

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.2616 of 2012
and
M.P.No.1 of 2012**

S.R.Subramani

.. Petitioner

Vs.

Kasthuri

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 12.04.2012 made in I.A.No.84 of 2012 in O.S.No.33 of 2006, on the file of the District Munsif-cum-Judicial Magistrate, Kodumudi.

For Petitioner : Mr.V.Anandhamoorthy

For Respondent : Mr.J.Abdul Hadi

ORDER

This Civil Revision Petition is directed against the fair and decretal order dated 12.04.2012, made in I.A.No.84 of 2012 in O.S.No.33 of 2006 on the file of the learned District Munsif cum Judicial Magistrate, Kodumudi.

2.The revision petitioner is the defendant in a suit filed by the respondent herein for recovery of money. It is seen from the record that before the suit was ripe for trial, the plaintiff has taken out an application in I.A.No.84 of 2012 under Section 151 of CPC seeking to direct the defendant to lead evidence first.

3.It is averred in the said application that the defendant has admitted the execution of promissory note in the written statement. But it is stated that loan amount borrowed by the defendant was repaid to the husband of the plaintiff. Therefore it is submitted by the plaintiff that if the defendant is able to prove the repayment of loan amount to the husband of the plaintiff, then the plaintiff is not required to lead evidence. Therefore the plaintiff has filed the above application.

4.The defendant has strongly opposed the said application, contending that the plaintiff will have to begin the case first. It is submitted by defendant that the application filed by the plaintiff seeking for the direction to begin the case by the defendant is unsustainable in Law.

5.Upon hearing the arguments on either side, the learned Trial Judge has allowed the application filed by the plaintiff by directing the defendant to the lead evidence at first. The said order is under challenge in this civil revision petition.

6.I heard Mr.V.Anandhamoorthy, learned counsel for the petitioner and Mr.J.Abdul Hadi, learned counsel for the respondent and perused the entire materials available on record.

7.The perusal of the records disclose that the Learned Trial Judge allowed the application by accepting the case of the respondent/defendant that under Section 118 of the Negotiable Instruments Act there is a presumption available in favour of the plaintiff and therefore directed the defendant to lead evidence at first.

8.In this regard it is relevant quote order 18, Rule 1 of CPC which reads as follows:

“ORDER XVIII”
HEARING OF THE SUIT AND EXAMINATION OF WITNESSES

Rule 1.Right to begin. - The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff

and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin”.

9.The perusal of order 18, Rule 1 of CPC make abundantly clear that the plaintiff has to begin evidence at first, unless the defendant admits the facts alleged by the plaintiff. In the case on hand according to the plaintiff, the defendant admitted the execution of pro-note in his written statement filed in the above suit. However, the defendant also disputed the fact that the amount borrowed from the plaintiff has been repaid by the defendant to her husband. Therefore the plaintiff cannot seek for the direction, to direct the defendant to lead evidence first.

10.In this case the Trial Court finding that directing the defendant to lead his evidence before the plaintiff adduces her evidence is not sustainable in law and the same is not coming within the exception given under order 18, Rule 1 of CPC.

11.Therefore in view of the discussion above, I am of the opinion that the order of the Trial Court is not in consonance with the provision

of order 18, Rule 1 of CPC and so it is liable to be set aside.

12.In the result:

(a) the civil revision petition is allowed by setting aside the order passed in I.A.No.84 of 2012 in O.S.No.33 of 2006, on the file of the District Munsif-cum-Judicial Magistrate, Kodumudi;

(b) the trial Court is directed to dispose of the suit since it is the year of 2006, within a period of two months, on day to day basis, without giving any adjournment to either parties and both the parties are hereby directed to give their fullest cooperation for the early disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

28.02.2017

vs

Internet:Yes

Index:Yes

To

The District Munsif-cum-Judicial Magistrate,
Kodumudi.

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M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
CRP(PD)No.2616 of 2012
and
M.P.No.1 of 2012**

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