

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.04.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).No.498 of 2016

and

C.M.P.No.2588 of 2016

M.E. Narasimman

...Petitioner/Applicant
/Defendant

Vs

K.V. Ramaiah

...Respondent/Respondent
/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 10.10.2015 made in I.A.(SR).No.47138 of 2015 in O.S.No.9480 of 2009 on the file of the learned I Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.N. Veerasamy

For Respondent : Mr.T. Skandhakumaar

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned I Assistant Judge, City Civil Court, Chennai, in an unnumbered I.A.(SR).No.47138 of 2015 filed for setting aside the order dated 30.03.2010 in O.S.No.9480 of 2009.

2.I.A.(SR).No.47138 of 2015 is filed to set aside the Judgment and Decree dated 30.03.2010 in O.S.No.9480 of 2009 on the file of the learned I Assistant Judge, City Civil Court, Chennai.

3. Along with the above application, two other applications were also filed:

(a) I.A.(SR).No.47139 of 2015 is filed to stay all further proceedings in pursuance of the Judgment and Decree dated 30.03.2010 in O.S.No.9480 of 2009 on the file of the learned I

Assistant Judge, City Civil Court, Chennai, pending disposal of the application.

(b).I.A.(SR).No.47140 of 2015 is filed to stay the execution of the Decree dated 30.03.2010 made in E.P.No.2926 of 2015 in O.S.No.9480 of 2009 pending on the file of the learned X Assistant Judge, City Civil Court, Chennai.

4.The brief facts preceeding the filing of the above application is that the respondent/plaintiff had filed a suit O.S.No.9480 of 2009 for a recovery of a sum of Rs.2,14,060/- due on the Promissory Note dated 09.11.2003. In the Plaint, he would state that there is an acknowledgment of debt on 28.09.2006 by making a part payment which had extended the period of limitation in respect of Promissory Note. On receipt of the summons in O.S.No.9480 of 2009, the defendant had filed I.A.No.25088 of 2009 seeking unconditional leave to the petitioner to contest the suit. The unconditional leave was

sought on the ground that the defendant had repaid the entire loan by way of Cheques and five demand drafts and subsequent to this, the same has been cleared and thereafter, another payment has been made by the plaintiff on 22.05.2006 and this sum of Rs.1,00,000/- was also repaid by the defendant on 28.09.2006 by way of Demand Draft. He would therefore contend that there is no cause of action in the suit and the suit is hopelessly barred by limitation as the suit is in respect of the Promissory Note dated 09.11.2003 filed in the year 2009.

5.The learned Judge dismissed the said application after contest and thereafter, as a consequence, the suit was decreed. After the suit was decreed, the impugned application has been filed along with the two other applications for staying of the suit and for staying of the execution proceedings reiterating the very same contention, i.e., seeking leave to defend the suit. The learned Judge dismissed the application without numbering the same on the ground that no special circumstances have been put

forward and that once the Order XXXVII Rule 3 of the Code of Civil Procedure application is declined the decree would automatically follow and therefore, the only remedy was available to challenge the same by way of appeal. Challenging the same, the revision petitioner is before this Court.

6. Heard Mr.N. Veerasamy, learned counsel appearing for the petitioner and Mr.T. Skandhakumaar, learned counsel appearing for the respondent and perused the material on record.

7. As rightly pointed out by the learned counsel for the respondent, the entire pleadings in the above applications have already been made in the leave to defend the application which was ultimately dismissed. That apart, there is no proof to show the amounts due towards the two Promissory Notes and that the amounts due towards the suit Promissory Note are fully discharged. It is further seen that even in the reply notice, the revision petitioner/defendant has not made any reference to the

2nd promissory Note, particularly, when in the pre-suit notice, the plaintiff has categorically stated that the defendant was due and owing a balance of Rs.1,39,000/- together with interest on the Promissory Note dated 09.11.2003. The learned Judge has rightly rejected the application holding that the remedy of the revision petitioner is only by way of an appeal and thereby directing the parties to approach the proper Forum. I find no infirmity in the order passed by the learned I Assistant Judge, City Civil Court, Chennai.

This Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

05.04.2019

Index : Yes/No

Internet : Yes/No

mps

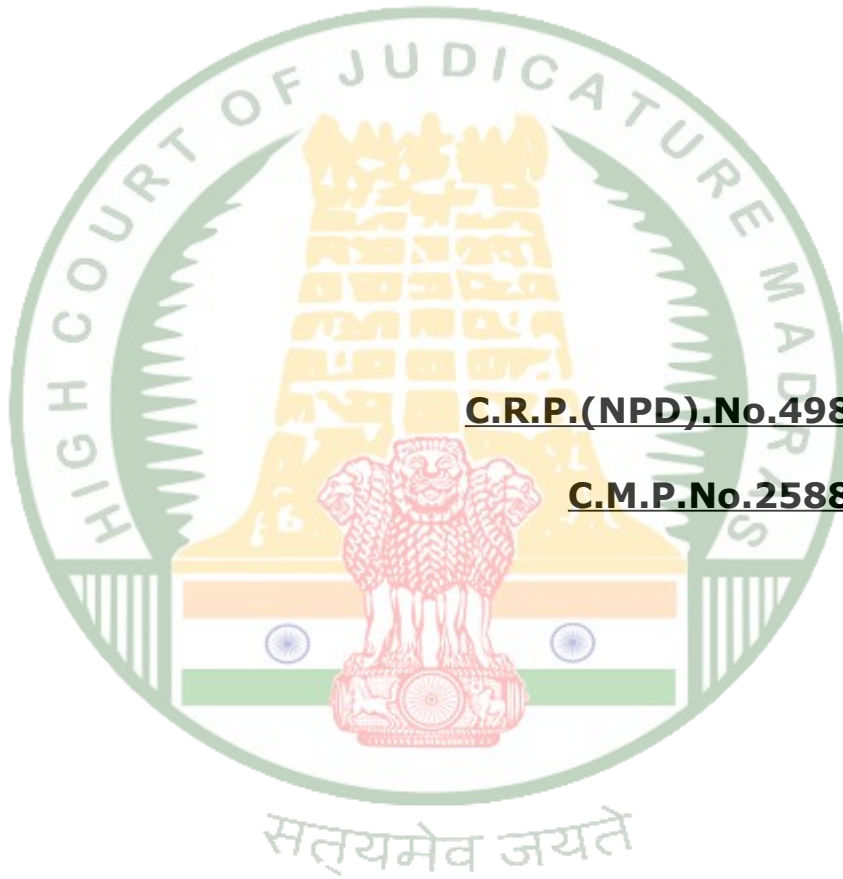
To

The I Assistant Judge,
City Civil Court,
Chennai.

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P.T. ASHA, J,

mps



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