

IN THE COURT OF THE SUBORDINATE JUDGE OF MELUR.

Present: Thiru. S. GANESAN, B.Sc., M.A., B.L.,

Subordinate Judge, Melur,

Saturday the 18th day of February 2023

I.A.No.1/2021

in

O.S.No.248/2021

S.Ramakrishnan

.....

Petitioner/Plaintiff

-Vs -

1. S.Meena

2. S.Vijayalakshmi

.....

Respondents 1 & 2 /
defendants

3.Junior Liason Officer

Regional Coffee

Research station, Coffee
board, Thandikudi

4. The Secretary

Coffee board

Ministry of commerce
and Industry,
Government of India,
Bangaluru.

.....

Respondents 3 & 4 /
Garnishee

This Petition is coming on 15.02.2023 for final hearing before me in the presence of Thiru.P.Shanmugam and Thiru.J.Alexander, Advocates for the Petitioner/Plaintiff and Thiru.A.Rajamanickam, Advocate for the respondent no.1 and Thiru.N.Lakshmanan, Thiru.J.Manickam and Thiru.Malaichamy, Advocates for the respondent no.2 and Thiru.B.Rooban, Thiru.S.Murugadas, Thiru.A.Kasilingam and Thiru.K.Rajdiwagar, Advocates

for the respondents 3 and 4, upon hearing both side and on careful perusal of Case records, documents, pleadings of the both parties and having stood over for consideration till this day, this court delivered the following:-

ORDER

1. This petition is filed by the petitioner/plaintiff under order 38 rule 5 of C.P.C. to direct the respondents/defendants 1 and 2 with the time fixed by it either to furnish security in such sum of Rs.4,00,000/- (Rupees four lakhs only) failing which a sum of Rs.4,00,000/- to interim conditional attach before judgment of the petition mentioned property pending in the hands of Garnishee pending disposal of the suit.

2. **The Petition averments** are that the plaintiff in the suit. The petitioner filed the suit for recovery of Rs.2,84,000/- from the respondents 1 and 2 / defendants and 1 crave leave of this court to read the plaint as part and parcel of this affidavit.

3. The first respondent is the mother of one deceased Sasikumar and 2nd respondent is wife of said Sasikumar. The son of 1st respondent and husband of the 2nd respondent namely Sasikumar, while he was alive, had borrowed a loan of Rs.2,50,000/- (rupees two lakh and fifty thousand only) from him on 5.3.2020 for his family needs and expenses. the said Sasikumar agreed to repay the said sum of Rs.2,50,000/- with interest at the rate of Rs.2/- per month per hundred. Accordingly, the said Sasikumar had executed a pro-note on 05.03.2020 in the presence of witnesses at his house, while he was alive was working as field officer in Regional coffee research station, coffee board, Thandikudi, Dindigul district.

4. The said Sasikumar has paid the interest for the loan till January 2021. From February 2021 onwards he did not pay any amount either towards interest or principal as agreed by Sasikumar even inspite of

demand made by him. Whenever he demanded for the payment of principal or interest, the said Sasikumar evaded by telling some lame-excuses. He has not paid the outstanding amount. In the mean while, the said Sasikumar died on 28.04.2021 leaving behind him the respondents 1 and 2 as his legal heirs. The respondents 1 and 2 have succeeded the entire estate of the deceased Sasikumar including the terminal benefit / leave salary arrears available in the hands of 4th respondent Secretary, Coffee board, Ministry of Commerce and Industry, Government of India at Bangaluru. After the demise of S.Sasikumar he approached the respondents 1 and 2 on 24.07.2021 and demanded to pay the amount borrowed by the deceased S.Sasikumar from him on 05.03.2020. They themselves promised to repay the said loan amount borrowed by deceased Sasikumar, but since the respondents 1 and 2 have not paid any amount to him even continuously demanded the said loan amount. It is highly unbecoming on the part of the respondents 1 and 2 are not repaying any amount towards the loan borrowed by the deceased S.Sasikumar. The respondents 1 and 2 are liable to pay the principal sum of Rs.2,50,000/- with interest at 24% per annum from February 2021.

5. The petitioner learnt that the respondents 1 and 2 are heavily indebted and they are attempting to dispose the terminal benefit arrears of salary of deceased sasikumar without giving the loan amount to him, which is retained in 4th respondent namely the Head office at Bangalore in order to defeat him rights and the respondents 1 and 2 are legal heirs of deceased Sasikumar and they are attempting to dispose the benefit amount estate with intention to defeat and delay the execution of decree that may be passed by this court. Hence, the petitioner have left no other option except to file the present suit for recovery of a sum of Rs.2,84,500/- with subsequent interest at 24% per annum from the date of plaint till the date of realisation on

the basis of promissory note executed by deceased Sasikumar against the defendants.

6. Further under mentioned property is terminal benefit arrears of salary of the deceased Sasikumar and the said amount is estate of the deceased and liable to be attached.

7. Further the respondents no.1 and 2 are legal heirs of deceased Sasikumar and they are attempting to dispose the amount under mentioned with intention to defeat and delay him. The respondents 1 and 2 are successfully in taking away these amount, hence the petitioner may not realise any amount in the event of decree being passed ultimately as against the parties. Hence, the petitioner filing this petition to direct the respondent to furnish security of a sum of Rs.4,00,000/- failing which to attach the under mentioned property.

8. Unless the petition is allowed, the petitioner will be put to heavy and irreparable loss. The respondents cannot have any valid objection for the same. Hence prayed to allow the petition by directing the respondent to furnish security of a sum of Rs.4,00,000/- failing which to attach the under mentioned property.

9. **The 2nd Respondent/2nd Defendant filed counter statement refuting the averments of the petition affidavit :-**

10. The petition is false, frivolous, vexatious and not maintainable according to the law and on facts. The respondents admitted averments hereunder, all the other averments are denied and the petitioner put to strict proof of the same. All the averments in the plaint or denied.

11. This defendant did not know for which purpose the petitioner / plaintiff said to have been given loan. Moreover, without the knowledge of this defendant, this respondent's husband never obtained any

loan from anybody. Moreover, there is no requirement for this respondent's husband for obtaining any loan from anybody. Moreover, without the knowledge of the wife and mother in law how the petitioner given such huge amount of money to the petitioner is totally doubtful. Moreover, without the knowledge of the close blood relatives, lending of loan by the plaintiff deceased husband Sasikumar cannot be acceptable one and unbelievable one. Moreover without knowing the legal heirship of Sasikumar, loan was said to have been disbursed, cannot be acceptable one and strongly denied. Moreover, this defendant's husband worked as a field officer in the Central government public department and earning good income, therefore there is no need to get any loan from the plaintiff. Moreover without consulting the defendant and her mother in law disbursed loan by the plaintiff and demanding as if the deceased obtained Rs.2,50,000/- as a loan without issuing any legal notice and without demanding in person, filed the suit is not maintainable one and vehemently denied. Moreover this defendant's husband worked in Thandikudi village after marrying this defendant, this petitioner as stated in the petition whether or not intimidated the Sasikumar or any other reason, the defendant's husband passed away on 28.4.21 under mysterious circumstances. Therefore, this defendant could not able to get the body of the Sasikumar from the hospital without having any monitory help from anybody. At that time, this defendant demanded the I.D. proofs or the Ration card of the defendant, the 1st defendant refused the same. Due to which within the shorts span of marriage, the life of this defendant is under peril and cascaded. Thereafter without any other hope this defendant with help of her father obtained certificate from the VAO and thereafter only the body of the defendant's husband was cremated.

12. Being the facts, stating that this defendant's husband said to have been obtained money from the plaintiff is become astonishing. Moreover this defendant is under the brewed situation and in grief. In mentally disturbed state. The 1st defendant is living separately without having any talk with this defendant. Moreover, only after getting the educational certificate of the deceased husband then only this defendant can get registered the nominee in the service register of the deceased husband. For which, this 1st defendant is not giving any help after the death of her son and there is no interest on the terminal benefits of the son. Therefore this defendant is residing with her parents for the life of the daughter is important. Hence prayed to dismiss the petition.

13. The 3 and 4 respondents/garnishee filed counter statement refuting the averments of the petition affidavit and adopted by 1st respondent/ 1st defendant :-

14. The petition is false, frivolous, vexatious and not maintainable according to the law and on facts. The respondents admitted averments hereunder, all the other averments are denied and the petitioner put to strict proof of the same. All the averments in the plaint or denied.

15. The 3rd respondent/garnishee herein is the not the defendant in the main suit and the counter is filed on 4th respondent/garnishee. In the outset this respondents are not parties to the main suit. Thereby the averments and allegations of the petitioner vide para 1 to 3 his affidavit against the Respondent 1 and 2 are no way related to this respondents and this respondents have nothing to say about the same except the averment that the deceased Sasikumar was working as a Field Officer in the respondents Board till his demise and the same is admitted.

16. The averments contained in para 3 and 4 of the Petitioner's affidavit are all no way relevant to this respondents except the fact that the terminal benefit of deceased Sasikumar is still with the Coffee Board and the same is yet to be disbursed to the Legal Heirs of the deceased Sasikumar and the same is admitted. The said death cum retirement gratuity of deceased Sasikumar is quantified to a tune of Rs.16,81,841/- and the same comprises the following, Leave Salary Group Saving Linked Insurance Death Cum Retirement Gratuity New Pension Scheme balance Total Rs. 3,56,819/- Rs.50,000/- Rs. 5,85,216/- - Rs. 6,89,806/- Rs.16,81,841/-. The averment contained in Para 5 of the Petitioner's affidavit is not legally sustainable since the terminal benefits namely the Death cum Retirement gratuity and the new pension scheme balance and the group insurance sought to be attached by the Petitioner/ Plaintiff are exempted from attachment as per Section 60 (1) (g) and (kb) of the Civil procedure Code. Hence, the subject application filed by the Petitioner is against the provisions of law and on that score alone, the petition filed by the Petitioner is liable to be dismissed. With regard to attachment of the leave salary, the same cannot be attached as per judgment of the Hon'ble Madras High Court reported in (2004) 1 MLJ 43 and the said view has been also upheld in the judgment of the Hon'ble Madras High Court in CRP (PD) No. 2498 of 2007 and W.P.No. 35067 of 2007 (Common Order) dated 23.10.2008.

17. As per the above said legal position the settled proposition of law the attachment sought for by the petitioner is not all maintainable and the subject application is liable to be dismissed. Hence prayed to dismiss the petition.

18. The point for consideration aroused is that

Whether the petition has to be allowed or not?

19. Point.

20. On the side of the petitioner, no documents marked. On the side of the 2nd respondent Ex.P1 marked. Both side learned counsels and the he learned counsel for the Garnishee submitted the oral arguments. Also submitted authorities in Citation filed by the Petitioner and 3rd and 4th respondent side in support of their oral arguments.

1. AIR 1952 Hon'ble Provident funds Act (1925) Supreme Court-227 Ss.2(a) 3(1) - Compulsory Mahajanchandrasek deposit - fund at credit of hara aiyar. retired servant - Not liable to attachment - No receiver can be appointed - (Civil P.C. 1908) S. 60 (K).
2. CRP.No.1378/2009, Civil Revision petitions filed dated 13.8.2010 and under article 227 of the M.P.(MD) No.1 of constitution of India, to set aside the order dated 29.6.2009 passed in I.A.No.223 of 2009 in O.S.No.13 of 2009, on the file of the Principal Sub court, Tiruchirappalli.
3. CRP.PD.No.2498 of CRP.PD.No.2498 of 2007 2007 and The civil revision petition is filed W.P.No.35067 of under article 227 of constitution 2007 and M.P.No.1 of India, against the order dated of 2008, 2.9.2006 passed in CMA No.24 CRP.PD.No.2498 of of 2005 by the I Additional Judge, City ciil Court, Chennai confirming the order dated 17.8.2004 passed in I.A.No.14342 of 2003 in O.S.No.4063 of 2003 by the VI Assistant Judge, city civil court, Chennai.
W.P.No.35067 of 2007 :-
The writ petition is filed under article 226 of the constitution of India praying

this court to issue a writ of mandamus, directing the respondent herein, to release the terminal benefits of late O.Arundale who is the husband of the petitioners herein and who worked in the respondent corporation forthwith.

4. Hon'ble Madras High court, consideration in this revision is Sathiyabama and whether the amount due as Ors. Vs. provident fund, leave salary, M.Palanisamy and gratuity etc., to the deceased Ors. on 20-10-2003. employee can be attached in the Equivalent hands of the employer pending citations : 2004 (2) the suit for recovery of money Crc 129, (2004) filed against the legal ILLJ 403, Mad, representatives of such (2004) 1 MLJ 43. employee for amounts borrowed by him.

21. Heard, perused records. Upon perusal of the records that the deceased Sasikumar worked as a field officer in the Coffee board. It is also admitted by the both parties. It is also admitted fact that the Sasikumar died on 28.4.21. The 1st defendant is the mother of the deceased Sasikumar and the 2nd defendant is the wife of the deceased Sasikumar. The terminal benefits of the deceased Sasikumar also not disbursed.

22. The original suit is filed for recovery of money filed by the petitioner / plaintiff for the money lent to the deceased Sasikumar. Since the Sasikumar passed away, the suit was filed against the 1 and 2 defendants for the amount of Rs.2,84,500/- inclusive of interest. Now the terminal benefits of the deceased Sasikumar is going to be disbursed. For which, the 3 and 4 respondents who are the liaison officer of the coffee board being the

garnishee are added the respondents. So that, the plaintiff claimed to attach the terminal benefits of deceased sasikumar.

23. Coming to the object of supplemental proceedings (applications for arrest or attachment before judgment, grant of temporary injunctions and appointment of receivers) is to prevent the ends of justice being defeated. The object of Order 38 Rule 5 CPC in particular, is to prevent any defendant from defeating the realisation of the decree that may ultimately be passed in favour of the plaintiff, either by attempting to dispose of, or remove from the jurisdiction of the court, his movables. The scheme of Order 38 and the use of the words “to obstruct or delay the execution of any decree that may be passed against him” in Rule 5 make it clear that before exercising the power under the said Rule, the court should be satisfied that there is a reasonable chance of a decree being passed in the suit against the defendant. This would mean that the court should be satisfied that the plaintiff has a prima facie case. If the averments in the plaint and the documents produced in support of it, do not satisfy the court about the existence of a prima facie case, the court will not go to the next stage of examining whether the interest of the plaintiff should be protected by exercising power under Order 38 Rule 5 CPC. It is well settled that merely having a just or valid claim or a prima facie case, will not entitle the plaintiff to an order of attachment before judgment, unless he also establishes that the defendant is attempting to remove or dispose of his assets with the intention of defeating the decree that may be passed.

24. As per Ex.R1, the 2nd defendant has categorically proved that the loan amount with the deceased Sasikumar and the plaintiff has been cleared by the deceased sasikumar on 13.8.2019. It is revealed through the R1

bank statement which is depicted in the statement of accounts submitted by the 1st defendant from the account statement of the deceased sasikumar.

25. So this court could not find any prima facie case in this aspect for attaching the terminal benefits. Moreover, the terminal benefits is not come under the purview of attachment. It is revealed that Section 60(g) CPC exempts the terminal benefits from attachment. For which the provision is hereby reproduced.

Section 60(g) CPC contain exempts the following amounts from attachment:-

"stipends and gratuities allowed to pensioners of the Government (or of a local authority or of any other employer), or payable out of any service family pension fund notified in the Official Gazette by (the Central Government or the State Government) in this behalf, and political pension;"

26. Further in the Mettur Industries, Ltd., v. Velayutha Mudaliar (1961 (1) LLJ 279)(Madras), it is held that

27. *so long as the amount does not cease to have the character of provident fund either by payment of the same to the employee or by removing it from his credit in his provident fund ledger, the immunity against attachment continues.*

28. The various decisions referred to above also indicate that whether the employee has retired, or has become insolvent or has died the character of these amounts do not change so long as they are in the hands of the employer. The immunity from attachment is complete. The object of the provisions are to see that the employee gets these amounts after his retirement or his heirs get them after the employee's 'death' since the scheme

is a beneficial one, the authority viz.: the employer is a trustee for those sums and is bound to object to the attachment. The second respondent has rightly maintained its stand against the attachment. There can be no legal justification for classifying or describing such deposits or amounts differently after the employee's death or retirement, so long as they are with the employees, there is protection from attachments.

29. Thereby, the terminal benefit amount of the deceased Sasikumar is exempted from attachment as per sec 60(g) of the CPC.

30. Further more as per Ex.R1 the defendant as categorically as proved that the loan amount with the deceased sasikumar and the plaintiff has been cleared by the sasikumar on 13.8.2019. which is revealed through the R1 bank statement which is depicted in the statement of accounts submitted by the 1st defendant from the account statement of the deceased sasikumar.

31. Therefore power under Order 38 Rule 5 CPC is a drastic and extraordinary power. Such power should not be exercised mechanically or merely for the asking. It should be used sparingly and strictly in accordance with the Rule. The purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilise the provisions of Order 38 Rule 5 as a leverage for coercing the defendant to settle the suit claim should be discouraged. Instances are not wanting where bloated and doubtful claims are realised by unscrupulous plaintiffs by obtaining orders of attachment before judgment and forcing the defendants for out-of-court settlements under threat of attachment.

32. Equally well settled is the position that even where the defendants are removing or disposing assets, an attachment before judgment

will not be issued, if the plaintiff is not able to satisfy that he has a prima facie case.

33. Thereby in any view, the proposed attachment of the property as sought for by the plaintiff is immune from attachment. Hence, the schedule of property cannot be attached. Therefore the petitioner is not entitled to the reliefs sought for and the petition is devoid of any merits.

34. Accordingly the point is answered.

In the result, this petition is hereby dismissed with costs.

Directly Typed by me in laptop, corrected and pronounced by me
in open court, on this 18th day of February 2023.

Sd/-
Sub Judge,
Melur.

Petitioner/Plaintiff side witnesses :- Nil

Petitioner/Plaintiff side documents :-

Ex.P1	05.03.2020	Promissory note executed by original. S.Sasikumar in favour of S.Ramakrishnan.
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Respondents/defendants side witnesses :- Nil

Respondents/defendants side documents :-

Ex.R1 02.06.2022 State bank of India, account statement Online copy.
from 01.01.2019 to 31.12.2019.

Sd/-
Sub Judge,
Melur.

Draft/ Fair Order
in
I.A.No.1/2021
in
O.S.No.248/2021
Date 18.02.2023
SJ, Melur