

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 26th DAY OF FEBRUARY 2019

THE HONBLE MR.JUSTICE R.SUBRAMANIAN

A.Nos.2603 & 2604 of 2019

in
C.S. No.502 of 2018

Mr.Shanavazz Mohamed,
S/o.Mohamed Haneef,
No.47/C/C1, Regal Enclave Flats,
Bajanai Koil Street, Choolaimedu,
Chennai-600 094. ... Plaintiff

-Versus-

1. Mrs.Parveen Jaleela,
W/o.A.Noordeen,
NJF Manzil,
24/1, Langas Garden Road,
Pudupet, Chennai-2.
2. A.Noordeen,
S/o.Abul Hassan,
NJF Manzil,
24/1, Langas Garden Road,
Pudupet, Chennai-2. ... Defendants

A.No.2603 of 2019:

Mrs.Parveen Jaleela,
W/o.A.Noordeen,
NJF Manzil,
24/1, Langas Garden Road,
Pudupet, Chennai-2.

...Applicant/Applicant/first Defendant

-vs-

Mr.Shanavazz Mohamed,
S/o.Mohamed Haneef,
No.47/C/C1, Regal Enclave Flats,
Bajanai Koil Street, Choolaimedu,
Chennai-600 094.

...First Respondent/First Respondent

2.A.Noordeen,
S/o.Abul Hassan,
NJF Manzil,
24/1, Langas Garden Road,
Pudupet, Chennai-2.

..Second Respondent/Second Respondent

Application praying that this Honble Court be
pleased to aside the order dated 26.02.2019 passed by the
Honble Master Court in A.No.6717/2018 in C.S.No.502/2018.

A.No.2604/2019:

A.Noordeen,
S/o.Abul Hassan,
NJF Manzil,
24/1, Langas Garden Road,
Pudupet, Chennai-2.

...Applicant/Second Defendant

-vs-

1.Mr.Shanavazz Mohamed,
S/o.Mohamed Haneef,
No.47/C/C1, Regal Enclave Flats,
Bajanai Koil Street, Choolaimedu,
Chennai-600 094.

2.Mrs.Parveen Jaleela,
W/o.A.Noordeen,
NJF Manzil,
24/1, Langas Garden Road,
Pudupet, Chennai-2.

...Respondent/Respondent

Application praying that this Honble Court be
pleased to set aside the order dated 26.02.2019 passed by
the Honble Master Court in A.No.6354/2018 in
C.S.NO.502/2018.

These applications coming on this day before this
court for hearing the Court made the following order:

These applications have been filed challenging the
order of the learned Master passed in A.Nos.6717 and 6354

of 2018 in CS.No.502 of 2018.

2. The said suit was filed for recovery of a sum of Rs.43,27,081/- together with interest. According to the plaintiff, the monies were deposited on various dates to the credit of the accounts of the 1st defendant and they represented the loans that were borrowed by the defendants, who are husband and wife, from the plaintiff.

3. The plaintiff had filed a suit as an under-chapter suit. The defendants had filed applications in A.Nos.6717 and 6354 of 2018 seeking leave to defend the suit.

4. While the 1st defendant contended that those monies were not loan received by the defendants, but they represented the investment of the plaintiff in the business carried on by the defendants. The 2nd defendant would however contend that none of the deposits were made to his accounts and therefore he cannot be made liable to answer the suit claim. On the above contentions, the defendants sought for leave to defend the suit.

5. The learned Master after referring to the judgment of the Hon'ble Supreme Court in **IDBI Trusteeship Services Limited Vs. Hubtown Limited** reported in **2017 (1) SCC 568**, held that apart from Bank transactions there is no document to show that there is a debt/ liability

imposed on the applicants/ defendants.

6. The learned Master had also concluded that the question as to whether the suit transaction would be a loan borrowed by the defendants or investment made by the plaintiff in the business carried on by the defendants will have to be decided only after recording evidence. The learned Master however granted conditional leave by directing the defendants to furnish security to the tune of Rs.50 Lakhs which is over and above the suit claim.

7. Aggrieved by the said order, the defendants have come forward with these applications.

8. I have heard Mr.S.Elambharathi, learned counsel for the applicant in A.No.2603 of 2019, Mrs.Abitha Banu, learned counsel for the applicant in A.No.2604 of 2019 and Mr.R.Raman Lal, learned counsel appearing for the respondent/ plaintiff.

9. The law relating to grant of leave to defend is well settled. The learned Master had referred to the latest judgment of the Hon'ble Supreme Court. However, the learned Master had imposed onerous condition directing the defendants to furnish security to the tune of Rs.50 Lakhs, where the suit claim itself is only Rs.43,27,081/-.

10. From the details of the deposit set out in the suit, it could be seen that no amounts were deposited to

the account of 2nd defendant. All the amounts were deposited to the account of 1st defendant only. The plaint also discloses that the defendants have paid certain amounts by way of cash/ deposits to the plaintiff. According to the defendants, those payments are the profits that were made out of the investment. Since the business went into loss, the defendants were unable to share the profits. The learned Master has rightly concluded that these questions will have to be decided at the time of trial.

11. The learned counsel appearing for the plaintiff is unable to give proper explanation for having accepted the payments set out in paragraph 6 of the plaint.

12. In view of the same, I find that the learned Master was not right in granting leave on condition that the defendants must furnish security of Rs.50 Lakhs which is over and above the suit claim. Once a plausible defence is set out, the court has to grant leave. Conditional leave can be granted only when the defence appears to be untenable.

13. I am therefore of the considered opinion that the learned Master was not right in imposing a onerous condition directing the defendants to furnish security for a sum of Rs.50 Lakhs which is over and above the suit claim.

14. Hence, both these applications are **allowed**.
Unconditional leave is granted to the defendants to
defend the suit.

15. Since the suit itself is valued below Rs.1
Crore, the Registry is directed to transfer the suit to
City Civil Court, Chennai for further proceedings. The
Registry is also directed to forward the papers to the
City Civil Court at the earliest.

sd/-R.S.M.J

08.07.2019

//Certified to be a true copy//

Dated this the day of 2019

R.s/12.07.2019

COURT OFFICER

**From 25.09.2008 the Registry is issuing certified copies
of the Order/Judgment Decree in this format.**

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