



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.(NPD) No.22 of 2006

P.Lalitha

.. Petitioner

vs

Pushpa Devi

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India challenging the order and decree dated 23.09.2005 in I.A.No.15222 of 2005 in O.S.No.3397 of 2005 on the file of VIII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.C.Umashankar

For Respondent : Mr.T.S.Kandhakumar

ORDER

The petitioner has filed this civil revision petition challenging the order and decree dated 23.09.2005 in I.A.No.15222 of 2005 in O.S.No.3397 of 2005 on the file of the learned VIII Assistant Judge, City Civil Court, Chennai.

2. The facts in a nutshell are as under: The petitioner herein is the defendant in the suit and the respondent herein is the plaintiff who filed the suit in O.S.No.3397 of 2005.

3. The respondent/plaintiff filed the suit, inter alia, to direct the petitioner/defendant to pay a sum of Rs.4.35 lakhs together with interest on Rs.2.50 lakhs at 24% per annum from the date of plaint till realization.

4. In the said suit, the petitioner/defendant filed I.A.No.15222 of 2005 seeking to grant unconditional leave to the petitioner/ defendant to defend the suit. The said interlocutory application was resisted by the respondent plaintiff by filing a counter affidavit.

5. The Court below, by order and decree dated 23.09.2005, while decreeing the suit as prayed for, dismissed the interlocutory application holding that the claim has been proved.



6. Assailing the dismissal of the interlocutory application, the present revision petition is filed.

7. It is the contention of the learned counsel appearing on behalf of the petitioner/defendant that the Court below had decreed the suit without granting leave to defend to the petitioner/defendant. It is specifically contended that the petitioner/defendant was not in Chennai on the date of execution of the alleged Promissory Note and the said fact was not considered by the Court below. It is added that triable issues are involved in the suit and the denial of leave to the petitioner/defendant.

8. It is further contended that when signature of the petitioner/defendant is alleged promissory note is seriously disputed, the trial Court ought not to have compared it with the signature of the petitioner/defendant found in other documents to rule against the petitioner/defendant. In any event, it is pleaded that the claim made by the respondent/plaintiff is well after three years and as such, the suit is barred by limitation. Moreover, it is pleaded that the cause of action for filing of the suit was criminal proceedings initiated by the petitioner/defendant's husband against the respondent/plaintiff's husband.

9. Per contra, the learned counsel appearing on behalf of the respondent/plaintiff, while reiterating the reasons that weighed with the Court below, submitted that the petitioner/defendant was very much present in person on 04.05.2002 at Chennai and only after going through the contents of the promissory note, she signed the said promissory note and, therefore, she cannot renege on the same.

10. I heard Mr.C.Umashankar, learned counsel for the petitioner and Mr.T.S.Kandhakumar, learned counsel for the respondent and perused the documents available on record.

11. At the outset it is to be noted that, at the time of admission of this revision, this Court, by order dated 17.01.2006, granted interim stay of operation of the order passed by the Court below and the same holds good even as on date. The respondent had not chosen to file any vacate stay petition till date.

12. Before advertng to the merits of the case, let us refer to Sub-rule 5 of Rule 3 of Order XXXVII of the Civil Procedure Code, which is as under:

"Order 37, Rule 3(5) :

The defendant may, at any time within ten days from



WEB COPY

the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just :

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious."

(emphasis supplied)

13. It is clearly provided in sub-rule 5 of Rule 3 of Order XXXVII of the Code that leave to defend the suit may be granted to the applicant unconditionally or upon such terms as may appear to the Court or Judge to be just and the leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious.

14. The learned trial Court has, in fact, not addressed to the main grounds taken by the petitioner/defendant in his application for leave to defend the suit. It has simply dismissed the application mainly on the ground that the promissory note bears the signature of the petitioner/defendant and is thumb marked by the witnesses and, therefore, it cannot be held that the respondent/plaintiff had forged and fabricated the promissory note in cahoots with the witnesses and has filed the false case under Order 37 of the Civil Procedure Code.

15. Another ground taken by the trial Court for denying the relief to the petitioner/defendant was that the legal notice served upon the defendant by the plaintiff through his counsel was not replied to by the defendant and lastly held that the grounds for leave to defend the suit, according to it, were evasive, however, without dealing with the grounds taken by the petitioner/defendant to defend his suit.

16. It is a definite stand of the petitioner/defendant in his application before the trial Court to defend the suit that the said promissory note, on the basis of which the suit has been filed by the respondent plaintiff, was not executed by the petitioner/defendant and the same was forged and fabricated and in fact, the petitioner/ defendant had never come to Chennai for signing the alleged promissory note. It was further clearly



stated in that application that the petitioner/defendant never borrowed the alleged amount shown in the promissory note nor she was liable to pay the same.

17. It can be said without doubt that the defence taken by the petitioner/defendant clearly raises a triable issue which would have been decided by the trial Court by granting the petitioner/defendant necessary permission to defend the suit. In fact, the trial Court has not given any firm finding by dealing with the defence taken by the defendant that the defendant had no reasonable defence to defend the suit in question.

18. The law pertaining to leave to defend has been summarised by the Hon'ble Supreme Court in the case of *Machalec Engineering and Manufacturers v. Basic Equipment Corporation*, AIR 1977 SC 577. The same principles have been reiterated in *Sunil Enterprises v. S.B.I. Commercial and International Bank Ltd.*, (1998) 5 SCC 354. The position of law as summarised is as under:

(a) If the defendant satisfies the Court that he has as good defence to the claim on merits, the defendant is entitled to unconditional leave to defend.

(b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence, although not a possibly good defence, the defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts may be sufficient to entitle him to defend, that is, if the affidavit discloses that at the trial he may be able to establish a defence to the plaintiffs claim the Court may impose conditions at the time of granting leave to defend the conditions being as to time of trial or mode of trial but not as to payment in to Court or furnishing security.

(d) If the defendant has no defence, or if the defence is sham or illusory or practically moonshine, the defendant is not entitled to leave to defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine, the Court may show mercy to the defendant by enabling him to try to prove a defence but at the same time



protect the plaintiff imposing the condition that the amount claimed should be paid into Court or otherwise secured.

WEB COPY

19. In view of the well settled proposition of law, referred supra, which is binding on this Court, we do not propose to deal with the decisions relied on either side.

20. On consideration of the material in this case, the defence sought to be raised and the criminal complaint earlier lodged, this Court is of the view that triable issues arise in this case and the petitioner/defendant has a good defence. So in the facts of the case and having regard to well settled legal position, discussed above, this Court expresses its inability to endorse the view of the Court below in not granting leave to the petitioner/defendant to defend the claim in the suit filed by the respondent/plaintiff.

21. In the result:

(a) this revision petition succeeds and the impugned order dated 23.09.2005 in I.A.No.15222 of 2005 in O.S.No.3397 of 2005 of the trial Court is set aside and the application for leave to defend the suit by the petitioner/defendant is allowed. The trial Court is directed to take up the suit and dispose of the same on merits and in accordance with law expeditiously, in any event within three months from the date of receipt of a copy of this order;

(b) the petitioner/defendant is directed to file his written statement within a period of four weeks from the date of receipt of a copy of this order;

(c) on filing the written statement, the trial Court is directed to dispose the suit within a period of four months thereafter. No costs.

Sd/-

Assistant Registrar (CS VIII)

//True copy//

Sub Assistant Registrar

vs



To

1. The VII Assistant Judge,
City Civil Court, Chennai.

2. The Section Officer,
VR Section, High Court,
Madras. (2 Copies)

+1cc to Mr.C.Umashankar, Advocate SR.No.30908

C.R.P. (NPD) No.22 of 2006

GMR (CO)
GN(10/05/2018)