

**III ADDITIONAL DISTRICT AND SESSIONS COURT
TIRUVALLUR AT POONAMALLEE**

Present : **Thiru.C.VIJAYAKUMAR, B.A., B.L.,**
III Additional District and Sessions Judge

Tuesday, the 10th day of March 2026

I.A.No.02/2025 in O.S.No.858/2025

K. Vijay, S/o. Kannan,
Door No. 3, 1st Floor,
A Block, Thirisulam Apartment,
AP Arasu Street, Lenin Nagar,
Ambattur, Chennai - 600 053

..Petitioner / Plaintiff

//Vs//

1) R. Hemanth Kumar, S/o.Ranganathan,
Plot No. 50, 2nd Floor,
Vadakku Poonga Sath Sangam Street,
Venkatapuram, Ambattur, Chennai 600 053.

2) Sangeetha. P, W/o. Hemanth Kumar,
Plot No. 50, 2nd Floor,
Vadakku Poonga Sath Sangam Street,
Venkatapuram, Ambattur, Chennai 600 053.

..Respondents / Defendants

This petition came up before this Court for final hearing on 29.01.2026 in the presence of M/s. G. Jaya Shruthi, S. R. Varun Karthick, Sujay Sivakumar, R. Prasath kumar learned counsels for the petitioner / plaintiff, Respondents / Defendants set *ex parte* on 29.01.2026, and upon hearing petitioner side arguments and having stood over for consideration till this day, this court passed the following:

ORDER

The plaintiff in the suit has filed this petition under Order XXXVIII Rule 5 of CPC and prayed to direct the defendant to furnish security to the suit claim failing which order for attachment before judgment for the scheduled property pending disposal of the suit.

2) The averments made in the affidavit filed by the plaintiff in support of the petition are briefly as follows:-

The Petitioner herein is the plaintiff in the above suit and stated that the petitioner sought a leased residence for his family in August 2024. He identified a flat in the "Krishna Castle" apartment complex in Ambattur, Chennai, advertised on nobroker.com. The property, spanning 1176 sq ft, was owned by respondents 1 and 2. After confirming the previous tenant, Mr. Vetri, would vacate once reimbursed, the deponent transferred the full lease amount of Rs.12,00,000/- through various GPay, net banking, and cash transactions in September, October, and November 2024. A significant portion of this money was transferred directly to Mr. Vetri's parents' bank accounts as instructed by the landlords. The deponent moved into the premises on October 26, 2024, and the 1st respondent provided an unregistered lease agreement dated November 1, 2024, for a three-year term. Crucially, the very next day, the deponent was served with a court warrant for possession initiated by Bajaj Housing Finance due to the respondents' loan defaults on the property. Faced

with immediate eviction, the deponent confronted the landlords, who admitted their default, promised a full refund within a month (with their son signing as a witness to this undertaking), and asked him to vacate. The respondents subsequently failed to repay the monies and have become evasive, leading the deponent to believe they are conspiring to cheat him. A police complaint and a legal notice were issued. The deponent asserts that the only asset the respondents possess is this specific property and believes they are attempting to sell it. He therefore seeks an urgent court order for an attachment before judgment of the property to secure his monies and prevent further irreparable loss and hardship. Hence, the petition.

3) After being taken on file, Notice issued to the respondents R1 and R2 . On 29.01.2026, learned counsel for the petitioner appeared and filed affidavit of service along with the acknowledgement card. Service held sufficient the Respondents R1 and R2 called absent, set exparte.

4) On the side of the Petitioner/ Plaintiff and Respondents/ Defendants, no witnesses were examined and no documents were marked.

5) **The point arising for consideration is whether the petition has to be allowed or not ?**

6) **Point:**

Heard both sides. Perused the documents.

7) The petitioner/Plaintiff filed the main suit for the recovery of money, a sum of Rs.12,00,000/- with interest at the rate of 12 % p.a from the defendant. The above suit is pending before this court for exparte evidence. At this stage, the petitioner / Plaintiff filed the petition for the direction to the defendant to furnish security to the suit claim and if he fails to furnish security, an order of attachment before judgement of the schedule property to be passed. Eventhough the notice issued to the respondent / defendant, he was failed to appear before this court. The Respondent / Defendant has not contested this petition nor shown any cause and set exparte. Though the respondent was set ex parte, the petitioner was not entitled to an automatic order. The petitioner has to establish his claim on the basis of the settled position of law.

8) When this court took this petition on file ordered to sent the notice to the respondent in form **VI A APPENDIX F** cause him to furnish security for a sum of Rs.12,00,000/- or shown cause that why he is not liable to furnish security as prescribed. On 29.01.2026, learned counsel for the petitioner appeared and filed affidavit of service along with the acknowledgement card ,the notice was duly served ,the notice shows that it is in the form of **VI A APPENDIX F** as prescribed. Thereafter due to the absence the respondent was sset exparte.

9) To substantiate the claim of the petitioner, the petitioner must establish his case under Order 38 Rule 5, which reads as follows:

5. Where defendant may be called upon to furnish security for production of property.—

(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule, such attachment shall be void.

10) As per the above mandate, the petitioner has to initially prove the following facts:

- 1) That he has a legitimate chance to obtain a decree;**
- 2) That the respondent, with the intent to obstruct or delay the execution of any decree that may be passed against him, is likely to dispose of or remove the property; and**

3) That the property mentioned in the petition is owned by the respondent.

11) That the petitioner has a legitimate chance to obtain a decree:

The petitioner herein filed the main suit for the recovery of money a sum of Rs.12,00,000/- with 12% interest per annum from the respondent. The petitioner is the owned a residential premises through the unregistered lease agreement from the defendant for a sum of Rs.12,00,000/- repayable to the petitioner at the time of vacation of the premises after 3 years from 01.11.2024. After he occupied the premisses, he came to know that the premisses was attached with the case Crl.M.P. No. 9527 of 2024 on the file of the Chief Judicial Magistrate, Thiruvallur. Hence, the petitioner filed the plaint to recover the lease agreed amount Rs.12,00,000/- with 12 % per annum i.e., Rs.13,53,073/-.

12) The present suit has been filed for recovery of the lease agreed money from the defendant. At this stage, this Court does not make a final determination on the rights of the parties; such findings will be made after full trial. Since the respondent has not come forward to defend the petition, this Court concludes that prima facie material shows the petitioner has a reasonable likelihood of establishing the relevant facts in issue in favour of him. That is the petitioner have an ultimate chance to obtain a decree infaovur of him as enumerated under order 38 rule 5 and 6 of CPC.

13) In this circumstances the Hon'ble Supreme court in the following case published in **Indian Kanon - <http://indiankanon.org/doc/9447> Reported in 2007 SC 80 Raman Tech. & Process Engg. Co. & ... vs Solanki Traders** case held that,

“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. Equally well settled is the position that even where the defendant is removing or disposing his assets, an attachment before judgment will not be issued, if the plaintiff is not able to satisfy that he has a prima facie case.”

14) In these circumstances, when this Court applies the above legal position to the present case, it is noted that the petitioner has filed an affidavit of a third party demonstrating that the respondent is attempting to sell the property belonging to him. Hence, it is clear that the respondent is attempting to alienate the property. Such an act would defeat the execution of forthcoming decree that may be passed in favour of the petitioner. The Encumbrance certificate shows that the already the property as mentioned in the petition was mortgaged to the Bajaj Housing Finance Ltd., Hence, this Court concludes that the petitioner has sufficiently proved his petition and has satisfied all the requirements under Order 38 Rule 5 of the CPC.

15) In result, the petition is allowed that the the petition mentioned property ordered to attached for the payment of sum of Rs.12,00,000/-. Such right is subordinate to the prior mortgage rights of the Bajaj housing finance Ltd. The petitioner's claim can only be enforced after satisfying the bank's mortgage claim, in accordance with Section 48 of the Transfer of Property Act, 1882. Attachment Batta within 7 days, call on 10.04.2026.

Dictated to the typist directly, typed by him in the computer, corrected and pronounced by me in the open court, this the 10th day of March 2026.

**III Additional District and Sessions Judge,
Tiruvallur at Poonamallee.**

Both side Witnesses and Exhibits : NIL

**III Additional District and Sessions Judge,
Tiruvallur at Poonamallee.**