



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE SYAM KUMAR V.M.

MONDAY, THE 27TH DAY OF JANUARY 2025 / 7TH MAGHA, 1946

FAO NO. 9 OF 2025

ARISING OUT OF THE ORDER DATED 05.12.2024 IN
I.A.NO.3/2024 IN O.S.NO.113/2024 OF THE ADDITIONAL SUB
COURT-II, ERNAKULAM

APPELLANT:

M.G. SREEJITH
AGED 46 YEARS
S/O GOPALAN, FLAT NO.210, METRO PARADISE,
EDAYAKUNNAM, SOUTH CHITTOOR,
ERNAKULAM, PIN - 682031

BY ADVS.
ARUN V.G. (K/795/2004)
V.JAYA RAGI
R.HARIKRISHNAN (KAMBISSERIL)
NEERAJ NARAYAN
A.S.SALMA

RESPONDENTS:

- 1 M/S MSS HOSPITAL AND NURSING COLLEGE PVT. LTD,
8/432, KAKKADA, PUNTHALA, ALAPPUZHA-689509,
REPRESENTED BY ITS MANAGING DIRECTOR,
MEERAN RAWTHER RAHEEM @ RAHEEM RAWTHER,
AGED 54 YEARS, 16 C & D, LINK HERITAGE,
CHITTOOR ROAD, KACHERIPPADY, ERNAKULAM,
PIN - 682018
- 2 MEERAN RAWTHER RAHEEM @ RAHEEM RAWTHER
AGED 54 YEARS
16 C & D, LINK HERITAGE, CHITTOOR ROAD,
KACHERIPPADY, ERNAKULAM, PIN - 682018



BY ADVS.
N.G.SUNIL, R1
P.JAYA, R2

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR
ADMISSION ON 17.01.2025, THE COURT ON 27.01.2025 DELIVERED
THE FOLLOWING:

**JUDGMENT**

Dated this the 27th day of January, 2025

This F.A.O. is filed challenging the order dated 05.12.2024 in I.A.No.3 of 2024 in O.S.No.113 of 2024 of the II Additional Sub Court, Ernakulam. Appellant was the petitioner in the I.A. and plaintiff in the suit. Respondents were the respondents in the I.A. and defendants in the suit (Parties are hereinafter referred to as per their status in the suit).

2. O.S.No.113 of 2024 was filed by the plaintiff for recovery of Rs.45 lakhs along with interest from the defendants and their assets. I.A.No. 3 of 2024 was filed along with the suit seeking to attach the plaint schedule property, which is a flat owned by the 2nd defendant. A conditional order of attachment had been initially granted by the Sub Court, which was lifted after hearing the parties, and the I.A. was dismissed. The aggrieved plaintiff (appellant) has preferred this F.A.O.

3. The plaintiff is a lawyer by profession. The 2nd defendant was a client of the plaintiff. He was the Managing Director of the 1st



defendant which is an incorporated entity that owns a hospital and nursing college. The defendants had availed loans from the South Indian Bank, Kacheripady Branch. The plaintiff scheduled property, which is a flat owned by the 2nd defendant, had been mortgaged with the Bank along with other properties of the 1st defendant hospital for availing the said loans. In the litigation that ensued between the Bank and the defendants over the defaulted loan amounts, the defendants had engaged the plaintiff as their lawyer. At some point of time, when confronted with a Court Order that required immediate payment of Rs.50 lakhs towards the loan account, the 2nd defendant requested his lawyer ie., the plaintiff to lend him Rs.45 lakhs. The plaintiff acceded to the said request and transferred the said amount from his account to the account of the 2nd defendant. The purported understanding was that the 2nd defendant would repay the amount of Rs.45 lakhs with 9% interest within 6 months. Due to the said timely monetary assistance from the plaintiff, the imminency of coercive steps against the hospital from the Bank was warded off. Subsequently, the hospital was wound up and sold to one M/s.Sunrise Institute of Medical Sciences



Pvt. Ltd. The loan outstanding with the Bank was fully cleared from the sale proceeds and the plaint schedule property viz., the flat, was redeemed by the 2nd defendant. The amount of Rs.45 lakhs due to the plaintiff however remained unpaid. In the agreement of sale that the defendants had entered into with the said M/s.Sunrise Institute, the liability to the plaintiff had been shown as a liability of the 1st defendant hospital which is to be paid off by the M/s.Sunrise Institute. Since the said amount was not repaid by the 2nd defendant nor by M/s.Sunrise Institute, and since the 2nd defendant was seen taking hasty steps to sell off the plaint schedule flat, left with no other recourse, the plaintiff filed the suit seeking to recover the amount due. The I.A. seeking attachment of the flat was also filed along with the suit.

4. The defendants entered in appearance and filed a counter affidavit in the I.A. seeking to lift the ex parte conditional attachment. It was *inter alia* contended that the amount of Rs.45 lakhs received from the plaintiff by the 1st defendant was in fact not a loan to clear off the Bank dues as alleged, but was an advance amount paid by the plaintiff pursuant to an agreement dated 23.04.2023 wherein he



had agreed to purchase the 1st defendant hospital for a total sale consideration of 14 Crores. Since the plaintiff had failed to keep his part of the bargain, the 2nd defendant had to sell the hospital to M/s.Sunrise Institute vide agreement dated 30.08.2023. In the said sale, it was the plaintiff who had drafted the relevant sale agreement pursuant to which the hospital was sold to M/s.Sunrise Institute. The plaintiff had consciously incorporated an entry regarding the amounts owed to him into the said sale agreement whereby, the obligation/ liability to pay the amounts due to the plaintiff by the 1st defendant had been taken upon itself by the purchaser of the hospital viz., M/s.Sunrise Institute. Since the sale of the 1st defendant to M/s.Sunrise Institute stands completed, the 2nd defendant is no longer the owner of the 1st defendant. Moreover, M/s. Sunrise Institute, who had undertaken to clear off the liability to the plaintiff has apparently done so already. If not, it is the look out of the plaintiff to realise the outstanding amounts, if any, from M/s.Sunrise Institute. The plaintiff cannot attach the plaint schedule property which is the personal property of the 2nd defendant for the amounts, if any, outstanding from the 1st defendant or from



M/s.Sunrise Institute. The interim attachment was thus sought to be lifted.

5. The Sub Court heard the parties and a comparison of the signatures of the plaintiff in the plaint and in the agreement dated 23.04.2023 was carried out. It was found, at least on the threshold, that the signatures had been put in by one and the same person and hence the contention that the amount of Rs.45 lakhs was paid by the plaintiff towards advance purchase money for the purchase of the 1st defendant hospital was *prima facie* valid. It was also noted that, subsequently when the 1st defendant was sold to M/s.Sunrise Institute, the amount of Rs.45 lakhs due to the plaintiff had been specifically mentioned along with other liabilities enumerated in Annexure C of the sale agreement dated 30.08.2023 which the defendants had entered into with M/s.Sunrise Institute. That in the suit that had ensued from the said sale agreement, viz., O.S.No.36 of 2024 before the Sub Court, Pathanamthitta, M/s.Sunrise Institute had in the plaint specifically stated that all obligations to be performed by them under the agreement dated 30.08.2023 stands performed, also weighed with the Sub Court. It was therefore



concluded by the Sub Court that the 2nd defendant cannot be made liable to pay any amount to the plaintiff and consequently, the conditional attachment granted earlier was lifted and the lifting was directed to be communicated to the concerned SRO and VO. The said order of the Sub Court is challenged in this F.A.O.

6. The 2nd defendant has filed a counter affidavit in the F.A.O. as well as a petition seeking to receive document Nos.1 to 7 as additional documents. The plaintiff has along with a memo produced document Nos.1 to 10. In the counter affidavit filed, the 2nd defendant has *inter alia* affirmed that he has no intention to sell the plaint schedule flat as he is living therein.

7. Heard Sri.V.G.Arun, Advocate for the plaintiff (appellant), Sri.N.G.Sunil, Advocate for 1st defendant (1st respondent) and Smt.P.Jaya, Advocate for the 2nd defendant (2nd respondent).

8. The learned counsel appearing for the plaintiff submitted that the impugned order is not legally sustainable on more than one grounds. It is *inter alia* contended that the Sub Court erred in placing reliance on the purported agreement dated 23.04.2023 between the plaintiff and the 2nd defendant. The plaintiff had denied executing



such an agreement with the 2nd defendant. The 1st defendant which is an incorporated entity is not a party to the said sale agreement. There is no reference to the decision, if any, of the Board of Directors of the 1st defendant to execute such an agreement and the same is purported to be entered into with the 2nd defendant alone. He is incompetent to enter into such a sale agreement on behalf of the 1st defendant and hence the said document is a sham, fabricated one. The Sub Court ought not to have relied on the same at the threshold. There was valid and reliable evidence before the court to show that Rs.45 lakhs had been transferred from the account of the plaintiff to the account of the 2nd defendant and that the said amount had been transferred to the loan account of the 1st defendant towards clearing outstanding loan liability with the Bank. The personal loan of the 2nd defendant had also been thus cleared. Evidence had also been produced to prove that the amount was paid by the plaintiff at the request of the 2nd defendant to ward off the imminency of the coercive steps that were looming large over the property including the plaint schedule property. Admittedly the purported sale agreement dated 23.04.2023 produced by the



defendants, which is denied by the plaintiff, is dated subsequent to the transfer of money by the plaintiff. That the payment of Rs.45 lakhs was towards clearing off the loan is thus evident. The subsequent agreement dated 23.04.2023 is an afterthought. Further, the exercise of comparing signatures by the court and drawing a prima facie conclusion therefrom leading to the lifting of attachment is an illegal and improper exercise. Reliance is placed on the dictum laid down in **T.Lakshmi v. State of Andhra Pradesh** [(2021) SCC OnLine AP 3670]. The falsity of the existence of an agreement of sale, such as the one dated 23.04.2023, is evident from the fact that the 2nd defendant never sought the performance of the same by issuing a legal notice. The Sub Court erred in overlooking the same and proceeding to carry out a mini-trial appreciating the documents and the signatures therein. A *prima facie* case in his favour had been made out by the plaintiff by substantiating the payment of Rs.45 lakhs. The defendants had no case that the said amount had not been received or that it had been paid back. The reliance on the plaint in O.S.No.36 of 2024 before the Sub Court, Pathanamthitta, is chimerical. The assertion therein does not take away the obligation



of the 2nd defendant nor obliterate the claim of the plaintiff. The balance of convenience lay in favour of the plaintiff. Irreparable loss and injury that will be occasioned to the plaintiff if the interim attachment granted is not continued had been demonstrated. The Sub Court however overlooked the same.

9. *Per contra* the learned counsel for the defendants vehemently contended that the plaintiff has not even made out a *prima facie* case entitling him to an order of attachment and that the Sub Court had validly lifted the conditional attachment earlier granted vide the order impugned. It was *inter alia* submitted that the agreement dated 23.04.2023 was entered into between the plaintiff and the 2nd defendant whereby the plaintiff had agreed to purchase and the 2nd defendant had agreed to sell the 1st defendant hospital for an amount of Rs.14 Crores. The 2nd defendant as the Managing Director and the major shareholder of defendant No.1 had all competence and authority to enter into such an agreement. The said agreement is valid and legal and is not fabricated as alleged. The Sub Court had validly compared the signatures of the plaintiff in both documents and had found that the same does indeed match. The



course adopted by the Sub Court cannot be termed illegal or irregular. The amount of Rs.45 lakhs transferred by the plaintiff to the 2nd defendant was only an advance of the purchase price. The learned counsel further submitted that while the contention that the amount paid by the plaintiff was advance money is substantiated by the agreement, there is no evidence whatsoever to prove the contention of the plaintiff that the amount paid was a loan with 9% interest. Since the plaintiff did not keep his part of the agreement to purchase the hospital by paying Rs.14 Crores, the 2nd defendant was hard-pressed for money and had to run from pillar to post to secure funds to pay off the loan amounts in full. The sale affected to M/s.Sunrise Institute was due to the breach of the plaintiff and the bonafides of the 2nd defendant is disclosed from the fact that in the list of liabilities outstanding to the 1st defendant, there is a specific reference to Rs.45 lakhs to the plaintiff which the buyer, ie., M/s.Sunrise Institute had taken upon themselves to pay. The 2nd defendant has not availed any loan from the plaintiff in his personal capacity. The plaint schedule flat is owned by the 2nd defendant and not by the 1st defendant hospital. The flat cannot be attached for any



amounts outstanding from the 1st defendant or M/s.Sunrise Institute. The very fact that the plaintiff had arrayed 1st defendant in the party array is an admission that the amounts, if any payable is to be paid by the said defendant and not the 2nd defendant. The learned counsel thus sought a dismissal of the F.A.O.

10. After hearing the counsel in detail and perusing the documents produced, it is clearly discernible that the defendants have never denied the receipt of Rs.45 lakhs from the account of the plaintiff to the account of the 2nd defendant. The principal contention taken by the defendants is that the said amount was paid towards advance sales consideration for purchasing the 1st defendant hospital which was later put into writing vide agreement dated 23.04.2023. The genuineness and veracity of the agreement dated 23.04.2023 is the moot question. The same can only be decided by a detailed appreciation of evidence. Before arriving at a conclusion regarding the similarity of signatures, though *prima facie*, substantial caution and care ought to have been adopted by the Sub Court. It is even more so in cases where the parties are already known to each other and have had transactions between them prior to the



execution of the document. Further, as rightly contended by the counsel for the plaintiff, in view of the advanced technology available, when the original document is not available for scrutiny, a comparison based on photocopy is quite a slippery slope and ought to be treated with great care and circumspection. [See **Jatinder Singh v. Satinder Singh** (2018 Supreme (P&H) 1117)]. The purported transfer of obligation to repay the plaintiff from the 1st defendant to M/s.Sunrise Institute pursuant to the sale agreement dated 30.08.2023, the inclusion of the liability to the plaintiff in Annexure C of the said sale agreement are all questions of fact turning on evidence to be tendered during trial. The mere presentation of the copy of the plaint containing an assertion by M/s.Sunrise Institute that all obligations as per Annexure C have been met does not by itself discharge the obligation of the 2nd defendant to explain the receipt of Rs.45 lakhs into his account. As already pointed out above, the agreement dated 23.04.2023 cannot be accepted in toto at the very threshold and requires substantiation at trial. The admission regarding the receipt of Rs.45 lakhs from the plaintiff into the account of the 2nd defendant coupled with the



inadequate evidence regarding any re-payment whatsoever of the said amount either by the defendants or by M/s.Sunrise Institute puts forth a strong *prima facie* case in favour of the plaintiff. The contention of the plaintiff that he may not be able to enjoy the fruits of the decree, if any, that would be passed in the suit, if the 2nd defendant alienates the plaint schedule property in the meanwhile, has a sound basis. The plaintiff would in such a circumstance be put to irreparable loss and injury. Hence it serves the interests of justice better if the conditional attachment granted earlier remains through the trial.

11. In the facts and circumstances of the case, as discussed above, it has to be concluded that the plaintiff had put forth a legally tenable *prima facie* case for retaining the attachment that had been granted by the Sub Court earlier. The lifting of the said attachment by the Sub Court for the reasons stated in the order impugned cannot be termed proper. Hence the order dated 05.12.2024 in I.A.No.3 of 20204 in O.S.No.113 of 2024 of the II Additional Sub Court, Ernakulam, is hereby set aside. The conditional order of attachment of the plaint schedule property as



stipulated under Order 38 Rule 5 of the C.P.C. granted earlier shall be retained during the pendency of O.S.No.113 of 2024. The 2nd defendant shall be free to furnish security before the Sub Court and seek the said court to lift the conditional attachment. The II Additional Sub Court, Ernakulam, shall endeavour to expedite the trial to enable an early disposal of the suit preferably within 6 months.

F.A.O. is allowed. No costs.

Sd/-

**SYAM KUMAR V.M.
JUDGE**

csI



APPENDIX OF FAO 9/2025

RESPONDENTS' EXHIBITS

- Document 1 TRUE COPY OF THE SALE DEED NO.1455/1/2023
OF SRO CHERIYANAD DATED 30.9.2023
- Document 2 TRUE COPY OF THE AGREEMENT ENTERED INTO
BETWEEN THE APPELLANT AND RESPONDENT DATED
23.4.2024
- Document 3 TRUE COPY OF THE ASSET LIST, HOSPITAL
EQUIPMENT AND FURNITURE ANNEXURE 1 DATED
23.4.2023
- Document 4 TRUE COPY OF THE LIST OF ARTICLES IN THE
HOSPITAL ROOMS DATED 23.4.2023
- Document 5 TRUE COPY OF THE INVENTORY LIST -ANNEXURE 2
OF THE AGREEMENT OF SALE DATED 23.4.2023
- Document 6 TRUE COPY OF THE LIABILITIES -ANNEXURE 2 OF
THE AGREEMENT OF SALE DATED 23.4.2023
- Document 7 TRUE COPY OF THE SUIT OS NO.36 / 2024 AT
SUBORDINATE JUDGE'S COURT, PATHANAMTHITTA
DATED 6.6.2024

PETITIONER'S EXHIBITS

- Document No.1 The true copy of the plaint in O.S No.113
of 2024 on the files of the Sub Court,
Ernakulam
- Document No.2 True copy of statement of accounts of
Savings Bank account No.0120053000044110
South Indian Bank, Banerjee Road Branch
- Document No.3 True copy of agreement executed between MSS
Hospital and Nursing College Pvt Limited,
Raheem Rawther and Sunrise Institution of
medical science Pvt Ltd executed on
30.08.2023



- Document No.4 The true copy of the I.A No. 3 of 2024 in
O.S No. 113 of 2024 on the files of the
Court of the Sub Judge, Ernakulam
- Document No.5 True copy of agreement for Sale executed
between Raheem Rawther on 23-04-2023
- Document No.6 True copy of Affidavit filed by the
Plaintiff on 19-11-2024
- Document No.7 The true copy of written statement filed by
1st defendant dated 10-10-2024
- Document No.8 8. The true copy of written statement filed
by 2nd defendant dated 10-10-2024
- Document No.9 The true copy of counter affidavit filed by
1st respondent dated 25-07-2024
- Document No.10 The true copy of counter affidavit filed by
2nd respondent dated 25-07-2024