

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, NAGERCOIL.

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

Tuesday, the 24th day of March, 2026.

I.A. No.10/2025 and I.A.No. 11/2025
in
C.O.S. No.11/2022

1. Asirvatham Nadar son Jewellers,
A Partnership Firm,
No. 78, East Tower, Nagercoil
 2. A. Arul Raj (Died)
 3. Arwind Asir
(Amendment carried out as per order in Memo dated 24.02.2026)
- ... Petitioners/Defendants 1 to 3
in both petitions

-Vs-

M. Subramonian

...Respondents/Plaintiff
in both petitions

This petition coming on 12.03.2026 for final hearing before me in the
presence of

Thiru P. Johnson - Advocate for the petitioners in both petitions

Thiru B. Harikesavan - Advocate for the respondent in both petitions

and upon hearing both side and upon perusing the materials available on record and
having stood over for consideration till this day, this Court delivers the following:-

COMMON ORDER

IA No. 10/2025 has been filed seeking for an order to reopen the case for examination of a additional witness on the side of the defendants.

2. IA No. 11/2025 has been filed by the defendants seeking leave to issue summons to the Branch Manager, Indian Bank, Main Branch, Nagercoil for giving oral evidence with respect to Ex. A9 to Ex. A13 on the side of the defendants.

3. The suit has been filed by the respondent/plaintiff for recovery of money arising out of alleged loan transaction between the parties. Now, the said suit, which has been jointly tried along with COS No. 12/2022 is pending in the stage of arguments. At this stage, the present petition has been filed claiming that Ex.A9 to Ex.A13 namely five cheques marked by the plaintiff are blank cheques given to the plaintiff long back as security for the previous money transactions on different dates which have been recently filled by the plaintiff as per his choice and had been misused for the unlawful claims in the present case and that is respect to the said cheques, the plaintiff has filed the criminal case before the Judicial Magistrate (Fast Track) Court, Nagercoil as STC.No. 110/2020 in which one Mr. Sivanathan S/o.Thiru Arumuga Perumal, the Branch Manager of Indian Bank, Nagercoil Main Branch was examined on 12.01.2024 as PW3. During cross examination in the said case, PW3

has admitted that the said current account cheques were issued from Indian Bank, Nagercoil Branch on different dates, from different cheque books. Therefore, the examination of the Branch Manager of Indian Bank, Nagercoil Main Branch is highly necessary on the side of defendants. The present petition have been filed.

4. The respondent/plaintiff had filed a counter objections in the said petition. Contending that only if the court is convinced that the proposed evidence is necessary for proper adjudication of the case, the power to reopen the case and summon the additional witness can be exercised. Ample opportunities has been given to the petitioner. But, he has not examined the proposed witness. Therefore, the present petition, filed at the stage of argument is liable to be dismissed. It would further be contended that the bank official has been sought to be examined only for the purpose of speaking about the valuation of the property for which the evidence of the bank official is irrelevant.

5. Heard both. Perused the materials on record.

6. **The point for consideration in this petition is:**

(i). Whether this present petition deserves to be allowed?

7. **Point No.(i):**

Sec. 16 of the Commercial Court Act 2015, provides that the provisions Code of Civil Procedure, 1908 shall apply to any suit in respect of a

Commercial dispute as specified in the schedule to the Commercial Court Act 2015, While there are amendments, omissions and addition to various provisions of Code of Civil Procedure, the power u/s 151 has not been restricted. Similarly, application under Order XVI related to summoning and attendance of witnesses, has not been done away with. Therefore, there is no difficulty in holding that the provisions of Orders XVI Rule 1 of CPC can be invoked by the petitioner in a suit involving commercial dispute of specified value also. The present petition, has been filed u/s 151 of CPC and u/s Order XVI Rule 1 of CPC.

8. The reason stated by the petitioner in the affidavit is that the evidence of Branch Manager of Indian Bank, Nagercoil Main Branch given in a criminal proceeding is relevant in the present case too by claiming that he has deposed about the period in which the cheque book came to be issued by the bank to the defendants. This claim has not been disputed by the respondent.

9. Therefore, considering the defence taken by the defendant in the present suit, the evidence given by PW3 in STC No. 110/2020 appears to be relevant to the present case. As the statement of a living person cannot be received in evidence unless he is examined in view of Sec. 27 and Sec. 148 of BSA, the examination of the said individual is necessary. It is also be noted that contrary to what the respondent has claimed, the proposed witness is not being summoned to depose about the value of some property. Therefore, the objection in this regard, is liable to be rejected.

10. In such circumstances, the suit deserves to be reopened for defendant's further evidence and Thiru Sivanathan S/o. Thiru Arumuga Perumal who adduced evidence as PW3 in STC No. 110/2020 is required to be summoned as a witness in the present case.

11. In the result, IA.No. 10/2025 and IA.No.11/2025 are allowed. Issue summons to Thiru Sivanathan S/o. Thiru Arumuga Perumal, who adduced evidence as PW3 in STC No. 110/2020 before the Judicial Magistrate (Fast Track) Court, Nagercoil upon payment of batta.

Dictated to the Steno-typist, transcribed and typed by her, corrected and pronounced by me in open court, on this the 24th day of March, 2026.

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

Principal District Court,
Nagercoil.
Common Fair order in
IA Nos.10/2025
and 11/2025
in COS No.11/2022
Dt.:24.03.2026