

IN THE COURT OF RAMANDEEP KAUR, PCS, CIVIL JUDGE (JR. DIVN.), SANGRUR, UID-PB0679

**CNR No: PBSG020011342022
CIS No:CS-894-2022
Decided on: 13.12.2022**

Present- Sh. G.P. Sharma Advocate, Counsel for plaintiff.
Sh. Ashe Goyal Advocate, Counsel for defendants No.1 to 4.

Application under Order 38 Rule 5 CPC.

ORDER:-

Vide this order, this Court proceeds to dispose of the application under Order 38 Rule 5 CPC filed by applicant/plaintiff (herein only referred as plaintiff) for attachment of the arrears and pension benefits lying with the Sant Longowal Institute of Engineering and Technology, Longowal, District Sangrur i.e. Defendant No.4 and attachment of bank account No.3041576417 of Central Bank of India, Branch SLIET Longowal before judgment likely to be passed against defendants/respondents (herein only referred as defendants).

2. The brief facts of the application are that the plaintiff has filed the present suit for recovery of Rs.2,50,000/- against defendants No.1 to 3 who are LRs of late Surinder Singh. Surinder Singh took loan of Rs.2,50,000/- in two installments and out of which Rs. 50,000/- has been paid in case on 15.02.2022 and Rs.2,00,000/- has been paid in case on 11.05.2022 by withdrawing the same from the bank account of the plaintiff to Surinder Singh. Surinder Singh assured plaintiff to return the said amount on or before 08.08.2022 and for repayment of the loan amount, Surinder Singh had issued one cheque no. 022531 dated 08.08.2022 of Rs. 2,50,000 of Central Bank of India, Branch Longowal duly signed by him in favour of the plaintiff as security at the time of taking payment of Rs. 2,00,000/- on 11.05.2022 and Surinder Singh had told the plaintiff to present the cheque after 08.08.2022. The plaintiff had presented the said cheque for encashment to his bank ICICI, branch Longowal but the same was returned unpaid vide its memo dated 12.09.2022. Thereafter, the plaintiff approached Surinder Singh and he came to know about the death of Surinderr Singh from defendant no. 1 namely Rajni Saini

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and she told that Surinder Singh had died on 04.08.2022. Surinder Singh was upper division clerk with defendant no. 4 and arrears and pension benefits are due and if the said arrears and pension benefits are not attached then the recovery of present suit will become impossible from defendants No.1 to 3. The defendant No.4 is impleaded as necessary party in the present suit for that purpose. In order to defeat the decree likely to be passed in the above noted suit, the defendants No.1 to 3 are intending to grab all the money and benefits of Surinder Singh lying with defendant No.4 fully mentioned in the heading of the application being LR's of Surinder Singh and for this purpose, defendants No.1 to 3 has started negotiations with defendant No.4 for the early disbursement of benefits of Surinder Singh in the above-mentioned bank account. In case the defendants succeeded in their illegal mission of grabbing and disbursement of benefits for the purpose of defrauding the plaintiff, then the plaintiff will suffer irreparable loss which will not be compensated later on in any manner and there will be no other source of recovering the amount from the defendants as the same cannot be recovered from the personal properties of defendants No.1 to 3 and it can only be recovered from the pension and arrear benefits inherited by defendants No.1 to 3 from defendant No.4. Hence, prayed to allow this application.

3. Per contra, the defendants/respondents submitted in their reply that the plaintiff did not give any loan to deceased Surinder Singh by withdrawing the same from his bank account. They further denied the fact of signing of any cheque by deceased Surinder Singh. Surinder Singh (since deceased) did not promise to return any amount on or before 08.08.2022. It is admitted that deceased Surinder Singh was doing the job of Upper Division Clerk with defendant no. 4 and defendant no. 1 to 3 are entitled to get arrears and pension benefits of deceased Surinder Singh from defendant no. 4. Moreover, the said arrears and pension benefits are not liable to be attached for the recovery of alleged suit amount. The plaintiff has filed a false and frivolous suit against defendants.

4. I have heard the rival contentions of both the parties and perused the case record minutely.

5. At this juncture, it would be gainful to mention that the object of supplemental proceedings (applications for arrest or attachment before judgment,

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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 that 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 5CPC. 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. A defendant is not debarred from dealing with his property merely because a suit is filed or about to be filed against him. A plaintiff should show prima facie that his claim is bonafide and valid and also satisfy the Court that the defendant is about to remove or dispose of the whole or part of his property with the intention of obstructing or delaying the execution of any decree that may be passed against him. My this view is fortified by the judgment of **the Hon'ble Supreme Court in case titled as Raman Tech. & Process Engg. Co. & Anr. vs Solanki Traders Appeal (civil) 6171 of 2001 decided on 20.11.2007.**

6. Now reverting to the facts of the present case, the plaintiff has produced original cheque bearing no. 022531 dated 08.08.2022 issued by deceased Surinder Singh and return memo and his bank statement. After perusing these documents, this Court is of the considered view that there is no prima face in

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favour of plaintiff because defendant no. 1 to 3 have denied the fact of signing any cheque and taking of any loan by deceased Surinder Sing. It can be decided only in trial that as to whether deceased Surinder Singh had taken any loan from the plaintiff or not. Moreover, there is nothing on record to show that defendants are attempting to remove or dispose of their assets/funds with intention to defeat the decree that may be passed in their favour. Mere allegation that if this amount of arrear is released in favour of defendants, they will utilize it, is not sufficient ground to order the attachment under Order 38 Rule 5 of CPC. Moreover, the purpose of Order 38 rule 5 is not to convert an unsecured debt into a secured debt. No order for attachment before judgment, or for security can be passed merely because no harm would be done thereby or that the defendant would not be prejudiced. My this view is fortified by the judgment of the Hon'ble Calcutta High Court in case titled as **Premraj Mundra Vs Md. Maneck Gazi And Ors. AIR 1951 Cal 156**. Therefore, applying the law to the facts and circumstances of this case, this Court is of the considered view that there is no sufficient reason to pass any order under order 38 Rule 5 CPC. Hence, the present application in hand is **dismissed**.

However, this Order of the Court shall not have any bearing effect on the merits of the case.

Dated 13.12.2022

Jyoti, stenographer III

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Present- Sh. G.P. Sharma Advocate, Counsel for plaintiff.
Sh. Ashe Goyal Advocate, Counsel for defendants No.1 to 4.

Arguments heard. The application under Order 38 Rule 5 CPC is dismissed vide my separate detailed order of the even date. Now, the case is adjourned to 16.01.2023 for filing written statement on behalf of defendant No.4.

Dated 13.12.2022

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