

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2017

CORAM

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

CRP (PD) No.1543 OF 2017
and CMP.No.7159 of 2017

V.G.B.Sivaramprasad	...	Petitioner
Vs.		
S.Ramesh Babu	...	
Respondent		

Prayer : Civil Revision Petition filed under Article 226 of the Constitution of India praying to set aside the order passed in I.A.No.12289 of 2016 in O.S.No.1203 of 2016 passed by the learned IV Assistant Judge, City Civil Court, Chennai, thereby consequently decreeing the suit in favour of the petitioner.

For Petitioner : M/s.Mothilal and Goda

ORDER

The petitioner, as plaintiff filed a suit in O.S.No.1203 of 2016 under Order XXXVII Rule 1 CPC for recovery of Rs.6,86,400/- based on the promissory note dated 01.04.2009 and acknowledgement by the respondent.

2. According to the petitioner/plaintiff, the respondent/defendant borrowed a sum of Rs.10,00,000/- on 01.04.2009, and in evidence, he executed a promissory note to repay the said amount with interest @ 24% per annum. It is submitted that the respondent paid interest upto 31.03.2009 and acknowledged his liability by endorsement dated 24.03.2012. According to the petitioner, as on 20.03.2015, the respondent is liable to pay the outstanding amount of Rs.6,86,400/- (including principal and interest) as per the agreed terms. Even after repeated reminders and requests made by the petitioner/plaintiff, the respondent did not pay the balance outstanding amount. Hence, the petitioner/plaintiff filed a suit for recovery of amount under Order XXXVII Rule 1 CPC as summary suit on 20.03.2015.

3. The petitioner/plaintiff filed petition for attachment before judgment in summary suit. After receipt of summons, the respondent filed affidavit of appearance. The respondent filed application in I.A.No.12289 of 2016 under Order XXXVII Rule 5 of CPC, for leave to defend the suit.

4. According to the respondent, he has discharged the entire loan taken from the petitioner/plaintiff and the suit is barred by

limitation, and the alleged payment and endorsement dated 24.03.2012 is a forged one. The respondent did not pay any amount on that said date and he has not made any acknowledgment admitting his liability. The petitioner has come forward with the suit based on the false claim, hence the respondent is seeking leave to defend the suit in I.A.No.12289 of 2016.

5. The petitioner/plaintiff filed counter and opposed the said suit and submitted that after giving credits to various amounts paid by the respondent , the petitioner has filed the suit. The allegation that the respondent did not pay any amount on 24.03.2012 and made an endorsement on that date, was denied by the petitioner. Similarly, the allegation that the respondent has repaid the entire amount fully is also denied by the petitioner. According to the petitioner, the respondent, on borrowing money from various persons cheated them and therefore, number of civil and criminal cases are pending against him.

6. Considering the averments made in the application, affidavit and counter affidavit, the learned Judge had allowed the application and granted leave to the respondent/defendant to defend the suit on the ground that there are discrepancies in the

averments made by the petitioner/plaintiff in the plaint and they are triable issues. Challenging the said order, the petitioner/plaintiff filed the present Civil Revision Petition.

7. In a summary proceedings, the defendant is entitled to defend the suit if he makes out a case that he has a valid defence in the suit. In the present case, petitioner/plaintiff has filed the suit based on the promissory note and endorsement of the respondent for payment as well as acknowledging his liability. The respondent had denied such payment and acknowledgment made on that day. The respondent has stated that he had repaid the entire loan taken from the petitioner and whether the acknowledgment is a forged one or not can be decided after appreciating the evidence to be let in by the parties. If the respondent proves that the acknowledgment is a forged one, then the suit will be dismissed as a barred one. Under the said circumstances, the learned Judge has allowed the application granting leave to the respondent to defend the suit. There is no illegality or irregularity in the order dated 04.02.2017 passed by the learned IV Assistant Judge, City Civil Court, Chennai, in I.A.No.12289 of 2016 in O.S.No.1203 of 2016, warranting interference by this Court.

8. In the result, the Civil Revision Petition is dismissed.

However the learned IV Assistant Judge, City Civil Court, Chennai, is directed to dispose of the suit, on merits and in accordance with law, as expeditiously as possible, in any event, not later than 30th October 2017. No costs. Consequently, connected miscellaneous petition is closed.

26.04.2017

ds

Speaking order/Non speaking order
Index : Yes/No

To:
The IV Assistant Judge,
City Civil Court, Chennai.

V.M.VELUMANI,J

ds

CRP (PD) No.1543 of 2017

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