

IN THE COURT OF ADDITIONAL DISTRICT JUDGE, DINDIGUL**Present: Thiru. Swarnam J.Rajagopalan, B.A.,B.L.,(Hons)****Additional District Judge, Dindigul**Thursday, dated this the 18th day of June, 2026**I.A.No.5/2025, I.A.No.6/2025 & I.A.No.7/2025****In****I.A.No.1/2024****In****O.S.No.393/2023**

Ramasokkalingam

...Petitioner/Respondent/Defendant

-Vs-

Poornima

...Respondent/Petitioner/Plaintiff

These petitions came up for final hearing on 12.06.2026 before me in the presence of Thiru.K.S.N.Shivamani and Selvi.P.Dhanalakshmi, the learned counsel for the Petitioner/Respondent/Defendant. Thiru.S.Sarvagan Prabhu, the learned counsel for the Respondent/petitioner/plaintiff and upon heard enquiry on both sides and having stood over under the consideration of this court till this date and this court this day delivered the following:

COMMON ORDER

1. These petitions are taken up together for consideration, as they arise out of the common order passed in I.A.No.1 of 2024 in O.S.No.393 of 2023 and involve interconnected questions of fact and law. Since the relief sought in each of the petitions is intrinsically connected with the order of attachment before

judgment passed in I.A.No.1 of 2024, they are disposed of by this common order.

2. **I.A.No.5 of 2025** has been filed by the petitioner/defendant under Section 151 of the Code of Civil Procedure seeking stay of all further proceedings pursuant to the order passed in I.A.No.1 of 2024, pending receipt of the certified copy of the said order and the filing of appropriate proceedings before the Hon'ble Madras High Court, Madurai Bench.
3. **I.A.No.6 of 2025** has been filed by the petitioner/defendant under Section 151 CPC seeking deferment of the attachment batta already paid pursuant to the order passed in I.A.No.1 of 2024 and for keeping the attachment proceedings in abeyance until further orders.
4. **I.A.No.7 of 2025** has been filed by the petitioner/defendant under Order XXXVIII Rule 9 CPC seeking to raise and set aside the order of attachment before judgment passed by this Court on 24.03.2025 in I.A.No.1 of 2024 in respect of the petition-mentioned property.
5. The case of the petitioner/defendant, in brief, is that the respondent/plaintiff, who is none other than his wife, has instituted the suit for recovery of money alleging that she had advanced various amounts to the petitioner and that the cheques issued by him towards discharge of the said liability were

dishonoured. According to the petitioner, the dispute between the parties is essentially matrimonial in nature and several proceedings are pending between them before various Courts. It is further contended that the respondent/plaintiff has suppressed material facts and that the claim made in the suit is not legally sustainable. The petitioner would further submit that the petition-mentioned property is already mortgaged with Canara Bank and, therefore, there is no possibility of alienating the same in a manner prejudicial to the interest of the respondent/plaintiff. The petitioner has also filed an undertaking affidavit before this Court stating that he shall not alienate, encumber, create any third-party interest over, or otherwise deal with the petition-mentioned property during the pendency of the suit. On the strength of the said undertaking and the existing mortgage, the petitioner seeks raising of the attachment before judgment and consequential reliefs.

6. Per contra, the respondent/plaintiff has filed separate counters opposing the petitions. According to the respondent, the suit has been instituted on the basis of a legally enforceable liability supported by documentary evidence. It is contended that the attachment before judgment was ordered only after this Court was satisfied about the necessity of protecting the plaintiff's interest and that the same ought not to be lightly interfered with. Therefore, the respondent prayed for dismissal of the petitions.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. The point that arises for consideration is:

“Whether the petitioner/defendant has made out sufficient grounds to raise the attachment before judgment ordered in I.A.No.1 of 2024 and consequently grant the reliefs sought for in I.A.Nos.5, 6 and 7 of 2025?”

9. Admittedly, this Court had earlier passed an order of attachment before judgment in I.A.No.1 of 2024 after considering the pleadings and materials then available on record. The object behind an order of attachment before judgment is to prevent a defendant from defeating or delaying the execution of a decree that may ultimately be passed by alienating or disposing of his properties. Such an order is intended as a protective measure and not as a punitive one.

10. It is well settled that attachment before judgment is an extraordinary remedy and that the Court must always ensure that such attachment is continued only so long as its continuance is necessary for safeguarding the interest of the plaintiff. If adequate security or sufficient assurance is subsequently made available to the Court so as to protect the plaintiff's interest, the Court is empowered under Order XXXVIII Rule 9 CPC to raise the attachment.

11. In the present case, the petitioner has placed materials before this Court to show that the petition-mentioned property is already subject to a mortgage in favour of Canara Bank. The documents produced prima facie establish that the property is encumbered and that the petitioner does not enjoy an unrestricted right of alienation over the same. The existence of such mortgage is a relevant circumstance which cannot be ignored while considering the necessity for continuing the attachment before judgment.

12. Apart from the above, the petitioner has filed an undertaking affidavit before this Court unequivocally stating that he shall not alienate, encumber, lease, mortgage afresh, create any third-party interest, or otherwise deal with the petition-mentioned property during the pendency of the suit. The said undertaking has been made voluntarily and through counsel. The petitioner has thereby subjected himself to the jurisdiction of this Court and any violation of the undertaking would expose him to appropriate legal consequences.

13. This Court is of the considered view that the undertaking affidavit furnished by the petitioner substantially protects the interest of the respondent/plaintiff. Once such an undertaking is recorded by the Court, the respondent/plaintiff would have sufficient remedies in law in the event of any breach thereof. Therefore, the apprehension that the petitioner may alienate the property and

thereby defeat the fruits of any decree that may ultimately be passed in favour of the respondent/plaintiff stands adequately addressed.

14.This Court also takes note of the peculiar facts and circumstances of the case.

The dispute is between husband and wife. The suit itself arises out of alleged financial transactions between the spouses. While the merits of the rival claims are matters to be decided during trial, this Court is of the opinion that continuance of attachment before judgment over a property already mortgaged to a nationalised bank may not be necessary when the defendant has also furnished a clear and unconditional undertaking not to alienate the property pending disposal of the suit.

15.The purpose of an attachment before judgment is to secure the interest of the plaintiff and not to confer any undue advantage upon either party. In the facts and circumstances of the present case, this Court is satisfied that the interest of the respondent/plaintiff can be adequately safeguarded by recording the undertaking given by the petitioner and directing him to abide by the same throughout the pendency of the suit.

16.Therefore, this Court is satisfied that sufficient cause has been shown for invoking the provisions of Order XXXVIII Rule 9 CPC and raising the attachment before judgment ordered in I.A.No.1 of 2024. Consequently, the attachment proceedings initiated pursuant thereto are liable to be withdrawn.

17. In fine, the undertaking affidavit filed by the petitioner/defendant is recorded and shall form part of the record. The petitioner/defendant shall strictly adhere to the undertaking and shall not alienate, encumber, create any third-party interest over, or otherwise deal with the petition-mentioned property during the pendency of the suit without the leave of this Court.

18. Accordingly, the order of attachment before judgment passed in I.A.No.1 of 2024 dated 24.03.2025 is hereby raised and set aside. Consequently, the attachment proceedings initiated pursuant thereto shall stand withdrawn.

In the result, I.A.No.5/2025, I.A.No.6/2025 and I.A.No.7 of 2025 are allowed.

No costs.

Directly dictated to the Steno – typist, typed by her, corrected and pronounced by me in open court this the 18th day of June 2026.

**Additional District Judge,
Dindigul**

List of witness and document on both sides : Nil

**Additional District Judge
Dindigul**