

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.3115 of 2013 &

M.P.No.1 of 2013

N.Baskaran

... Petitioner

v.

K.P.Punniyakotti

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 25.03.2013 made in I.A.No.18659 of 2012 in O.S.No.5326 of 2012 on the file of the XIII Asst. Judge, City Civil Court at Chennai.

For Petitioner : Mr.K.Rajasekaran

For Respondent : Mr.V.B.Thirupathi Kumar

ORDER

Challenging the fair and final order passed in I.A.No.18659 of 2012 in O.S.No.5326 of 2012 on the file of XIII Assistant Judge, City Civil Court, Chennai. the defendant has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.5326 of 2012 under Order 37, Rule 1 of CPC claiming a sum of Rs.5,96,400/- (Rupees five lakhs ninety six thousand and four hundred only) together with interest at the rate of 24% per annum.

3. The defendant filed an application in I.A.No.18659 of 2012 to grant leave to file written statement and defend the suit.

4. In the affidavit filed in support of the application, the defendant has stated that he had not borrowed any amount on 15.11.2010 and not executed any promissory note in favour of the plaintiff as claimed in the suit and he did not sign any of the 28 promissory notes as stated by the plaintiff in the plaint. Further, the defendant had stated that earlier he borrowed loan from the plaintiff and executed the demand promissory notes during the year 1999 and repaid the entire amount to him. However, the defendant had misused the said promissory notes and filed the present suit. Further, the defendant has raised other issues in the affidavit filed in support of the

application.

5. The application filed by the defendant was contested by the plaintiff stating that there is no triable issue, therefore, the application filed by the defendant to grant leave to defend the suit has to be dismissed.

6. The Trial Court, after taking into consideration the case of both the parties, found that there is no triable issues in the matter, therefore, the application has to be dismissed. Further, the Trial Court observed that the defendant had not produced any document to prove the contention that the earlier loans obtained by him were discharged. Further, the Trial Court also took into consideration the non-issuance of the reply to the notice sent by the plaintiff.

7. It is pertinent to note that non-issuance of the reply to the notice sent by the plaintiff cannot be construed as fatal to the case of the defendant. In these circumstances, on a reading of the affidavit filed in support of the application, I am of the view that there are triable issues involved in this matter and therefore, the Trial Court had committed an error in dismissing the application filed by the defendant to grant leave to defend the suit.

8. The judgment relied upon by the learned counsel for the petitioner made in Civil Appeal No.8194 of 2015, dated 01.10.2015 by the Hon'ble Supreme Court squarely applies to the facts and circumstances of the present case.

9. I am not adverting to the other issues raised by the defendant in the affidavit filed in support of the application for the reason that any finding is given in this Civil Revision Petition would affect the trial of the suit. The defendant shall file his written statement within a period of two weeks from the date of receipt of a copy of this order. The XIII Assistant Judge, City Civil Court, Chennai is directed to dispose of suit in O.S.No.5326 of 2012, on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order.

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

19.01.2016

Index : Yes/No

Rj

To

The XIII Assistant Judge,
City Civil Court,
Chennai

M. DURAISWAMY,J.,

Rj

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