

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **17.04.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(N.P.D.) No.931 of 2012

S.Sathish Kumar : Petitioner
versus

IDBI Bank Ltd.,
Retail Asset Center,
rep. By its Authorized Signatory,
Murugesh Naicker Complex,
3rd Floor, 68, Greams Road,
Chennai 600 006 : Respondent

PRAYER: Revision filed against the order of XV Assistant City Civil Court, Chennai dated 2.11.2011 in I.A.No.12634 of 2011 in O.S.No.2996 of 2011.

For petitioner :: Mr.D.Muthukumar

For respondent :: Mr.R.Palanikumar Ramesh

ORDER

The challenge in this civil revision petition is to the order dated 2 November 2011 in I.A.No.12634 of 2011 in O.S.No.2996 of 2011, rejecting the request made by the petitioner to grant him unconditional leave to defend the suit.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The respondent filed a suit in O.S.No.2996 of 2011 before the XV Assistant City Civil Court, Chennai, against the petitioner for a decree, directing him to pay a sum of Rs.6,31,762/- with interest @ 18% p.a.

4. The petitioner, on receipt of summons, filed an application in I.A.No.12634 of 2011 under Order XXXVII rule 3 and 4 CPC to grant him unconditional leave to defend the suit.

5. The petitioner in his affidavit filed in support of the application, contended that the suit was barred by limitation. According to the petitioner, there was no acknowledgment of liability and as such, the suit filed on 28 March 2011 was legally not maintainable. The petitioner took up a further contention that the signatory to the plaint was not authorized to file the suit and as such, the suit is liable to be struck off.

6. The learned Trial Judge dismissed the application notwithstanding the substantial challenge made by the petitioner. The learned Trial Judge permitted the respondent to produce documents indicating that the signatory to the plaint was authorized to sign the plaint. The Trial Court recorded that the respondent made payment subsequently and in case the said date is taken into account, the suit was not barred by limitation. There was no admission on the part of the petitioner that he made payments on any particular day. The factual matrix clearly indicates that there are triable

issues involved in the subject suit. The learned Trial Judge was therefore not correct in dismissing the application filed by the petitioner to grant him unconditional leave to defend the suit. The impugned order is liable to be set aside.

7. In the result, the order dated 2 November 2011 in I.A.No.12634 of 2011 is set aside.

8. In the upshot, I allow the civil revision petition. No costs. Consequently, M.P.No.1 of 2012 is closed.

17.04.2017

Index:Yes/no
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To
The XV Assistant City Civil Court, Chennai.

K.K.SASIDHARAN, J.

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