

**THE COURT OF THE PRINCIPAL DISTRICT JUDGE, TIRUPPUR**

**Present:- Thiru. N. Gunasekaran, M.B.A., B.L.,  
Principal District Judge, Tiruppur**

Wednesday, the 04<sup>th</sup> day of June, 2025

**I.A. No. 03/2024 in**

**COS No.15/2024**

(CNR No.TNTI18 002211 2024)

1. Orfeo Spinning Mills P. Ltd  
Represented by its Managing Director P.Jeganathan,
2. P. Jaganathan
3. J. Karkuzali

... Petitioners/Defendants

/Vs./

1. M/s. N.R.U. Spinning Mills Ltd  
Represented by its Managing Director Devadass,
2. Devadass

... Respondents/Plaintiffs

On 25.03.2025, this petition came up before me for the final hearing in the presence of Thiru.R. Ramasamy, Counsel appearing for the petitioners and Thiru.K.Gavutham Bharathi, Counsel appearing for the respondents and upon hearing both side and on perusal of case records including Notes of written argument from the respondents, Memo; dated:11.03.2025 on behalf of respondents / defendants and Memo of objections; dated: 25.03.2025, this Court delivers the following:-

**ORDER**

Petition is filed under Order 38, Rule 5 of Civil Procedure Code to attach the petition mentioned property before judgment.

Date:04.06.2025

Principal District Court, Tiruppur

2) **Case of the Petitioners/defendants in brief reads as follows:-**

The 2<sup>nd</sup> petitioner has filed this affidavit on his behalf and as the Managing Director of the 1<sup>st</sup> petitioner company. The plaintiffs have business transaction with the defendants on purchase of yarn, during the course of business and on making payment to third parties as per the request of the defendants, a sum of Rs. 2,60,88,088/- is due from them and the plaintiffs had made repeated demands to pay the same. Since the plaintiffs have not come forward to settle the due amount, on 13.02.2024, the petitioners / plaintiffs sent a legal notice. Even on receipt of the same, they have not paid the amount. As a final attempt, the petitioners filed a petition under Sec. 12(A)(1) of the Commercial Courts Act before the Chairman, District Legal Services Authority, Tiruppur and though summons was served on them and they appeared before the Court, they had not repaid the due amount. In order to cheat the petitioners / plaintiffs, the respondents / defendants tried to sell the property belonged to them to third parties. If the same would be sold, the petitioners will be put to irreparable loss and hardships. Hence, it is just and necessary to attach the petition mentioned properties before pronouncement of judgment. Hence, the Petition.

3) **Case of the respondents in brief from their counter statement reads as follows:-**

The Petition is false, frivolous, vexatious and unsustainable both in law and on the facts of the case. These Respondents do not admit any of the averments made in the affidavit accompanied Petition except those specifically admitted and put the petitioner to strict proof of all of them.

The plaintiff had filed the above suit for the relief of monetary claim for the sum of Rs.2,60,88,088/- against these respondents, the

petitioner has suppressed the real facts and twisted the facts to suit his claim. In reality as per the ledger book of the respondents for the years April 2020 to March 2023, the Petitioner is liable to pay Rs. 41,51,356/- to the respondents. The sum of the amount claimed to be paid by the Petitioner to the third-party suppliers are without any approval from these respondents.

The total order cost placed by the Petitioners with the respondents for the financial year 2020 2023 is Rs. 2,98,75,947/ out of which the petitioner paid to the Plaintiff mentioned third-party suppliers Rs. 91,36,879/- in total (without any authorisation) and the Petitioner had paid Rs. 1,65,87,712/-directly to respondents in the said financial years. Therefore, by the end of financial years 2020-2023, only the Petitioner is due Rs. 41,51,356/- to the respondents. The respondents herein are preparing to file a separate detailed written statement along with a counterclaim to recover the above amount from the petitioner. In the light of above facts, the petitioner has no prima facie case and the petitioner has no locus standi to maintain this application at this stage.

The averments in paragraph 2 of the affidavit is completely denied. The petitioner has conveniently suppressed the facts on the statement of accounts he failed to show how he had derived the claimed sum of the amount. He voluntarily to mislead the court he had abstained himself from giving proper detail accounts and invoices under which he has arrived at suit claim sum of Rs.2,60,88,088/-. The petitioner has not approached this court with clean hands. The petitioner was doing business with the respondent and the transactions between the parties to this application are purely based on individual orders and invoices. The petitioner was literally making use of the respondent company for his own personal benefits.

Since the petitioner was a major business partner to the respondent, out of undue influence he made a huge profits out of the same while leaving the respondents in a huge loss. When the same was found and questioned the petitioner stopped the business and came up with this application to harass the respondent.

Initially, till 2019 when the petitioner company was a major business player with respondent company the petitioner company was dictating terms in the respondent company but later when it was found that there were several discrepancies in the accounts and business with the petitioner company and the same was questioned, differences arose between the parties to this application. The petitioner neither cooperated nor gave sufficient data for the respondent to verify their accounts, therefore there was a delay in tracing accounts, in meantime, the petitioner has initiated several proceedings against the respondents without giving any time to tally the accounts. Only after thorough examination of the accounts it was found that it is only the petitioner who is liable to pay a sum of amount to the petitioner and not the respondents.

The petitioner has manipulated the ledger account statement. He has included the previous fabricated invoice till the year 2019 into the accounts from April 2020 to suit the limitation period. The petitioner herein has conveniently by showing opening balance brought in the sum of amount which is barred by limitation. The same cannot be accepted in law. He had miserably failed to file any valid proof along with this application to substantiate the allegation against respondents stated in paragraph 4 of the affidavit.

Further, the value of the property sought to be attached under the petition is much more valuable than the alleged claim of the

petitioner. The petition as framed is defective and this Court ought to have returned the application and not taken the same on file. The petitioner has not filed any third party affidavit as mandated by law. The petitioner has not produced title deeds or EC for the properties sought to be attached. The Plaintiff has played a fraud by suppressing vital documents and through clever Drafting got the plaint taken on file when the plaint claim if any is barred by limitation. When the claim of the petitioner is disputed through documents, the relief under order 38 should not be considered.

For the reasons that,

- a. the respondent is not liable to pay any amount to the petitioner,
- b. only the petitioner is liable to pay Rs.41,51,356/- with respect to suit involved ledger book for financial year between 2020-2023,
- c. The suit is barred by limitation.
- d. the plaintiff has no prima facie case
- e. the petitioner has failed to substantiate his claim in this application with sufficient evidence and proof.

this application is not maintainable and is liable to be rejected. This application is filed only to cause irreparable loss and much prejudice to the rights of the respondents. Hence, the petition is to be dismissed with exemplary cost.

4) **The Point for consideration is**

Whether the petition mentioned properties are to be ordered to be attached before judgment ?

- 5) No oral or documentary evidence was let in from both side.

6) **Point:-**

Both side heard. Records perused. The first petitioner is a private limited company and the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners are its Directors. The first

respondent is also a private limited company in which the 2<sup>nd</sup> respondent is shown to be its Managing Director.

7) The case of the petitioners / plaintiffs is that the first petitioner is the buyer and seller of yarn, and the 1<sup>st</sup> respondent being the manufacturer of it had received excess payment than the actual procurement price of yarn from the 1<sup>st</sup> petitioner in between the year 2021 to 2023 in addition to payment being made towards third party liability on its behalf. Hence, the suit is for recovery of the amount to a tune of Rs.2,60,88,088/- in total with subsequent interest.

8) Pending suit, the petition under order is filed by the petitioners / plaintiffs to seek attachment of the petition mentioned property before judgment. The respondents / defendants resisted the same on the ground that the 1<sup>st</sup> petitioner lacks the authorization from it to make alleged payment to the third party and they are not the owner of the portion of petition mentioned properties covered under Patta No. 1321, 263 and 26 and claimed that the property covered under Patta No.1311, 5724 and 5699 were sold pending this application.

9) In the scenario, no document of title is filed in respect of the petition mentioned properties to assert its ownership. Company is a separate legal entity and distinct from its members under law. The directors of the company are not either jointly or severally liable like that of the partners in the partnership firm. The portion of petition mentioned properties covered in Patta No.5724, 1321, 263 and 26 are not in the name of the 1<sup>st</sup> respondent. The estimated value of the properties required to be attached as mandated under Order 38, Rule 5(2) of Civil Procedure Code is also not disclosed in the petition. The properties cannot be attached before judgment without the respondents being called upon to furnish security. Therefore, the prayer in the petition under order

seeking to attach the petition mentioned properties without affording opportunity to the respondents to furnish security is found to be defective in nature. Patta is not a title to the property. No document is produced by the petitioner to show the authorization is being given to it to make payment to the third party on behalf of the 1<sup>st</sup> respondent to discharge its liability as alleged in the affidavit accompanying the petition under order. The respondents had also filed a counter claim against the petitioners to a tune of Rs.41,51,356/-. Whether the suit claim is barred by law of limitation or not can be determined only on trial since the plea of limitation is a mixed question of fact and law. Further, the claim towards the alleged excess payment than the actual procurement price of yarn as alleged in the plaint can be determined only on appreciation of oral and documentary evidence on trial. For the reasons stated above, the petitioners / plaintiffs are not able to satisfy this Court that they have a prima facie case. Admittedly, the portion of the petition mentioned properties covered under Patta No.1311, 5724 and 5699 were said to have been sold pending this application as per the Memo; dated: 11.03.2025. In the absence of prima facie case, an attachment before judgment cannot be ordered and the power under Order 38, R5 of Civil Procedure Code is a drastic and extraordinary power and the same cannot be exercised mechanically and is to be used sparingly and strictly in accordance with rule and the purpose of order 38, R 5 is not to convert an unsecured debt into a secured debt as per **the principle laid down by the Hon'ble Supreme Court of India in Raman Tech & Process Engg. Co. & others Vs. Solankri Traders reported in 2008 (2) SCC 302.**

10) It is the right of the respondents / defendants to file a counter statement instead of furnishing security and there cannot be any mechanical attachment even if security is not furnished as per **the**

**principle laid down by the Hon'ble High Court, Madras in R. Ramesh Vs. R. Raveender reported in 2014 (2) LW 372.**

11) As on date, the respondents are not having subsisting right or interest over the portion of the petition mentioned properties which were already subjected to sale and hence, the same cannot be ordered to be attached before judgment as per the principle laid down by the Hon'ble Madurai Bench of Madras High Court in D.Pankiraj Vs. A.Innasi in C.R.P(MD)Nos.498 & 499 of 2018 (PD) and C.M.P(MD)No.2183 of 2018. The purchaser of the said properties is not added to the petition under order to ascertain his bonafide-ness in purchase.

12) On cumulative analysis, this Court is not inclined to allow this petition and accordingly, the point is answered.

In the result, the petition is dismissed.

Dictated to the Steno-typist, typed by him as directly on Computer, corrected and pronounced by me in the open Court dated this the 04<sup>th</sup> day of June, 2025.

Principal District Judge,  
Tiruppur.

**LIST OF WITNESSES AND EXHIBITS ON BOTH SIDE:** Nil

P.D.J.,  
Tiruppur.

Draft / Fair Order  
I.A.No.03/2024 in  
COS.No.15/2024  
Dated:04.06.2025.  
P.D.J. Court, Tiruppur.