

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE,
DINDIGUL.

PRESENT : **THIRU. A.K. MEHBUB ALI KHAN, B.L.M., LL.M.,**
PG.D.PM/IR.,
ADDITIONAL DISTRICT JUDGE, DINDIGUL.

Thursday, the 19th Day of September 2024

I.A. No.1/2023

-in-

O.S. No.85/2023

Ramalingam ... Petitioner / Plaintiff

-Vs-

Palanichamy ... Respondent / Defendant

This petition came on 03.09.2024 before this Court for hearing in the presence of Tvl. S. Selvakumar, D.Jeeva Selvakumar, A. Savariyar, S.Harish, B.Divya, K.Thilagavathi Advocates for the Petitioner / Plaintiff, Tmt.M.K.Rani, Advocate for Respondent / Defendant and on perusal of records, this Court delivers the following :

ORDER

Petition is filed by the petitioner / plaintiff Under Order XXXVIII, Rule 5 and Sec.151 of C.P.C.

2. **Contention of the Petitioner / Plaintiff in brief:**

The Petitioner is the plaintiff and he has filed the suit for recovery of money on the pronote. The respondent / defendant had borrowed a sum of Rs.9,00,000/- from this petitioner on 25.12.2021 to meet his family expenses and sundry debts, and executed the suit pronote at this house. But, the respondent did not pay any amount either towards the principal or towards the interest. The notice sent to the defendant on 31.12.2022 did not evince any result. So, the petitioner filed this suit. The properties described in the petitioner were allotted to the respondent under a family partition at 25.08.2022 under 'C' schedule. He is attempting to sell them, take the sale amount and to leave the jurisdiction of this court. If the respondent is allowed to do so, the petitioner would be put to irreparable loss and hardships. So, he prays to direct the respondent to deposit the suit amount into court and if not done so, to attach the properties before judgment.

3. **Contention of the Respondent /Defendant in brief:**

The respondent has denied all the allegations made by the petitioner. He has stated that he received a loan of Rs.5,00,000/- from Arul Murugan Finance, Coimbatore in March 2021 and had handed over four unfilled but

signed pronotes including the suit pronote. He also had chit transactions with the said finance company. After repaying the said loan with interest, when the respondent demanded return of the pronote, he was told that they would be returned after completion of chit transactions. Later, in December 2022 after completion of chit transaction when demanded, they told him that he has to pay a sum of Rs.1,00,000/- towards chit balance and they have to verify the accounts. The respondent handed over the chit accounts and stated that he did not owe any amount to them. But, they did not return the pronotes. The said finance company persons have handed over one of those pronotes to this plaintiff and have filed this suit. The respondent never borrowed any amount from the petitioner. The petitioner has not given the details of District, Taluk or Village wherein the properties sought to be attached situate and so the petition is not maintainable. Hence, he prays to dismiss the petitioner

4. The point for determination in this petition is “ **Whether the petition be allowed ?**”
5. No oral or documentary evidence was let in by either side.
6. The arguments of both parties were heard by me.
7. **Answer to the Point :**

The petitioner has filed this petition to direct the respondent to deposit the suit amount and in case of failure to do so, to order attachment before judgment against the properties described in the petition. The respondent has denied borrowing any amount from the petitioner and has specifically stated that he had given four signed but unfilled pronotes to Arul Murugan Finance, Coimbatore. The question about liability can be decided only after trial in the suit. But, the petitioner has claimed that the respondent is attempting to alienate the properties with an intention to defeat his right. He has not filed any affidavit by 3rd party asserting such attempt.

8. It is trite that the order of attachment before judgment is drastic and extraordinary order and the courts have to exercise caution before passing such orders. It is equally important that such order cannot be passed on the basis of vague and bald averments, mechanically and merely for asking. The Hon'ble Supreme Court in "**Raman Tech. & Process Engg. Co & Another Vs Solanki Traders**"¹ has laid down the above proposition. Similarly, the

Hon'ble Madras High Court in "**Shinago Holding Private Limited Vs**

1 (2008) 2 SCC 302

M. Ethiraj² has held that,

“In the normal course, there should be affidavits from third parties, who are prospective purchasers or there should be some affidavits or materials to show that attempts are being made to sell away the machineries.”

But, in this case, except a vague allegation that the respondent is attempting to alienate the properties, no affidavit from 3rd parties is filed by the petitioner.

9. It is further important to note that, the description of the properties as given in the petition is incomplete and is bereft of the particulars as to District, Registration District, Taluk, or village in which they situate. Therefore, even if any order is passed, no purpose would be served in the absence of correct and complete description.

10. Therefore, in view of the discussion made above, this court is of the considered opinion that, the petition has to fail and no order either directing to furnish security or attachment before judgment can be passed in this case. This point is answered accordingly.

2 O.S.A. Nos. 125 and 126 of 2017 dated 11.08.2017

In the result, this petition is dismissed with cost.

Written down by me and typed by stenographer in computer, corrected and pronounced by me in Open Court on this the 19th day of September 2024.

Sd/- Thiru.A.K.Mehbub Alikhan
Additional District Judge,
Dindigul.