

.IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice N.ANAND VENKATESH

O.S.A.No.247 of 2018
and C.M.P.Nos.11732 and 11733 of 2018

B.K.Rajeswari .. Appellant

Vs

1.G.Dharani
2.G.Sakthivel .. Respondents

Appeal preferred under Order XXXVI Rule 9 of O.S. Rules
r/w Clause 15 of Letters Patent against the order and decree
dated 06.06.2018 made in A.1602/18 in A.No.2815 of 2017 in
C.S.No.75 of 2016.

For Appellant ... Ms.Chitra Sampath,
Sr. Counsel for M/s.Poongkhulali

For Respondents... Mr.GR.M.Palaniappan

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

As against the order granting conditional leave, by
directing the appellant, who is the defendant in the suit to
deposit a sum of Rs.15 lakhs, the present appeal has been filed.

2.Learned senior counsel appearing for the appellant would
submit that before the dishonour of cheques in the year 2015,
the subsequent presentation followed by dishonour and the filing
of the suit thereafter without asking for payment in the
interregnum would create suspicion as there are sufficient
grounds to show that the payment having been made by way of
defence, the conditional order cannot be sustained.

3.Learned counsel appearing for the respondent would submit
that no payment has been made by the appellant. Factually, the
cheques have been dishonoured. Under those circumstances no
interference is required.

4.A perusal of the order passed by the learned single Judge would show that relevant materials have been taken into consideration at the time of passing the order. Learned single Judge has exercised his discretion while imposing the condition. Therefore, we do not find any error in the order passed. It is a case where the appellant's cheques were dishonoured. Therefore, the onus is heavily on the appellant to substantiate the reason behind the dishonour and the payment allegedly made.

5.In such view of the matter, we do not find any error in the order passed by the learned single Judge. However, considering the submission made by the learned senior counsel for the appellant, we deem it fit to modify the condition imposed. Accordingly, the sum of Rs.15 lakhs as ordered by the learned single Judge to be deposited by the appellant is modified to Rs.9 lakhs. The appellant is given eight weeks from the date of receipt of a copy of this order to comply with the aforesaid order.

6.With the above modification, the Original Side Appeal stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS VI)

//True copy//

Sub Assistant Registrar

mmi

To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

+lcc to Mr.G.RM.Palaniappan, Advocate SR.No.47771

+lcc to Mr.B.Poongkhulali, Advocate SR.No.44339

O.S.A.No.247 of 2018

SVI (CO)
GN(01/08/2018)