



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

MISCELLANEOUS FIRST APPEAL NO.3530 OF 2021 (CPC)

BETWEEN:

MR. MAHESH. B. R.
S/O. RANGAPPA. B. B.,
AGED ABOUT 35 YEARS,
RESIDING AT BALUR HORATTI,
BALUR ESTATE,MUDIGERE,
CHICKMAGALURU DISTRICT-577 122.

...APPELLANT

(BY SRI. K. RAVISHANKAR.,ADVOCATE)

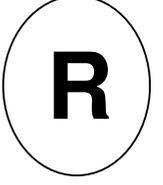
AND:

ATLANTIC DATA BUREAU SERVICES PVT. LTD
REPRESENTED BY ITS DIRECTORMR. P. DEEPAK
SHARMAS/O. P. V. SHARMA,
AGED ABOUT 42 YEARS,
DIRECTOR, ATLANTIC DATA BUREAU
SERVICE PVT. LTD.,
DOOR NO. 3-45/12,OLD NH-75,
OPP POST OFFICE, KANNUR,
MANGALURU-575 007.

...RESPONDENT

(BY SRI. ANANDARAMA. K.,ADVOCATE FOR C/RESPONDENT)

THIS MFA FILED U/O 43 RULE 1(q) OF CPC PRAYING TO
SET ASIDE THE ORDER DATED 12.04.2021 PASSED ON
I.A.NO.III IN O.S.NO.223/2020 ON THE FILE OF III





ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, MANGALURU
DAKSHINA KANNADA.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS
DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

ORAL JUDGMENT

The appeal is filed by the appellant/defendant questioning the order dated 12.04.2021 passed on I.A.No.III filed under Order XXXVIII Rule 5 & 6 read with Section 151 of CPC in O.S.No.223/2020 on the file of III Additional Senior Civil Judge and JMFC, Mangaluru, Dakshina Kannada¹, whereby the schedule properties A, B and C are attached.

2. It is case of the plaintiff that the appellant/defendant is the employee of the plaintiff/respondent Company. The defendant has appointed as Team Lead - Finance with the salary of Rs.36,020/-. The allegation against the appellant/defendant that he has misappropriated sum of Rs.4,09,29,935/-. Therefore, filed

¹hereinafter referred to as 'the Trial Court' for short



the suit for mandatory injunction directing the defendant to pay sum of Rs.4,09,29,935/- with the plaintiff company with interest at the rate of 12% p.a., from the date of suit till realization. Also the plaintiff has filed IA No.III under Order XXXVIII Rule 5 & 6 of CPC praying for conditional order of attachment before judgment of movable and immovable properties as shown in scheduled A, B and C before judgment. The trial Court has allowed I.A.No.III by passing order of attachment before the judgment. This order assailed in this appeal by raising various grounds in the memorandum of appeal.

3. Learned counsel for the appellant/defendant vehemently submitted that the order passed is in a mechanical way and there is no cogent reasons made out by the plaintiff for obtaining such an order. Mere deposition in the affidavit is not sufficient regarding the plaintiff deemed to have understand the defendant that the defendant is going to sell away his property is not the ground to grant an order of attachment. By placing various



judgments on this issue, learned counsel for the appellant/defendant submitted that the order of attachment is illegal. Hence, prays to allow the appeal. He places reliance on the judgments of the Hon'ble Apex Court as well as this Court which are extracted below:

- (i). RAMAN TECH & PROCESS ENGG. CO & ANR. VS. SOLANKI TRADERS² (Raman Tech's Case)**
- (ii). ASHISH KRISHNASWAMY VS. MONEY FOCUS INFRASTRUCTURE PRODUCTS LTD BANGALORE & ORS³ (Ashish Krishnaswamy's Case)**
- (iii). KRISHNAPPA VS. SMT. K.N. SRIDEVI⁴ (Krishnappa's Case)**
- (iv). PALGHAR ROLLING MILLS (P) LTD. VS. VISVESWARAYYA IRON & STEEL LTD⁵ (Palghar Rolling Mills Case)**

4. It is sum and substance of the submission made by the learned counsel for the appellant/defendant that the

²2008(2) SCC 302

³ILR 2021 KAR 2491

⁴ILR 2012 KAR 3328

⁵ILR 1985 KAR 3989



plaintiff has not made out *prima facie* case so as to grant an order of attachment. The mere allegation that the defendant has committed fraud is not sufficient, as the provisions under Order XXXVIII Rule 5 CPC can be accessed for hearing, otherwise, it infringes the rights of the appellant/defendant.

5. Therefore, submitted that the plaintiff ought to have shown some *prima facie* material warranting issuance of an order of attachment before judgment, but that has not been done. Therefore, prays to allow the appeal.

6. On the other hand, learned counsel for the respondent/plaintiff submitted that the defendant/appellant has not disputed that he was an employee of the respondent/plaintiff - Company as a Team Lead - Finance. The plaintiff has made a detailed statement on how the defendant has siphoned off the amount of the plaintiff-company, which constitutes *prima facie* case and balance of convenience so as to grant an order of attachment and



if an order of attachment before judgment is not granted, then what would the plaintiff suffer, loss or injury is also stated. Otherwise, even if decree is passed in favour of the plaintiff, that will only become a paper decree and not possible for the plaintiff to recover the said amount. Therefore, the plaintiff has made a strong *prima facie* case and balance of convenience by making detailed pleading in the plaint. Also, what is the amount stated in the plaint the same amount is credited to the bank account of the defendant. This itself shows that the plaintiff has strong *prima facie* case and balance of convenience to grant an order of attachment before judgment and if order of attachment before judgment is not granted, then the plaintiff would suffer irreparable loss and injury. Besides, even if the suit is decreed, it is not possible for the plaintiff to recover the said amount, if order of attachment before judgment is not granted. Therefore, justified the order passed by the trial Court.



7. Also, it is submitted that during the pendency of the appeal before this Court, the defendant/appellant has sold the schedule 'B' property, which itself shows that the intention of the defendant making attempt to nullify decree if it is passed. Therefore, this shows the conduct of the defendant, trying to defeat the legitimate claim of the plaintiff, and accordingly produced the copy of the sale deed for having sold the 'B' schedule property during pendency of the appeal when order of attachment is in forces. Therefore, submitted that this is one of the strong circumstances which needs confirmation of the order of attachment before judgment of scheduled properties. Therefore, prays to dismiss the appeal.

8. Heard the arguments from both sides and perused the materials furnished in the appeal.

9. Upon various submissions, the following points arises for consideration of this Court are:

- i. Whether, under the facts and circumstances of the case, the plaintiff makes out prima*



facie case so as to grant an order of attachment before the judgment as per Order XXXVIII Rule 5 of CPC?

- ii. Whether, under the facts and circumstances of the case, the plaintiff makes out case of balance of convenience so as to grant an order of attachment before the judgment as per Order XXXVIII Rule 5 of CPC?*
- iii. Whether, under the facts and circumstances of the case, if an order of attachment is not granted then plaintiff would suffer any irreparable loss or injury?*
- iv. Whether, the order of attachment before the judgment passed by the Trial Court requires any interference by this Court?*

10. The plaintiff has averred in the plaint that the defendant was employee and was appointed as the 'Team Lead-Finance' as per the appointment order dated 16.12.2013. The initial salary was Rs.36,020/- per month and the same was increased from time-to-time and the last drawn salary by the defendant for the month of November - 2020 was Rs.81,000/- per month. The plaintiff has made a averment regarding the nature of job of the



defendant, as it was a duty of the defendant of accounting and analyzing the financial information, preparing financial reports, compliance and analysis of financial information to prepare entries to accounts like general ledger accounts, documenting business transactions and analysis of financial information, detailing assets, liabilities and prepared balance sheet, profit and loss statement and other reports to summarise the Company's financial position and even he was the Head of Accounts of the plaintiff's Company from the beginning.

11. The appellant/defendant was also assigned additional job and operational responsibilities, such as handling payroll of employees, banking purchases, customs, IT returns, calculation of GST, service tax and coordinating with the plaintiff company's auditors. The plaintiff has made the duties of the defendant to perform for and on behalf of the plaintiff's company, mainly on financial aspects. It is allegation against the defendant made out in the plaint that since the defendant had a key



role in maintaining the financial and general transactions, by taking advantage of his position, the defendant has siphoned off an amount of Rs.2,91,63,290/-. Hence, filed the suit for recovery of money of Rs.4,09,29,935/- as this amount is calculated along with interest.

12. The plaintiff has filed an application under Order XXXVIII Rules 5 and 6 read with Section 151 of CPC for attachment before judgment. The provisions under Order XXXVIII Rule 5 of CPC can be exercised sparingly and can be exercised only to ensure that if the suit decreed, the decree would not become a mere paper decree, so as to realize the fruits of decree. Hence, Order XXXVIII Rule 5 of CPC is an enabling provision before judgment confirming the right of the plaintiff to fructify the decree which would be passed in future after completion of trial and evidence. Therefore, whenever the plaintiff seeks an order of attachment before judgment, it is onus on the plaintiff to make out a *prima facie* case and balance of convenience and also demonstrate that if the provisions under Order



XXXVIII Rule 5 of CPC are not exercised positively, then what the plaintiff would suffer loss or injury as the application is to be considered on the principle of considering grant of equitable relief.

13. Learned counsel for the appellant/defendant places reliance on the various judgments of Hon'ble Supreme Court and the High Court and it is worth to follow the said guidelines issued by the Hon'ble Supreme Court in the case of **Raman Tech (supra)** at paragraph Nos.4, 5 and 6, it is held as under:

"4. 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 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 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.

5. The power under Order 38 Rule 5 CPC is a 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 realized by unscrupulous plaintiffs by obtaining orders of attachment before judgment and forcing the defendants for out-of-court settlements under threat of attachment.

6. A defendant is not debarred from dealing with his property merely because a suit is filed or about to be filed against him. Shifting of business from one premises to another premises or removal of machinery to another premises by itself is not a ground for granting attachment before judgment. A plaintiff should show, prima facie, that his claim is bona fide 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, before power is exercised under Order 38 Rule 5 CPC. Courts should also keep in view the principles relating to grant of attachment before judgment. (See Premaraj Mundra v. Md. Manech Gazi⁶ for a clear summary of the principles.)”

14. Further, the Division Bench of this Court in the case of **ASHISH KRISHNASWAMY (supra)** at paragraph Nos.7, 13, 15 and 16, it is observed as follows:

“7. The Learned Senior Counsel appearing for the appellant has taken us through the relevant portion of the pleadings and the impugned order. We must note here that the challenge in this appeal is to both the orders dated 23rd October 2019 and 30th June 2020. The Learned Senior Counsel appearing for the appellant firstly submitted that though compliance with sub-Rule (1) of Rule 5 of Order XXXVIII of CPC was a condition precedent for passing an order of attachment before judgment, the same is not made. Therefore, by virtue of sub-Rule (4) of Rule 5 of Order XXXVIII of CPC the attachment is void. He also pointed out that no satisfaction is recorded by the Learned Trial Judge before passing the order of attachment as required by sub-Rule (1) of Rule 5 of Order XXXVIII of CPC. He submitted that the Trial Court did not consider the fact that the property subject matter of Schedules – ‘B’ to ‘G’ was owned by the second defendant and there was no pleadings in the plaint as to how the second defendant was liable to pay any amount to the plaintiff. He pointed out that it is pleaded in the written statement filed by the second defendant that Schedule – ‘B’ property has been sold by a sale deed and in respect of the properties at Schedules – ‘C’ to ‘G’, mortgage has been created by the second defendant.

⁶AIR 1951 Cal 156



13. As noted earlier, the satisfaction required to be recorded as per sub-Rule (1) of Rule 5 of Order XXXVIII of CPC is that the defendant with an intent to obstruct or delay the execution of any decree that may be passed against him is about to dispose of the whole or any part of his property. Thus, the Court must be satisfied that there is a reasonable chance of a decree being passed in the suit and that is how there is a legal requirement of the Court being satisfied about the existence of a prima facie case.

15. Coming back to the facts of the case, the order of attachment dated 23rd October 2019 was not preceded by any order passed in accordance with sub-Rule (1) of Rule 5 of Order XXXVIII of CPC. The order merely refers to an affidavit of the plaintiff stating that the defendants are trying to sell the schedule properties. There is no finding recorded about the existence of a prima facie case or a reasonable possibility of a decree being passed in favour of the plaintiff against the second defendant and for that matter even against the first defendant. There is no satisfaction recorded that the second defendant with an intent to obstruct or delay the execution of the decree which may be passed against him is about to dispose of the whole or part of his property. Thus, the said order of attachment which has been made without complying with the provisions of sub-Rule (1) of Rule 5 of the Order XXXVIII will be rendered void.

16. We have carefully perused the plaint. Paragraph 8 of the plaint proceeds on the footing that the first defendant is the owner of the schedule properties. Going by the averments in the plaint, the transaction of the sale of building material was between the plaintiff and the first defendant which is a private limited company. There is not even an averment in the plaint that the second and third defendants are jointly and severally liable along with the first defendant to pay the amount claimed in the suit. In fact, taking the averments made in the plaint as correct, it is



impossible to record even a prima facie finding that there is a possibility of a decree being passed against the second defendant."

15. Further, this Court in the case of **KRISHNAPPA** (*supra*) at paragraph Nos.10, 11 and 12, held as follows:

*10. The object of Order 38 Rule 5 of CPC is to prevent a decree that may be passed from being rendered infructuous. In **PREMRAJ MUNDRA VS. MD. MANECK GAZI & OTHERS**⁷, the Calcutta High Court after referring to number of authorities has deduced 14 guiding principles governing the issue of an order under Order 38 Rule 5, which are as under:*

- (1) "That an order under Order 38 Rule 5 & 6 can only be issued, if circumstances exist as are stated therein.*
- (2) Whether such circumstances exist is a question of fact that must be proved to the satisfaction of the Court.*
- (3) That the Court would not be justified in issuing an order for attachment before judgment, or for security, merely because it thinks that no harm would be done thereby or that the defendants would not be prejudiced.*
- (4) That the affidavits in support of the contentions of the applicant, must not be vague, and must be properly verified. Where it is affirmed true to knowledge or information or belief, it must be stated as to which portion is true to knowledge, the source of information should be disclosed, and the grounds for belief should be stated.*

⁷AIR 1951 Calcutta 156



- (5) *That a mere allegation that the defendant was selling off and his properties is not sufficient. Particulars must be stated.*
- (6) *There is no rule that transactions before suit cannot be taken into consideration, but the object of attachment before judgment must be to prevent future transfer or alienation.*
- (7) *Where only a small portion of the property belonging to the defendant is being disposed off, no inference can be drawn in the absence of other circumstances that the alienation is necessarily to defraud or delay the plaintiff's claim.*
- (8) *That the mere fact of transfer is not enough, since nobody can be prevented from dealing with his properties simply because a suit has been filed: There must be additional circumstances to show that the transfer is with an intention to delay or defeat the plaintiff's claim. It is open to the Court to look to the conduct of the parties immediately before suit and to examine the surrounding circumstances and to draw an inference as to whether the defendant is about to dispose of the property, and if so, with what intention. The Court is entitled to consider the nature of the claim and the defence put forward.*
- (9) *The fact that the defendant is in insolvent circumstances or in acute financial embarrassment, is a relevant circumstance, but not by itself sufficient.*
- (10) *That in the case of running business, the strictest caution is necessary and the mere fact that a business has been*



closed, or that its turnover has diminished, is not enough.

- (11) Where however the defendant starts disposing of his properties one by one, immediately upon getting a notice of the plaintiff's claim, and/or where he had transferred the major portion of his properties shortly prior to the institution of the suit, and was in an embarrassed financial condition, these were grounds from which an inference could be legitimately drawn that the object of the defendant was to delay and defeat the plaintiff's claim.*
- (12) Mere removal of properties outside jurisdiction, is not enough, but where the defendant with notice of the plaintiff's claim, suddenly begins removal of his properties outside the jurisdiction of the appropriate Court, and without any other satisfactory reason, an adverse inference may be drawn against the defendant. Where the removal is to a foreign country, the inference is greatly strengthened.*
- (13) The defendant in a suit is under no liability to take any special care in administering his affairs, simply because there is a claim pending against him. Mere neglect or suffering execution by other creditors, is not a sufficient reason for an order under Order 38 of the Code.*
- (14) The sale of properties at a gross undervalue, or benami transfers, are always good indications of an intention to defeat the plaintiff's claim. The Court must however be very cautious about the evidence on these points and not rely on vague allegations."*



11. In **PALGHAR ROLLING MILLS (P) LTD., VS. VISVESWARAYYA IRON AND STEEL LTD⁸**, this Court has enumerated the requirements of Order 38 Rule 5 of the CPC as under:

"(ii) The mandatory essentials of Order 38, Rule 5 are: (i) the Court must be 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, (ii) is about to dispose of the whole or any part of his property, or (iii) is about to remove the whole or any part of the property from the local limits of the jurisdiction of the Court. Therefore, the most essential requirement of Order 38, Rule 5 is the subjective satisfaction of the Court regarding the requirements mentioned above. Order 38, Rule 5, is a mandatory provision demanding of the Court to satisfy itself first that the defendant is intending to obstruct or delay the execution of the decree that may be passed against him. If the order passed by the Court does not speak or show that the Court has applied its mind to the requirements of Order 38 Rule 5 CPC or if the order passed by the Court below does not show clearly that it has considered the material on record, or if the order does not show that the Court is satisfied that the defendant with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of the whole or any part of the property, the order would be in violation of Order 38, Rule 5 CPC. Order 38, Rule 5 as it stood before the amendment in 1976 would have at the most rendered such order irregular. But, now sub-Rule (4) inserted by Section 85(1) of the Act

⁸ ILR 1985 KAR 3989



104 of 1976 reads that if an order of attachment is made without complying with the provisions of sub-Rule (1) of Rule 5 of Order 38, such attachment shall be void. Sub-Rule (4) has been inserted with a view to see that the Courts do not pass such an extra-ordinary order in a cavalier manner and without satisfying themselves about the requirements of Order 38, Rule 5.

(iii) Simple mention of the apprehension is not sufficient to show that the defendant No. 1 was intending to dispose of the properties with a view to obstruct or delay the execution of a decree that may be passed against him. Simple production of the language used in Order 38 Rule 5 will not meet the requirements of Order 38, Rule 5 CPC. The affidavit must state the source of the information or apprehension. Unless the source is disclosed, the Court should not hasten to pass an order under Order 38, Rule 5 CPC."

12. Taking note of the amendment made to Order 38 Rule 5 by insertion of sub-Rule (4) by Act No. 104/1976 (w.e.f. 1.3.1977), this Court has further held that while passing the order of attachment before judgment, the Court should bear in mind that any attachment order passed without complying with sub-Rule (1) shall be void. Therefore, the Courts, which are armed with vast powers, should acquaint themselves with the amendments and should scrupulously follow the mandatory requirements of law. If the Court, inspite of sub-Rule (4) passes an order in a cavalier manner, such an order must be struck down in the interest of administration of justice."



16. Further, the Hon'ble Supreme Court in the case of **PALGHAR ROLLING MILLS (P) LTD., (supra)** at paragraph Nos.8 and 9, it is held as under:

"8. The mandatory essentials of Order 38, Rule 5 are: (i) the Court must be 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, (ii) is about to dispose of the whole or any part of his property, or (iii) is about to remove the whole or any part of the property from the local limits of the jurisdiction of the Court. Therefore, the most essential requirement of Order 38, Rule 5 is the subjective satisfaction of the Court regarding the requirements mentioned above. Order 38, Rule 5, in my opinion, is a mandatory provision demanding of the Court to satisfy itself first that the defendant is intending to obstruct or delay the execution of the decree that may be passed against him. If the order passed by the Court does not speak or show that the Court has applied its mind to the requirements of Order 38 Rule 5 C.P.C. or if the order passed by the Court below does not show clearly that it has considered the material on record, or if the order does not show that the Court is satisfied that the defendant with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of the whole or any part of the property, the order would be in violation of Order 38, Rule 5 CPC. Order 38, Rule 5 as it stood before the amendment in 1976, would have at the most rendered such order irregular. But, now sub rule 4 inserted by Section 85(1) of the Act 104 of 1976 reads that if an order of attachment is made without complying with the provisions of sub-rule (1) of Rule 5 of Order 38, such attachment shall be void. Sub-rule (4) has been inserted with a view to see that the Courts do not pass such an extraordinary order in a cavalier manner and



without satisfying themselves about the requirements of Order 38, Rule 5.

9. The order passed by the Court below has been extracted above. There is nothing in it to show that the Court has even bothered to go through the affidavit filed by the plaintiff. It has not even chosen to consider whether any material has been let-in by the plaintiff to show that the defendant with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of the whole or any part of his property. Therefore, the order passed by the Court below, in my opinion, appears to have been passed in a most cavalier manner and without realising the consequences that might flow from the attachment order. The order has been passed nearly about 7 years after the amendment. The Court passing the order of attachment before judgment should bear in mind that any attachment order passed without complying with sub-rule (1) shall be void. Therefore, the Courts which are armed with vast powers, should acquaint themselves with the amendments and should scrupulously follow the mandatory requirements of law. If the Court, inspite of sub-rule (4) passes an order in a cavalier manner, such an order must be struck down in the interest of administration of justice as void. Therefore, it is concluded that the order of attachment before judgment passed by the Court below is void. Therefore, all the proceedings that have followed such a void order, will have to be struck down.

17. While considering the application filed under Order XXXVIII Rules 5 and 6 read with Section 151 of CPC, the foremost aspect to be considered is ensuring that the plaintiff benefits from the decree that would be passed at a



later stage after the trial and that the decree to be rendered should not become mere paper decree. The provisions under Order XXXVIII Rule 5 of CPC, can be exercised sparingly with balancing the assertions made by plaintiff and defendant. This provision should not be used to harass the defendant; therefore, a heavy burden lies on the plaintiff to demonstrate why an order of attachment before judgment is necessary. This can be considered under the facts and circumstances of each case and the burden lies heavily on the plaintiff to show how the plaintiff would suffer injury and loss if an order of attachment before judgment is not passed.

18. The purpose of Order XXXVIII Rule 5 of CPC is not to convert an unsecured debt into a secured debt. However, in the present case, the plaintiff has specifically stated in the plaint by pleading in detail that the defendant had possession and control over the financial aspects and internal transactions. Further the plaintiff has in detail averred that how the defendant committed an act of fraud



defrauding the plaintiff company. The defendant has not disputed that he was an employee under the plaintiff company. Further, the plaintiff has pleaded that the amount misappropriated as per the alleged plaintiff averments, was credited to the bank account of the defendant. Hence, the plaintiff has made out *prima facie* case and balance of convenience for grant of an order of attachment before judgment.

19. When the instant case is analyzed under this principle, a *prima facie* case is made out at this stage, as it is admitted by the defendant that he was an employee under the plaintiff company and was appointed as the Team Lead-Finance. The duties, responsibilities and functions of the defendant are explained in detail in the pleadings of the plaintiff as discussed above. It is the case made out by the plaintiff in the plaintiff that the defendant had control over the company on behalf of its directors. When such being the key position held by the defendant,



as explained in the plaint and the amount of fraud alleged against the defendant, the plaintiff has made out a *prima facie* case and balance of convenience on part of the plaintiff in the suit. Therefore, when these facts are revealed and an order of attachment before judgment is not passed, certainly it would cause loss and injury to the plaintiff.

20. Furthermore, the learned counsel for the respondent/plaintiff submitted that during pendency of the appeal, the defendant sold out the suit schedule 'B' property for a total sale consideration amount of Rs.30,00,000/- in spite of the order of attachment is in force and filed a memo along with a copy of the sale deed. The sale deed dated 03.03.2023, *prima facie* shows that during subsistence of the order of attachment before judgment, the defendant sold the suit schedule 'B' property. Although, the plaintiff has initiated the contempt proceedings, this would go to show that the defendant



disregarded the order of attachment passed by the trial Court. Therefore, when the plaintiff has filed an affidavit stating that they came to know about misappropriation of resources and the defendant's intention to make alienation, this averment becomes sufficient cause for granting relief of attachment before judgment. The further act of the defendant in selling the suit schedule 'B' property would go to show *prima facie* that the defendant intends to sell away the suit schedule properties. In such an event, the plaintiff would suffer irreparable loss and injury. Hence, the plaintiff has made out all the three points as above discussed and the plaintiff is entitled to an order of attachment before judgment, which was correctly exercised by the trial Court and needs no interference. Accordingly, I answer point Nos.(i) to (iii) in the **Affirmative** and point No.(iv) in the **Negative**. Thus, the appeal is liable to be dismissed.

21. Accordingly, the appeal is **dismissed**.



NC: 2025:KHC:40704
MFA No. 3530 of 2021

In view of disposal of the appeal, pending IAs' if any,
shall stand disposed of.

SD/-
(HANCHATE SANJEEVKUMAR)
JUDGE

KA: Para 1 to 10
SRA: Para 11 to end
List No.: 1 Sl No.: 21