

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	28.06.2019
Pronounced On	25.07.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN****C.R.P.(NPD).No.942 of 2015****and****M.P.No.1 of 2015**

A.Dhurga Shankar,

.. Petitioner

vs

1.State Bank of India
Jawahar Nagar Branch,
Rep.by City Case Officer,
Stressed Assets Recovery Branch,
Chennai – 600 008.

2.A.Sakthilakshmi

3.M.Ayyamperumal

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the judgment and decree dated 12.06.2014 made in I.A.No.954 of 2014 in O.S.No.3865 of 2013 passed by the learned VI Assistant City Civil Court, Chennai.

For Petitioner : M/s.N.Umapathi

For R1 : Mr.K.Sankaran

For R2 & R3 : No appearance

ORDER

The petitioner is aggrieved by the impugned order dated 12.06.2014 passed by the lower Court in I.A No.954 of 2014 in O.S No. 3865.

2.By the impugned order, the Court has rejected the prayer of the petitioner for a leave to defend under Order XXXVII of the CPC.

3.Aggrieved by the impugned order dated 12.06.2014 in I.A.No.954 of 2014 the petitioner has filed the present Civil Revision Petition.

4.The petitioner was the 3rd defendant in O.S.No.3865 of 2013 which was filed under Order XXXVII Rule 2 of CPC. In the said suit, the 1st respondent/ plaintiff prayed for the following relief:-

- i. to pay Rs.5,60,728/- towards the outstanding in the loan account.
- ii. for interest at 14.25% p.a with monthly rests from the date of suit till realisation on the aforesaid amount.
- iii. for cost of the proceedings and for such further or other orders as may be deemed fit and necessary in the circumstances of the case and render justice.

5.It is the case of the petitioner that there has been a violation of mandatory requirement of Order 37 Rule 3 of the CPC in as much as the suit summons and the plaint did not accompany the annexure i.e the suit documents.

6.Having received the summons without the copy of the documents, the petitioner filed I.A.No.954 of 2014 for leave to defend stating that the there has been violation of the conditions of Order 37 Rule 3 of CPC.

7.It was submitted that without the documents, the petitioner was unable to defend himself in the summary proceedings and therefore sought for leave.

8.The 1st respondent/plaintiff in their counter stated that they have filed adequate number of copies of the documents along with the plaint as per the procedure under order 37 Rule 3 of CPC and therefore they cannot be faulted if the suit documents were not served to the petitioner by the Court.

9.It is further stated that the petitioner ought to have retrieved the same from the court bundle and since there was a

failure on the part of the petitioner to collect the same, leave to defend should not be granted. It was further submitted that application to leave to defend the suit was intended to drag on the proceedings.

10.The trial Court rejected the prayer of the petitioner and decreed the suit on 12.06.2014 and held that the petitioner along with the defendants (principal borrowers) were jointly and severally liable for the suit claim.

11.It is the case of the petitioner that he merely stood as a guarantor for the loan give to the 2nd and 3rd respondents (1 & 2 defendants) in the year 2004.

12.The 1st respondent has merely obtained letter for revival of liability only from the 2nd and 3rd respondents on 13.08.2007 and 17.07.2010. They have not obtained letter for revival of liability from the petitioner. Therefore, the suit was barred by limitation as against the petitioner.

13.Heard learned counsel for the petitioner and the respondent bank.

14.The learned counsel for the respondents submits that at the time of signing Deed of Guarantee (a specimen copy of letter of guarantee was shown), a guarantor agrees to waive limitation and agrees to bind himself of the principal borrower gives fresh letters to revive his liability. In this connection, the learned counsel for the respondent bank refers to clause 9 of the specimen copy Deed of Guarantee in support the case. Relevant portion of the Clause 9 reads as under:-

“I/We further agree that in the borrower (s) making an acknowledgment or making payment he shall in audition to his personal capacity be deemed to act as my/our duty authorised agent in that behalf for the purposes of Section 18 & 19 of the Limitation Act of 1963.”

15.The learned counsel for the petitioner submits that the suit was time-barred and the letter of guarantee dated 16.09.2004 would not have permitted revival of limitation beyond as was submitted.

16.It was therefore submitted that it cannot be interfered that the respondent bank had a valid claim subsisting against the petitioner in the year of 2013. Merely because the original defendants (R2 and Rs) had given two letters of rival on 31.08.2007 and 17.07.2010, the limitation cannot be fastened on the petitioner.

17.The learned counsel for the petitioner referred to the decision rendered in **Neebha Kapoor vs Jayantilal Khandwala and Others**, (2008) 3 SCC 770, wherein referred the paragraph 12 wherein it was held that power to grant leave is discretionary.

18.He also referred another recent decision of this Court in **C.Kalaiselvan vs K.Pitchandi** in C.R.P.(NPD).No.244 of 2016 wherein it was held that apart, the defendant has taken out a defence that the very loan due under the promissory note has been discharged which has to be proved based on the documents, which is a triable issue.

19.Since the documents were not available, the court records were called for an examined. Extracted portion of Clause 9 in the specimen Date of Guarantee filed by the learned counsel for the respondent bank during hearing is conspicuously absent in suit document No. 4 filed by the respondent bank in the said summary suit.

20.There has been no waiver in the said documents by the petitioner binding himself to the liability if the Principal borrower executes letter of revival of liability. In my view, the impugned order has been passed without proper application of mind. The petitioner

has a triable case defence in the above suit. Therefore, I am constrained to set aside the impugned order for consequential relief. Therefore the present Civil Revision Petition deserves to be allowed.

21.Learned VI Asst City Civil Judge, Chennai shall therefore take up the above suit and proceed with the trial within a period of six months from date of receipt of a copy of this order. Needless to say, the petitioner shall be entitled to file a written statement and let in oral evidence.

22.The above Civil Revision Petition stands allowed with the above the observation. No cost. Consequently, connected Miscellaneous Petition is closed.

25.07.2019

Index : Yes/No
Internet : Yes/No
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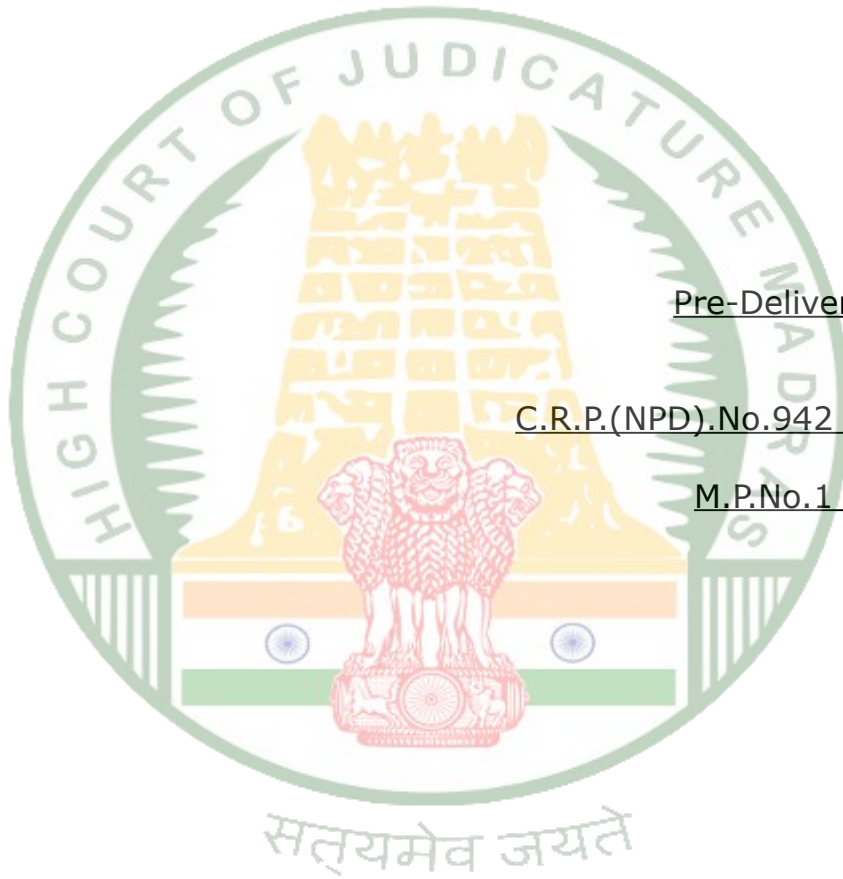
To

- 1.The VI Assistant City Civil Court,
Chennai.
- 2.The Section Officer,
V.R.Section, High Court, Madras.

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C. SARAVANAN J.,

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Pre-Delivery order
in

C.R.P.(NPD).No.942 of 2015
and
M.P.No.1 of 2015

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