

**IN THE COURT OF THE III ADDITIONAL DISTRICT JUDGE, SALEM.
PRESENT : Thiru. G.SRI RAMA JEYAM, B.L.,
III Additional District Judge,
Salem**

Wednesday, the 16th day of August 2023

**I.A.No.4/2023 in IA.No.1/2022 in
O.S.No.351/2022**

N.Maheswari

..... Petitioner / 1st Respondent/
1st Defendant

/ Versus /

G.Moorthy

..... Respondent / Petitioner / Plaintiff

This petition came up on 20.07.2023 for final hearing before me in the presence of Thiru.S.Anandha Krishnan, Advocate for the Petitioner / 1st Respondent / 1st Defendant and Thiru.K.Sivasankar, Advocate for the Respondent/ Petitioner/ Plaintiff and upon hearing the arguments of both sides and upon perusing the records and having stood over for consideration till this day, this Court delivers the following

ORDER

Defendant No.1 in O.S.No.351/2022, who is the 1st Respondent in IA.No.1/2022 (ABJ Application), is the Petitioner in the present Application, which has been filed under Order 8 Rule 8 and 9 r/w Sec.141 and 151 CPC praying this Court to receive the Additional Counter, pertaining to IA.No.1/2022, that has been submitted along with this Application.

2) According to the Petitioner, the Respondent has filed O.S.No.351/2022 seeking recovery of money and in the said Suit, he has filed IA.No.1/2022 seeking attachment of property before passing Judgment. The Petitioner has been contesting the above ABJ Application and only during preparation of arguments in the said Application, the Petitioner came to know that some vital points are omitted to be contended in the Counter that has been already filed. Therefore, the Petitioner is

constrained to file the present Application praying this Court to receive her Additional Counter.

3) The Respondent opposes.

4) Now, the Point that arises for consideration in the above Application is that Whether the Additional Counter that has been submitted along with this Application be received?

Point:

5) Heard both sides and perused the records.

6) Perusal of records would show that the Respondent herein has filed the above Suit seeking the recovery of money on the basis of a Cheque dated 31.05.2019, which is allegedly issued by the husband of the Petitioner herein by name Late Sri.Natarajan. The Defendants in the above Suit are the Legal Heirs of Late Sri.Natarajan. Along with the said Suit, the Respondent herein has filed an Application under Order 38 Rule 5 CPC praying this Court to direct the Petitioner herein and the other Defendants to furnish security to the tune of the Suit claim and in case of failure, to attach the Petition mentioned properties.

7) The said Application has been taken on file in IA.No.1/2022 and the same is pending enquiry. In the said Application, the 2nd Defendant has already filed her counter, which is adopted by the Petitioner/ 1st Defendant, wherein it is contended that the Defendants are not liable to pay the Suit claim to the Plaintiff as Late Sri.Natarajan has not borrowed any amount from the Respondent/ Plaintiff and he has not issued any Cheque favouring the Respondent for discharging the said alleged debt.

8) It is further contended in the said Counter that there were number of Criminal Proceedings pending between the Respondent on the one hand and Late Sri.Natarajan on the other hand and there were some Police Complaints also. In the said Counter, the 2nd Respondent, who is none else than the Daughter of Late Sri.Natarajan, has stated that an Additional Counter would be filed immediately after the papers relating to the above Criminal Proceedings are traced out.

9) In the Additional Counter filed by the 1st Respondent, among other things, it is stated that the Respondent had borrowed, that on 16.02.2017, Rs.50,00,000/- from Late Sri.Natarajan for interest and the Respondent/ Plaintiff has repaid only a sum of Rs.10,00,000/- and for the remaining amount, he was paying interest to Late Sri.Natarajan. It is further stated that on 13.06.2019, the Respondent had managed himself to take with him a sum of Rs.26,00,000/- that belonged to Late Natarajan and when Late Natarajan and the Petitioner had gone to the house of the Respondent to demand the repayment of the said amounts, they were Criminal intimidated by the Respondent and his Wife.

10) The Additional Counter would further read that in respect of that incident, Late Sri.Natarajan had lodged a Complaint at Hasthampatty Police Station and the same was registered as CSR.

11) In the Additional Counter, it is further stated that using his Friendship and close nexus with Late Sri.Natarajan, the Respondent herein had taken away a Cheque that belonged to Natarajan stealthily and fabricating and forging the said Cheque, the present Suit has been filed. The Additional Counter further reads that Late Sri.Natarajan had filed a Private Complaint against the Respondent, regarding the theft of the aforesaid Cheque, which was taken on file in CMP.No.995/2021. It appears that the Petitioner has produced several documents also in connection with the aforesaid averments contained in the Additional Counter.

12) The averments contained in the Proposed Additional Counter are synonyms with the averments contained in the Counter already filed by the 2nd Respondent and the Proposed Additional Counter does not contain any mutually destructive plea nor it would intend to withdraw any admissions made in the Counter already filed.

13) In fact, the averments contained in the Additional Counter appear to explain the disputes involved between the parties in an elaborate manner and therefore, this Court feels that the Additional Counter could be received and if it is done, the same would not cause any prejudice to the Respondent as an opportunity would be given to the Respondent to file his reply Counter. However, considering the

facts and circumstances, this Court feels that this Application could be allowed by imposing some cost.

In result, the above Application will be allowed on condition that the Petitioner shall pay a sum of Rs.2,000/- (Rupees Two Thousand only) towards cost to the Respondent on or before 23.08.2023. Failing which, the above Application will be dismissed.

Call the above Application on 24.08.2023.

Dictated to the Steno-Typist, transcribed by her, corrected and pronounced by me in open court, this the 16th day of August 2023.

III Additional District Judge,
Salem.

APPENDIX:

Petitioners' Side Witnesses and documents : NIL

Respondents' Side Witnesses and documents : NIL

III Additional District Judge,
Salem.