

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.07.2018

Pronounced on: 14.08.2018

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P (NPD) .No.205 of 2006
and C.M.P. No.1609 of 2006

M.R.Deivam

... Petitioner/Defendant/Petitioner

Vs.

1.Mrs.Amirthammal (died)

2.P.S.Mani ... Respondent/Plaintiff/Respondent

(Second respondent was brought in Record as legal heir of the deceased sole respondent viz., Amirthammal vide Court Order dated 07/12/2017 made in C.M.P. No.250 of 2013 in C.R.P. No.205 of 2006.)

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to grant unconditional leave to defend to the petitioner to defend the suit by setting aside the order of the XV Assistant City Civil Court at Chennai dated 29.03.2005 in I.A.No.5734 of 2005 in O.S. No.6469 of 2004.

For Petitioner

: Ms.M.D.Leelavathi
for Mr.A.P.Suryaprakasam

For Respondent

: Mr.M.Chidambaram,

ORDER

The above Civil Revision Petition is filed challenging the order dated 29.03.2005 passed by the XV Assistant City Civil Judge, Chennai, in I.A. No.5734 of 2005 in O.S.No.6469 of 2004 in and by which the learned Judge has dismissed the application filed by the petitioner herein seeking leave to defend the suit filed by the respondent herein.

2. A brief resume of facts culminating in this Revision petition is as follows:-

The respondent herein had filed the suit O.S.No.6469 of 2004 as an under chapter suit, claiming a sum of Rs.76,250/- together with interest at 18% per annum on Rs.50,000/- from the date of plaint till the date of realisation. This sum due on a Promissory Note dated 12.12.2001, which was given as a security by the petitioner herein for the borrowal of a sum of Rs.50,000/- on the said date. The petitioner herein had also deposited the original title deeds relating to his property situated at Kanchipuram and comprised in Survey Nos.141/2, 3 and 139/9 and 10, with the respondent herein.

3. It was the case of the respondent that despite demands the petitioner had not come forward to clear his dues, thereby, constraining the respondent to issue a legal notice dated 13.09.2004. Though the said notice was received by the petitioner on 14.09.2004, he had neither sent a reply nor complied with the request in the legal notice. Therefore, left with no other alternative the respondent had filed the suit for the relief stated supra.

4. After receiving notice in the above suit, the petitioner herein had filed an application seeking leave to defend the suit. In the affidavit filed in support of the petition, the petitioner would contend that he has cleared the entire dues of the respondent/plaintiff for which he has documents and also contending that he had sent a reply notice on 15th of September 2004. Interestingly, in the affidavit he has not given any details about the date on which he had cleared the dues and obtained a cancellation of the Promissory Note.

5. The petition was resisted by the respondent/plaintiff inter-alia contending that the amount was not repaid and that the pro note had not been cancelled and also submitting that no reply notice had been received from the petitioner. It was further contended that if the petitioner had discharged his dues under the Promissory Note, as contended by him, he would have obtained the signature either from the respondent or her son P.S.Mani, that apart the petitioner would have demanded the return of the documents pledged with the respondent. It was also contended that the application was nothing but a ruse to protract the proceedings.

6. During the enquiry the petitioner herein had marked three documents which were the reply dated 15.09.2001, cancellation on Promissory Note and the pay slip of the petitioner. On the side of the respondent the original Promissory Note and the legal notice and the acknowledgement card were marked as Exs.R1 to R3. On either side no oral evidence was let in. The learned Judge

after considering the documents and hearing the arguments came to the conclusion that Ex.P2 Promissory Note, was a fabricated document and dismissed the application holding that there was no triable issue. Challenging this order the petitioner has moved this Court.

7. Heard, Ms.M.D.Leelavathi, learned Counsel for the petitioner and Mr.M.Chidambaram, learned Counsel for the respondent. From a perusal of the documents particularly Ex.P2 and Ex.P1 the same appears to have been created after the filing of the suit. In the affidavit filed in support of the petition seeking leave of the Court to defend the suit, the petitioner has not mentioned any date for the cancellation of the Promissory Note, whereas in Ex.P1 there is a statement that the amount was settled on 01.10.2003. Ex.P2, as rightly pointed out by the learned XV Assistant City Civil Judge, has not been done witnessed/counter signed by either the plaintiff/respondent herein or her son who was the introducer.

8. Further the contents of Ex.P2 and the contents of Ex.R1, which is an admitted document differs. The petitioner having admitted the loan and execution of Promissory Note has not discharged her duty to prove discharge. Apart from claiming cancellation of the pro note, there is no other defence which have been raised by the petitioner. The document being a fabricated one the petitioner is not entitled for leave to defend the suit. Further he has also not raised any triable issue. I find no infirmity in the order passed by the learned XV Assistant City Civil Judge, Chennai.

9. In the result, the Civil Revision Petition is dismissed. The order passed by the XV Assistant City Civil Judge, Chennai, in I.A. No.5734 of 2005 in O.S.No.6469 of 2004, dated 29.03.2005 is confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

सतयुक्त
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

msvm

To

1.The XV Assistant City Civil Judge,
Chennai.

2.The Section Officer,
VR Section, High Court,Madras

+1cc to Mr.A.P.Suriya Prakasam, Advocate, S.R.No.55961

+1cc to Mr.M.Chidambaram, Advocate, S.R.No.55959

C.R.P (NPD) .No.205 of 2006
and C.M.P. No.1609 of 2006

GP (CO)
GSP (05/09/2018)



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