

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 15.11.2019

ORDER PRONOUNCED ON : 25.11.2019

CORAM:

THE HON'BLE MR. JUSTICE R. PONGIAPPAN

Civil Revision Petition (NPD) No.4438 of 2014
and
M.P.No.1 of 2014

Akash Khan

Petitioner

Vs

Mukesh Kumar Ranka

Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreeal order dated 01.04.2014 passed in I.A.No.18814 of 2013 in O.S.No.3013 of 2013, on the file of I Assistant City Civil Court, Chennai.

For Petitioner : Mr.S.T.Raja for
M/s.Om Sai Ram Associates

For Respondent : M/s.S.Karpagavarthini

ORDER

The defendant in OS No. 3013 of 2013 on the file of I Assistant City Civil Court, Chennai is the revision petitioner herein. By way

of filing this Civil Revision Petition, he pleaded to set aside the order and decree dated 01.04.2014 passed in IA No.18814 of 2013 in OS No.3013 of 2013 by the learned I Assistant City Civil Judge, Chennai and prayed to allow the above referred IA by granting unconditional leave to the petitioner to defend the suit.

2. In earlier, the respondent in this Civil Revision Petition has filed a suit as against the revision petitioner and prayed for the direction directing the defendant to pay a sum of Rs.5,73,390/- with subsequent interest to the plaintiff. The said suit has been filed under Order XXXVII Rule 1 & 2 of Civil Procedure Code. During the course of the trial proceedings, in order to comply the order, the petitioner/defendant has filed an application under Order XXXVII Rule 3 (5) of Civil Procedure Code with a prayer to grant unconditional leave to defend the above suit. The learned I Assistant City Civil Judge, Chennai, after affording opportunity to the respondent herein by an order dated 01.04.2014 has dismissed the application filed by the petitioner. In the impugned order, it was held that the grounds raised by the petitioner are not sufficient to grant leave to defend the case. Further, it was held that the defence raised in the petition are formal in nature, which all the debtors normally take in the money claim. Ultimately, the learned trial Judge has dismissed the application filed by the petitioner.

3. Aggrieved over the said findings, the Revision petitioner is before this Court with this Civil Revision Petition.

4. The averments made in the affidavit filed by the petitioner in support of the petition is as follows:-

4.1. The allegation of execution of Promissory note by the petitioner is denied. Further, the petitioner was highly irregular in paying the interest is also denied. The respondent is a grandson of Sampathraj Ranka @ Sampath Lalji against whom the petitioner had filed the suit to follow due process of law in OS No.2538 of 2013, on the file of VII City Civil Court, Chennai. In the earlier suit, he has specifically pleaded that he has taken usurious loan from Sampathraj Ranka @ Sampath Lalji and others. It is further pleaded that the said loans are barred by limitation and the petitioner executed a blank promissory notes, blank papers, blank stamp papers, blank cheques and blank bonds to Sampathraj Ranka @ Sampath Lalji and others for getting loan at high interest. It is further stated that the present suit has been filed by the respondent in counter blast to the suit filed by him against his grandfather. The petitioner never borrowed any amount from the respondent and he had borrowed only from his grandfather and therefore the respondent is not holder in due course and present suit promissory note executed during the period of 2009 and it was handed over to the grandfather of the respondent. The said Sampathraj Ranka @ Sampath Lalji had handed over the promissory

notes to his grand sons, the respondent herein had filed the present suit. The prima facie promissory note is barred by limitation, the claim made by the plaintiff is hit by Section 3 and 7 of Tamil Nadu Money Lenders Act, 1957.

5. The respondent/plaintiff has filed a counter affidavit and states as follows:-

5.1. In order to meet the urgent expenses, the petitioner/defendant has borrowed a sum of Rs.3,00,000/- from the respondent by way of a cheque dated 03.05.2010, bearing No. 120973 drawn on Bank of Baroda, Sowcarpet Branch, Chennai, on executing a promissory note to and in favour of the respondent. The petitioner/defendant has been highly irregular in paying the interest and paid only a small sum towards interest that too after several demands. The petitioner/defendant herein did not clear the arrears of interest dues and after several demands from the respondent, the petitioner/defendant has paid only a sum of Rs.25,000/- on 12.03.2012 as a part towards the huge arrears of interest and as such a sum of Rs.5,73,390/- is due as on 30.04.2013. The petitioner/defendant, who duly received the summon in the above suit did not comply with the requirements of Order 37 and Rule 1 & 2 of Civil Procedure Code, which is mandatory one. Even after the exparte order was set aside and receive the summons for judgment, the petitioner/defendant herein did not file the application for leave to defend

within ten days, which is mandatory. The averments set out in the application is false. The respondent is not aware and not connected with the alleged suit in OS No.2538 of 2013 and he is not a party to the suit. The petitioner/defendant cannot deny the borrowal. Hence, no defence for the petitioner and no leave could be granted to the petitioner/plaintiff.

6. Today when the Civil Revision Petition came up for hearing, the learned counsel appearing for the petitioner is present and made a submission that in the defence raised by the petitioner positively, he raised the triable issues. In otherwise, because of the reason that the petitioner has not received notice, he was not in a position to send a reply to the respondent. So the said lapse cannot be taken into account for considering the case of the petitioner. Further, the suit has been filed beyond the period of limitation. Hence, the said defence has to be settled only by way of trial. On the other hand, in the impugned order, the learned trial judge did not consider those aspects and merely dismissed the application filed by the petitioner, which is nothing but erroneous one.

7. Per contra, the learned counsel appearing for the respondent would contend that the defence indicated by the petitioner is usual defence raised only for money claim. In the affidavit filed before the trial Court, he alternatively admitted the signature found in the promissory note. Further, only because of the reason that the petitioner did not

receive the pre-suit notice, the same was returned to the respondent, for which the respondent is no way held liable.

8. Upon considering the arguments advanced by either side, it is necessary to see whether the impugned order passed by the Court below is correct or not. Further, it is significant to verify whether the ground stated by the petitioner has raised any triable issues. In this occasion, it is necessary and useful to see the judgment of our Honourable Apex Court reported in 2019 (7) SCC 577, in which it was held as follows:-

-While granting leave principles to be followed are:

(i) where defendant satisfies court that he has substantial defence that is likely to succeed, plaintiff not entitled to leave to sign judgment and defendant entitled to unconditional leave to defend suit:-

(ii) where defendant raises triable issues indicating that he has fair or reasonable defence, although positively not good defence, under such situation plaintiff not entitled to sign judgment and defendant is "ordinarily" entitled to unconditional leave;

(iii) where defendant raises triable issue but doubt remains about good faith of defendant

or genuineness or triable issues, conditions as to time and mode of trial as well as payment into court or furnishing security may be imposed – While imposing conditions, objective of expeditious disposal of matter not defeated and triable orders are not shut by unduly severe orders regarding deposit or security;

(iv) where defendant raised defence which is plausible but improbable, condition regarding mode of trial as well as payment into court or furnishing security may be imposed – Where defence does not raise triable issues, conditions of deposit or security can be extended to entire principal sum together with such interest as court feels justice of case requires.

(v) if defendant has no substantial defence and/or raises no genuine triable issues and courts finds such defence as frivolous or vexatious then leave to defend shall be refused, and plaintiff entitled to judgment forthwith; and

(vi) if any part of amount claimed by plaintiff is admitted by defendant to be due from him (even if triable issues substantial defence is raised) then leave to defend suit shall not be granted unless amount admitted to be due is deposited in court.

Applying the principles set out by our Honourable Apex court, in the case in our hand, in the defence raised by the petitioner, he has not denied the signature found in the promissory note. Moreover, he has stated that blank promissory note was given only to the grandfather of the respondent. In otherwise, he has not stated at what time and under what circumstances, the same has been handed over to the grandfather of the respondent. Of course, Section 20 of Negotiable Instruments Act, authorizes the person to fill the Negotiable instrument. Further, the petitioner has admitted the signature found in the suit and the promissory note belongs to him.

9. It is also admitted by the petitioner that he has not sent a reply to the pre-suit notice sent by the respondent. In this regard, the learned counsel appearing for the petitioner would contend that no pre-suit notice is served to the petitioner. In this aspect, on going through the endorsement found in the returned cover, it was mentioned that "not claimed". In otherwise, the said notice was sent to the petitioner to the

address, which was mentioned in the plaint. Hence, it cannot be said that the suit notice was sent to the wrong address. However, only in the circumstances when the addressee refused to receive the letter, the postal authorities have written the reference as unclaimed. The said circumstances reveals the fact that the petitioner purposefully evaded to receive the pre-suit notice and thereby it cannot be termed that the said situation creates triable issues.

10. Yet another ground raised by the petitioner before the trial Court is that as a counter blast to the suit filed by the petitioner, the grandson of the defendant has filed the suit in OS No.2538 of 2013. Now on going through the copy of the plaint enclosed with the type set reveals the fact that the said suit filed as against 17 defendants, thereby it cannot be said that the suit now filed by the respondent is a counter blast to the suit instituted by the petitioner.

11. Accordingly, I am of the opinion that the defence raised by the petitioner is wholly untenable. In respect to the plea of limitation, the respondent in his counter has clearly stated as the suit was instituted by him on the first working day of Court, ie after completion of summer vacation. So, the same has also taken into account as the suit is not barred by limitation. Accordingly, the defence raised by the petitioner did not raise any triable issues. If there is any triable issue, in the sense that

there is a fair dispute to be tried as to the meaning of a document on which the claim is based or uncertainty as to the amount actually due or where the alleged facts are of such a nature as to entitle the defendant to interrogate the plaintiff or to cross-examine his witnesses leave should be denied. In this case, as rightly observed by the counsel appearing for the respondent, the question of cross examination does not arise in respect to the defence raised by the petitioner. In otherwise, if discretion is exercised arbitrarily or is based on a misunderstanding of principles governing its exercise interference is called for. But in this case, on close scrutiny of the impugned order passed by the Court below, it cannot be said that the learned judge arbitrarily without understanding the principles governing under Order XXXVII Rule 3 passed the impugned order.

12. In the light of the above detailed discussions, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

25.11.2019

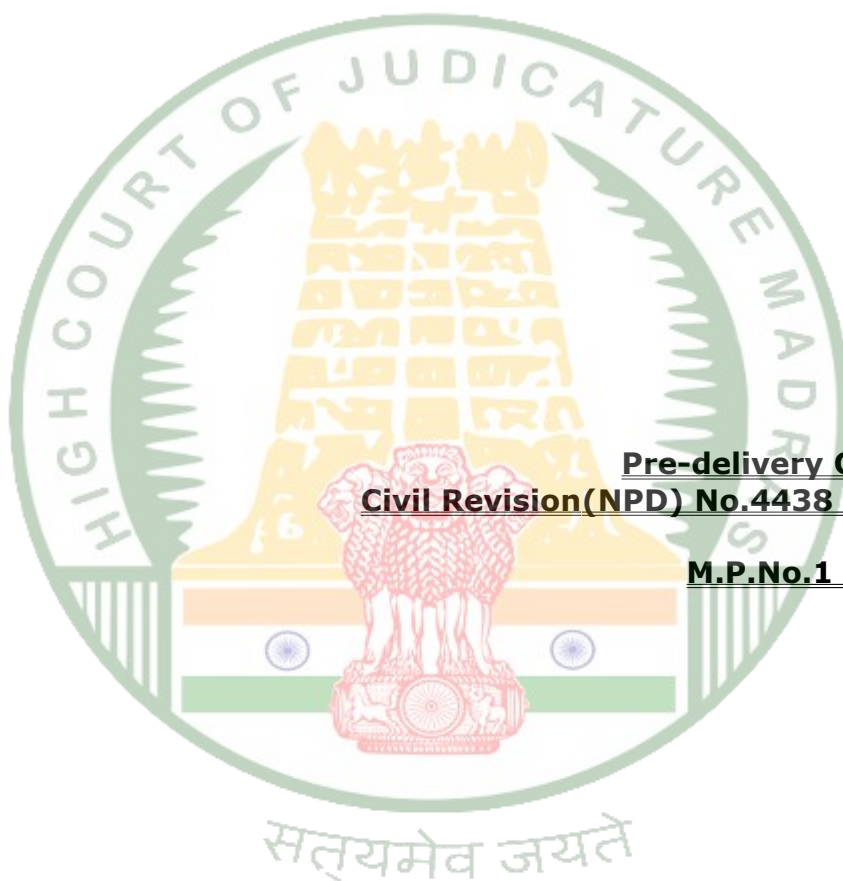
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To

The I Assistant City Civil Court, Chennai.

R.PONGIAPPAN, J.,

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Pre-delivery Order in
Civil Revision(NPD) No.4438 of 2014
and
M.P.No.1 of 2014

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