

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.200 of 2015
& M.P.No.1 of 2015

P.Kannan

.. Petitioner

Vs.

R.Mahendran

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and decretal order of the XI Assistant Judge, City Civil Court, Chennai dated 11.09.2014 made in I.A.No.4438 of 2014 in O.S.No.7078 of 2011.

For Petitioner : Mr.M.V.Venkataseshan

For Respondent : Mr.T.P.Sekar

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 11.09.2014 made in I.A.No.4438 of 2014 in O.S.No.7078 of 2011 on the file of the XI Assistant, City Civil Court, Chennai.

2.The petitioner is the defendant and respondent is the plaintiff in O.S.No.7078 of 2011 on the file of the XI Assistant, City Civil Court, Chennai. Respondent filed the said suit against the petitioner under Order XXXVII Rule 1 and 2 of C.P.C as a summary suit. The petitioner filed I.A.No.4438 of 2012 for permission to grant unconditional leave to defend the suit and to file written statement. According to the petitioner, he did not borrow any money from the respondent; did not execute promissory note and did not issue any cheque in favour of the respondent. He was running seven buses. He issued blank promissory notes and cheques as security for the transaction between the petitioner's son and the financier N.Raja Mohamed. The respondent by obtaining a blank promissory note from the financier and by misusing the said promissory note, filed the suit as though the petitioner already borrowed money from him and executed promissory note. The respondent is a close relative of petitioner. The petitioner sold one bus to the respondent and his brother Seeman for a sum of Rs.4,90,000/-. In the transaction, the respondent, without knowledge of the petitioner dismantled the bus and sold the parts, for which the petitioner and one C.Ramalingam, permit holder have given complaint to the Commissioner of Police, Madurai against the respondent and his brother. The respondent has

closed his house and has come to Chennai. The respondent, originally a police constable was dismissed from service. He threatened the petitioner to withdraw the complaint given to the Commissioner of Police, Madurai. The petitioner has got valid defence and there are triable issues in the suit. The petitioner has got fair chance of success in the suit.

3.The respondent filed counter affidavit and opposed the said application. According to the respondent, the petitioner borrowed a sum of Rs.5,00,000/- and executed two promissory notes dated 03.09.2008 and 24.09.2008, promising to repay the said amount together with 12% per annum interest. Earlier, the suit was decreed exparte and only with an intention to cheat the respondent and to drag on the proceedings, the petitioner has filed the present application.

4.Before the learned Judge, no oral evidence was let by both the parties. The petitioner marked 8 documents as Exs.P1 to P8 and respondent marked 13 documents as Exs.R1 to R13.

5.The learned Judge, considering the deposition of the petitioner that he executed the suit promissory note and cheques

handed over to the financier, dismissed the application in view of Section 20 of Negotiable Instruments Act.

6. Against the said order dated 11.09.2014, made in I.A.No.4438 of 2014 in O.S.No.7078 of 2011, the present Civil Revision Petition is filed by the petitioner.

7. Heard the learned counsel petitioner as well as respondent and perused the materials available on record.

8. **The point for consideration** in the present Civil Revision Petition is whether the petitioner has made out a case to show that there is triable issue in the suit and he has a valid defence.

9. From the materials available on record, it is seen that the petitioner and respondent are close relatives. From the averments in the affidavit, counter affidavit and impugned order of the learned Judge, it is seen that petitioner has given criminal case against the respondent and his brother and petitioner has denied having borrowed a sum of Rs.5,00,000/- from the respondent; executed the promissory note and issued cheque in favour of the respondent. Whether the contention of the petitioner that he gave blank

promissory note and cheques to the financier or to the respondent after borrowing money can be decided only after appreciating the evidence let in by the parties. From the averments in the affidavit filed by the petitioner and the contentions raised in the grounds of revision, it is seen that the petitioner has made out prima facie case that there are triable issues and learned Judge has not considered the various contentions raised by the petitioner in his affidavit and dismissed the application on the ground that petitioner has admitted his signature in the promissory note; but failed to consider the contention of the petitioner that both the documents are given only to financier N.Raja Mohammed and not to the respondent.

10. In view of the above, the impugned order of the learned Judge is set aside. The petitioner is given unconditional leave to defend the suit. The decree passed in the suit on 11.09.2014 in I.A.No.4438 of 2012 in O.S.No.7078 of 2011 is set aside. The petitioner is directed to file written statement within four weeks from the date of receipt of a copy of this order. On filing the written statement, the learned Judge is directed to dispose of the suit as expeditiously as possible and in any event, not later than three months thereafter.

11.In the result, this Civil Revision Petition is allowed, setting aside the order dated 11.09.2014, made in I.A.No.4438 of 2014 in O.S.No.7078 of 2011. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No

Internet: Yes/No

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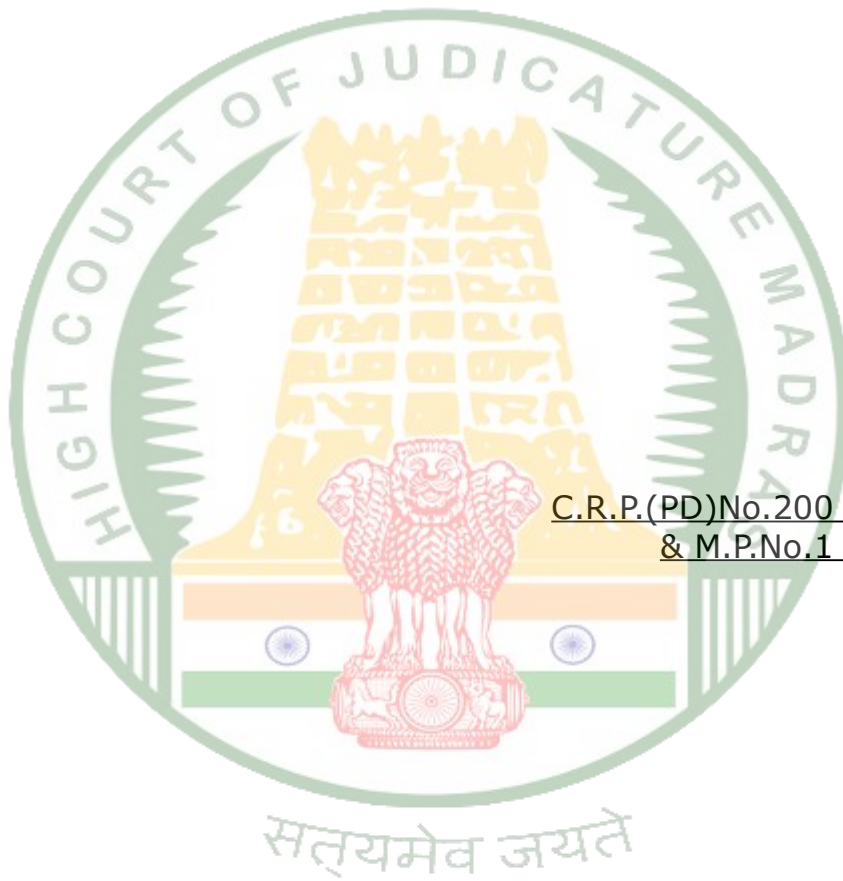
The XI Assistant Judge,
City Civil Court,
Chennai.

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V.M.VELUMANI,J.

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