hand, it is alleged by the petitioner himself, that the respondent has mortgaged the suit property by depositing the title deeds in favour of ICIC Bank vide registered mortgage deed dated 08.07.2024.

18. This court also relied on decisions of **Hon'ble High Court of Madras in S.Sidarth Vs P.Lalitha Kumari and Ors 2014 2 CTC 639** wherein it was observed that the power under Or 38 R 5 is drastic and could not be exercised mechanically or for mere asking.

19. This court also relied on the decision of **Hon'ble High Court of Madras in D.Dhanalakshmi Vs. M/s Radhakrishna Multiple Industries Pvt Ltd and Anr 2015 2 TNCJ 780 Mad (DB)** wherein it was emphasized that before meeting the two essential requirements namely, defendant is about to dispose of the whole or any part of his property and said disposal is being done with an intention to obstruct or delay

the execution of the decree that may be passed against him are to be established before ordering attachment.

20. This court is aware that the mere affidavit with bald allegations and without any concrete and specific averment could not make the compliance of the provision and moreover, a mere filing of recovery suit by itself would not entitle the petitioner for an attachment order and that express provision should be complied and that Or 38 R 5 CPC is a drastic and extra ordinary power vested in the hands of the court and has to exercised sparingly.

21. The object of the provision of Order 38 Rule 5 is to prevent any attempt on the part of the defendant to defeat the realization of the decree that may be passed against the defendant. The property in question vest with the respondent and the petitioner to satisfy the decree if passed in his favour in the suit came up with this petition. It is evident that the petitioner has knocked the doors of this court for decree based on the dishonor of cheques which was alleged given for the supplies of the medicines by the petitioner to the respondent. It is also from the record that the present respondent has given an undertaking not to alienate or encumber the petition mentioned property. Moreover the undertaking given is not in compliance to the *Form as per Form No.6 in Appendix (F) of the CPC* as held in the decision of the **Hon'ble Madras High Court in S.Rajasekar Vs C.Sakthivel Raajaa** decided on 03.08.2023.

22. Since the undertaking given by the respondent/defendant is not in strict compliance of the requirement under Order 38 Rule 5 C.P.C. as there is only a simple undertaking not to alienate the property though he has already mortgaged the suit property. The respondent / defendant has not offered the entire petition mentioned property as security to the suit debt to satisfy the suit claim this court is not inclined to accept the affidavit of the respondent/defendant by placing reliance to the decision of the **Hon'ble High Court of Madras in Velpa International Private Limited Vs Pridharshini and Ors 2025 5 CTC 38.**

23. This court has perused the petition and connected records along with the third party affidavit. It was also brought to the notice of this court that the present petition mentioned property has been already mortgaged to the ICICI bank by the respondent / defendant through a registered mortgage on 06.07.2024 for Rs.1,50,00,000/-.

24. The limited scope of the petition, is only to decide whether the respondent's property be attached for the suit claim. From the very discussion and the decisions referred *supra*, This court feels that whether the petitioner is entitled to the suit relief, whether there exist a legally enforceable debt, whether the alleged cheques were given to the petitioner by the respondent for the medicines supplied by the petitioner, whether the respondent is not liable for any payment against the invoices as alleged by the petitioner are all the issues to be determined at the trial after giving adequate opportunities to the petitioner / plaintiff and the respondent / defendant and permitting the parties to the *lis* to let in oral and documentary evidence to substantiate their case in accordance with law.

In the result, the petition is dismissed.

The Order is directly typed in computer by Typist, corrected and pronounced by me in this Open Court on this 25th Day of October, 2025.

Judge
Commercial Court
(Senior Civil Judge Cadre)
Coimbatore

List of Documents:-**List of Documents the side of the Petitioners: Nil****List of Documents the side of the Respondents: Nil**

Judge
Commercial Court
(Senior Civil Judge Cadre)
Coimbatore

Fair Order
IA.No. 01 of 2025
Cos No. 797 of 2024
Date: 25.10.2025