

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.685 of 2015
and
M.P.No.1 of 2015

S. Mohamed Idris

Revision Petitioner

VS

Silver Touch Finance and Investments,
rep by its Proprietor Mr.Shivkumar Nair,
S/o Mr.E.C. Nair,
No.91/44, Armenian Street,
Chennai-34

.... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final decretal order dated 31.7.2014 passed in I.A.No.7160 of 2014 in O.S.No.1260 of 2014 on the file of the learned XVI Assistant City Civil Court, Chennai.

For Petitioner : Mr.Y. Bhuv Anesh Kumar
For respondent : Mr.A. Sirajudeen

ORDER

Aggrieved over the fair and final order passed in I.A.No.7160 of 2014 in Summary O.S.No.1260 of 2014 on the file of the learned XVI Assistant City Civil Court, Chennai, the defendant has filed the civil revision petition.

2. The plaintiff has filed a suit in O.S.No.1260 of 2014 for recovery of a sum of Rs.1,23,868/- together with interest at the rate of 18% p.a on a sum of Rs.1,00,000/- from the date of plaint till the date of realisation.

3. The said suit was filed under Order 37 Rule 1 of Civil Procedure Code. The defendant has filed an application in I.A.No.7160 of 2014 to grant leave to him to defend the suit. In paragraphs 4,5 and 6 of the affidavit, filed in support of the petition, the defendant raised the contentions, disputing the averments stated in the plaint. The defendant has specifically stated that he borrowed only a sum of Rs.35,000/- and repaid the same with interest.

4. The contentions raised in the affidavit, filed in support of the petition, are triable issues. When there are triable issues involved in the suit, the suit can be decided only after completion of the trial.

5. That apart, the defendant has not admitted the case of the plaintiff.

Therefore, the trial court ought not to have dismissed the application, filed by the defendant, to defend the suit.

6. In these circumstances, the fair and decreetal order passed in I.A.No.7160 of 2014 in Summary O.S.No.1260 of 2014 on the file of the learned XVI Assistant City Civil Court, Chennai is set aside. The defendant shall have unconditional leave to defend the suit.

7. The trial court is directed to dispose of the suit, after filing of the written statement and after completion of the trial, on merits and in accordance with law. The defendant shall file his written statement in three weeks time. The trial court is directed to issue notice to the authorities of the suit, informing the date of hearing.

8. With the above observation, the civil revision petition is allowed. No costs. Consequently connected MP is closed.

10.04.2015

sr

Index:no
website:yes

M. DURAISWAMY,J.,

sr

To

XVI Assistant City Civil Court, Chennai.

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