

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	30.04.2019
Pronounced On	06.06.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P (NPD).No.2566 of 2014**and****M.P.No.1 of 2014**

1.Mukesh Kumar Challani

2.M/s.Supreme Plastics

Represented by its Partner,

Mukesh Kumar Challani,

4, Elakandappan Street,

Park Town, Chennai – 600 003.

.. Petitioners/Defendants

M/s.Rainbow Finance (India) Limited,

Represented by its Director Mr.Shailesh Sharma,

Suit No.5, Second Floor,

'Golden Enclave',

No.184, Poonamallee High Road,

Kilpauk, Chennai – 600 010.

.. Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to allow the civil revision petition by setting aside the Fair and Decretal order of the XVI Assistant City Civil Court at Chennai dated 22.01.2004 in I.A.No.14189 of 2013 in O.S.No.3411 of 2013.

For Petitioners : Mr.P.Valliappan

For Respondent : Mr.R.Shankar

ORDER

The present civil revision petition is directed against the Fair and Decretal Order dated 22.01.2004 in I.A.No.14189 of 2013 in O.S.No.3411 of 2013 on the file of the XVI Assistant City Civil Court at Chennai.

2. The said suit was filed by the respondent/plaintiff against petitioners/defendants under Order XXXVII Rule 1 of C.P.C., based on statement of accounts maintained by the respondent/plaintiff and adjustment made in the said statement of accounts. The petitioners/defendants filed I.A.No.14189 of 2013 for leave to defend under Order XXXVII Rule 3 (5) of C.P.C.

3. The said Interlocutory Application was contested by the respondent/plaintiff which culminated in the impugned order passed by the XVIth Assistant City Civil Court, Chennai dated 22.01.2014 rejecting the prayer of the petitioners/defendants for leave to suit/leave to defend the suit.

4. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

5. The only reasoning given while rejecting the application is in Paragraph (8) of the impugned fair order which reads as under:

“8. But in this case the plaintiff is a Limited Company and the loan was disbursed only through cheque. There is no document to show that the petitioner has repaid the loan amount. The statement of account is also produced along with the plaint. There is no document produced by the petitioner to show that he has pledged the gold jewels with the plaintiff and obtained loan and later on he has repaid the same. The grounds mentioned in the petition are not reliable one and is not substantial defence. The petitioner did not issues any notice to the respondent. The petitioner would not have kept quite from the year 2008 till the filing of the suit if he has repaid the loan and the bank did not returned the jewels. The grounds taken in the petition is only imaginary in nature and hence this petition is filed only to prolong the issue and delay the repayment of the loan. Hence I consider that this petition can be dismissed.”

6. The learned counsel for the petitioners/defendants submits that there are several triable issues and the issues is covered by a plethora of decisions. He drew my attention to the following cases listed below:-

1. ***Shivsu Canadian Clear International Limited, Shivsu Towers vs Freightcan Global Logistics Private Limited*** reported in 2013 (3) CTC 305, and
2. ***S.Balasubramanian Vs V.Govindan*** reported in 2013 (5) CTC 260.

7. Per contra, the learned counsel for the respondent/plaintiff submits that the order is perfectly valid and requires no interference and therefore submits that the Civil Revision Petition is liable to be dismissed.

8. The learned counsel for the respondent/plaintiff undertook to file written submissions within one week. However, no written submission has been filed by the respondent/plaintiff.

9. I have gone through the facts of the case. After the impugned order was passed, the suit itself has been decreed on the same date on 22.01.2004, in view of dismissal of I.A.No.14189 of 2013.

10. It is noticed that the leave to sue has been rejected by holding that the petitioners have not produced any document to show that they have pledged Gold Jewels and obtained loan from the respondent/plaintiff.

11. In the affidavit the petitioners/defendants have stated as follows:-

“I submit that I have borrowed a sum of Rs.15,00,000/- in the year 2007 by giving gold jewellery as security, since at that time I do not have any other property to give as

security and also I do not have sufficient business turnover to show my credit worthiness. I submit that I have paid the loan amount in the year 2008, at that time I requested the plaintiff to return my gold jewellery for that he refused to give and giving evasive reply. I submit that after 2008 I have not paid any interest to the plaintiff, the plaintiff is withholding my gold jewellery.”

12.The petitioners have stated that the loan pertains to the year 2007 and the alleged default is of the year 2008 as per the plaint. Therefore, the suit should have been filed within three years i.e by 2011. However, the suit was filed only in the year 2013. The petitioners have therefore stated that the suit was time barred. The petitioners have therefore stated that they have not received notice before the issue.

13.I have considered the arguments and the records of the case. Prima facie there is a triable issue and therefore the petitioners deserve a fair chance to defend themselves.

14.Therefore, the impugned order deserves interference. The order is liable to be set aside as the suit claim is purely based on the books of accounts of the respondent.

15. At the same time, to balance the interest of the parties and to meet the ends of justice, the petitioners should be directed to deposit a sum of Rs.5,00,000/- to the credit of the suit within six weeks from the date of receipt of a copy of this order to prove their bonafide.

16. The present Civil Revision petition is therefore allowed with the following conditions:-

- i. The impugned order dated 22.01.2004 in I.A.No.14189 of 2013 passed by the XVI Assistant City Civil Court, Chennai is set aside.
- ii. The petitioners shall deposit a sum of Rs.5,00,000/- to the credit of the suit within six weeks from the date of receipt of a copy of this order to prove their bonafide.
- iii. The petitioners shall also file their written statement within a period of six weeks from the date of receipt of a copy of this order.
- iv. If the suit is decreed, the respondent shall be entitled to withdraw the amount.

- v. Since the suit is of the year 2013, the XVI Assistant City Civil Court, Chennai therefore is directed to dispose the suit within six months from the date of receipt of a copy of this order.
- vi. Connected Miscellaneous Petition is also closed.

06.06.2019

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

To

The XVI Assistant City Civil Court,
Chennai.

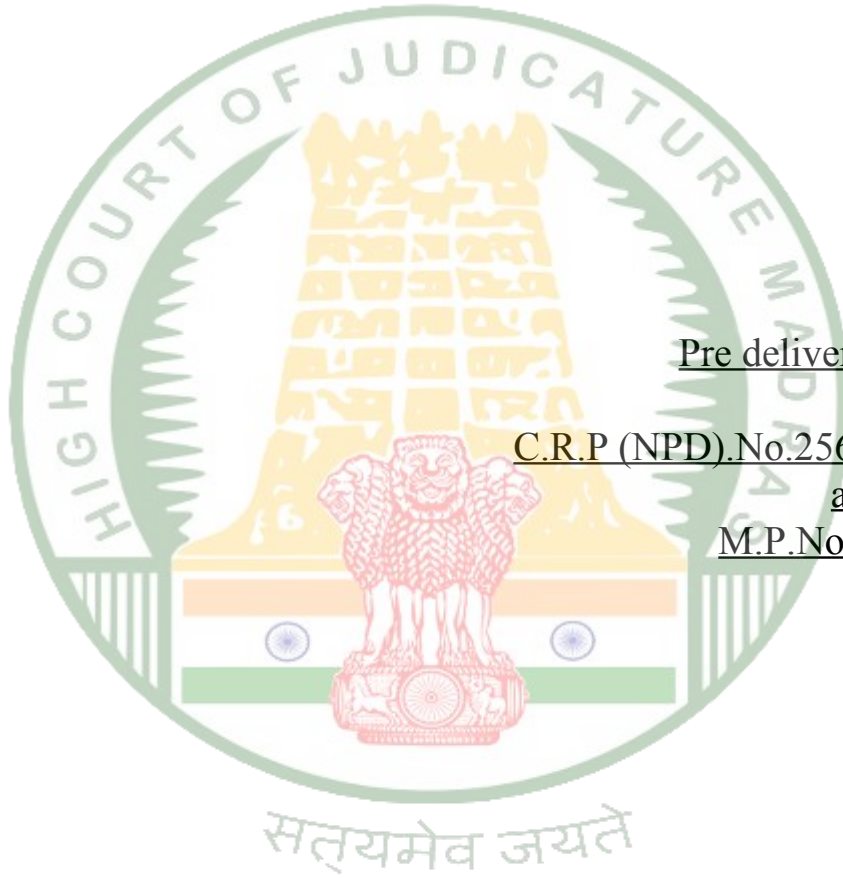
Note

Issue order copy on 7/6/2019.

सत्यमेव जयते
WEB COPY

C.SARAVANAN,J.

Arb/jen



Pre delivery order in

C.R.P (NPD).No.2566 of 2014

and

M.P.No.1 of 2014

WEB COPY

06.06.2019