



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.1144 of 2018 and
C.M.P. (MD) No.4887 of 2018

S.Murugan

... Petitioner/Petitioner/Defendant

-vs-

1. V.Vivekananda
2. V.Nirmaladevi

... Respondents/Respondent/Plaintiffs

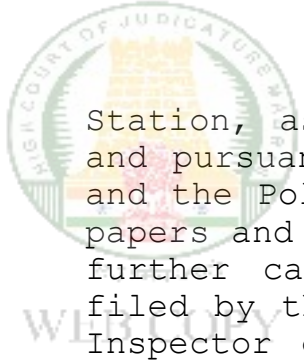
Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair order and decreetal order dated 06.04.2018 made in I.A.No.260 of 2018 in O.S.No.115 of 2014 on the file of the 5th Additional District Court, Madurai and allow this Civil Revision Petition with costs.

For Petitioner : Mr.R.Rajaraman
For Respondents : Mr.V.Janakiramulu

O R D E R

The revision petitioner is the defendant in O.S.No.115 of 2014 on the file of the 5th Additional District Court, Madurai and the plaintiffs had filed the suit for recovery of money of Rs.22,09,244/- with 12% interest per annum on Rs.20,00,000/- from the date of plaint till the date of realization, etc. During the pendency of the suit, the defendant had filed an application in I.A.No.260 of 2018 for summoning one Mr.M.Ravi, Inspector of Police, V-3, J.J.Nagar Police Station for the purpose of examination and the said application was dismissed, on the ground that no purpose would be served in summoning the said Inspector of Police. Aggrieved by such finding, the revision petitioner/defendant is before this Court.

2. It is the case of the revision petitioner that the son of the plaintiffs was a drunkard and they requested the defendant to help them to rehabilitate their son from the said habit. Therefore, the defendant admitted him in one Widsom Rehabilitation Centre and their son was recovered from the drinking habit. The plaintiff incurred some amount towards payment to the said Centre and subsequently, owing to the difference of opinion, they lodged a complaint against the defendant to the V-3, J.J.Nagar Police



Station, as if a sum of Rs.35,00,000/- was misappropriated by him and pursuant to the complaint, he was called to the Police Station and the Police Personnel also obtained some signatures on the blank papers and those papers were handed over to the plaintiff. It is the further case of the revision petitioner that the money suit was filed by the plaintiff only to harass the defendant and unless the Inspector of Police, who investigated the complaint lodged by the plaintiff, is summoned and examined, he may not be in a position to establish that the averments made by the plaintiff are wrong.

3. The revision petitioner states that the case is posted for his examination and the burden of proving the case in respect of obtaining unfilled cheques, blank papers and some documents from him, is shifted to the defendant, for which, it is absolutely necessary to summon the Inspector of Police, V-3, J.J.Nagar Police Station, but, the Trial Court has disallowed the application filed by him. Contending that there was no money transaction taken place between him and the plaintiffs and the said fact can be proved only by examination of the said witness, it is prayed that the order of the Trial Court is liable to be set aside.

4. Per contra, learned counsel for the respondents/plaintiffs would contend that the defendant had borrowed from each of the plaintiff a sum of Rs.10,00,000/- on 07.09.2013 for his urgent family expenses and discharge of sundry debts, etc., by duly executing two promissory notes in favour of the plaintiffs on the very same day and despite several demands, he did not pay the amount towards principal or interest, which forced them to file a suit for recovery of money. While so, the defendant filed a vexatious application for summoning an Official witness to prove his case, which is highly unwarranted and unproductive of success. It is further contended that the plaintiff, having duly proved that the promissory notes were executed at the residence of the defendant at Madurai through examination of P.Ws.5 and 7, seeking to summon an Official witness is nothing, but an abuse of process of law.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. It is seen that the plaintiffs had initiated *lis* against the defendant for recovery of money, which was refuted by the defendant. Subsequently, there were three complaints lodged against the defendant and according to the defendant, based on one such complaint, he was called for enquiry by the Inspector of Police, V-3, J.J.Nagar Police Station and some signatures were obtained on some blank papers at the instance of the plaintiffs and therefore, it is the stand of the defendant that the said Inspector should be summoned for proving the same. It is highly astonishing that for the sake of argument, if it is presumed that the said Inspector of Police is summoned, what is the guarantee that he will depose positively and support the case of the defendant, as it will amount to throwing sand on his own head. The next contention, that

the onus of proof is shifted to him, cannot be accepted, because as rightly held by the Trial Court, it is for the plaintiffs to prove that the defendant had borrowed money from them, given blank cheques and executed promissory notes to substantiate their averments made in the plaint. There could be some justification, if the defendant could have asked for summoning some independent witnesses to prove his case. Finding that no interest of justice will be met in summoning the Inspector of Police, this Court is of the view that the order dated 06.04.2018 made in I.A.No.260 of 2018 in O.S.No.115 of 2014 by the learned 5th Additional District Judge, Madurai is justified and sustainable.

7. In the result,

a) this civil revision petition is dismissed, confirming the order dated 06.04.2018 made in I.A.No.260 of 2018 in O.S.No.115 of 2014 by the learned V Additional District Judge, Madurai;

b) the learned V Additional District Judge, Madurai is directed to dispose of the suit in O.S.No.115 of 2014 within a period of three months from the date of receipt of copy of this order, by conducting trial on day-to-day basis without giving any adjournments to either parties and the parties are also directed to give their fullest cooperation for early disposal of the suit within the specified time as indicated above.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To:

1. The V Additional District Judge,
Madurai.
2. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

- + 1 CC TO Mr.R.RAJARAMAN, ADVOCATE IN SR No. 67965
- + 1 CC TO Mr.V.JANAKIRAMULU, ADVOCATE IN SR No. 68070

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TE/SV/SAR-2 : 18/07/2018 : 3P/6C

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