

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.4673 of 2015 &

M.P.Nos.1 & 2 of 2015

1.M/s.Caliber Valves Pvt. Ltd.,
Rep. By its Managing Director
No.101, 1st Floor, 4th Street
Anna Nagar, Chennai – 600 040.

2.E.Sekar

3.G.Nirmala

... Petitioners

v.

S.K.Malhotra,

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 28.08.2015 passed in I.A.No.10221 of 2015 in Original Suit No.2823 of 2015 on the file of II Assistant City Civil Court, Chennai.

For Petitioner : Mr.S.Ambigapathi

ORDER

Challenging the fair and final order passed in I.A.No.10221 of 2015 in O.S.No.2823 of 2015 on the file of II Assistant Judge, City Civil Court, Chennai, the defendants have filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.2823 of 2015 under Order 37 of CPC claiming a sum of Rs.4,69,000/- (Rupees four lakhs and sixty nine thousand only) together with interest.

3. According to the plaintiff, the defendants borrowed a sum of Rs.5,00,000/- on 13.5.2014 and requested the plaintiff to issue a cheque for Rs.4,12,500/- and a sum of Rs.87,500/- by cash. According to the plaintiff, out of the amount borrowed by the defendants they repaid a sum of Rs.1,00,000/- by way of two cheques amounting to Rs.50,000/- each. So far as the plaintiff's Rs.4,00,000/- is concerned, the defendants have not repaid the amount. Further, according to plaintiff, the defendants agreed to repay the loan amount together with interest at the rate of 18% per annum. On 13.5.2014, the defendants executed a demand promissory note in favour of the plaintiff. On 18.4.2015, the plaintiff issued a notice to the defendants calling upon them to repay the loan amount. However, the defendants failed to repay the loan amount.

4. Since the suit has been filed under Order 37 of CPC, the defendants filed an application in I.A.No.10221 of 2015 under Order 37, Rule 3(5) of CPC to grant leave to the respondent-plaintiff to defend the suit.

5. In the affidavit filed in support of the application, the defendants admitted the loan transaction, however, they have stated that they issued 10 post dated cheques of Rs.50,000/- each and out of these, 3 cheques were returned by the bank. According to the defendants, the cheques were presented in the bank without the consent of the defendants. That part, the defendants also stated that they repaid the 7 installments by way of cash to the plaintiff's son and also stated that they are willing to pay the remaining and last installment amount by deducting TDS amount.

6. The averments stated in the affidavit filed in support of the application were disputed by the plaintiff. In the counter, the plaintiff has specifically stated that out of the sum of Rs.5,00,000/-, the defendants have repaid only a sum of Rs.1,00,000/- and therefore, they are liable to repay the balance amount of Rs.4,00,000/- together with interest.

7. When the defendants have contended that they repaid the loan amount by cash to the plaintiff's son, they could have established the said contention by oral and documentary evidences. In the case on hand, the

defendants failed to prove the said contention by any means whatsoever. The other contention raised by the defendants was that the plaintiff without giving any opportunity to the defendants to settle the matter amicably filed the suit with *mala fide* intention. On a reading of the affidavit filed in support of the application, it is clear that the defendants have admitted the transaction between the plaintiff and the defendants and also stated that out of 10 post dated cheques, 3 cheques have been bounced. In these circumstances, the Trial Court has rightly dismissed the application finding that the defendants are liable to repay a sum of Rs.4,00,000/ together with interest. When the claim made by the plaintiff was not disputed by the defendants in the affidavit filed in support of the application, the order passed by the Trial Court is just and proper.

8. In these circumstances, I do not find any error or irregularity in the order passed by the Execution Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes/No
Rj
To
The II Assistant Judge,
City Civil Court,
Chennai.

17.12.2015

M. DURAISWAMY,J.,

Rj

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