

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP (NPD) No.1794 of 2006

and

M.P.No.1 of 2006

Ramamurthy

.. Petitioner

Vs.

M/s.S.P.S.Mohideen Traders,
Rep. by its Proprietor,
S.P.Sultan Mohideen,
No.8, West Cemetery Road,
Old Washermenpet,
Chennai-21.

...Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the Fair Order and Decreeal order of First Assistant City Civil Court at Chennai, dated 25.01.2006 in I.A.No.2264 of 2005 in O.S.No.3579 of 2003.

For Petitioner : Mr.M.V.Balakrishnan

For Respondent : No Appearance

O R D E R

That the instant Civil Revision is directed against the Fair and Decreeal order made in I.A.No.2264 of 2005 in O.S.No.3579 of 2003 dated 25.01.2006 dismissing the revision petitioner's application to set aside the Decree passed against him by the learned I Assistant City Civil Court, Chennai.

2.The record shows that above suit under Order 37, Rule 1 and 2 of CPC seeking Summary Trial is found to be filed for recovery of money by the respondent basing upon few cheques said to have issued by the revision petitioner.

3.According to the respondent / complainant the cheques issued by petitioner towards his liability came to be dishonored for want of funds. The respondent further failed to pay the amount due to him despite of receipt of statutory notice calling upon him to pay the outstanding due. Hence the above summary suit filed for recovery of money.

4.I heard Mr.M.V.Balakrishnan, learned counsel for the petitioner and perused the entire materials available on records. There is no representation on behalf of the respondent.

5.According to the petitioner, summary procedure cannot be adopted in the case on hand as it involves triable issues. He also claims manipulation of records at the hands of the respondent. Further it is the petitioner's case that fraud was played upon him by misusing the cheques issued by him for security purpose.

6.It is found that the respondent has also admitted that there were monetary transactions in their business course. Thus petitioner submits that to establish the actual transaction projected by him oral and documentary evidence is required.

7.Thus I find triable issues as to Fraud, Manipulation of record and the series of business transaction to be substantiated and accordingly special circumstances in favour of the petitioner under Order XXVII, Rule 4 of CPC is liable to be invoked.

8.Accordingly, in view of the fact that the case involves triable issues, the Civil Revision Petition is liable to be allowed.

9.In the result:

a) this Civil Revision Petition is allowed by setting aside the order passed in I.A.No.2264 of 2005 in O.S.No.3579 of 2003, dated 25.01.2006, on the file of the learned First Assistant City Civil Judge, Chennai;

b) the petitioner/defendant is hereby directed to file written statement within a period of 15 days from the date of receipt of a copy of this order;

c) the trial Court is hereby directed to take up the suit on day to day basis, without giving any adjournment to either parties and to dispose the same within a period of 30 days from the date of filing the written statement, since the suit is for the year 2003. Both the parties are hereby directed to give their fullest co-operation for early disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

The First Assistant City Civil Court,
Chennai.

CRP (NPD) No.1794 of 2006
and
M.P.No.1 of 2006

KAN (CO)

rrs 21/12/2018



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