

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2019

CORAM

THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.(NPD)No.337 of 2016

and

CMP.No.1781 of 2016

1. Mr. Mathialagan
2. Mrs. Vijaya Mathialagan

...Petitioners

Vs

M/s. Royal Vinayam Chits (P) Ltd.,
Represented by K.V. Krishnadasan
No.36, V.V. Koil Street, Periamet,
Chennai -600 003.

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order passed in I.A.No.102 of 2014 in O.S.No.7051 of 2014 dated 30.09.2015 by the XV Additional Judge, City Civil Court, Chennai.

For Petitioners : Mr. R. Sivakumar
For Respondent : Mr. C. Rajan

ORDER

The above Civil Revision Petition is filed challenging the order dismissing the leave to defend application filed by the defendants and consequentially decreeing the suit in O.S.No.7051 of

2012 by the learned XV Additional Judge, City Civil Court, Chennai.

2. The facts in brief are as follows:

The respondent/plaintiff had filed the suit O.S.No.7051 of 2012 on the file of the XV Additional Judge, City Civil Court, Chennai as an under chapter suit claiming recovery of a sum of Rs.12,00,000/- with interest at the rate of 24 per cent per annum towards the amounts borrowed by the defendants from the plaintiff. After executing the promissory note dated 08.07.2009, the plaintiff would contend, that despite several demands, the amounts have not been paid either towards the principle or towards the interest and therefore left with no other alternative, the suit is being filed as a summary suit.

3. After receiving notice in the suit, on entering appearance, the defendants have filed I.A.No.102 of 2014 seeking leave to defend the summary suit, on the ground that

a) the plaintiff had collected blank cheques and blank promissory notes which are now being misused against them.

b) that the plaintiff had initiated proceedings under the Negotiable Instruments Act, which is pending and

c) No statement of account had been furnished by the plaintiff.

4. They would further contend that there are several factual aspects which have to be gone into. There are triable issues, which have to be considered in the suit and therefore leave has to be granted.

5. The said application was resisted by the plaintiff by contending that the defendants are not entitled to any unconditional leave to defend the suit as there is no triable issue and therefore being a summary suit the decree should follow. The learned XV Additional Judge, City Civil Court, Chennai by her order dated 30.09.2015 dismissed the said application, challenging the same, the revision petitioner has preferred the above Civil Revision Petition. Since the Application seeking leave to defend has been dismissed consequentially the suit O.S.No.7051 of 2012 has also been decreed on the same date.

6. Initially, when the matter was posted, this Court tried to bring about the settlement by asking the defendant to make payments to the respondent/plaintiff however, the Advocate has pleaded inability to repay the said sum and therefore this Court has proceeded to hear the Civil Revision Petition.

7. The contentions which have been raised before the trial

Court are once again reiterated here. The learned counsel appearing for the petitioners has filed an additional typed set of papers in which he has brought to the notice of this Court legal notices that have been received from the defendant each of which with a different stand. In the notice dated 01.02.2012, the 1st defendant/1st revision petitioner would contend that he was regular in the payment of dues and by the end of 2008 as he suffered huge loss in the business, he could not pay the dues promptly, however for the year 2019, he had paid a sum of Rs. 58,000/-. Thereafter, he has been making payments of Rs.4,000, 5,000/- etc and for all such payments, no receipts had been issued by the plaintiff. In the said letter, the 1st defendant had asked for a statement of accounts, and offering one time settlement of the dues. Thereafter, another legal notice that has been issued on 12.07.2012 where the second defendant had submitted that she was compelled to sign in some blank papers as a guarantor and that she has not executed any promissory note in favour of the plaintiff/Company and she had further pleaded that she has no knowledge of the chit transaction that her husband had. In the leave to defend application it is also stated that the respondent/plaintiff had initiated proceedings against the petitioners herein under the Negotiable Instruments Act and the same is pending. They have not borrowed a sum of Rs.10,00,000/- from the respondent/plaintiff; on the other hand a sum of Rs.15,00,000/- was

given to them as prize money and nearly the entire amount has been re paid. However the plaintiff/Company had claimed a sum of Rs.17,20,000/- as on 28.06.2012.

8. The defendant had also alleged that the interest which was being levied by the plaintiff was more. These are the issues which are factual and not triable issues. Admittedly, there has been borrowing and amounts have been paid for which in their letter the defendant had sought for the statement of account. It is also submitted that the statement of account has since been given to the defendant, and no amounts have been paid till date. The defendant has not made out any case for granting leave to defend and the issues stated in the affidavit filed in support of the leave to defend application are trivial in nature. I do not find any infirmity in the order impugned calling for interference Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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12.04.2019

Index: Yes/No
Internet:Yes/No
Speaking order / Non-speaking order

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P.T.ASHA, J.,

mrn

To,
1. The XV Additional Judge,
City Civil Court,
Chennai

2. M/s. Royal Vinayam Chits (P) Ltd.,
Represented by K.V. Krishnadasan
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