

Application No.7878 of 2014

V.RAMASUBRAMANIAN J.

This is an application filed by the creditor seeking direction to the respondent to furnish security to the extent of his claim under a demand promissory note.

2. Heard M/s.S.Rajeni Ramadoss, learned counsel for the applicant and Mr.P.Tamilavel, learned counsel for the respondent.

3. According to the applicant, the respondent borrowed a sum of Rs.10,00,000/- from him and executed a demand promissory note on 12.12.2011 in evidence of the said borrowing. It was followed by a Memorandum of Understanding dated 12.12.2011, whereunder the parties agreed to have any dispute arising between them referred to Arbitration. It is claimed by the applicant that the two cheques issued by the respondent towards repayment of the dues dishonoured. Therefore, the applicant has come up with the above application.

4. The respondent has filed a counter affidavit contending *inter*

alia that there was no relationship of creditor and debtor between the applicant and the respondent and that he never borrowed any money from the applicant. According to the respondent, he borrowed money from a person by name Ethiraj of Karur District and gave a demand promissory note and blank cheques. The respondent claims that after repayment of the entire loan amount to the said Ethiraj, he did not return the blank cheques and the promissory note. The respondent suspects that the applicant has made use of them.

5. The liability is very clearly disputed in this case. There are also circumstances, which make it clear that the defence taken by the respondent cannot be rejected outright as a frivolous defence. The borrower is admittedly in Chennai, the lender is in Karur and two persons, who have witnessed the promissory note, are from Kanchipuram and Dindigul respectively. The Memorandum of Understanding is not attested by any witness, though the promissory note is. The Memorandum of Understanding states that money will be repaid on or before 30.09.2014. But both the cheques are dated 09.10.2014 and 31.10.2014. No demand was made before the institution of the present

application. There are also other issues with regard to the security interest allegedly created under paragraph-3 of the Memorandum of Understanding. In such circumstances, no case is made out for the grant of an order under Order 38 Rule 5 CPC.

6. The law is well settled on this aspect as seen from the decision of the Hon'ble Supreme Court in ***Raman Tech. & Process Engg. Co. and another .vs. Solanki Traders ((2008) 2 Supreme Court Cases 302)***. Therefore, leaving all the issues open to the parties to be agitated before the Arbitrator, this application is dismissed.

Mra

03.06.2015

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