

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD)No.2903 of 2014

and

MP No.1 of 2014

Yesurathanam

... Petitioner

versus

K. Vasantha

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the Fair and Decreetal order passed in I.A. No.20337 of 2010 in O.S.No.6995 of 2010, on 07.12.2010 passed by the learned II Assistant Judge, City Civil Court at Chennai and quash the same.

For petitioner : Mr.K.Seetharam

For respondent : Mr.V.Ramana Reddy

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 07.12.2010 passed by the learned II Assistant Judge, City Civil Court, Chennai in I.A. No.20337 of 2010 in O.S.No.6995 of 2010.

Brief facts leading to the filing of the instant Civil Revision**Petition :**

2. The petitioner is the defendant in the suit O.S. No.6995 of 2010 on the file of the learned II Assistant Judge, City Civil Court, Chennai. A suit was filed by the respondent against the petitioner for the recovery of sum of Rs.78,399/- together with interests and costs based on a promissory note, allegedly executed in favour of the respondent. The suit was filed under Order XXXVII Rule 1 CPC as a summary suit. The petitioner filed I.A. No.20337 of 2010, seeking leave to defend the suit. In the said affidavit filed in support of I.A. No.20337 of 2010, the petitioner has stated he has not borrowed any money from the respondent and he has also not executed the alleged promissory note, dated 03.03.2008 in favour of the respondent. A counter affidavit was also filed by the respondent in I.A.No.20337 of 2010 denying the allegations contained in the affidavit filed in support of I.A. No.20337 of 2010.

3. By order dated 07.12.2010, the Trial Court dismissed I.A. No.20337 of 2010 filed by the petitioner. Aggrieved by the said order, the instant Civil Revision Petition has been filed under Section 115 of the Civil Procedure Code.

4. Heard Mr.S.K.Seetharam, learned counsel for the petitioner and Mr.V.Ramana Reddy, learned counsel for the respondent.

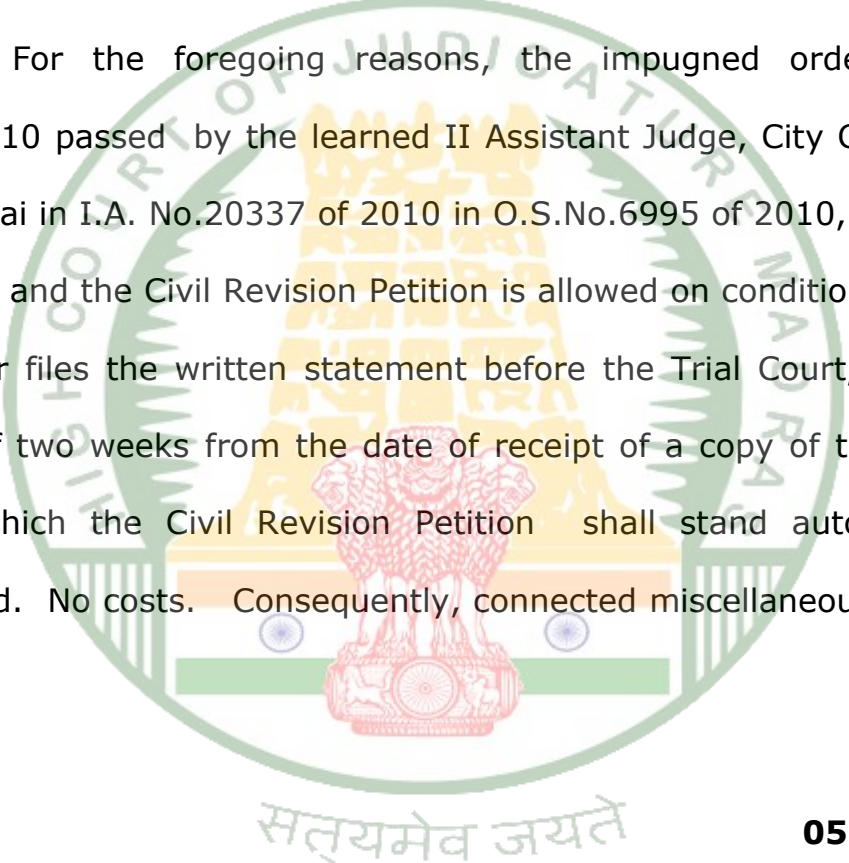
5. As seen from the affidavit filed in support of I.A. No.20337 of 2010, filed by the petitioner seeking leave to defend the suit, the petitioner has taken a categorical stand that he has not borrowed any money from the respondent and that he has also not executed the alleged promissory note, dated 03.03.2008, which the respondent claims in the plaint that the petitioner had executed in favour of the respondent. However, the Trial Court by the impugned order dismissed the application on the ground that the petitioner has admitted that the husband of the respondent is known to the petitioner and on that ground, the suit was decreed in favour of the respondent. Since, the petitioner has taken a categorical stand that the alleged promissory note is a fabricated document and has not been executed by him in favour of the respondent / plaintiff, in the considered view of this Court, the Trial Court ought to have allowed the leave to defend application viz. I.A No.20337 of 2010, however has dismissed the same only on the ground that the petitioner knows the husband of the respondent. As the defence raised by the petitioner is a triable issue,

ABDUL QUDDHOSE, J.

vsi2

which can be adjudicated only after trial, there is merit in the submission made by the learned counsel for the petitioner before this court.

6. For the foregoing reasons, the impugned order, dated 07.12.2010 passed by the learned II Assistant Judge, City Civil Court at Chennai in I.A. No.20337 of 2010 in O.S.No.6995 of 2010, is hereby set aside and the Civil Revision Petition is allowed on condition that the petitioner files the written statement before the Trial Court, within a period of two weeks from the date of receipt of a copy of this order, failing which the Civil Revision Petition shall stand automatically dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**05.07.2019**

Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
vsi2

To
The II Assistant Judge, City Civil Court,
Chennai.

CRP (NPD)No.2903 of 2014