

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. Nos. 3, 4, 5 and 6/2022 in COS No.17/2022

IA No. 3/2022:

M. Mercy
Proprietrix of Grace Consultancy,
Nagercoil. ... Petitioner/Plaintiff

- Vs -

S. Pebin Sam S/o. Samuel ... Respondent/2nd defendant

IA No. 4/2022:

M. Mercy
Proprietrix of Grace Consultancy,
Nagercoil. ... Petitioner/Plaintiff

- Vs -

K. Mary Pushpa Rose W/o. Samuel ... Respondent/3rd defendant

IA No. 5/2022:

M. Mercy
Proprietrix of Grace Consultancy,
Nagercoil. ... Petitioner/Plaintiff

- Vs -

S. Penin Sam S/o. Samuel ... Respondent/4th defendant

IA No. 6/2022:

M. Mercy
Proprietrix of Grace Consultancy,
Nagercoil. ... Petitioner/Plaintiff

- Vs -

A. Anish Reni S/o. Ayyathurai ... Respondent/5th defendant

These four petitions coming on 07.11.2024 for final hearing
before me in the presence of

Thiru S. Sureshkumar	-	Advocate for the petitioner in all the four petitions
Thiru V. Balaji Rajaram	-	Advocate for the respondent in IA Nos.4/2022 and 5/2022
Exparte	-	Respondent in IA Nos.3/2022 and 6/2022

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

COMMON ORDER

These petitions have been filed against the defendants 2, 3, 4 and 5 seeking direction to furnish security for Rs.59,87,300/-, Rs.11,75,000/-, Rs.5,89,600/- and Rs.2,81,100/- respectively, invoking Order XXXVIII Rule 1 CPC claiming that there are no properties in the name of these respondents and these respondents with an intent to delay and or to avoid any process of the court and to delay the execution of the decree that may be passed is about to abscond and to leave the local limits of the jurisdiction of this court.

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 applications have been filed against the defendants 2, 3, 4 and 5 seeking direction to furnish security for Rs.59,87,300/-, Rs.11,75,000/-, Rs.5,89,600/- and Rs.2,81,100/- respectively claiming that there are no properties in the name of these respondents and these respondents with an intent to delay and or to avoid any process of the court and to delay the execution of the decree that may be passed is about to abscond and to leave the local limits of the jurisdiction of this court.

3(i). In I.A. Nos.4/2022 and 5/2022 filed against the 3rd and 4th defendants, they have filed their counter statements disputing the suit claim as well as the allegations of the petitioner that they are about to abscond from the local limits of this court.

(ii) In IA No.3/2022 and I.A.No.6/2022, the respondents remained exparte.

4. Heard both. Perused the materials on record.

5. **The Point for consideration that arise in the present petitions is :-**

(i) Whether the present petitions deserve to be allowed ?

6. **Points for consideration :-**

Even in the case of attachment before Judgment, the Hon'ble Supreme Court and the High Court have held that the same is an extraordinary power and has to be used sparingly. In fact, while cautioning the courts to be circumspect, while exercising the power under Order XXXVIII Rule 5, the higher courts have also pointed out that it touches on the rights of a person to own property, which is constitutional right. On the other hand, the powers conferred under Order XXXVIII Rule 1, 2, 3 and 4 of CPC are much more severe in the sense, when the respondents against whom the direction to furnish security for their appearance before the court till the disposal of the suit is granted fails to do so, it would entail him to be confined in the Civil Prison, directly breaching his liberty which is a

fundamental right guaranteed Article 21 of Constitution of India. When such an order is passed, the material available before this court should be of extraordinary, impeccable and unimpeachable character. However, what is available before this court is a mere assertion made by the petitioner in the affidavit filed in support of the petition. There is absolutely nothing which would warrant, this court to believe this assertion, leave alone that is impeccable or unimpeachable. In any case, the respondent in IA No.4/2022 and IA No.5/2022 have filed their counter statement before this court and contested the suit.

7. In the case of the 2nd and 5th respondent alone, they have remained exparte and in fact, the case of the 2nd respondent, notices sent to him have been returned as “left India”. Even the 1st respondent who was present before this court on 02.03.2023 was stated to have claimed that the whereabouts of this respondent is not known.

8. In such circumstances, there is ample proof before this court warranting invocation of Order XXXVIII Rule 1 of CPC in I.A.Nos. 3/2022 and 6/2022 alone. As such, IA Nos.4/2022 and 5/2022 deserve to be dismissed and I.A.Nos. 3/2022 and 6/2022 deserve to be allowed.

9. **I.A.No. 3/2022 :-**

In the result, this petition is allowed. Warrant shall be issued to arrest the respondent/2nd defendant to bring him before this court to show cause why he should not furnish security for his appearance.

I.A.No. 4/2022 :-

In the result, this petition is dismissed.

I.A.No. 5/2022 :-

In the result, this petition is dismissed.

I.A.No. 6/2022 :-

In the result, this petition is allowed. Warrant shall be issued to arrest the respondent/5th defendant to bring him before this court to show cause why he should not furnish security for his appearance.

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 Common Order in
I.A.No.3, 4, 5 & 6/2022
COS No.17/2022
Dt.: 01.07.2025