

**IN THE COURT OF I ADDITIONAL DISTRICT AND SESSIONS
JUDGE, VELLORE, VELLORE DISTRICT.**

PRESENT: Tmt. G. Santhi,

I Additional District and Sessions Judge,
Vellore.

Wednesday, the 4th day of June 2025

I.A.No.1/2022 IN O.S.No.73/2022
CNR.No.TNVL01-002797-2022

V. Kotteeswaran

...Petitioner/Plaintiff

/vs/

S. Mageswari

...Respondent/Defendant

This petition came up before me for final hearing on 03.06.2025 in the presence of Thiru. A. Kamalanathan and Thiru. V.Sudhakar, Counsel for the Petitioner/Plaintiff and Thiru.J.Balamurugan and Thiru.S. Sathishkumar, Counsel for the Respondent/Defendant, upon hearing the arguments of both sides, upon perusing the case records and having stood over for consideration till this day, this Court delivered the following:-

ORDER

The petition filed on the behalf of the Petitioner/Plaintiff under Order 38 Rule 5 CPC to attach the property before judgment.

2. The brief averments in the affidavit filed by the Petitioner/Plaintiff are reads as follows:

The petitioner is the plaintiff in the main suit. The respondent/defendant borrowed a sum of Rs. 5,00,000/- (Rupees Five Lakhs only) from the petitioner on 28.12.2020 at his residence for her urgent family legal necessity and she executed a 'A' promissory note agreeing to repay the principal amount with interest at 24 % p.a on demand. Then he borrowed a sum of Rs. 14,00,000/- (Rupees Fourteen Lakhs only) on 02.01.2021 and she executed 'B' Promissory note agreeing to repay the principal amount with interest at 24 % p.a on demand. Then he borrowed a sum of Rs. 13,00,000/- (Rupees Thirteen Lakhs only) on 12.01.2021 and she executed 'C' Promissory note agreeing to repay the principal amount with interest at 24 % p.a on demand. The respondent / defendant has paid the interest due under the promissory notes dated 28.12.2020, 02.01.2021, 12.01.2021 (A,B,C promissory notes) till January 2022 and totally the petitioner claiming the principal amount of Rs. 32,00,000/- alone under the promissory notes respectively marked as A, B and C from the respondent/defendant.

2. Further the respondent / defendant is employed as Teacher in Higher secondary school and is getting monthly salary above Rs. 1,00,000/- and her husband is owning landed properties fetching income besides getting pension from state government, the respondent / defendant has been evading to repay

the amount due under the promissory notes dated 28.12.2020, 02.01.2021 and 12.01.2021 inspite of repeated oral demands. Further the petitioner came to know that the respondent / defendant is making arrangement to sell the terraced house standing in her name at Konavattam after discharging the loan raised by her from LIC Housing finance Limited, Vellore branch which is subsisting over the house owned by the respondent / defendant and to secrete the sale proceeds for her personal use with a dishonest intention. If the respondent/defendant succeeds in selling the house which is the only immovable property standing in her name and which is described in the suit schedule property and secretes the sale proceeds, he will not be in a position to realize the amount due under the aforesaid promissory notes executed by the respondent / defendant even if a decree is passed in his favour. In the above circumstances, the petitioner constrained to file the suit for recovery of money due under the A, B and C promissory notes dated 28.12.2020, 02.01.2021 and 12.01.2021.

3. Hence, the petitioner prays to direct the respondent to furnish security for the suit claim of Rs.32,00,000/- within the time stipulated by this court and if she fails to furnish the security for the suit claim pass an order of attachment of the property described in the schedule before judgment and for further orders.

4. The Schedule of Property :

வேலூர் மாவட்டம், வேலூர் பதிவு மாவட்டம், வேலூர் சப்டியைச் சேர்ந்த கொணவட்டம், சர்வே எண் 6, மனை எண். 6, வடக்கு தெற்காக உள்ள 15 அடி அகல வழி பாதைக்கு கிழக்கு, 12-ம் நெம்பர் காலி மனைக்கு மேற்கு, காலி மனை எண்.5-க்கு வடக்கு, மனை எண். 7-க்கு தெற்கு, இதன் மத்தியில் கிழக்கு மேற்கு 40 அடி, வடக்கு தெற்கு 25 அடி ஆக மொத்தம் 1000 சதுரடி கொண்ட அடி மனையும், இதில் கட்டியுள்ள ஆர்.சி.சி ரூப் வீடும், இதில் அமைந்துள்ள மின் இணைப்பு, சகல சாமான்கள், அடி மனை, மேல்சாயா உள்பட யாவும். இதன் மதிப்பு ரூ.40,00,000/-.

3. The brief averments in the Counter filed by the respondent/defendant are reads as follows:

1. The application filed by the petitioner for attachment before judgment regarding the wait schedule property is not sustainable either in law or on facts.

2. The facts pleaded by the petitioner in the application filed is completely false and there is no prima facie on part of the petition as pleaded.

3. The property sought for to be attached in this application is already pending in loan with LIC and hence the property which is already pledged with another concern and the said loan is pending as on date cannot be attached by the petitioner in this suit. Further the respondent is making

arrangements to sell the schedule property is simply ridiculous as already pleaded the same is mortgaged with LIC. The written statement filed by this respondent may be read as part and parcel of the suit.

4. The petition to seek attachment before judgement regarding property is concerned the same should be bonafide and with full authenticated information and the application defective of the same cannot be entertained and the respondent cannot be sought for to produce security. Hence the petition is liable to be dismissed.

4. Both side arguments heard. Records perused.

5. The point for consideration is,

Whether the relief of attachment of the judgment must be allowed or not?

POINT:

6. The learned counsel for petitioner argued that the respondent not come forward to proceed the matter and he tried to alienate the property. Hence he prays to allow this application and ordered to furnish the security.

7. Whereas, the learned counsel for respondent argued that there is no truth in the averments of application and he argued that no proof filed to made out the prima facie case to get Order u/s.38 Rule 5 C.P.C, the properties sought for to be attached in this application is already pending in loan with LIC and hence the property which is already pledged with another concern

and the said loan is pending as on date cannot be attached by the petitioner in this suit. The petitioner averment that, this respondent is making arrangement to sell the schedule property is ridiculous as already pleaded the same is mortgaged with LIC. There is no bonafide in the application, the petition is defective one and lacking of details and liable to be dismissed.

8. To support his argument he relied the following citations :

***Raman Tech and Process Engg. Co. and Another Vs. Solanki Traders
Judgement dated 20.11.2007.***

In the above judgment, it is held as follows:

“...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.

The said order was challenged in revision by the plaintiff. Before the High Court, the plaintiff pointed out that the trial court had ignored its averment that defendants had removed their name board and were removing their machinery from the jurisdiction of the court. The plaintiff also produced a copy of the writ petition (WP No. 11855/2000) filed by the defendants to restrain the police from interfering with the shifting of their assets from their business premises to another premises. The High Court

allowed the revision petition by order dated 13.10.2000, being of the view that the trial court ought to have taken note of the fact that defendants were trying to remove the machinery. It directed defendants to furnish security for the suit amount to the satisfaction of the court within four weeks. The said order is challenged in this appeal by special leave.

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 realization 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 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. 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.

The power under [Order 38 Rule 5 CPC](#) is 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 utilize 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 settlement, under threat of attachment..”

2. Raja Vs. Chelladurai, –

“...In the considered view of this Court, where a security is given by the defendants in the form of an undertaking not to alienate the property, it is as good as an attachment and any violation of the same will make the future transaction void...”

3. Vandhana Verma Vs. Roop Singh and others (CS(OS) No.437/2021)

The judgment of the Supreme Court in Dalpat Kumar and Anr. Vs. Prahlad Singh and Ors.. (1992) 1 SCC 719,

“...4. Order 39 Rule 1(c) provides that temporary injunction

may be granted where, in any suit, it is proved by the affidavit or otherwise, that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit until the disposal of the suit or until further orders. Pursuant to the recommendation of the Law Commission clause (c) was brought on statute by Section 88(i)(c) of the Amending Act 104 of 1966 with effect from February 1. 1977. Earlier thereto there was no express power except the inherent power under Section 151 CPC to grant ad interim injunction against dispossession. Rule I primarily concerned with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury In other words, the court in exercise of the power of granting ad interim injunction, is to preserve the subject matter of the suit in the status quo for the time being. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on

the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical

possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit..."

*Mandali Ranganna & Ors. Versus. T. Ramachandra & Ors.,
(2008) 11 SCC 1,*

"...21. While considering an application for grant of injunction, the court will not only take into consideration the basic elements in relation thereto viz. existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties.

22. Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal

with the properties exclusively, ordinarily would not be entitled to an order of injunction. The court will not interfere only because the property is a very valuable one. We are not however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The courts dealing with such matters must make all endeavours to protect the interest of the parties. For the said purpose, application of mind on the part of the courts is imperative. Contentions raised by the parties must be determined objectively.

"..The Supreme Court has observed as aforesaid that the provisions of Order XXXVIII Rule 5 of the CPC have to be used sparingly and that the plaintiff has to satisfy the Court that the defendant is seeking to remove or dispose of whole or part of his property with the intention of obstructing or delaying the execution of the decree that may be passed against him..."

"In M/s. K. C. V. Airways Ltd. & Anr. Vs. Wg. Cor. R. K. Blaggana, AIR 1998 Delhi 70, a Division Bench of this Court held that the power of the Court under Order XXXVIII Rule 5 of the CPC is an extraordinary remedy. Reference in this regard may be made to paragraph 8 of the judgment:

"8. Needless to say, that R. 5 of O. XXXVII, CPC is an extraordinary remedy and if the ingredients for invoking it are lacking in the application and the affidavit filed in support thereto attachment before judgment order cannot be ordered. claim for attachment before judgment on the averments has

been mainly set out in paras 7 and 8 reproduced above of the application in question and a bare reading thereof reveals, that it was not pleaded therein that the appellants with intent to obstruct or delay the execution of the decree that may be passed against them (a) are about to dispose of the whole or any part of the property, or (b) are about to remove the whole or any part of the property from the local limits of the jurisdiction of this Court. Affidavit filed along with the application contains no statement except an assertion that the respondent has gone through the application and the facts stated therein are correct to the best of his knowledge and information received. That be so, on the basis of the averments as they stand made in the application and the affidavit in question the appellant could not have been legally asked to furnish security in the sum of Rs.8.50 lacs."

9. As per Order 38 Rule 5 C.P.C, at any stage of a suit, if 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.

10. In our case, the petitioner stated that it is already pledged by the respondent/defendant in the LIC Housing Finance Limited and that he heard that the respondent is making arrangements to sell the terraced house standing in the name of the petitioner at Konavattam after discharging the loan raised by her from LIC Housing Finance Limited, Vellore branch which is subsisting over the house owned by the respondent/defendant and to secrete the sale proceeds for her personal use with a dishonest intention.

11. Whereas, the respondent/defendant denied the contention raised by the petitioner. Admittedly, there was a loan raised by the respondent in LIC debt to discharge the petitioner is entitled to security as debt amount is not denied and pending trial. Hence, this court decided to order to furnish the security for the amount payable by the respondent by paying a sum of Rs.32,00,000/- with subsequent interest to January 2022.

12. Since property already pledged in LIC Housing Finance Limited, Vellore. The petitioner is also entitled to get the security and also to get the security from remaining sale proceeds after discharging the loan raised by the

respondent from LIC Housing Finance Limited, Vellore.

As a result, this petition is allowed and the petitioner is directed to produce the security for a sum of Rs.32,00,000/- with subsequent interest within 15 days. In case of failure, attach the remaining sale proceeds after discharging the loan raised by the respondent from LIC Housing Finance Limited, Vellore.

Dictated by me to the Steno-Typist, directly typed by her in computer, corrected and pronounced by me in the Open Court, this the 4th day of June 2025.

Sd/- Tmt. G.Santhi,
I Additional District and Sessions Judge,
Vellore.

DRAFT/FAIR IA ORDER

IA. No. 1/2022 in

OS.No.73/2022

Dt. 04.06.2025

I ADJ Court, Vellore.