

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.2830 of 2012
and
M.P.No.1 of 2012**

Anoopchand Chordia

.. Petitioner

Vs.

Nirmal

..Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the Order and Decreetal Order dated 13.09.2011 passed in I.A.No.7194 of 2011 in O.S.No.13346 of 2010 by the learned 2nd Assistant City Civil Judge, at Chennai.

For Petitioner : Mr.N.Nagu Sah

For Respondent : No Appearance

ORDER

The petitioner has filed this Civil Revision Petition to set aside the petition to set aside the order and decreetal order dated 13.09.2011 passed in I.A.No.7194 of 2011 in O.S.No.13346 of 2010 by the Learned II Assistant City Civil Judge at Chennai, and allow the above I.A.No.7194 of 2011 by granting unconditional leave to the petitioner to defend the suit allowing this Civil Revision Petition.

2.The Revision Petitioner is the defendant before the trial Court in a suit filed under Order 37 Rule 2 of CPC. It is the case of the petitioner that against him the Respondent/ Plaintiff filed a suit for the recovery of a sum of Rs.62,644/- with further interest @15% per annum for the principal amount of Rs.50,000/- from the date of the plaint till the date of realization. In the said suit the Revision Petitioner/Defendant filed a petition under Order 37 Rule 3 of CPC to get the leave of the trial Court to defend the suit. In the averments made in the affidavit, it is stated that the allegations made in the plaint that on 25.05.2000, he borrowed a sum of Rs.50,000/- by issuing a cheque bearing No.596902 dated 25.05.2000 drawn on M/s.Andhra Bank by agreeing to repay the amount with interest @ 15%. But after

receiving the amount it is alleged by the Respondent/Plaintiff that the petitioner failed to repay the principal amount with agreed rate of interest. However, the revision petitioner failed either to repay the principal or interest due under the promissory note.

3.However the Revision Petitioner/Defendant accepted that it was not loan transactions but it was business dealing between the petitioner and the respondent in selling and purchase of tyres. Further, the petitioner also raised another ground that though it was alleged by the plaintiff/respondent that the money was transacted in the year 2000, but steps were taken after a lapse of 9 years for recovery. Moreover the petitioner also raised another ground that his signature was forged and no prior notice was served upon him while the plaint was filed before the concerned Court. So, he filed the petition to get the leave of the trial Court to defend the suit.

4.Per contra, counter affidavit was filed by the Respondent/Plaintiff wherein it is contented that the leave petition was not filed within the stipulated period of 10 days from the date of service of summons for judgment. Apart from that no delay excuse petition was filed, and therefore, he prayed for the dismissal of the

petition.

5.Considering the rival submissions, the learned trial Court dismissed the petition filed by the petitioner by holding that the revision petitioner did not file documentary evidence and the contention of the petition, filed by the petitioner, did not have any supportive document to show that he was bonafide and finally dismissed the petition filed by the Revision Petitioner by order and decree dated 13.09.2011.

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

7.I heard Mr.Nagu Sah, learned counsel appearing for the petitioner and perused all the materials available on record. No representation for the respondent.

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 but even after the

receipt of summons, the defendant did not file the leave petition within 10 days but filed the leave petition without delay excuse petition.

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. 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 has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious. Here the revision petitioner has filed petition 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.

10. The learned counsel appearing for the petitioner also raised the grounds by saying that the signature found in the Ex.R1 is not the signature of the revision petitioner, who is the defendant in the suit. In

fact, he also states that Ex.R1 Promissory note, which not at all executed by the petitioner/defendant.

11. When the burden of proof on the revision petitioner proving the non execution of Ex.R1 by him, it is the duty bound of the Court below to permit the petitioner/defendant to defend the suit. But, without doing so, he had simply agreed the signature found in the Ex.R1 Promissory note and decreed the suit and dismissed the petition.

12. The learned counsel appearing for the petitioner raised the ground by saying that the endorsements on the reverse of the Ex.R1 Promissory note dated 31.03.2006, while the said document in Ex.R1 Promissory note himself to be brought into existence only on 01.04.2009, which itself clearly proves Ex.R1 Promissory note is a forged and concocted document created by the respondent/plaintiff to set up a false case against the revision petitioner.

13. Apart from this, he has also raising the ground that the endorsement on the reverse of the Ex.R1-Promissory note were not signed by the revision petitioner and it bears initial of the respondent himself which will not save the limitation and it will not amount to

acknowledgement of liability. Further, it is also stated that the endorsement made by the respondent/promissee on the reverse of the promissory note would save the limitation is unknown to law and allow to them in the absence of valid acknowledgement of liability by the revision petitioner between the period 25.05.2000 to 01.04.2009 will not save the limitation in respect of the borrowing alleged to have made on 25.05.2000. By very much noted in the order that the Ex.R1 being a forged promissory note, it will not save the limitation in respect of the amount paid by the respondent on on 25.05.2000. But only for the purpose of saving the limitation that there was an alleged execution of endorsement made in the pronote, which was enclosed in Page Nos.12 and 13, which was shows that on 31.03.2006, the petitioner has endorsed on the back side by paying a sum of Rs.7,500/-, this would clearly proved that when the alleged pronote was executed on 01.04.2009, how the endorsement would be made on 31.03.2006 and how the trial Court has accepted the said Ex.R1, there is a totally confused in the pronote namely Ex.R1. But, the learned Judge, without noting the same and without applying the mind, had simply dismissed the application.

14. Therefore, all the questions are to be tried would be come to true only by way of full fledged trial by giving an opportunity to the petitioner to defend the suit. The alleged pronote executed on 01.04.2009 and the endorsement on the back side made on 31.03.2006 would not be proved. Therefore, I am inclined to allow the civil revision petition by setting aside the judgment and decree passed by the learned trial Court.

15. In the result:

(a) this civil revision petition is allowed by setting aside the order passed in I.A.No.7194 of 2011 in O.S.No.13346 of 2010, dated 13.09.2011, on the file of the II Assistant City Civil Court, Chennai;

(b) the petitioner/defendant is directed to file his written statement within a period of 30 days from the date of receipt of a copy of this order;

(c) on filing the written statement within the stipulated time as fixed by this Court, the learned trial Judge is directed to take up the suit and to dispose of the

same within a period of three months thereafter, without giving any adjournment to either parties. No costs. Consequently, connected miscellaneous petition is closed.

09.01.2017

Note: Issue order copy on 03.07.2017
Internet: Yes
Index: Yes

vs

To

The II Assistant City Civil Judge,
Chennai.

M.V.MURALIDARAN, J.

VS

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