

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANIC.R.P.(PD)Nos.3682 to 3686 of 2015
and M.P.Nos.1 to 1 of 2015 (5 M.Ps)

M/s.P.M.M.Trading (P) Ltd.,
Office No.6, 4th Street,
Tatabad, Coimbatore,
Rep. By is Managing Director,
Udayarani

.. Petitioner in all
C.R.Ps.

Vs.

C.T.Umesh

.. Respondent in
C.R.P.No.3682/2015

C.T.Lingaraj

.. Respondent in
C.R.P.No.3683/2015

C.T.Govindaraj

.. Respondent in
C.R.P.No.3684/2015

T.Ramu

.. Respondent in
C.R.P.No.3685/2015

T.Vasan

.. Respondent in
C.R.P.No.3686/2015

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of Constitution of India to set aside the fair and decretal orders dated 17.02.2015 made in I.A.Nos.695 to 699 of 2014 respectively in O.S.Nos.134, 135, 433 of 2014, 361 of 2013 and 638 of 2011 on the file of the I Additional District Court, Coimbatore.

For Petitioner : Mr.D.Selvaraju
for M/s.P.T.Ramadevi

For Respondent : Mr.A.Arumugam
(in all C.R.Ps.)

COMMON ORDER

These Civil Revision Petitions are filed to set aside the fair and decretal orders dated 17.02.2015 made in I.A.Nos.695 to 699 of 2014 respectively in O.S.Nos.134, 135 and 433 of 2014, 361 of 2013 and 638 of 2011 on the file of the I Additional District Court, Coimbatore.

2.The petitioner and the issues involved in all the Civil Revision Petitions are one and the same and therefore, they are disposed of by this common order.

3.The petitioner is the plaintiff and respondent in each of the Civil Revision Petitions is the defendant respectively in O.S.Nos.134, 135 and 433 of 2014, 361 of 2013 and 638 of 2011 on the file of the I Additional District Court, Coimbatore. The petitioner filed the said suits for recovery of a sum of Rs.2,00,000/-, Rs.2,00,000/-, Rs.2,00,000/-, Rs.2,00,000/-, and Rs.12,00,000/- respectively. The respondents filed written statement and are contesting the suits.

4.The petitioner filed I.A.Nos.695 to 699 of 2014 under Order XVIII Rule 1 of C.P.C for a direction to the respondents to let in evidence first since they had admitted the receipt of the cheque and encashment of the same and they have to begin trial. According to the petitioner, the respondents approached him at Coimbatore to settle the loan taken from ING Vysya Bank. The petitioner, considering the request of the respondents, agreed to settle the loan taken by them in ING Vysya Bank and issued cheques for a sum of Rs.2,00,000/- each to the respondent in I.A.Nos.695 to 698 of 2014 and Rs.12,00,000/- to the respondent in I.A.No.699 of 2014. The respondents in the written statement had admitted the receipt of cheque, encashment and entire transaction between the petitioner and respondents. The respondents have taken a stand that amount received by them is only advance amount for the sale of their property. The agreements filed along with written statement relates to sale in favour of one M.V.Subramanian. The petitioner's company is in no way connected with said agreement. In view of the admission of the respondents and plea taken by them, they have to let in evidence and begin trial and disprove the claim of the petitioner.

5.The respondents filed counter affidavit in the respective I.A.Nos.695 to 699 of 2014, denying all the averments made in the affidavit and contended that they did not admit borrowing from the petitioner company. They do not know Udayarani, Managing Director of the petitioner. One S.Chinnaswamy who is a Chartered Accountant, husband of Udayarani in collusion with M.V.Subramanian approached the respondents at Bangalore to purchase the properties belonging to all the respondents and paid a sum of RS.10,00,000/- as advance by issuing cheques for a sum of Rs.2,00,000/- each in the name of the respondent in I.A.Nos.695 to 698 of 2014 and Rs.12,00,000/- in the name of the respondent in I.A.No.699 of 2014. Subsequently, the said M.V.Subramanian issued another cheque for further sum of Rs.10,00,000/-. The said M.V.Subramanian did not complete the transaction within the time stipulated. M.V.Subramanian issued notice dated 11.06.2011 to all the respondents, calling upon them to repay the sum of Rs.20,00,000/-. The respondents issued reply to the said M.V.Subramanian on 30.06.2011 stating that the said sum of Rs.20,00,000/- is forfeited as he did not perform his part of the contract. M.V.Subramanian sent a rejoinder on 25.07.2011. After that, the petitioner sent notice dated 12.10.2011 to one of the

respondent by name Vasan, claiming Rs.12,00,000/-. He sent a reply to the said notice.

5(a).The respondents never admitted the borrowing. Only one issue "whether petitioner is entitled to said claim" alone is framed. In view of the same, it is for the petitioner to let in evidence to prove her case and prayed for dismissal of the applications.

6.The learned Judge considering the averments in the affidavits, counter affidavits, plaints, written statements and issue framed in the suit, dismissed all the applications holding that the respondents did not admit the claim of the petitioner and therefore, as per Sections 101 to 103 of Indian Evidence Act, it is for the petitioner to prove her claim first.

7.Against the said orders of dismissal dated 17.02.2015 made in I.A.Nos.695 to 699 of 2014 respectively in O.S.Nos.134, 135 and 433 of 2014, 361 of 2013 and 638 of 2011, the petitioner has come out with the present Civil Revision Petitions.

8.Heard the learned counsel for the petitioner as well as the respondent in all the Civil Revision Petitions and perused the

materials available on record.

9.The contention of the petitioner is that the respondents admitted the borrowing and encashment of cheque. In view of the same, it is for the respondents to let in evidence first and begin trial to prove that a sum of Rs.20,00,000/- received from the petitioner is not in the form of borrowing, but it is only advance amount paid by one M.V.Subramanian for purchase of their property. On the other hand, from the materials on record, it is seen that the respondents have not admitted the borrowing from the petitioner at Coimbatore. Their specific case is that one S.Chinnaswamy, husband of Udayarani, Managing Director of the petitioner approached the respondents along with M.V.Subramanian at Bangalore for purchase of the properties belonging to the respondents in I.A.Nos.695 to 698 of 2014 and issue cheques for a sum of Rs.2,00,000/- each and respondent in I.A.No.699 of 2014 for a sum of Rs.12,00,000/- in the name of the respondents.

10.The respondents further contended that the said M.V.Subramanian paid a further sum of Rs.10,00,000/- in the name of the respondents. The said M.V.Subramanian did not perform his part of the contract and wanted refund of Rs.20,00,000/- from the

respondents. The respondents refused to refund the same. In view of such refusal, M.V.Subramanian, the husband of Udayarani, Managing Director of the petitioner, S.Chinnaswamy and the petitioner colluded together and filed the present suit and there were exchange of notes.

11.In view of the denial of the borrowing from the petitioner by the respondents, the contention of the petitioner that respondents admitted borrowing and respondents have to let in evidence and begin the trial first is not correct. It is for the petitioner to let in evidence to prove that each of the respondent in I.A.Nos.695 to 698 of 2014 borrowed Rs.2,00,000/- and respondent in I.A.No.699 of 20214 borrowed Rs.12,00,000/- at Coimbatore and failed to repay the amounts. In view of the rival contentions, Order XVIII Rule 1 of C.P.C is not applicable to the facts of the present case. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 17.02.2015 made in I.A.Nos.695 to 699 of 2014 respectively in O.S.Nos.134, 135, 433 of 2014, 361 of 2013 and 638 of 2011.

12.In the result, these Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are

closed. Since, the suits are filed for recovery of money, the learned Judge is directed to dispose of the suits as expeditiously as possible, in any event not later than three months from the date of receipt of a copy of this order.

21.03.2018

Index :: Yes/No
gsa

To

The I Additional District Judge,
Coimbatore.



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V.M.VELUMANI,J.

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and M.P.Nos.1 to 1 of 2015 (5 M.Ps)

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