

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).No.244 of 2016

and

C.M.P.No.1190 of 2016

C.Kalaiselvan

... Petitioner

-VS-

K.Pitchandi

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order in I.A.No.3538 of 2013 in O.S.No.3719 of 2011 on the file XV Assistant City Civil Court, Chennai dated 25.06.2013 by allowing the Civil Revision Petition.

For Petitioner : Mr.T.Jayaramraj

For Respondent : No Appearance

WEB COPY
ORDER

The Civil Revision Petition is filed challenging the order passed in I.A.No.3538 of 2013 in O.S.No.3719 of 2011, which was a petition filed by the defendant seeking leave to defend the summary suit filed by the respondent/plaintiff.

2. The respondent had filed a suit for recovery of a sum of Rs.3,60,000/- together with interest 24% per annum on the basis of a promissory note dated 10.06.2009. The case of the plaintiff was that the revision petitioner/defendant had undertaken to pay the said sum on demand, but had however failed to repay the said sum. The plaintiff had issued a legal notice dated 22.03.2011, but however, the defendant had failed to send a reply or pay the amounts. Therefore, the plaintiff had invoked provisions of Order 37 Rule 1 of CPC and instituted the suit as an under chartered suit.

3. A reading of the plaint would show that the pleading has not been couched in the form prescribed for an under chapter suit and it is informed that the summons were also not served, which is the summons that is to be served for an under chapter suit. 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. In fact, in the affidavit filed in support of the leave to defend application, the defendant would submit that he has sent a reply as soon as he received a legal notice dated 22.03.2011, wherein he had contented that the entire loan has been settled on 15.02.2007. Despite receiving the reply notice, the plaint is silent about the receipt of the suit notice.

4. The learned XV Assistant City Civil Judge, Chennai, who heard the said application has dismissed it just with a one line order, that *prima facie* borrowing has been proved and that there is no triable issue. Therefore, the leave could not be demanded.

5. In my respectful opinion, the said observation cannot be countenanced. The learned Judge has not looked into the fact that the procedure contemplated under Order 37 of CPC has not been complied with, insofar as the pleadings are concerned. Order 37 Rule 2 of CPC specifically states that the pleadings should contain

- (i) a specific averment that the suit is filed under the said order;
- (ii) that no relief is claimed which does not fall under the Rule, and
- (iii) the summons in the suit should be in Form No.4 in before the Appendix-B of the CPC.

6. In view of the above, the order passed by the learned XV Assistant City Civil Judge, Chennai, suffers from infirmity and the same is set aside. Exercising Jurisdiction under Order 37 Rule 4 of CPC, this Court is setting aside the decree which was passed in the suit as a consequence to the dismissal of the leave to defend the petition.

P.T.ASHA.,J

hvk/esbi

7. The Civil Revision Petition stands allowed, on the above grounds.

No costs. Consequently, connected Miscellaneous Petition is closed.

01.03.2019

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order
hvk/esbi

To

The XV Assistant City Civil Court,
Chennai.



WEB COPY

C.R.P.(NPD).No.244 of 2016
and
C.M.P.No.1190 of 2016