

In the Court of the Principal Subordinate Judge of Palani.

Present: Thiru. K. Hariharan, M.L.,

Principal Subordinate Judge, Palani.

Thursday, 9th day of March 2023.

I.A. No.1/2022

in

O.S.No.163/2022

C. Thirumalaisamy ... Petitioner/Plaintiff

/Vs/

P. Marimuthu ... Respondent/Defendant

This petition was came on 31.10.2022 for final hearing before me in the presence of Thiru.P. Ganesan, Thiru.P.Kalimuthu and Thiru.K.Surendrakumar, the learned Counsels for the Petitioner, Thiru.M.Suriaprakash, the learned Counsel for respondent and after hearing both side enquiries, upon perusing the relevant records and having stood over for consideration till this day, this court passed the following:

//ORDER//

The petition has been filed by the petitioner seeking to attach the petition mentioned property under Or. 38 Rule 5 and under Section 151 of CPC.

2. **Petition averments which are found essential for the disposal of the petition is that :**

Originally the suit has been instituted by the plaintiff for the relief of recovery of sum of Rs. 3,39,000/-. In which the written statement has been filed and the suit is pending at the stage of trial. The petitioner in the petition mentioned that the respondent as several loans including the loan borrowed from the petitioner and is bound to make the repayment of the said loans. Further the petitioner mentioned that

the respondent is trying to encumber the petition mentioned property with an intention to defeat and delay the creditors including the petitioner. Hence the petitioner has sought for to attach the petition mentioned property stating that if the property would not attached the petitioner would not be in a position to realise the fruits of the decree and sought for to allow the petition.

3. The respondent filed the memo to adopt the written statement filed in the suit. In the written statement the respondent has stated that towards vehicle loan a transaction is mentioned to have been taken place between Mugil Auto Finance, the plaintiff is the partner. It is further mentioned that the respondent had made all the payments to the Mugil Auto Finance. For security unfilled promissory notes were mentioned to be given by the respondent to the Mugil Auto Finance. The respondent states that the entire amount has been paid by the respondent to the Mugil Auto Finance and further stated that without no due is pending on the side of the respondent to the said finance. Now with the intention to grab money from the respondent, the petitioner is alleged to have created the suit promissory note with the help of witness and alleged that the suit claim is false one and sought for to dismiss the suit. For which reason the petition is also sought to be dismissed.

4. Point for determination is whether the petition could be allowed ?

5. No oral or documentary evidence adduced on both sides.

6. **Point :**

The order of attachment could be passed only after issuing notice to the petitioner regarding to furnish security. In this petition the respondent himself has come forward to furnish the security for the suit amount and has filed the FD bond

which is made in the name of the respondent with the ESAF Bank, Dharapuram Branch for a sum of Rs. 3,40,000/- which is the suit amount. Since as provided under Or. 38, R.5 the respondent has come forward to furnish the security before going to the question of the attachment.

In the result, this Court would find it appropriate to attach the fixed deposit that is made in the name of the respondent with the ESAF Bank, Dharapuram Branch. For attachment batta to attach FD made in the ESAF Bank, Dharapuram Branch in Account No. 10220002034324 in the name of the respondent Marimuthu in this suit as per Section 136 of CPC. The bond is ordered to be kept in safe custody of this Court. For attachment batta call on 15.03.2023.

Dictated to the Steno-Typist, transcribed and typed by her, corrected and pronounced by me in the open court, this 9th day of March 2023.

Prl. Sub Judge,
Palani.

Petitioner and Respondent side Witnesses and documents: Nil.

Prl. Sub Judge,
Palani.