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**A.No.6084 of 2023
and
A.No.3747 of 2024
in
C.S No.200 of 2023**

**MASTER
16.07.2026**

ORDER

1. There are two applications filed by the applicants/defendants before this Court. A.No.6084 of 2023 is filed to grant unconditional leave to defend the suit in C.S No.200 of 2023. A.No.3747 of 2024 is filed seeking permission of this court to file the documents mentioned in the schedule of the Master summons and mark it as Ex.A1 to Ex.A18.

2. The above suit has been filed by the respondent/plaintiff seeking the relief to pass a Judgment and decree directing the defendant to pay a sum of Rs.3,32,06,230.59 paise only together with simple interest @ 18% per annum from the date of plaint till the date of realization.

3. After service of summons the defendants entered their appearance and filed these applications for leave to defend the suit and to receive the documents mentioned in the Master summons on behalf of the applicants. The respondent/plaintiff has filed his counter.

4. a) Heard both side counsels. The case of the applicants is that the suit is barred by limitation and the suit filed by the respondent/plaintiff is not based on any promissory note, debt agreement or terms and conditions between the parties and so, the above suit is not maintainable under Order 37 of C.P.C. It is further submitted that the material available on record shows that there was no contract or arrangement with



related party and relatives except with one Boomarani, W/o.C.Sivakumar. The counsel further submitted that the so called claim of advance payment to the 1st applicant for purchase of land as land aggregator or otherwise was not reflected in the books of accounts of the plaintiff company and other statutory reports. It is submitted that the agricultural income of the 2nd applicant's family was handed over to the father of 1st applicant namely (Late).S.Chandrasekaran on a regular monthly basis from the month of May 1990 till January 2005 and as on January 2005 (Late).S.Chandrasekaran has quantified the principle, accumulated interest and profit at Rs.2,21,00,000/- which was informed to the respondent C.Murugan and C.Sivakumar in the presence of the applicants and one Pandian who was employed as a Senior Manager-cum-Accountant of the respondent company, and the 1st applicant's (Late) father instructed C.Murugan and C.Sivakumar to return the entire amount of Rs.2,21,00,000/- along with future interest and profit.

b) It is further stated that the 1st applicant's father (Late).S.Chandrasekaran promised that the entire money along with interest and profit earned in the business would be returned to the 2nd applicant and his family as and when required and this fact would be clearly established from the books of accounts of family business M/s.Sekar Emporium and its associate concerned. Subsequent to the death of 1st applicant's father, C.Murugan and C.Sivakumar approached the applicants and requested them to continue handing over the 2nd applicant's family income in order to ensure smooth running of the family business M/s.Sekar Emporium on the basis of which the applicants continue to handover the family income of 2nd applicant to C.Murugan and C.Sivakumar who quantify the amount payable to the 2nd applicant's family at Rs.4,37,00,000/- as on 03.02.2016 after deducting the college fees paid for the applicants son's higher studies.

c) It is further stated by the applicants that when their elder son intended to set



up a business of his own in the year 2019, the 2nd applicant requested C.Murugan and C.Sivakumar to return all the monies with interest and profit for which C.Murugan and C.Sivakumar assured that they will assist in establishing a business for the applicants son and accordingly, the fixed deposit was closed on various dates and an amount of Rs.2,09,28,058/- was transferred to the 1st applicant bank account. The books of accounts of family business M/s.Sekar Emporium and the bank statements from 1990 to till date would establish how the funds came to the accounts and how the fixed deposits were closed and how the funds were transferred to the 1st applicant's bank account. The applicants further submitted that there is no privity of contract between the parties and several material facts were suppressed before this Court by the respondent and so they have many valid grounds to contest the suit. Moreover, the above is filed as a counterblast to the filing of C.S No.54 of 2023 by the 1st applicant for partition. Hence, leave to defend application may be allowed.

5. The respondent filed a detailed counter stating that the applicants have not made out any prima facie case for grant of leave to defend and the filing of this application is nothing but an abuse of process of law. The applicants have not explained with sufficient reason as to why the payment was received by the 1st applicant from the respondent/plaintiff and in what way the pendency of the partition suit is germane and relevant to the above suit. It is further contended that the partition suit is nothing to do with the suit transaction and the relief prayed for in the present suit, the above suit is independent of the partition suit. Accordingly, the application for leave to defend filed by the applicants is liable to be dismissed.

6. During pendency of leave to defend application the applicants have filed A.No.3747 of 2024 seeking permission to file the documents mentioned in the schedule of the Master summon as applicant / defendant side Exs.A1 to A18 in the leave to



defend application in A.No.6084 of 2023. The only reason given by the applicants to permit to file the document Nos.1 to 14 mentioned in A.No.3747 of 2024 is that they have filed the aforesaid documents along with the written statement as per the earlier instructions of the Hon'ble Court which was not taken on record and so the said documents are required to be marked in the leave to defend application. In this application the respondent filed his counter stating that the aforesaid documents do not support the case of the applicants/defendants and moreover there is no whisper or mention made about any of these 18 documents in the leave to defend application and also the said documents do not pertain to the above suit transaction.

7. Before going into the merits of this application it would be relevant to look into the provisions of Madras High Court, Original Side Rules which deals with the subject procedure in respect of certain suits.

Order VII, Rule 1 reads as follows:

“A suit to recover a debt or a liquidated demand in money evidenced by a document, or any money payable by the defendant with or without interest, assigned on a Negotiable Instrument or on a bond or a contract for payment of liquidated amount of money evidenced by a document or on a guarantee whether the claim arises against the principle in the manner aforesaid, may, in case the plaintiff desires to proceed herein be instituted by presenting a plaint in the form prescribed.”

For the purposes of this Order “liquidated demand” means a demand for the amount stated or so expressed that the ascertainment of the amount is a mere matter of calculation.



Order VII, Rule 5 reads as follows:

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“ In any case in which the plaintiff and summons or in the form prescribed in this Order, the defendant shall not defend the suit unless he obtains leave to defend from the Master as herein after provided. Any default of the defendant obtaining such leave, or if he fails to defend in pursuance of such leave, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for the sum claimed in the plaint and in cases where, interest is payable either by contract or statute, interest till the passing of the decree and further interest @ 6% per annum from the date of decree to the date of payment, and such sum for cost as may be prescribed.”

8. Admittedly, the suit was filed by the plaintiff as a summary suit. The defendant entered into appearance and has filed the present application seeking leave to defend the suit. At this juncture, it is useful to look into the provision of **Order VII, Rule 6 reads as follows:**

- (1) An application for leave to defend the suit shall be made to the Master supported by such evidence by way of affidavit as the defendant desires to place before the court.*
- (2) Leave to defend may be given unconditionally or subject to such terms and the directions as the Master thinks fit.*
- (3) The Master shall, (a) if the defendant shall not appear, on proof by affidavit of service of the summons on the defendant, or (b) if leave to defend is not granted, pass a decree for the amount amount claimed and costs.*



9. This court obliges to refer the decision in ***IDBI Trusteeship Services Limited Vs Hub Town Limited CIVIL APPEAL NO.10860 of 2016 (Arising out of SLP (Civil) No.31439 of 2015)*** in Para 18 held that “18. Accordingly, the principles stated in paragraph 8 of Mechelec’s case will now stand superseded, given the amendment of O.XXXVII R.3, and the binding decision of four judges in Milkhiram’s case, as follows: If the defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit; if the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend;

even if the defendant raises triable issues, if a doubt is left with the trial judge about the defendant’s good faith, or the genuineness of the triable issues, the trial judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security;

if the Defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

if the Defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend



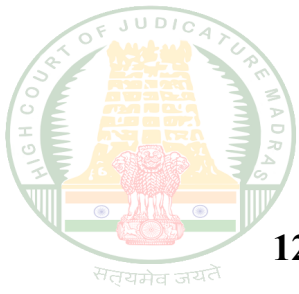
the suit shall be refused, and the plaintiff is entitled to judgment forthwith;

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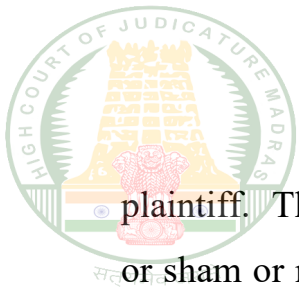
if any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.”

10. Keeping the above principles in mind, now this court is to decide whether the applicant/defendant has raised any bona fide, proper or plausible triable issues to allow this application to grant unconditional leave to defend.

11. The learned counsel for the applicants/defendants submitted that the suit filed by the respondent/plaintiff is not based on any promissory note, debt agreement or terms and conditions between the parties and so, the above suit is not maintainable under Order 37 of C.P.C. It is further argued that there is no privity of contract between the parties and the very fact that there was no agreement or promise to pay any commission for acting either as an agent or as a land aggregator clearly establishes that there was no such arrangement or representation or agreement between the applicants and the respondents. It is further submitted that since this suit is not based on any negotiable instrument or a bond or a contract for payment of liquidated amount executed by the applicants in favour of the plaintiff and the above suit filed as an under chapter suit is not at all maintainable under law. Admittedly, there are several other disputes pending between the parties in respect of their family business as well as properties. Similarly, it is an admitted fact that the suit is not based on a promissory note or a written contract between the parties. This suit has been filed by the plaintiff based on the ledge entries showing the payment of amounts on various dates to and in favour of the 1st applicant by way of cheques.



12. The summary suit under Order VII, Rule (1) & (2) of Madras High Court (Original Side) Rules, r/w Order 37 of C.P.C is maintainable only when the suit is based upon a negotiable instrument or the written contract whereby the defendant has undertaken liability towards the plaintiff for a liquidated amount. In the present case, the plaintiff relies upon the entries made in the ledger and no proof has been filed by the plaintiff to show that the applicants/defendants agreed to repay the amount mentioned in the ledger entries, this court is unable to presume the genuineness of claim with regard to the purpose of transaction in the absence of proof to substantiate the plaintiffs claim that the defendants owe a sum of Rs.3,32,06,230.59 paise. The contention of the applicants that there is a family arrangement between the applicants and the father of the 1st applicant (Late).S.Chandrasekaran that the agricultural income of the 2nd respondent's family be handed over to the father of the 1st applicant on a regular monthly basis to be invested in the plaintiff's business which is a family business of the 1st applicant with an assurance that the investment will be repaid with future interest and profit. And the further contention of the 1st applicant that the alleged payments mentioned in the plaint was made as a part repayment of the investment made by the 2nd applicant's family in order to assist the applicants elder son to establish his own business can only be decided by trial. Further, it is crystal clear from the pleadings in the plaint that there is no written contract between the parties for the alleged loan transaction and the ledger entries cannot be treated as a written contract between the parties as it does not disclose the nature, purpose, terms and conditions of the transactions. Therefore, this court is of the opinion that in the present case on hand the defendant has raised substantial triable issues regarding maintainability of the summary suit and existence of privity of contract to file the summary suit. The suit claim is not found directly upon any negotiable instrument or written contract executed by the defendant in favour of the



plaintiff. Therefore, the defence raised by the defendant cannot be said to be illusory or sham or moonshine. Therefore, this court is satisfied that the defendant is entitled to leave to defend.

13. In so far as the application to permit the applicants to file the documents mentioned in the master summons in A.No.3747 of 2024 this Court feels that having allowed the leave to defend application, the applicants are very much entitled to file the said documents along with the written statement. However, marking documents at the stage of deciding leave to defend is not strictly appropriate. At this stage, the court only looks at the documents to assess whether a bonafide defend exist or not? Formal proof and marking of exhibits arise only during trial after leave is granted. Therefore, this court is of considered opinion that the prayer in this application cannot be entertained at this stage.

In fine, A.No.3747 of 2024 is dismissed. No cost.

A.No.6084 of 2023 is allowed and unconditional leave to defend the suit is granted to the defendants. No cost.

MASTER