

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.2892 of 2012
and
M.P.No.1 of 2012

M.S.Umadevi

.. Petitioner

Vs.

State Bank of Mysore,
Abiramapuram Branch,
No.67, C.P.Ramaswamy Road,
Abiramapuram, Chennai 600 018.

..Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the order dated 02.02.2011 made in I.A.No.9354 of 2010 in O.S.No.11646 of 2009 on the file of the learned VII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.Devadasan

For Respondents : No Appearance

ORDER

The Revision Petitioner aggrieved over dismissal of his application filed in I.A.No.9354 of 2010 under Order XXXVII, Rule 3 of CPC seeking leave to defend the summary suit filed by the respondent Bank in O.S.No.11646 of 2009, by way of this civil revision petition challenges the refusal of the Court below to grant leave to the petitioner to defend the above suit.

2.On perusal of records, it is seen that the respondent bank has filed the above suit under Order XXXVII of CPC praying for a Decree against the revision petitioner and one S.Lalitha, the 2nd defendant holding them jointly and severally on a loan due payable to the bank towards the bank loan availed by the revision petitioner.

3.According to respondent bank, the revision petitioner availed a housing loan from the respondent bank to the tune of Rs.8,38,000/- and to the said loan the 2nd defendant namely S.Lalitha stood as guarantee. However, as the loan went unpaid the above suit was filed for relief stated supra.

4.In the said suit, revision petitioner filed an application in

I.A.No.9354 of 2010 seeking to grant leave to defend the suit by contending that the suit is not maintainable for want of statutory compliance of provisions under Chapter 43 of CPC.

5.It is also her contention that the suit is barred by limitation and the suit cannot be proceeded with as the plaint is filed by the respondent is unsupported by original documents and that the documents shown as filed along with plaint are all Xerox copies which cannot be relied upon.

6.Per contra, it is found that the respondent Bank has resisted the application contending that original loan agreement is lying with the Jurisdictional police authority in connection with an Investigation pending on a criminal complaint lodged by the respondent bank as against revision petitioner for her illegal registration of a sale deed on 24.06.2005 and its subsequent cancellation on 15.10.2007 beyond the knowledge of the bank. It is also their contention that the petitioner has played fraud upon the Court.

7.I heard Mr.Devadasan, learned counsel for the petitioner and perused the records. No representation on behalf of the respondent.

8. On appraisal of above contentions made by either side, the Court below holding that since the original loan agreement is with Commissioner of Police, and that the petitioner has not paid any amount towards loan, there is no triable issues to grant leave to the revision petitioner to defend the suit.

9. On perusal of the case records, it is seen that it is her defense that the suit is barred by limitation. In this regard it is equally important to state that absolutely there is no say as to the last date of payment made by the revision petitioner which would also play a vital role in calculation of limitation period. In my opinion the trial Court ought to have seen as to whether there is continuing cause of action and suit is filed in time and if the Trial Court finds the suit is filed in time, an issue ought to have been framed and answered in affirmative.

10. Secondly in as much as the question of genuineness and veracity of loan agreement, it is found from the loan agreement in Document No.1 Annexed with plaint that there is no witness shown as to who witnessed the agreement and the said column remains blank. On further perusal of loan agreement it is often seen that the Loan

application remains unfilled.

11.Coming to other facet as to alleged fraud committed by the revision petitioner, it is found that the revision petitioner has specifically pleaded that she is unaware of execution and cancellation of sale deed. In such circumstance I am of the considered opinion that the defendant should be given an opportunity to defend the suit.

12.More so it is needless to say that the instant suit cannot be proceeded on bare footing relying exclusively on xerox copies of Documents. No doubt that the production of original document is indispensable to decide the issue on hand and the Court below can call for such documents to be produced before it.

13.In this regard it would be useful to state that except Document Nos.6, 7, 8 namely AD card dated 23.05.2009 and a returned cover from 2nd respondent which is also dated 23.05.2009 and thirdly a statement of account in document No. 8, all other Vital documents namely loan application, sanction letter, loan agreement, letter of guarantor Documents 1-4 respectively are photo copies and document No. 5 is a copy of legal notice dated 18.05.2009.

14. Therefore, I find that there are triable issues in the suit on hand and accordingly by following the Judgment reported in AIR 1977 SC 577, which has been followed by this Court in similar cases, I think this case falls under principle (c): "if the defendant discloses such fact as may be deemed sufficient to entitle him to defend, that is to say, though the affidavit does not positively and immediately make it clear that he had a defence, yet shows such a state of facts as leads to the interference that at the trial of the action he may be able to establish a defence to the plaintiff's claim, the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend."

15. In the result:

(a) this Civil Revision petition is allowed by setting aside the order passed in I.A.No.9354 of 2010 in O.S.No.11646 of 2009, dated 02.02.2011, on the file of the learned VII Assistant Judge, City Civil Court, Chennai;

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

(c) thereafter, 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 of the same within a period of 30 days from the date of filing the written statement, as time fixed by this Court, since the suit is for the year 2009. 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.

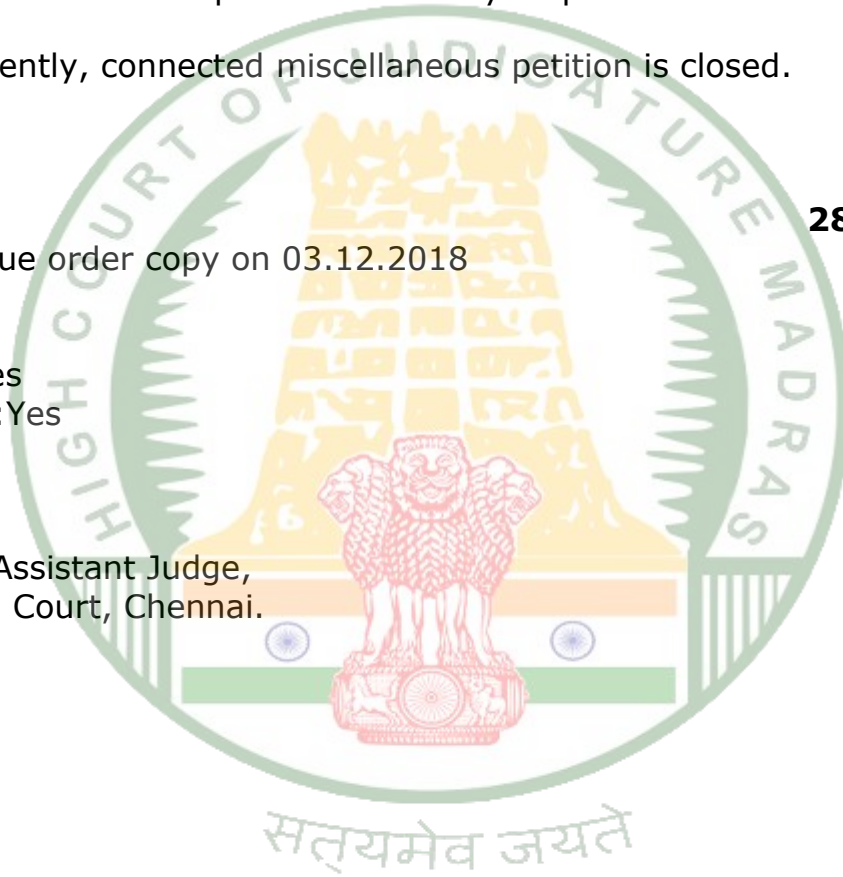
28.04.2017

Note: Issue order copy on 03.12.2018
vs

Index: Yes
Internet: Yes

To

The VII Assistant Judge,
City Civil Court, Chennai.



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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)No.2892 of 2012
and
M.P.No.1 of 2012

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