

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.

Friday, the 13th Day of September 2024

I.A. No.1/2023

-in-

O.S. No.126/2023

A. Senthil Kumar ... Petitioner / Plaintiff

-Vs-

L.S. Aravind Kumar ... Respondent / Defendant

This petition came on 04.09.2024 before this Court for hearing in the presence of Tvl. V.Kannan, S. Japastian, Advocates for the Petitioner / Plaintiff. Tvl. E.Raguraman, T.Balachandran and T.Senthilkumar, Advocates for respondent / defendant and after having heard the argument on petitioner's sides and on perusal of records, this Court delivers the following :

ORDER

This 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 in the suit. He has filed the suit for recovery of Rs.18,95,000/- against the Respondent. The respondent was known to him for about 10 years. On 02.02.2021, the defendant borrowed a sum of Rs.15,00,000/- from the plaintiff, to meet out his urgent family expenses, agreeing to repay the same and he gave a cheque dated 02.02.2021 for the said amount drawn on Dindigul, Corporation Bank and assured that he would repay the amount in 2 months. The respondent told the plaintiff to collect the amount by depositing the said cheque. Therefore, the plaintiff deposited the cheque on 29.03.2021 through his account in Canara Bank, Chinnalapatti Branch. But, the cheque was returned citing '*funds insufficient*' as the reason dated 30.03.2021. But, as promised the defendant did not repay the amount and hence the plaintiff approached him and asked him to repay the said amount. The defendant promised to repay the said amount within a month.

3. By believing his words of the defendant, the plaintiff deposited the cheque on 29.03.2021 through his account but, the cheque was again returned citing '*funds insufficient*' as the reason dated 01.05.2021. So, the plaintiff

again demanded repayment on 03.05.2021. But, the respondent promised to repay the said amount within three months with interest at the rate of Rs.1/- per Rs.100/- per month. While so, this respondent attempted to alienate the petition mentioned properties to some 3rd party. Hence, the petitioner filed the suit to recover his debt. If the respondent is permitted to alienate the properties, it would be difficult for the petitioner to recover the debt. Hence, he has filed this petition for directing the respondent to furnish security and failing which to pass an order of attachment before judgment of the properties described in the petition. He prays to allow the petition accordingly.

Contention of the Respondent /Defendant in brief:

4. The respondent denied all the allegation made in the petition. The respondent was known to the petitioner as a land broker. He states that he borrowed a sum of Rs.10,00,000/- for interest at 5% per Rs.100/- p.m. on October 2016 and gave an unfilled cheque, an unfilled promissory note and executed an original sale deed for security. The respondent has repaid the said amount with interest and asked the plaintiff to give back the unfilled cheque, pronote and original sale deed. The petitioner told him that he had misplaced them and that he would return the same soon after tracing them. Believing his

words, the respondent did not take any action.

5. He further states that the petitioner has filed the case against him through his brother and friend in Judicial Magistrate Court, Aathoor, Dindigul and Judicial Magistrate Court No.I, Bhavani, Erode respectively. The petitioner has cheated the respondent for not giving the commission of selling his property. Hence, a police complaint was filed against the petitioner in Chennai on March 2023. The petitioner has filed this petition with false allegations and with an intention to grab the money form the respondent. The suit and this petition are not maintainable. He cannot seek attachment of property. The respondent has given an undertaking that he would not alienate the property and so the petition is not maintainable. He prays to dismiss the petition.

6. The point for determination in this petition is “ **Whether the petition be allowed ?**”

7. No oral or documentary evidence was let in by either party.

8. The arguments of both parties were heard.

9. **Answer to the Point :**

It is needless to state that attachment before judgment is a drastic relief and cannot be granted straightway without following the procedure laid down in Order 38, Rule (1) to (4) of C.P.C as held in “ *SPIC Ltd & Ors Vs Rathish Kanna*”¹. No doubt, it is true that the petitioner has made out a prima facie case and has a reasonable apprehension that the respondents are attempting to alienate the property. Hence, the respondent is directed to furnish a security in accordance with the prescribed form within one week. It is further held that on furnishing of such undertaking affidavit in prescribed form within a week and a copy of the same be intimated to the concerned SRO with a copy. Failing which there shall be an order of attachment before judgment. This point is answered accordingly.

In the result, the Respondent /Defendant is directed to furnish security by way of an undertaking affidavit in a prescribed Form and Stamp Paper on or before 23.09.2024 and on filing such affidavit, a copy of the same shall be

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intimated to the concerned SRO. Failing which, an order of attachment before judgment of the property shall be passed. Call on 23.09.2024.

Dictated to the stenographer, directly typed by her in computer, corrected and pronounced by me in Open Court on this the 13th day of September 2024.

Additional District Judge,
Dindigul.