

**BEFORE THE DISTRICT COURT OF THE NILGIRIS
DISTRICT, UDHAGAMANDALAM**

**Present: Thiru. P. Murugan, Ph.D. (Law)
District Judge**

Saturday, the 15th day of October, 2022

I.A.No. 02 of 2022

in

O.S.No. 71 of 2022

Smt. Lalitha

...Petitioner/Plaintiff

Vs

1. Mrs. Mamtha

2. Mr. Sathish

...Respondents/Defendants

This petition was coming on 13.10.2022 for hearing before me in the presence of Thiru. C. Sasikumar, learned counsel for the petitioner/ plaintiff and Thiru. B.S.Sivakumar, learned counsel for the respondents 1 and 2/defendants 1 and 2 and upon hearing the arguments of the both sides and upon perusing the relevant records, this court passes the following:

O R D E R

This petition is filed U/O 38 Rule 5 r/w 151 of CPC, to furnish security to the suit amount with cost and interest, within the time fixed by this court, failing which, to pass an order to attach the schedule

mentioned property before judgment.

2. Brief facts from the affidavit of the petitioner is as that the petitioner has filed the suit for recovery of money for the value of Rs.14,00,000/- together with interest. The respondents are the absolute owners of the petition schedule property. Those properties are only available property to the respondents. The petitioner came to know that the respondents are making speedy arrangements to sell the petition schedule property in favour of his close associates and to dispose the same with an intention to deceit and defraud the petitioner's lawful claim in the main suit. If the respondents are able to succeed in their attempt, the petitioner may not be in a position to enjoy the fruits of the decree that would be passed in the suit. Unless the respondents are directed to furnish security for the suit amount, the petitioner will be put to heavy loss and hardship. Hence, this petition.

3. Brief facts of the counter statement filed by the 1st respondent adopted by the 2nd respondent is as that the petition is false, vexatious and the same is not maintainable in law or on the facts of the case. The averment in the affidavit of the petitioner is denied. The petitioner is a Government servant working in the Municipal Department and

therefore, the Tamil Nadu Civil Services Conduct Discipline and Appeal Rules applies wherein if the Government servants gives loan more than Rs.10,000/- prior permission from the Head of the Department is to be obtained. In this case, no such permission has been obtained by the petitioner. In the plaint, the petitioner has stated that the respondents had borrowed Rs.14,00,000/- in 2019 and 2020, but plaint does not say, on which date, how much the amount the respondents had borrowed. When the petitioner pleads such huge amount has been paid, there should be a clear facts with regard to the payment etc. The respondent was compelled to execute an affidavit dated 13.08.2020 as if she had borrowed a sum of Rs.9,00,000/-. Further within 6 months the respondent was forced to execute an affidavit for Rs.14,00,000/- on 22.04.2021. However, the petitioner has not filed the affidavit dated 13.09.2020 for the reasons best known to her. Both affidavits have been executed by the 1st respondent only and not by the 2nd respondent. The 2nd respondent has nothing to do with the transaction between the petitioner and the 1st respondent. If at all the 2nd respondent also signed the pronote on 22.04.2021, definitely the petitioner would have obtained the 2nd respondent's signature in the

affidavit dated 22.04.2021. The alleged pronote was executed long back, but not on 22.04.2021. The respondents are liable to pay only Rs.40,000/- to the petitioner and for the meager amount, the petitioner cannot seek for an order of attachment of the schedule property. The affidavits dated 13.08.2020 and 22.04.2021 filed by the respondents reveal that within a span of 7 months there cannot be a payment in addition of Rs.9,00,000/-. Therefore, the case of the petitioner is nothing but a false claim. The respondents had issued a notice dated 30.06.2022 to the petitioner, but without replying the notice, the petitioner has filed the suit for recovery, when the respondents had made several allegations against the petitioner with regard to the payment. In the course of notice issued by the respondents, the petitioner's husband Mr. Gurusami and their daughter Mrs. Priya issued a separate notice to the respondents for a sum of Rs. 7,00,000/- each, and those notices were suitably replied. So, the total amount of Rs.28,00,000/-, which proves that the case of the petitioner is nothing but a money lender and collecting exorbitant interest. Therefore, on all these grounds the petition is liable to be dismissed.

4. Heard both sides. Perused the records. Considered their

submissions.

5. The point for consideration is as to whether the petitioner request to order for attachment of schedule mentioned property before the Judgment is to be allowed or not?

6. The petitioner has filed the suit in O.S.No. 71 of 2022 against the respondents, for recovery of a sum of Rs.14,00,000/- with interest on the basis of pronote dated 22.04.2021, notarized affidavit dated 22.04.2021 executed by the 1st respondent in favour of the petitioner, copy of partition deed dated 16.08.2021 and bank letter dated 01.07.2022 all filed along with the plaint. This interim application has been filed with a prayer to direct the respondents to furnish security, failing which, attachment of schedule mentioned property before judgment may be ordered. This application has been moved on 25.07.2022 and this court, after hearing the petitioner, issued notice to the respondents, returnable by 25.08.2022. On 25.08.2022 for the respondents Mr. B.S. Sivakumar, Advocate filed vakalath, and thereafter, adjournment was given to the respondents to file their counter, and also for appearance of both the parties before this court.

7. On 07.09.2022 both the parties appeared and there was no

possibility of settlement, thereafter, the respondents took time for filing counter on 29.09.2022. Even on 29.09.2022 the respondents 1 and 2 had requested time for filing counter, and after recording their request, this court directed the respondents 1 and 2 to furnish security to the suit claim by 13.10.2022. On 13.10.2022 the respondents filed counter to this application and also written statement in the main suit. When this court hearing the counsels of both parties, this court posed a question to the respondents counsel about furnishing of security on the basis of earlier order dated 29.09.2022. To that query, the learned counsel for the respondents 1 and 2 fairly submitted that now the respondents are filing counter to the interim application and after hearing both sides, this court may pass suitable orders based on the pleadings and documents produced along with the counter. Then, this court heard both sides and reserved for orders.

8. The main contention of the respondents is as that since the petitioner is a Government servant working in Municipal Department, the Tamil Nadu Civil Services Conduct Discipline and Appeal Rules is applicable to the petitioner, wherein whenever a Government servant is extending loan more than Rs.10,000/-, that servant has to seek prior

permission from the department, but, in this case no such permission is availed.

9. Even the respondents denied the borrowal of Rs.14,00,000/-, stating that they only borrowed Rs.1,00,000/- and based on the payment of Rs.1,00,000/-, the respondents had paid Rs.60,000/- and there would be a balance Rs.40,000/- only. It is the case of the respondents that the petitioner is a money lender of exorbitant interest at 15% per month on Rs.100/-. The alleged affidavit dated 22.04.2021 and pronote dated 22.04.2021 are denied by the respondents. Even in the alleged affidavit dated 22.04.2021, the 1st respondent only signed and not by the 2nd respondent.

10. It is the case of the respondents that prior to filing of the suit by the plaintiff/petitioner, the respondents had sent a notice to the petitioner, but the said fact was suppressed by the petitioner. However, the petitioner through her husband and daughter Mrs. Priya claimed that each of them have advanced Rs.7,00,000/- to the respondents. If at all the plaintiff had advanced Rs.14,00,000/-, along with Rs.7,00,000/- advanced by her husband and Rs.7,00,000/- advanced by her daughter Priya, altogether the loan amount would be

Rs.28,00,000/-, but the plaint has been filed only for Rs.14,00,000/- by the petitioner. The factum of notice sent by the respondents is not been found either in the plaint or in the affidavit.

11. The respondents had sent a notice dated 30.06.2022 to the petitioner by narrating the transaction between the petitioner and the respondents and admitting that as on 30.06.2022 the respondents are liable to pay only Rs.40,000/-. The notice was received by the petitioner on 02.07.2022. Even prior to sending that notice to the petitioner, her daughter Mrs. Priya sent a notice dated 22.06.2022 to the respondents stating that the respondents had borrowed a sum of Rs.7,00,000/- on 10.11.2020. The notice was properly replied by the respondents on 25.07.2022. Yet another notice was sent by the petitioner's husband on the same date of 22.06.2022 to the respondents, claiming that the respondents had borrowed a sum of Rs.7,00,000/- from the petitioner's husband. To that notice also the respondent properly replied by notice dated 25.07.2022. Both the affidavits dated 30.08.2020 and 22.04.2021 photocopies have been filed by the respondents with regard to execution of the affidavit for Rs.9,00,000/- and Rs.14,00,000/-, respectively, in favour of the

petitioner/plaintiff.

12. It is the contention of the respondents that the plaintiff sent a Whatsapp message to the respondents with unparliamentary words with regard to repayment of amount. The printed Whatsapp messages has been filed along with the counter. Looking at any angle, the borrowal of Rs.14,00,000/- by the respondents not made out prima facie and therefore, considering all these aspects of the documents filed by the respondents and the suppression by the petitioner to file affidavit and exchange of notices, this court is of the firm view that the request of the petitioner to attach the schedule mentioned property before the judgment cannot be granted for the reasons, the petitioner being a Government Servant and violated the Code of Conduct as per counter statement of the respondents. If at all the petitioner is not violated the Code of Conduct, certainly, the petitioner ought to have filed rejoinder to the counter, but, it was not done.

13. The petitioner being a Government servant, the issue whether the petitioner had obtained prior permission from the department has to be decided only at the time trial after posing necessary questions to the witnesses and also by examining Municipal officials, if so

necessary. Even apart from that, the case of the petitioner with regard to Rs.14,00,000/- payment is doubtful wherein the case of the respondents show that the 1st respondent had transaction with the petitioner for 10 years back and whenever she borrowed amount, it is usual in nature that the plaintiff to get documents like, signed blank cheques, signed NJ stamp papers, signed pronotes etc. for security purpose. In the given circumstances, it is the case of the respondents that the petitioner has misused all such papers with an intention to defraud the property of the respondents.

14. In view of the above discussions, this court finds that there is no prima facie case and balance of convenience infavour of the petitioner to grant attachment of schedule mentioned property before judgment and the parties are directed to step into the trial wherein the suit is ready for trial and that the case of the plaintiff and defendants shall be decided after elaborate evidences of oral and documents. Therefore, with this reservation this petition is liable to be dismissed. Accordingly, it is dismissed and the point is answered negative to the petitioner. No cost.

15. In the result, this petition is dismissed. No cost.

Dictated to the Steno typist, transcribed and computerized by her, corrected and pronounced by me in open court this the 15th day of October, 2022.

District Court,
Udhagamandalam.
Copy of Order in
I.A. No.02 of 2022 in
O.S. No.71 of 2022
Dated: 15.10.2022