

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.1662 of 2012
and
M.P.No.1 of 2012**

Anoopchand Chordia

.. Petitioner

Vs.

M/s.A.K.Medicals,
Proprietor Mr.Kalyan B.Jain
No.228/3, Govindappa Street,
Chennai-79.

..Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the Order and Decretal Order dated 06.09.2011 passed in I.A.No.12185 of 2011 in O.S.No.13345 of 2010 by the learned 1st Assistant City Civil Judge, at Chennai.

For Petitioner : Mr.N.Nagu Sah

For Respondent : Mr.S.T.Raja
for M/s.Om sai Ram

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order and decreetal order dated 06.09.2011 passed in I.A.No.12185 of 2011 in O.S.No.13345 of 2010 by the learned 1st Assistant City Civil Judge at Chennai, and allow the above I.A.No.12185 of 2011 by granting unconditional leave to the petitioner to defend the suit allowing this Civil Revision Petition.

2.The defendant is the revision petitioner. The respondent herein as plaintiff filed a suit against the petitioner herein in O.S.No.13345 of 2010 before the I Assistant City Civil Court at Chennai for recovery of money on the basis of pronote. The suit was filed under Order.37, Rule 2 of CPC. The defendants/revision petitioner on receipt of summon in the above suit, filed application under Order 37, Rule 3 of CPC in I.A.No.12185 of 2011 seeking leave of the Court to defend the above suit.

3.The contention of the revision petitioner in the leave to defend application is that he did not borrow any amount from the respondent herein much less, the alleged cheque amount and promissory note amount. Further the revision petitioner has stated that he has not

executed the suit pronotes and the signatures found in the suit promissory notes were not his signature and the same were forged by the respondent herein. Further even assuming without admitting any borrowing, the suit is barred by limitation period of 3 years and the debt is a time barred debt. The revision petitioner further contented that as there are triable issues in the above suit in respect of the execution of the suit promissory notes, he may be permitted to file written statement by granting him unconditional leave to defend the suit.

4.The respondent herein resisted the above application by filing counter affidavit. The contention of the respondent herein is that the suit is not barred by limitation. All the signatures found in the suit promissory notes are that of the defendant. There is no triable issue involved in this suit and therefore no leave to be granted to the revision petitioner to defend the suit. Hence, he prayed to decree the suit as prayed for.

5.Upon hearing the arguments, the Learned trial Judge was pleased to dismiss the application filed under Order 37, Rule 3 of CPC by order and decree dated 06.09.2011 by holding that there is no

triable issues involved in the suit.

6. Against the order of dismissal of the leave petition, the defendant has filed the instant Civil Revision Petition.

7. I heard Mr. N. Nagu Sah, learned counsel appearing for the petitioner and Mr. S. T. Raja, learned counsel appearing for the respondent and perused all the materials available on record.

8. It is the case of the plaintiff that money transaction was taken place between the plaintiff and the defendant. But the Revision Petitioner/Defendant did not repay the money with agreed interest. So, the plaintiff was constrained to file the suit.

9. For the useful reference "**Order 37 Rule 3(1)**" is reproduced here under:

"In a suit to which this order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexure thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by

pleader and, in either case, he shall file in Court an address for service of notices on him”.

10. In the proviso class, it is provided that leave to defend shall not be refused, unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defense to raise or that the defense intended to be put up by the defendant is frivolous or vexatious. Here the revision petitioner has filed petition to leave to defend the suit by raising several legal grounds to prove his innocence. He has also alleged that his signature was forged and prayed before the trial Court to grant leave to defend the suit.

11. But the learned trial Court did not analyze or consider all the surrounding circumstance of the case but simply dismissed the same. In the considered opinion of this Court, the trial Court is duty bound to provide opportunity to either party seeking the leave to defend him. Here, it is found from the affidavit filed by the revision petitioner that he has raised several substantial points before the learned trial Court, but they were not considered as per law. The trial Court ought to have given opportunity to any party before the trial Court to prove his innocence.

12.In the result:

(a) this Civil Revision Petition is allowed by setting aside the order in I.A.No.12185 of 2011 in O.S.No.13345 of 2010, dated 06.09.2011, on the file of the learned I Assistant Judge, City Civil Court, Chennai;

(b) the petitioner/defendant is directed to file his written statement within a period of one month from the date of receipt of a copy of this order;

(c) the learned trial Court is hereby directed to dispose the suit on merits within a period of three months thereafter. No costs. Consequently, connected miscellaneous petition is closed.

06.01.2017

Note:Issue order copy on 14.06.2017.

Internet:Yes/No.

Index:Yes/No.

vs

To

The Ist Assistant Judge,
City Civil Judge,
Chennai.

M.V.MURALIDARAN, J.

VS

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