



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2017

CORAM :

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

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C.R.P. (MD) No. 1084 of 2017

and

CMP (MD) No. 4770 of 2017

N. Hidayathulla

... Petitioner/Petitioner/Defendant
Vs.

Neellakumar

... Respondent/Respondent/Plaintiff

PRAYER: This Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decretal order dated 23.01.2017 passed in I.A.No.721 of 2016 in O.S.No.20 of 2015 on the file of the III Additional District Judge, Tiruchirapalli.

For Petitioner : Mr.C.Deepak

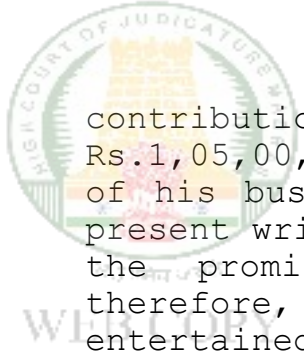
For Respondent : Mr.K.K.Senthil
for Caveator

O R D E R

Aggrieved by the dismissal of I.A.No.721 of 2016 to receive additional written statement, the defendant in O.S.No.20 of 2015 has preferred the present revision petition.

2. Heard the learned counsel for the revision petitioner and the caveator.

3. The plaint contention of the revision petitioner is that there was a deal between the petitioner and the respondent in respect of property, wherein there was a money transaction, in course of the said transaction, the suit promissory note was executed. While so, when the suit for recovery of money based on the promissory note was filed, written statement was filed admitting the execution of promissory note and borrowing of Rs.1,05,00,000/- from the plaintiff on 29.04.2013 and re-payment of Rs.5,00,000/-, Rs.10,00,000/- and Rs.25,00,000/- on various dates. While so, after settling the issue and the matter was likely to take up, the present application to receive additional written statement has been filed contending that there was no consensus ad-idem between the parties in executing the suit promissory note and the plaintiff has ~~unfairly and vindictively~~ entangle the defendant to register a suit promissory note in his favour as if the defendant had borrowed the amount for business purpose. The Trial Court after pointing out the



contribution in the first written statement admitting receipt of Rs.1,05,00,000/- from the plaintiff on 29.04.2013, for the purpose of his business improvement and execution of promissory note, the present written statement sought to be filed denies the execution of the promissory note alleging absence of consensus ad-idem, therefore, dismissed the petition, no contrary plea can be entertained by way of additional written statement.

4. The prime contention while challenging the impugned order is that since the trial has not commenced, there is no impediment in admitting the additional written statement, so as to enable the defendant to effectively repudiate the claim made by the plaintiff based on the promissory note which was executed for the different purpose and not against the alleged borrowing.

5. The learned counsel for the respondent submitted that the revision petitioner herein filed the written statement on 15.10.2015 and when the matter was taken up for trial and listed for examination of witnesses did not turn up and remained absent. Hence, ex-parte decree was passed on 03.06.2016. Thereafter, the application was filed to set aside the ex-parte decree, which was allowed by the trial Court and listed for examination of witnesses. At this stage, to protract the proceedings, application to receive additional written statement containing averments contra to the admitted facts is sought to be filed. Therefore, the Trial Court has rightly dismissed the application and there is no illegality in the said order.

6. The content of the additional written statement filed by the revision petitioner on 15.10.2015 and the additional written statement sought to be filed are quite contrary to each other, more particularly, regarding the factum of executing the suit promissory note having candidly admitted the execution of the suit promissory note and borrowing the loan of Rs.1,05,00,000/- as against the promissory note for business development by way of additional written statement.

7. The said admission cannot be repudiated the defendant by admission is now estopped the same that there was no consensus ad-idem while executing the promissory note. It is also brought to the notice of this Court that Order VIII Rule 9 of C.P.C., provides for parties to raise additional grounds of defence, if such ground arises after the institution of the suit.

8. In this case, the plea now sought to be introduced through the additional written statement is not about any event after the institution of the suit, but regarding the circumstances under which the suit promissory note were executed. Having placed on record about the nature and circumstances under which the promissory note was executed at different circumstances, reasons by way of additional written statement quite contrary to the earlier admission is in permissible. Therefore, the order of the trial Court refusing



to entertain the application is in order. This Court does not find any illegality to interfere with the order passed by the trial Court in I.A.No.721 of 2016 under Article 227 of the Constitution of India. Hence, the Civil Revision Petition is dismissed. No Costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

The III Additional District Judge,
Tiruchirapalli.

+1 cc to Mr.K.K.Senthil , Advocate in SR.No. 59502

mm/akv

AE/MR/SAR3/19.06.2017/3P/3C

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