

In the Court of Principal District Judge, Kanyakumari District
at Nagercoil.

Present : Thiru B. Karthikeyan, B.L.,
Principal District Judge.

Tuesday the 1st day of July, 2025.

I.A. No. 2/2022 in C.O.S. No. 17/2022

M. Mercy,

Proprietrix of Grace Consultancy,

Nagercoil.

.. Petitioner/Plaintiff

/Vs./

R. Samuel

S/o Rajamony

.. Respondent/1st Defendant

This petition is coming on 07.11.2024 before me for final
hearing before me in the presence of ,

Thiru S. Suersh Kumar .. Advocate for the petitioner

Thiru V. Balaji Rajaram .. Advocate for the respondent

and upon hearing the arguments of both sides and upon perusing the
materials available on record and having stood over for consideration till
this day, this court delivered the following :-

ORDER

This petition has been filed under Order XXXVIII Rule 1 of C.P.C. seeking attachment before Judgment of the petition mentioned property owned by the 1st defendant.

2. It is the claim of the petitioner that the petitioner who was doing business was cheated by the defendants 1 to 4 who claimed to be in the business of placing individuals on employment abroad and the petitioner believing the words of the defendants 1 to 4 submitted passports of 32 of her clients to the defendants 1 to 4 between 14.03.2018 to 06.03.2019 and as per the specific demands made by the defendants 1 to 4, she paid Rs.1,00,20,000/- to the defendants 1 to 6 through their account numbers submitted by the respondents 1 to 4 and also by way of cash to the respondents 1, 3 and 4. The respondents have executed receipts dated 21.05.2019 and 27.05.2019 acknowledging their liabilities, after they failed to secure employment for her clients. Even after several demands, the respondents 1 to 6 did not repay the amount and only thereafter, she came to know that they had indulged in cheating. After going through the process

of complaints and investigations by police authorities, the present suit has been filed claiming a sum of Rs.99,03,000/- with interest at the rate of 18% per annum from the date of suit till date of decree and thereafter at 6% per annum from the date of decree till date of realisation. In the said suit, the present application has been filed against the 1st defendant, interalia stating that the petition schedule property alone stands in the name of the 1st respondent and in order to defeat the suit claim, the respondents have conspired together to alienate the same at the earliest and accordingly he is seeking prospective purchasers to sell the property. Claiming that he will put to irreparable loss and gave miscarriage of justice will be caused, he has sought for an order directing the respondent to furnish security for Rs.15,90,000/- out of the suit claim and to pass an attachment of petition schedule property before Judgment, if he fails to furnish security as above.

3.(i) The respondent filed a counter statement denying the said allegations. He has completely denied any liability to the petitioner. He has also denied the execution of alleged receipts. He would claim that no passports were received from the petitioner and that he has not promised the plaintiff that he would be arranging employment or business to anyone.

(ii) In addition to the above, the respondent would contend that the relief under Order XXXVIII Rule 5 of CPC is drastic and extraordinary and such power could not be exercised mechanically or merely for the asking, besides it should be used sparingly and strictly in accordance with the Rule. He would further point out that the purpose of Order XXXVIII Rule 5 is not to convert unsecured debt into secured debt and that any attempt by the plaintiff to utilise the provisions of Order XXXVIII Rule 5 as leverage for coercing the defendant to settle the suit claim should be discouraged. He would further claim that the attachment before Judgment is considered a very harsh remedy because it substantially interferes with the defendant's property rights before the final resolution of the over all dispute. Claiming thus, he would seek the dismissal of the petition.

4. Heard both. Perused the materials on record.

5. **The Points for consideration that arise in the present petitions are :-**

(i) Whether the present petition deserves to be allowed ?

6. **Points for consideration :-**

Dehors the claim of the plaintiff about the liability of the defendant and the rival claim of the defendant that the documents were concocted and that he is not liable to pay any amount, which claims have to be tested during trial, the first and foremost duty of this court is to look into whether the petitioner has made out any case for invoking Order XXXVIII Rule 5 of CPC. As pointed out by the respondent, the power under Order XXXVIII Rule 5 CPC is an extraordinary power and has to be used sparingly. The petitioner cannot merely rest on the allegation made in the affidavit that the respondent is about to alienate the property. There should be something more beyond such allegation. There should be some material before the court which would warrant this court to believe any such claims of the petitioner.

7. In the present case, there is absolutely no other material available before this court to show that the respondent might alienate the suit property before the disposal of the suit. On the other hand, the respondent has even offered to undertake not to alienate the property pending disposal

of the suit and had stated categorically that he has no such intention to alienate the property.

8. In such circumstances, this court is of the view that the present petition does not make out a case for granting an order under Order XXXVIII Rule 5 of CPC. As such, the present petition deserves to be dismissed.

9. In the result, this petition is dismissed.

Dictated to the Steno-typist, transcribed and typed by her, corrected and pronounced by me in open court, this the 1st day of July, 2025.

Sd/-B. Karthikeyan
Principal District Judge,
Kanniyakumari at Nagercoil.

Principal District Court,
Nagercoil.
Fair Order in
I.A. No.2/2022 in
C.O.S. No. 17/2022
Dt.: 01.07.2025.