

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.3298 of 2016  
and C.M.P.No.16822 of 2016

G.Muruganandam

... Petitioner

Vs.

R.Kumar

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair order and decretal order dated 15.03.2016 passed in I.A.No.11406 of 2015 in O.S.No.1613 of 2015 on the file of the VIII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Vijayaraghaven

For Respondent : Mr.B.Manivannan

**ORDER**

Challenging the fair and final order passed in I.A.No.11406 of 2015 in O.S.No.1613 of 2015 on the file of the VIII Assistant Judge, City Civil Court, Chennai, the defendant has filed the above Civil Revision Petition.

2.The respondent/plaintiff filed the suit in O.S.No.1613 of 2015 under Order 37 Rule 1 of the Civil Procedure Code to recover a sum of Rs.8,55,000/- together with interest at the rate of 24% per annum on the principal amount of Rs.5,00,000/-.

3.The defendant filed an application in I.A.No.11406 of 2015 to grant leave to defend the suit in O.S.No.1613 of 2015. In the affidavit filed in support of the petition, the defendant has stated that he had taken loan for a sum of Rs.10,00,000/- about five years ago from the plaintiff and the said amount was lent to him on Thandal basis. Further, he has stated that the plaintiff obtained two blank cheques at the time of lending the money and had misused the same. Further, he has stated that he did not borrow any amount on 21.03.2012 and executed promissory note dated 21.03.2012 or on any other date. The defendant has also stated that there are triable issues in the suit as to whether the amount of Rs.10,00,000/- was advanced or Rs.15,00,000/- was advanced to him by the plaintiff. Further, according to the defendant, there are triable issues involved in the suit, hence, leave should be granted to him to defend the suit. The application filed by the defendant was opposed by the plaintiff stating that when the defendant had admitted the borrowal of Rs.10,00,000/-, there are no triable issues involved in the suit, therefore, the application is liable to be dismissed. The

trial Court, taking into consideration the case of both parties, dismissed the petition stating that the defendant had admitted the borrowal of Rs.10,00,000/-, therefore, there are no triable issues involved in the suit.

4.However, on a perusal of the pleadings available on record, the defendant had stated that he had borrowed a sum of Rs.10,00,000/- and issued two cheques and specifically, had stated that he had not borrowed the sum of Rs.5,00,000/- and executed the pronote dated 21.03.2012. The suit is filed only in respect of a sum of Rs.5,00,000/- borrowed under the alleged pronote dated 21.03.2012. When the defendant had specifically disputed the execution of the pronote dated 21.03.2012, the same can be established only at the time of trial.

5.The ratio laid down in the judgment reported in **(2014) 3 MLJ 693 [S.Balasubramanian Vs. V.Govindan]** squarely applies to the facts and circumstances of the present case.

6.The question whether the defendant had borrowed a sum of Rs.10,00,000/- or a sum of Rs.15,00,000/- had to be established by the plaintiff only in the trial. When the defendant is specifically disputing the averment that he had not borrowed the sum of Rs.5,00,000/- and executed

the pronote dated 21.03.2012, the trial Court should have allowed the application and permitted the defendant to contest the suit on merits.

7. In view of the same, I am of the considered view that the fair and decreetal order passed in I.A.No.11406 of 2015 are liable to be set aside. Accordingly, the same are set aside. The application in I.A.No.11406 of 2015 stands allowed. The defendant is directed to file his written statement within a period of two weeks from the date of receipt of a copy of this order. The VIII Assistant Judge, City Civil Court, Chennai is directed to dispose of the suit in O.S.No.1613 of 2015, on merits and in accordance with law, within a period of nine months from the date of receipt of a copy of this order.

8. With these observations, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No  
Internet : Yes  
va

**14.11.2016**

**Note: Issue order copy on 17.11.2016.**

To

- 1.The VIII Assistant Judge,  
City Civil Court, Chennai.

**M.DURAISWAMY,J.**  
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