BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.06.2018

DELIVERED ON : 28.08.2018

CORAM

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

C.R.P. (MD) (PD) No.1033 of 2018
and
CMP(MD)No.4436 of 2018

Dhanapal .. Petitioner

vs

R.Sakkaraipandi .. Respondent

Civil Revision Petition filed under Article 227 of Constitution of India against the order dated 12.07.2017 passed in I.A.No.430 of 2017 in O.S.No.20 of 2014 on the file of the learned VIth Additional District Judge, Madurai.

For Petitioner : Mr.G.R.Inbaraj

ORDER

This revision is directed against the order dated 12.07.2017 of the learned VI Additional District Judge, Madurai in I.A.No.430 of 2017 in O.S.No.20 of 2014, dismissing the petition filed by the petitioner under Order 7, Rule 11 of CPC.

2. The petitioner is the defendant and the respondent is the plaintiff in the suit. The plaintiff filed the suit for recovery of a sum of Rs.12,03,800/- with interest at the rate of 24% per annum on the principal amount from the date of plaint till the date of realisation. Resisting the suit, the petitioner has filed the written statement.

3. Pending trial, the petitioner has filed I.A.No.430 of 2017 under Order 7, Rule 11 of CPC seeking to reject the plaint alleging that he was residing at Bangalore and all the money transactions were took place at the residential home of the petitioner's residence at Kengeri Satellite Town, Bangalore and in fact, every month interest of Rs.25,000/- was sent to the respondent from Bangalore Bank to the respondent's account in State Bank of India at Madurai. The petitioner came to know the suit proceedings through the notice received by him from his working factory. It was

alleged that the respondent has not obtained license for lending money under the Tamil Nadu Money Lenders Act and the respondent shall not demand or take from the petitioner any interest, profit or other sum whatsoever in excess of that payable. In fact, in the suit, the respondent claimed excess amount and the same was barred by sub-rule (3) of Section 7 of the Tamil Nadu Money Lenders Act.

4. According to the petitioner, the relief claimed by the respondent was objectionable and also against the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. In the plaint itself, the respondent admitted that he has received a sum of Rs.2,07,000/- from the petitioner as interest at the rate of 24% per Rs.100/- per annum, which was punishable offence under the Act. The petitioner has also lodged a police complaint against the respondent before the Nagamalai-Pudukottai Police Station and the same was pending. Since there were defects in the plaint, the same has to be rejected.

5. Resisting the petition, the respondent filed counter stating that the petitioner borrowed an amount of Rs.7.00 lakhs on 05.5.2012 from the respondent at his residence and executed seven separate promissory notes in favour of him each for Rs.1 lakhs agreeing to repay with interest at the rate of Rs.2/- for Rs.100/- in each promissory note. Similarly, the petitioner borrowed a sum of Rs.3.00 lakhs on 9.7.2012 and executed three promissory notes in his favour for an amount of Rs.1 lakh in each promissory note agreeing to repay the same with interest at 24% per annum in each promissory note. It is stated that earlier, the petitioner filed I.A.No.1078 of 2014 to decide the preliminary issues. By an order dated 8.1.2016, the said petition was dismissed by the trial Court, against which, the petitioner preferred C.R.P.(MD) No.960 of 2016 and the same was also dismissed by this Court on 28.4.2016.

6. According to the respondent, the respondent was examined as P.W.1 and when the suit was pending for trial, the petitioner filed petition under Section 10 CPC and the same was rejected at the initial stage itself by the trial Court. Thereafter, the respondent was cross-examined by the petitioner and witnesses to the promissory notes and scribe were examined as P.W.2 to P.W.4 and also the respondent's side evidence was closed. It is stated that when the suit was pending for examination of the petitioner, he filed I.A.No.1026 of 2016 to summon the Income Tax Officer and the same was dismissed by the trial Court. Since witnesses were cross-examined by the petitioner at length and elicited every fact concerning the execution of promissory notes, he was estopped from filing the present petition. As far as cause of action for the suit was concerned, already the said point has been dealt with in I.A.No.1078 of 2014, which was confirmed in C.R.P.(MD) No.960 of 2016.

7. It is further stated that the transaction between the respondent and the petitioner was personal transaction and the

respondent was not doing any money lending business. Since it was a contractual liability between the respondent and the petitioner on the strength of the promissory notes, the interest was calculated at the rate specified in the instruments as per the provisions of Negotiable Instruments Act. In order to protract the trial proceedings, the petitioner has filed the present petition and prayed for dismissal of the same.

8. Before the trial Court, on the side of the petitioner, Exs.P1 to P23 were marked. No document has been marked on the side of the respondent.

9. Upon consideration of the rival submissions, the trial Court dismissed the petition. Aggrieved by the same, the petitioner has filed the present revision.

10. I heard Mr.G.R.Inbaraj, learned counsel appearing for the petitioner and perused the entire materials available on record.

11. Assailing the order of the trial Court, the learned counsel for the petitioner submitted that the trial Court ought to have allowed I..A.No.430 of 2017 taken out by the petitioner for seeking rejection of plaint in O.S.No.20 of 2014 by submitting various and valid reasons, whereas the trial Court miserably and erroneously dismissed the petition without assigning any valid reasons. He would submit that the trial Court miserably and erroneously gave due weight to the pleas taken out by the respondent and the pleas taken out by the respondent were not at all relevant to the very basic nature of the petition. The learned counsel further submitted that the trial Court technically dismissed the petition by holding that the petitioner has taken out petition under Order 7, Rule 11 CPC in order to drag on the proceeding and that the finding of the trial Court was totally against the scope available under Order 7, Rule 11 CPC. and prayed for setting the order of the trial Court.

12. Admittedly, in the case on hand, the petitioner was not able to point out the infirmity in the order of the trial Court. Similarly, the petitioner has not produced any material to show that the finding of the trial Court in the impugned order was totally against the scope available under Order 7, Rule 11 of CPC.

13. As rightly held by the trial Court, in the case on hand, the points to be considered were whether the petitioner borrowed money from the respondent and for security whether the petitioner had executed promissory notes. As also rightly held by the trial Court, the trial has commenced and nearly four witnesses were examined on the side of the respondent and the witnesses were also extensively cross-examined by the petitioner. At this stage, it was not fair on the part of the petitioner in filing petition under Order 7, Rule 11 of CPC seeking to reject the plaint.

14. Order VII, Rule 11 of C.P.C. provides:
"11. Rejection of plaint. - The plaint shall be rejected in the following cases:
(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate; (f) where the plaintiff fails to comply with the provisions of rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

15. In the case on hand, the plaintiff has filed the suit based on the promissory notes executed by the respondent. For the sake, if the petitioner denies execution of the promissory notes and passing of consideration, it is his duty to prove that he had not executed any promissory note and no consideration was passed on. The case of the respondent is that the petitioner had received Rs.7.00 lakhs and Rs.3.00 lakhs on two different dates and had executed several promissory notes and inspite of repeated demands, he had not repaid the same.

16. It was admitted by the petitioner that he had borrowed money from the respondent. However, according to the petitioner, all the money transactions were took place at Bangalore and therefore, the Madurai Court had no jurisdiction to file the suit. The respondent is the resident of Nagamali Pudhikottai, Madurai-19. According to him, the entire transaction took place in his house within the jurisdiction of Madurai Court.

17. It is to be noted that normally, if a person in need of money will only approach the person who is willing to advance the loan. It was not possible that the person who is willing to advance money will go to the residence of the person who is borrowing and given it at his residence. When the petitioner pleaded that the entire transactions were took place at his residence, it is his duty to prove the same that too by letting in evidence and the same cannot be decided as preliminary issue.

18. It is apposite to mention that earlier the petitioner had filed I.A.No.1078 of 2014 to decide the points viz., (i)Whether the cause of action took place at Madurai?; (ii)Whether the suit can be entertained before the Madurai Court without territorial jurisdiction?; (iii)Whether the petitioner was permanently residing and working at Bangalore?. After an elaborate enquriy, I.A.No.1078 of 2014 came to be dismissed by the trial Court. Aggrieved by the same, the petitioner preferred C.R.P.(MD) No.960 of 2016 and the same was also dismissed by this Court confirming the order of the trial Court. Therefore, the petitioner is estopped from raising the jurisdiction point once again.

19. As far as the cause of action for the suit is concerned, in paragraph 10 of the plaint, the respondent has elaborately stated how the cause of action has arisen for the suit. Therefore, it cannot be contended that there was no cause of action for the suit.

20. In so far as the plea of the petitioner that the suit is hit by the Tamil Nadu Money Lenders Act is concerned, nothing has been produced by the petitioner to establish the same. Qua charging of exorbitant interest is concerned, the respondent filed the suit based on the promissory notes, in which, the petitioner agreed to repay the amount with 24% interest per annum. Whether the respondent is entitled to get the interest as per the contractual rate or not is to be decided only at the time of trial. Therefore, these points raised by the petitioner seeking to reject the plaint would not attract the provisions of Order 7, Rule 11 of CPC. Moreover, as stated supra, the petitioner is estopped from filing petition when the trial has begun that too, the petitioner cross-examined the witnesses including the attesting witnesses and scribe of the suit promissory notes. As rightly argued by the respondent only to drag on the trial of the suit, the petitioner has filed this kind of vexatious petition. This Court finds no infirmity and/or perversity in the order of the trial Court and the Civil Revision Petition is liable to be dismissed.

21. In the result:

(a) The Civil Revision Petition is dismissed, by confirming the order passed in I.A.No.430 of 2017 in O.S.No.20 of 2014 on the file of the learned VI Additional District Judge, Madurai;

(b) The learned VI Additional District Judge, Madurai is directed to dispose of the suit in O.S.No.20 of

2014 within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar()

/True Copy/

Sub Assistant Registrar(CS-II)

vsv

To

The VI Additional District Judge,
Madurai.

C.R.P. (MD) (PD) No.1033 of 2018
and
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NM/SV/SAR II/16.11.18/6P/2C.