

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE,
DINDIGUL.

PRESENT : **THIRU. A.K. MEHBUB ALI KHAN, B.LM., LL.M.,**
PG.D.PM/IR.,

ADDITIONAL DISTRICT JUDGE, DINDIGUL.

Monday, the 24th Day of June 2024

I.A. No.1/2023

-in-

O.S. No.298/2023

M.Sakthivel

... Petitioner / Plaintiff

-Vs-

P. Balasubramanian

... Respondent / Defendant

This petition came on 11.06.2024 before this Court for final hearing in the presence of Tvl. K.Ilampooranan and S.Palanikumar, Advocates for the Petitioner / Plaintiff. Thiru. N. Sivakumar, Advocate for respondent / defendant and after having heard the argument of both sides and on perusal of records, this Court delivers the following :

ORDER

Petition filed by the petitioner / plaintiff Under Order 38, Rule 5 and Section 151 of C.P.C.

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

Petitioner is the plaintiff in the suit and has filed the suit for recovery of money against the respondent. Respondent had borrowed a sum of Rs.50,00,000/- from the plaintiff on 24.12.2020 and executed a promissory note. In spite of repeated demands, he did not repay the amount. So, the plaintiff issued a legal notice through his counsel on 23.8.2023 and the same was received by the defendant on 30.8.2023 and he issued a reply with false allegations. Hence, the plaintiff had filed this suit against the defendant. The petition mentioned properties belong to the respondent. The respondent in order to cheat the loan amount borrowed from this petitioner is attempting to settle his property to some others and is planning to leave the jurisdiction of this court. If the respondent is permitted to alienate the properties and leave the town, it would be difficult for the petitioner to recover the suit amount. Hence, he has filed this petition for directing the respondent to furnish security and failing which to order attachment before judgment of the properties described in the petition. He prays to allow the petition accordingly.

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

The respondent had contended that he did not borrow any amount from the plaintiff and there arose no necessity to borrow any such amount. This respondent had borrowed a sum of Rs.20,00,000/- from one L. Periyasamy, son of Lakshmanan, Thirupur in July 2017. For the security purpose of the above said loan, this respondent had signed in 5 unfilled pronotes, and unfilled cheque leaves. This respondent had repaid Rs.11,00,000/- through installments for the above said loan till date and only Rs.9,00,000/- is balance. In the mean while, L. Periyasamy demanded this respondent to sell his property to him, but the respondent denied the same. Hence, the said L. Periyasamy in order to grab the properties of this respondent had filed the suit in the names of Sakthivel and Sakthivel's father A.Murugesan. All allegations are false and the pronote is created by the plaintiff. He has further stated that the respondent has several properties and business at Oddanchatram and he has no idea to leave the place. He has also denied the allegations that he is attempting to sell the properties described in the schedule to some 3rd parties. He further stated that he would not alienate or create any encumbrance in respect of the properties. He has further stated that

the suit itself is not maintainable and hence the petition seeking attachment before judgment is not maintainable and has to be dismissed with cost.

4. Point for consideration in this petition is, **Whether the petition be allowed ?**

6. Heard elaborate arguments of both sides.

7. **POINT:**

In this petition, the respondent has filed a memo along with an undertaking stating that he would not alienate or create any encumbrance in respect of the property sought to be attached. As per the provisions of Order 38 Rule 5 C.P.C, attachment before judgment can be made only if the respondent fails to furnish security. Since, the respondent has furnished an undertaking, it is held that the attachment before judgment could not be made in this case. However, the apprehension of petitioner that the respondent would create encumbrances in spite of the undertaking and affidavit given by him has to be taken into consideration. He has also relied upon the decision of the Hon'ble High Court in “***Babu Vs Raj Kumar and another***”¹. In the said decision, the Hon'ble High Court has directed the respondent to furnish a

1 C.R.P. (PD) (M.D). No. 614/2022 and C.M.P. (MD) No. 2536 /2022 dated 25.04.2022

fresh affidavit before the trial court that he would not alienate the property and also that the same may be intimated to the concerned Sub Registrar. Accordingly, it is held that the undertaking deed executed by the respondent herein is sufficient, but however a copy of the same shall be sent to the concerned Sub Registrar intimating about the said undertaking so as to prevent any alienation against the said undertaking. This point is decided accordingly.

In the result, this petition is disposed off recording the undertaking given by the respondent and with a direction that a copy of the same be intimated to the concerned Sub Registrar on necessary process being paid by the petitioner.

Dictated to Steno Typist and transcribed and typed by her in computer, corrected and pronounced by me in the Open Court on this the 24th day of June 2024.

Additional District Judge,
Dindigul.