

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	30.07.2019
Pronounced On	27.08.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(PD).Nos.263 to 268 of 2015

A.Balaji

... Petitioner in
all C.R.Ps

VS

S.K.Malhotra

...Respondent in
C.R.P.(PD).No.263 of 2015

Kanchana Malhotra

...Respondent in
C.R.P.(PD).No.264 of 2015

S.Aarti D. Khatri

...Respondent in
C.R.P.(PD).No.265 of 2015

S.Dimple Bathija

...Respondent in
C.R.P.(PD).No.266 of 2015

Hitesh Malhotra

...Respondent in
C.R.P.(PD).No.267 of 2015

Avinash Malhotra

...Respondent in

C.R.P.(PD).No.268 of 2015

Prayer in C.R.P.(PD).No.263 of 2015: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the impugned fair and decretal orders dated 01.07.2014 in I.A.No.17366 of 2013 in O.S.No.5266 of 2013 on the file of the Learned VII Assistant City Civil Judge at Chennai and allow the petition in I.A.No.17366 of 2013 in O.S.No.5266 of 2013.

Prayer in C.R.P.(PD).No.264 of 2015: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the impugned fair and decretal orders dated 01.07.2014 in I.A.No.17367 of 2013 in O.S.No.5270 of 2013 on the file of the Learned VII Assistant City Civil Judge at Chennai and allow the petition in I.A.No.17367 of 2013 in O.S.No.5270 of 2013.

Prayer in C.R.P.(PD).No.265 of 2015: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the impugned fair and decretal orders dated 01.07.2014 in I.A.No.17368 of 2013 in O.S.No.5268 of 2013 on the file of the Learned VII Assistant City Civil Judge at Chennai and allow the petition in I.A.No.17368 of 2013 in O.S.No.5268 of 2013.

Prayer in C.R.P.(PD).No.266 of 2015: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the impugned fair and decretal orders dated 01.07.2014 in I.A.No.18385 of 2013

in O.S.No.5267 of 2013 on the file of the Learned VII Assistant City Civil Judge at Chennai and allow the petition in I.A.No.18385 of 2013 in O.S.No.5267 of 2013.

Prayer in C.R.P.(PD).No.267 of 2015: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the impugned fair and decretal orders dated 01.07.2014 in I.A.No.18386 of 2013 in O.S.No.5269 of 2013 on the file of the Learned VII Assistant City Civil Judge at Chennai and allow the petition in I.A.No.18386 of 2013 in O.S.No.5269 of 2013.

Prayer in C.R.P.(PD).No.268 of 2015: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the impugned fair and decretal orders dated 01.07.2014 in I.A.No.18387 of 2013 in O.S.No.5271 of 2013 on the file of the Learned VII Assistant City Civil Judge at Chennai and allow the petition in I.A.No.18387 of 2013 in O.S.No.5271 of 2013.

For Petitioner : Mr.M.E.V.Thulasi in all C.R.Ps.

For Respondent : Mr.T.Srikanth in all C.R.Ps.

COMMON ORDER

By this common order all the six Civil Revision Petitions are disposed.

2.The petitioner is aggrieved by the following six fair and decretal orders dated 01.07.2014 passed by the VII Assistant Judge, City Civil Court, Chennai in the respective I.As:-

Table - 1 :

C.R.P.(PD).No	I.A.No	O.S.No
263 of 2015	17366 of 2013	5266 of 2013
264 of 2015	17367 of 2013	5270 of 2013
265 of 2015	17368 of 2013	5268 of 2013
266 of 2015	18385 of 2013	5267 of 2013
267 of 2015	18386 of 2013	5269 of 2013
268 of 2015	18387 of 2013	5271 of 2013

3.These I.As were filed by the petitioner for leave to defend himself in the respective suits filed by the respective respondents.

4.The suits were based on the strength of the promissory notes executed by the petitioner in favour of the respective respondents/plaintiffs in the respective suits. The respondents/plaintiffs of the suits appear to be members of the same family. Their relationships are given below in the table:-

Table – 2 :

S.K. Malhotra	*	Kanchana Malhotra
(Husband)	*	(Wife)
C.R.P.(PD).No.263 of 2015	*	C.R.P.(PD).No.264 of 2015
O.S.No.5266 of 2013	*	O.S.No.5270 of 2013
Hitosh Malhotra		Avinash Malhotra
(Son)		(Son)
C.R.P.(PD).No.267 of 2015		C.R.P.(PD).No.268 of 2015
O.S.No.5269 of 2013		O.S.No.5271 of 2013
S.Aarti D.Khatri		S.Dimple Bathija
(W/o. Hitosh Malhotra)		(W/o. Avinash Malhotra)
C.R.P.(PD).No.265 of 2015		C.R.P.(PD).No.266 of 2015
O.S.No.5268 of 2013		O.S.No.5267 of 2013

5. These suits are based on six different promissory notes executed by the petitioner for a total sum of Rs. 19,50,000/- as detailed below:-

Table – 3 :

C.R.P.No	O.S.No	Favour of the plaintiff	Date of Promissory Note & Cheque No	Amount
263 of 2015	5266 of 2013	S.K.Malhotra	25.08.2012 KVB: 000099	5,00,000
		Kanchana	23.05.2012	3,00,000

C.R.P.No	O.S.No	Favour of the plaintiff	Date of Promissory Note & Cheque No	Amount
264 of 2015	5270 of 2013	Malhotra	KVB: 456279	
265 of 2015	5268 of 2013	S.Aarti D.Khatri	10.05.2012 KVB: 000024	2,75,000
266 of 2015	5267 of 2013	S.Dimple Bathija	23.05.2012 KVB: 000044	3,00,000
267 of 2015	5269 of 2013	Hitosh Malhotra	23.05.2012 KVB: 000041	3,00,000
268 of 2015	5271 of 2013	Avinash Malhotra	10.05.2012 KVB:000045	2,75,000
Total				19,50,000

6.As per the plaint and the averments in the counter filed by the respective respondents, the principal amount re-paid by the petitioner and the balance amounts payable are as under:-

Table – 4 :

C.R.P.No	O.S.No	Amount	Principal Amount paid	Balance Amount to be paid	Interest to be paid	Suit Claim Amount
263/2015	5266 of 2013	5,00,000	2,74,000	2,26,000	90,000	3,16,000 *
264/2015	5270 of 2013	3,00,000	-	3,00,000	67,000	3,67,000 *
265/2015	5268 of 2013	2,75,000	-	2,75,000	61,000	3,36,000 *
266/2015	5267 of 2013	3,00,000	75,000	2,25,000	67,000	2,92,000 *
267/2015	5269 of 2013	3,00,000	75,000	2,25,000	67,000	2,92,000

C.R.P.No	O.S.No	Amount	Principal Amount paid	Balance Amount to be paid	Interest to be paid	Suit Claim Amount
						*
268/ 2015	5271 of 2013	2,75,000	1,10,000	1,65,000	61,000	2,26,000 *
Total		19,50,000	5,34,000	4,16,000	4,13,000	18,29,000 *

(* In all the suits interest were claimed on the balance principal amount together at 18% per Annum)

7.From the above tables, it is discernible that on 10.05.2012 the petitioner had allegedly borrowed a total sum of Rs.5,50,000/- (2,75,000+2,75,000) from the respondents/plaintiffs in C.R.P.(PD).Nos.265 & 268 of 2015, a sum of Rs.9,00,000/- (3,00,000 x 3) from the respondent/plaintiff in C.R.P.(PD).Nos.264, 266 & 267 of 2015 on 23.05.2012 and a further sum of Rs.5,00,000/- in C.R.P.(PD).No.263 of 2015 on 25.08.2012 from the respondents/plaintiffs.

8.After service of suit summons in the above suits, the petitioner filed the respective applications for leave to defend. The affidavits filed in support of the respective applications are skeletal

and contain no details. Paragraph Nos. 2 to 6 read identically with *mutatis muthandis* changes regarding the date of the respective demand promissory notes and the amounts, They read as under:-

2. I state that the plaintiff has filed the above case against me to grab money from me illegally.
3. I further state that averments in Para 3 to 9 of the plaintiff is false on baseless.
4. I further state that I have borrowed money from the plaintiff in the year 2011 (wrongly mentioned as 2005 in the affidavit) and returned it to him/her on various dated but the plaintiff has not chosen to show the accounts.
5. I further state that the plaintiff has not returned my cheques and promissory notes now with malafide intention to grab money from me he/she has filed the respective above suits U/O 37 CPC without invalid cause or reason an it is greedy and illegal.
6. I further submit that there is no cause of action as stated by the plaintiff and there cannot be any claim since the entire amounts have been paid by me. I pray that the plaintiff/respondent may be directed to show the actual accounts.

9.The respective respondents have denied the averments in their respective counter. Again the counter paragraph Nos.3, 4 & 5 of the respective counter are similar with *mutatis mutandis* changes regarding the date of the demand promissory notes and the amounts. The sample of the counter in I.A.No.17366 of 2013 in O.S.No.5266 of 2013 impugned in C.R.P.(PD).No.263 of 2015 read as follows:-

3.A close reading of the affidavit discloses the defendant/petitioner do admit the execution of the promissory note in other words, do admit the signature in the suit promissory note, what all they allege is that the defendants have borrowed money from me in the year 2011 and repaid entire money and the said allegation is neither maintainable in law nor on facts in view of the fact that he has not mentioned how much amount he has borrowed on what date, he has borrowed money and on what date he has repaid the entire money and he has not even whispered whether he had demanded for the return of the alleged discharged promissory note.

4.Therefore it is crystal clear that the defendant/petitioner has borrowed money in the year 2011 and he has repaid the entire money in the year 2011 is untenable. *** So far as I am concerned the approached me for a loan of Rs.5,00,000/-* and when I was about to issue a cheque in favour of the defendants the defendants frantically requested me to lend atleast a sum of Rs.1,10,000/-* and remaining sum by cheque and accordingly, I had issued a cheque bearing No.000099 drawn on Karur Vysya Bank for Rs.3,90,000/-* and cash of Rs.1,10,000/-* and in consideration of the same the defendants had executed suit promissory note in my favour.**

5.In respect of the said promissory note, the defendants had paid only a sum of Rs.2,74,000/-* towards principal as mentioned in para 4 of the plaint. I submit when the defendants failed and neglected to pay the balance of principal and all accumulated interest, I had instructed my advocate to issue a notice of demand demanding repayment of the money due to me. The defendants have evaded to receive the said notice and therefore, I am obliged to file the suit.

(*Amount varies according to the respective suits/promissory notes)

10.By the separate order the Court has dismissed the applications filed by the petitioner for leave to defend the respective suits, placing reliance the decision of the Hon'ble Supreme Court in **Raj Duggal vs Ramesh Kumar Bansal**, AIR 1990 SC 2218. Paragraph No.8 of the impugned order in C.R.P.(PD).No.263 of 2015 reads as under:-

8) On perusal of Ex.R1 promissory note and the plaint there is an endorsement on the left hand corner bottom regarding the details and particulars of passing of the consideration and it is also incorporated in the plaint therefore, the promissory note amount is given by way of cheque. The respondent/plaintiff had admitted the payment of Rs.95,000/- (Rupees Ninety Thousand only) paid by way of cash as part payment. The petitioner has neglected and failed to pay the amount, when demanded. The

petitioner has evaded to receive Ex.R2 notice. If the allegations made by the petitioner is true, the petitioner would have replied either denying or discharging the liability or would not have made a part payment. Neither of these have been done by the petitioner/defendant.

11.The court also recorded the payment of amounts by the petitioner subsequent to the institution of suit in the respective orders. The impugned order in the other Civil Revision Petitions also read similarly with *mutatis mutandis* changes in the amounts and dates of demand Promissory Notes.

12.Heard M/s.M.E.V.Thulasi, learned counsel for the petitioner in respective C.R.Ps and Mr.T.Srikanth, learned counsel for the respondent in respective C.R.Ps.

13.The learned counsel for the petitioner admits that the affidavits filed in support of the petition to leave to defend are not detailed. She however submits that no case was out by the respective respondents for decreeing the suit without trial. It was further submitted since according to the respondents/plaintiffs amounts have been partially paid after the institution of the suits, the court ought to have granted leave to defend to the petitioner by allowing these I.As. The learned counsel for the petitioner submits that there is a triable issue and the amounts allegedly due cannot

be decided in a summary manner.

14.It is submitted that the petitioners were entitled for fair chance to dispute the claim of the respective respondents in the above suits. The learned counsel for the petitioner relied on the following cases:-

- i. **Mahammad Gulraiz Hasan vs The Lt.Governor of Delhi and others**, passed by Central Administrative Tribunal Principal Bench in O.A.No.689 of 2013.
- ii. **C.C.Alavi Haji vs Palapetty Muhammed and Another**, (2007) 6 SCC 555.
- iii. **Smt.Kiranmoyee Dassi and another vs Dr.J.Chatterjee**, 1949 AIR (Calcutta) 479.
- iv. **The Jawala Bank Ltd., Agra and Another vs Ch.Habib Ahmad and Another**, 1952 AIR (Punjab) 296.
- v. **Raj Duggal vs Ramesh Kumar Bansal**, 1991 Supp (1) SCC 191.
- vi. **Santhosh Kumar vs Bhai Mool Singh**, AIR 1958 SC 321.

15.The learned counsel for the petitioner submits that the suits have been filed without details and have been instituted without service the pre suit notice by enclosing undelivered pre suits notices allegedly sent to the petitioner and that was contrary to Section 27 of the General Clause Act.

16. That apart the learned counsel for the petitioner submits though the leave to defend was rejected, the lower court has decreed the suit without giving credit to the amount allegedly repaid by the petitioner on 03.10.2013.

17.Per contra, the learned counsel for the respective respondents submits that the impugned order passed by the lower court are well reasoned and require no interference and therefore the respective Civil Revision Petitions are liable to be dismissed. The learned counsel for the respective respondents relied on the following case:-

- i. **V.K.K.Nair vs D.Shittal kumar**, 2004 (5) CTC 734.
- ii. **Aman Gulyani vs Praveen Kumar**, 1999 SCC OnLine Del 752.
- iii. **V.K.K.Nair vs Kanchan Kavar**, 2005 (1) CTC 748.
- iv. **V.K.Enterprises and Another vs Shiva Steels**, (2010) 9

SCC 256,

18.The learned counsel for the respective respondents have further submitted that the petitioner has also not denied signing in the respective promissory notes and had partially paid the amount after the institution of the above respective suits and thereby admitted the liability.

19.It was further submitted that in any event there was no necessity to issue pre suit notice to the petitioner before filing of the suit and therefore, even if as alleged that there was no service of pre suit notice, it was no fatal either to the institution of the summary suit or for rejecting the application for leave to defend or for decreeing the summary suit.

20. I have considered the arguments advanced by the learned counsel for the petitioner and learned counsel for the respective respondents in the respective Civil Revision Petitions.

21.Though several decisions were cited by the parties, the law on the subject is clear. As per the law settled by the Hon'ble Supreme Court, Order 37 CPC has been included in the Code of Civil

Procedure in order to allow a person, who has a clear and undisputed claim in respect of any monetary dues, to recover the dues quickly by a summary procedure instead of taking the long route of a regular suit. The courts have consistently held that if the affidavit filed by the defendant discloses a triable issue that is at least plausible, leave should be granted, but when the defence raised appears to be moonshine and sham, unconditional leave to defend cannot be granted." This was the ratio in **V.K.Enterprises and Another vs Shiva Steels**, (2010) 9 SCC 256.

22.A similar view was taken by the Hon'ble Supreme Court on an earlier occasion also in **Raj Duggal vs Ramesh Kumar Bansal**, 1991 Supp (1) SCC 191, wherein it was held that *the test is to see whether the defence raises a real issue and not a sham one, in the sense that if the facts alleged by the defendant are established there would be a good or even a plausible defence on those facts. If the court is satisfied about that leave must be given. If there is a triable issue in the sense that there is a fair dispute to be tried as to the meaning of a document on which the claim is based or uncertainty as to the amount actually due or where the alleged facts are of such a nature as to entitle the defendant to interrogate the plaintiff or to cross-examine his witnesses leave should not be*

denied. Where also, the defendant shows that even on a fair probability he was a bona fide defence, he ought to have leave. Summary judgments under Order 37 should not be granted where serious conflict as to matter of fact or where any difficulty on issues as to law arises. The court should not reject the defence of the defendant merely because of its inherent implausibility or its inconsistency.

23.The Hon'ble Supreme Court in **Santhosh Kumar vs Bhai Mool Singh**, AIR 1958 SC 321 has observed that *in general, therefore, the test is to see whether the defence raises a real issue and not a sham one, in the sense that, if the facts alleged by the defendant are established, there would be a good, or even a plausible, defence on those facts.*

24.The court has also observed that *this at once raised an issue of fact, the truth and good faith of which could only be tested by going into the evidence and, as we have pointed out, the learned trial Judge held that this defence did raise a triable issue. But he held that it was not enough for the defendants to back up their assertions with an affidavit; they should also have produced writings and documents which they said were in their possession*

and which they asserted would prove that the cheques and payments referred to in their defence were given in payment of the cheque in suit.

25.The Court also observed that at that stage all that the court has to determine is whether "if the facts alleged by the defendant are duly proved" they will afford a good, or even a plausible, answer to the plaintiff's claim. Once the court is satisfied about that, leave cannot be withheld and no question about imposing conditions can arise; and once leave is granted, the normal procedure of a suit, so far as evidence and proof go, obtains. The power to impose conditions is only there to ensure that there will be a speedy trial. If there is reason to believe that the defendant is trying to prolong the litigation and evade a speedy trial, then conditions can be imposed. But that conclusion cannot be reached simply because the defendant does not adduce his evidence even before he is told that he may defend the action.

26.Similar view has been followed in the decisions cited by the counsels for the respondents.

27.The pattern in the six summary suits are similar. The

averment of the petitioner in the respective applications for leave to defend are also similar in all the six suits. The defence of the respondents/plaintiffs in the respective applications for leave to defend are paraphrased identically. The impugned orders are also paraphrased similarly. The grounds the Civil Revision Petition are also paraphrased similarly.

28.The transactions are from the members of same family. The cheque under which payments were allegedly given also appear from the same bank namely KVB indicating karur Vysya Bank. The cheque numbers given also appear to indicate that they have been issued by one of the respondents who holds the account with the said bank though the promissory notes have been executed by the petitioner in favour of the six respondents/plaintiff.

29.The amounts in the promissory notes appear to have been filled up by the same person. The transactions are during the same calendar years. Five transactions are during the month of May, 2012 and one transaction is during the month of August, 2012.

30.Both affidavit and counters filed to leave to defend is also bareft of details. From a cumulative reading of the counters and the affidavits filed in support of the application to leave to defend and counter, it is evident that the respondents have stated that the petitioner had allegedly borrowed the aforesaid amounts and had partially re-paid the amount. However, there are no documents to substantiate when amounts were re-paid in cash and cheque and the particular of the dates.

31.Thus, there is a reasonable doubt in the manner in which the entire transaction has been recorded by the respondents in the respective suits.

32.That apart on a cumulative reading of all the plaints together indicate that despite lending a total sum of Rs.5,50,000/- (2,75,000 + 2,75,000) on 10.05.2012 by the respondents in C.R.P.(PD).Nos. 265 & 268 of 2015 and another tranche for a sum of Rs.9,00,000/- (3,00,000 x 3) was allegedly paid on 23.05.2012 by the respondents in C.R.P.(PD).Nos.264, 266 & 267 of 2015 which are within 13 days and of 1st payment a further sum of Rs.5,00,000/- was paid on 25.08.2012 by the respondent in C.R.P.(PD).No.263 of 2015. All of the lenders are members of the

same family. It appears *prima facie* improbable if these transactions would have taken place as has been stated in the plaint. No bank statements have been filed by the respondents to substantiate the same.

33.From the table, it is noticed even as per the respondent, the petitioner has already paid a total sum of 11,08,000/- before the institution of suit and after the institution of suit (on 03.10.2015). No receipts have been filed.

34.The transactions as narrated above in the plaint appear to create a reasonable doubt particularly in the light of the fact that the amounts that have been allegedly lent were not by any random persons but by the members of the same family i.e husband, wife and their two sons and their respective spouses. If the petitioner had already borrowed amounts but had not re-paid the amounts, further lending of money individually by the members of the same family appears improbable. This can be decided only in a trial.

35.Even though, the affidavits filed in support of the leave by the petitioner are very skeletal, I am of the view that in the facts of the case, the court should have granted leave to defend to the

petitioner on a cumulative reading of all the plaints.

36.I am therefore inclined to interfere by setting aside the respective impugned orders subject to the condition that the petitioner deposits a sum of Rs.1,25,000/- in each of the suits (1,25,000 x 6 = 7,50,000) before the lower Court within a period of three months from the date of receipt of a copy of this order, less amount already paid during the pendency of the present Civil Revision Petitions, if any to prove his bonafide.

37.On such deposit the petitioner shall file his written statement and thereafter the respective respondents shall file their reply statement if any. Liberty is given to the respective respondents to amend the plaint and to file documents to substantiate the suit claim. The respective respondents are entitled to withdraw the aforesaid amounts.

38.The court shall thereafter proceed to frame issues and conduct a joint trial and dispose all the six suits within a period of twelve months from the date of receipt of a copy of this order.

C.SARAVANAN, J.

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39.The present Civil Revision Petitions are allowed with the above observations.

27.08.2019

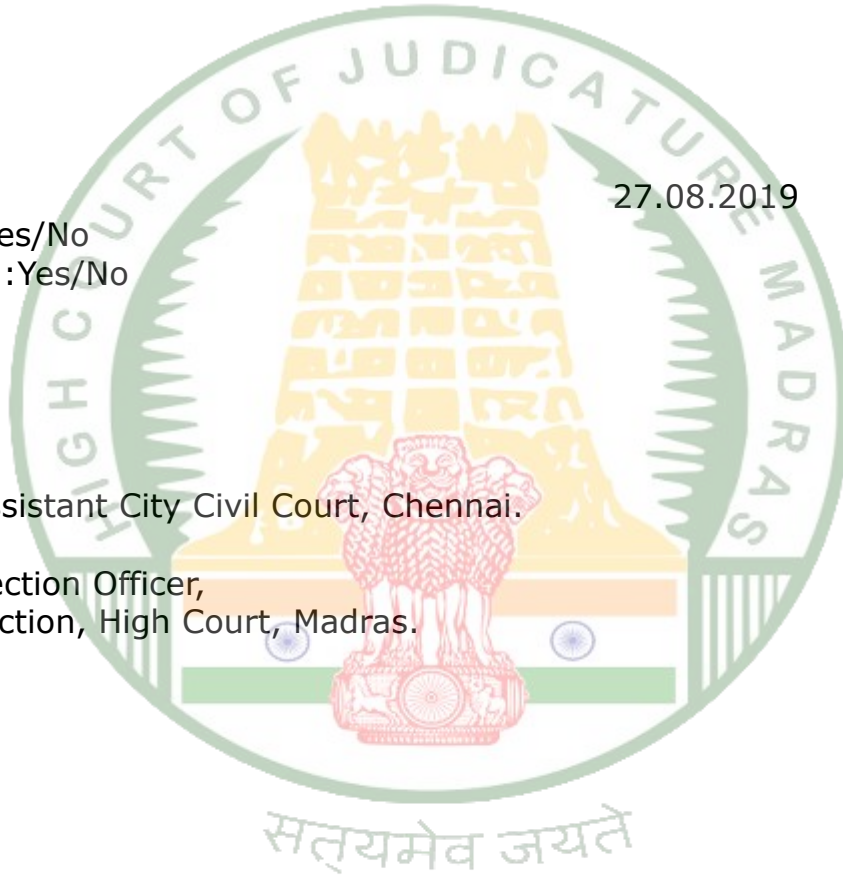
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To

1.The Assistant City Civil Court, Chennai.

2.The Section Officer,
V.R.Section, High Court, Madras.



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Pre-Delivery Order
in
C.R.P.(PD).Nos.263 to 268 of 2015