

IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE, ERODE

Present: **Dr.Tmt.R. MALATHI,**
Sessions Judge,
Magalir Neethi Mandram
(Fast Track Mahila Court), Erode.
Full Additional charge of
II Additional District Judge,
Erode.

Wednesday the 5th day of July 2023

I.A.No.2/2021
in
O.S. No.494/2021
CNR No.TNED01- 003849-2021

M.Rathnakumar
Proprietor, M/s SR Tex

: Petitioner/Plaintiff

Vs.

M.Shalini

: Respondent/Defendant

This petition came up before this court for final hearing on 23.06.2023 in the presence of Mr.G.Kalaivanan, Advocate for the petitioner/plaintiff and Mr.K.Shanmugasundaram, Advocate for the respondent and after hearing the arguments of the learned counsel for the petitioner and the learned counsel for the respondent and upon perusing the records and having stood over for consideration till this day, this court delivered the following:-

O R D E R

This petition is filed by the petitioner/plaintiff under Order 38 Rule 5,6 and section 151 of CPC seeking to pass an order directing the respondent/ defendant to furnish sufficient security to the suit claim with future interest and cost, failing compliance order of attachment before judgment of the petition mentioned property.

2. Brief averments in the affidavit filed by the petitioner/plaintiff in support of the petition :-

The petitioner is the plaintiff in the original suit and the petitioner has filed the suit against the respondent for recovery of amount Rs.56,86,525/- on the basis of promissory note along with annexure and loan document. The respondent/ defendant is doing Real Estate brokerage business in a large scale of business and also catering business at any functions and she is residing at Erode. The defendant is well known to him for the past five years. The defendant borrowed loan from him on various dates, time, again and again for her business purposes and also for her urgently family needs, promising to repay the said sum with accrued interest at the rate of Rs.1.50 per hundred per month to his order. There is sum of Rs.26,70,250/- stood as outstanding as on 17.3.2020 and interest for the months of April to October 2020. At the same time, the respondent/ defendant had also been insisting to lend some more money for her business requirements as well as family needs. She had also been assured to pay interest @ Rs.1.50 as so far she had been paying. The petitioner bonafide believed that the respondent/ defendant would be regular in her repayments, lent loan amounts to the respondent /defendant which were NEFT transferred from his accounts to respondent/ defendant's bank

account. There is sum of Rs.22,08,000/- stood as outstanding as on 31.12.2020. The respondent/ defendant had not paid any other amount either towards interest or principal. He undertook to discharge the debt of Rs.26,70,250/- and Rs.22,08,000/- with accrued interest amounts as agreed by her, but she failed to do so in spite of him repeated demands to repay the debt and interest. The respondent /defendant is making to encumber the petition mentioned properties by alienation, except the petition mentioned properties the respondent/ defendant has no other assets to satisfy the decree. Therefore the petitioner has come forward with this petition and prayed to pass an order directing the respondent to furnish sufficient security for the suit claim and on failure to do so order to attach the petition mentioned property before judgment belonging to the respondent.

3. Brief averments in the Counter filed by the respondent :-

The petition is not maintainable either in law or on facts. The allegations in the affidavit in paragraphs 5 to 14 that the respondent borrowed amounts on various dated from the petitioner agreeing to repay the same with interest at the rate of Rs.1.50 per hundred per month, that the loan amount was paid in cash and as on 17.03.2020 a sum of Rs.26,70,250.00 is due to the petitioner, that on 18.03.2020 the respondent executed a promissory note for the said amount due to the petitioner with an annexure sheet containing the particulars of payments, that the respondent interest for the months of April to October 2020, that the respondent further insisted the petitioner to lend more amount and as per the request of the respondent the petitioner paid further sum of Rs.22,08,000.00 to the respondent, that on 28.08.2021 the respondent executed a loan document confirming the amount borrowed by her, that the

respondent agreed to pay interest at the rate of Rs.1.50 per hundred per month for the amount borrowed as mentioned in the loan document failed to make any further payment and evading to discharge the debt, that the respondent is making to encumber the petitioner mentioned property by alienation, except the petition mentioned properties the respondent/defendant has no other assets to satisfy the decree are all denied as false. The suit promissory note and the suit loan document are not true, genuine and valid. The respondent stated that she has not necessity to borrow such a huge amount of Rs. Rs.26,70,250.00 and Rs.22,08,000.00. The petitioner is not entitled for the relief of attachment before judgment of the petition mentioned property as a matter of right and therefore the respondent they pray to dismiss the petition with costs.

4. The point for consideration in this petition is whether for the reasons stated in this petition, this petition has to be allowed as prayed for by the petitioner or not?

5. In this petition there is neither oral nor documentary evidence by both sides. Arguments of the learned counsel for the Petitioner and the learned counsel for the respondent were heard.

6. POINT:

The petitioner/plaintiff has filed this application under Order 38 Rule 5 of CPC praying this court to pass an order of attachment before judgment against the petition mentioned property.

7. The learned counsel for the respondent goes to argue the allegations that this respondent has received loan amount of Rs.26,70,250/- and Rs.22,08,000/- are totally false. It is also false to state that he had execute suit promissory note towards the same. The petitioner is not entitled for the attachment as prayed for. The property is not the name of

this respondent.

8. The petitioner's learned counsel goes to argue that the property was sold out through fraudulent sale deed dated 30.5.2022 after the security has been called for, hence the petitioner is entitled for the attachment as prayed for.

9. On perusal of the records, it is found that on 23.12.2021 show cause notice has been issued to furnish security for the suit claim. Subsequently, due to pandemic this case has been adjourned and no order of attachment of petition mentioned property has been passed till 30.5.2022.

10. The suit is filed for money claim and this application filed u/o 38 R.5 of CPC calling upon the defendant to furnish the security for production of property. Admittedly, the petition mentioned property do not stand in the name of this respondent/defendant. The learned petitioner counsel had not produced details of any other property in the name of the respondent/ defendant. When there is no property owned by the defendant specified in the application, this court finds that the petitioner/plaintiff is not entitled for an order of attachment before judgment for the petition mentioned property .

In the result, this petition is dismissed without cost.

This order is dictated by me directly to the stenographer and typed by her directly in Computer and corrected by me and pronounced by me in the open court this the 5th day of July 2023.

Sd/-Dr.R. MALATHI,
Sessions Judge,
Magalir Neethi Mandram
(Fast Track Mahila Court), Erode.
Full Additional charge of
II Additional District Judge, Erode.

Fair/Draft order
I.A.No.2/2021
O.S. No.494/2021
II ADJC,Erode
05.07.2023