

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. NPD No.2765 of 2009
and M.P.No.1 of 2009**

R.Jaganathan

...

Petitioner

Vs

V.G.Santhi

...

Respondent

Civil Revision Petition is filed under Section 115 of CPC against the orders of the learned IV Asst. City Civil Judge at Chennai dated 30.07.2009 made in I.A.No.9687 of 2009 in O.S.No.12 of 2007.

For Petitioner : Mr.G.Jeremiah

For Respondents : No appearance.

सत्यमेव जयते

ORDER

This Civil Revision Petition is filed against the the orders of the learned IV Asst. City Civil Judge at Chennai dated 30.07.2009 made in I.A.No.9687 of 2009 in O.S.No.12 of 2007.

2. The petitioner is the plaintiff and the respondent is the defendant in O.S.No.12 of 200 on the file of the IV Asst. Judge, City Civil Court, Chennai. The petitioner filed the suit in O.S.No.12 of 2007 against the respondent for a declaration that the deed of mortgage dated 08.02.1999 registered as Doc.No.296 of 1999 executed by the petitioner in favour of the respondent on payment of Rs.25,601/- towards full and final payment of the above mortgage and direct the respondent to return the original deed of mortgage, blank signed cheques, and the connected title deeds and also xerox copies of the parent documents.

3. The respondent filed written statement along with counter claim on 15.06.2007 and is contesting the suit. The petitioner filed reply statement on 19.09.2007 denying the counter claim of the respondent. The petitioner was examined as PW1 and was cross examined. On behalf of the respondent, one Govindasamy filed proof affidavit. The petitioner filed I.A.No.6194 of 2009 to issue summons to respondent directing her to give evidence in the suit. The respondent filed I.A.No.9687 of 2009 under Order XII Rule 6 CPC for a decree for Rs.25,601/- on the admission made in the plaint and

Rs.38,500/- being counter claim under Exs.B1 to B3.

4. According to the respondent, the petitioner admitted that a sum of Rs.25,601/- is due and payable by the petitioner on the mortgage deed and admitted execution of promissory note for Rs.25,601/- and endorsement made on the reverse of the promissory note by paying Rs.2,000/-. In view of such admission, the respondent prayed for a decree for the admitted amount. The petitioner filed counter affidavit and denied that he admitted the borrowing of Rs.25,601/- and execution of promissory note and payment of Rs.2,000/- and making endorsement on the reverse of promissory note.

5. According to the petitioner, his Advocate who conducted the case earlier arranged for a loan of Rs.10,000/- and the petitioner executed a registered mortgage deed and as per the instruction of his earlier advocate, he gave signed blank white paper as well as signed blank cheque. The petitioner never met the respondent. Some misunderstanding arose between the petitioner and his earlier advocate. When the petitioner demanded the signed blank white paper and signed blank cheque from his earlier Advocate, he informed the

petitioner that the same is a dispute between the petitioner and the respondent and he has nothing to do with the same. The petitioner issued a letter dated 12.08.2005 to the respondent stating the borrowing of Rs.10,000/- through his earlier advocate and expressed his willingness to repay the said amount due under mortgage deed and requested the respondent to consider the reduction of interest payable by him and return the blank white paper and the blank signed cheque given by him through his earlier Advocate. The respondent did not reply to the said letter and therefore the petitioner has filed the suit. The petitioner further stated in the counter that in his chief examination and cross examination, he has deposed to that effect.

6. The learned Judge allowed the application filed by the respondent passing the decree, as prayed for in the application holding that the petitioner has admitted in the cross examination the claim of the respondent.

7. Against the said order dated 30.07.2009 made in I.A.No.9687 of 2009 in O.S.No.12 of 2007, the petitioner has come up before this Court.

8. The learned counsel appearing for the petitioner contended that the petitioner borrowed only a sum of Rs.10,000/- and executed a registered mortgage deed. He did not borrow Rs.25,601/- from the respondent and did not execute promissory note and did not pay Rs.2,000/- and made any endorsement on the reverse of the promissory note. The respondent has fabricated the signed blank white paper given to the previous counsel of the petitioner and has filed the suit. The learned Judge, without appreciating the averments in the plaint, reply statement, counter affidavit had allowed the application. In an application pending suit to pass a decree as per Order XII Rule 6 CPC, there must be a clear admission. In the present suit, there is no admission by the petitioner with regard to borrowing of Rs.25,601/- and execution of promissory note. In support of his contention, the learned counsel relied on the following judgments wherein it has been held as follows -

(i) **2011 (7) MLJ 843 (SC) [Himani Alloys Ltd. v. Tata Steel Ltd.]**

6.Once the claim of the respondent regarding admission was proved to be incorrect, its application for judgment on admission ought to have been rejected by the High Court. The High Court could not have embarked

upon an enquiry as to whether there was some other admission nor given a judgment on the basis of such other admission, not pleaded by the respondent-plaintiff. If the respondent wanted to rely upon some other admission, it ought to have made a separate application, so that the appellant could have filed its objections to the same. That was not done.

9. It is true that a judgment can be given on an “admission” contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim. In short the discretion should be used only when there is a clear “admission” which can be acted upon.

(ii) 2010 (SAR) Civil 572 [M/s.Jeevan Diesels & Electricals Ltd. v. M/s.Jasbir Singh Chadha (HUF) & Anr.]

12. Learned counsel for the respondents-plaintiffs relied on a judgment of this Court in *Karam Kapahi & Others vs. M/s. Lal Chand Public Charitable Trust & Another* reported in 2010 (3) SCALE 569 and contended that in view of the principles laid down in that case, this Court may affirm the judgment of the High Court in the instant case. This Court is unable to accept the aforesaid contention. In *Karam Kapahi* (supra) a Bench of this Court analyzed the principles of Order 12 Rule 6 of the Code and held that in the facts of that case there

was clear admission on the part of the lessee about non-payment of lease rent. The said admission was made by the lessee in several proceedings apart from its pleading in the suit. In view of such clear admission, the Court applied the principles of Order 12 Rule 6 in the case of Karam Kapahi (supra). The principles of law laid down in Karam Kapahi (supra) can be followed in this case only if there is a clear and unequivocal admission of the case of the plaintiff by the appellant.

14. . In Uttam Singh Duggal & Co. Ltd. Vs. United Bank of India and others reported in (2000) 7 SCC 120 the provision of Order 12 Rule 6 came up for consideration before this Court. This Court on a detailed consideration of the provisions of Order 12 Rule 6 made it clear "wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed" the principle will apply. In the instant case it cannot be said that there is a clear admission of the case of the respondents-plaintiffs about termination of tenancy by the appellant in its written statement or in its reply to the petition of the respondents-plaintiffs under Order 12 Rule 6.

9. Heard the learned counsel for the petitioner and perused the materials available on record.

10. The learned counsel for the respondent appeared on 11.07.2017 and after hearing the arguments in part, this case was directed to be posted on 17.07.2017 for further hearing and for filing deposition of PW1. However, there was no representation for the respondent on 17.07.2017 as well as on 31.07.2017. Hence, the matter was directed to be posted today under the caption "for orders".

Today also, there is no representation for the respondent. Therefore, this matter is taken up for hearing and order is being passed on merits.

11. As per Order XII Rule 6 CPC, Court has power to pass interim decree on the admission made by the party and proceed with the suit with regard to disputed issue. The power under this section is a discretionary power and it is not a mandatory. The discretion must be exercised judicially only when there is a clear admission by the parties in view of the fact that the proceedings under this provision is summary in nature. A reading of the reply statement and evidence of the petitioner would reveal that he has not admitted borrowing of Rs.25,601/- and denied the execution of promissory note and endorsement made therein. He has not admitted his signature in the promissory note and endorsement made therein. In view of such admission, Section 118 of Negotiable Instruments Act comes into play. The presumption under Section 118 of the Negotiable Instruments Act is a rebuttable one. Once the defendant proves that existence of consideration was improbable or doubtful or the same is illegal, the onus is shifted to plaintiff to prove the payment of consideration. The petitioner, in the reply statement as well as in his evidence has denied

the borrowing and execution of promissory note and stated that promissory note was fabricated misusing the signed blank paper given to his earlier advocate. According to the learned counsel for the petitioner, the above facts would show that the petitioner by acceptable evidence has rebutted the presumption.

12. The learned Judge, ought to have appreciated the averments in the reply statement as well as evidence of PW1 at the conclusion of trial and ought to have given a finding whether the petitioner has rebutted the presumption and whether the same is acceptable or not. Instead of following the said procedure, the learned Judge has committed an irregularity in passing a decree in respect of amount claimed by the respondent based on the promissory note. When there is no clear admission by the petitioner, the judgments relied on by the learned counsel for the petitioner are squarely applicable to the facts of the present case.

13. For the above reasons, the decree passed by the learned Judge under Order XII Rule 6 CPC in so far as it relates to decree for the amounts claimed by the respondent based on the promissory note is hereby set aside. The finding of the learned Judge in respect of the

mortgage deed alone is confirmed.

14. In the result, this Civil Revision Petition is partly allowed.
No costs. Consequently, connected Miscellaneous Petition is closed.

07.08.2017

Index : Yes/No

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To

The IV Asst. Judge
City Civil Court,
Chennai.

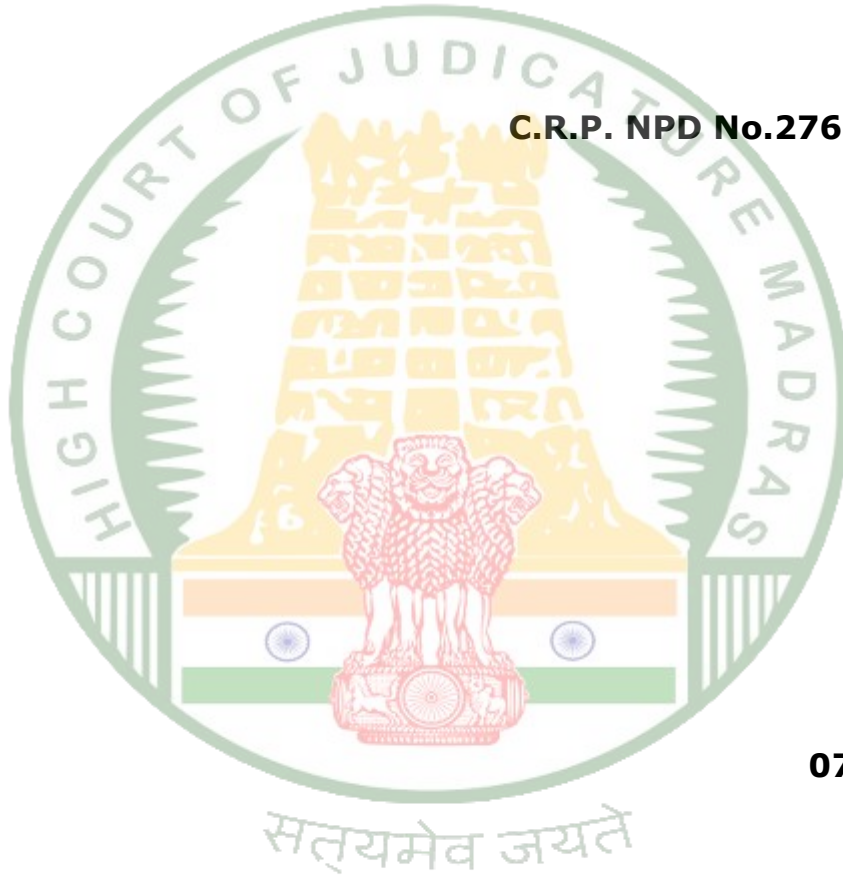


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V.M.VELUMANI, J.

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