

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2019

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

**CRP (PD) No.2837 of 2019 &
C.M.P.No.18576 of 2019**

1. S.T.Kasinathan
2. K. Chandra Kasinathan

... Petitioners

Vs

1. Mr. A. Tamilarasan
2. Mrs.T.Kamalam

... Respondents

Prayer :Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order dated 12.07.2019 made in a memo filed on behalf of the respondents/defendants in O.S.No.2387 of 2019 on the file of the 17th Additional City Civil Court, Chennai and consequentially direct to decree the suit by following the order 37 Rule (3)(6) CPC.

For Petitioner : Mr.A. Tamilarasan

ORDER

This Civil Revision Petition is directed against the order passed on the memo filed by the respondent/defendants dated 12.7.2019.

2. The plaintiffs/petitioners filed a suit for recovery of money on the basis of promissory notes. He issued summons as per Form No.4-A under Order 37, Rule 3 CPC.

3. On 18.06.2019, the defendants have entered appearance and issued notice of appearance to the plaintiff. On 24.6.2019, the plaintiff filed summons for judgment. However, the respondents/defendants without filing petition to leave to defend have filed a memo dated 28.6.2019, 4.7.2019 seeking to convert the summary suit into a regular suit for non compliance of the procedure laid down under Order XXXVII, Rule 3 CPC.

4. The trial Court having been convinced that the procedure has been duly followed, proceeded with the suit as per Order XXXVII CPC. However, the defendants filed another memo complaining that the documents mentioned in the plaint were not served upon them.

5. The trial Court, after passing an order in the memo, directed the plaintiff to serve the copy of plaint along with documents. Aggrieved over the same, the petitioners/plaintiffs have preferred the

above revision.

6. It is well settled that the defendants are facing litigation on the basis of transaction entered between the plaintiff. The pleadings set was served with summons u/Or.XXVII, R.3 CPC and even assuming the documents are not served, they must be aware of all the documents during the course of their transactions. Hence the plaintiff discloses the documents relied on for getting the relief, the defendants are bound to adhere to the procedure laid down under Order XXXVII CPC. The defendants are not surprised by new documents. Once the documents reveal the transaction, it is the bounden duty to proceed further instead of insisting on furnishing of the plaint documents. Therefore, the order passed by the trial Court directing the plaintiffs to serve documents on the defendants is an unnecessary procedure.

7. However, the learned counsel appearing for the petitioners/plaintiffs would submit that they have already communicated the documents to the respondents and the learned counsel for the respondents also submit before the court that they have received the documents.

8. The Honourable High Court, in the case of **Jivaraj Motilal Vs. Marthaka Plastic Industries** reported in **1985 CJ (Mad) 111**, discusses the procedure to be followed by the plaintiff. In the above judgement cited supra, in paragraph 6, it is held as under;

'6. It is now necessary to refer to Order 37, Rule 3, C.P.C. Under Order 37, Rule 3(1), C.P.C. the plaintiff is obliged to serve on the defendant together with the summons in Form 4 under Order 37, Rule 2(2), C.P.C. a copy of the plaint and other annexures and thereafter the defendant, within ten days of such service, has to enter an appearance either in person or by pleader and, in either case, an address for service or notice on him shall be filed by him in court. Sub-clause (2) of Order 37, Rule 3, C.P.C. declares that if all summonses and notices are left at the address given by the defendant or defendants for service, that would be due service. Order 37, Rule 3(3), C.P.C. requires the defendant or defendants to give notice of appearance to the plaintiff's pleader or to the plaintiff, if he appears in person, on the day of entering the appearance, either by notice delivered at or sent by a pre-paid letter directed to the address of the plaintiff's pleader or of the plaintiff as the case may be. When the defendant enters appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form 4-A in Appendix B returnable not less than ten days from the

date of service supported by an affidavit verifying the cause of action and the amount claimed, and stating that in his behalf there is no defence to the suit and thereafter the defendant may, at any time within ten days from the service of such summons for judgment, apply on such summons for leave to defend such suit disclosing such facts as may be deemed sufficient to entitle him to defend, and the court may grant leave to defend either unconditionally or upon such terms as may appear to the court to be just. The proviso to Sub-clause (5) of Order 37, Rule 3, C.P.C. states that leave to defend should not be refused unless the court is satisfied that the facts disclosed do not indicate a substantial defence to be raised or that the defence intended to be raised is frivolous or vexatious. The second proviso therein states that where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit should not be granted, unless the admitted amount is deposited. Under Sub-clause (6)(a) of Order 37, Rule 3, C.P.C. at the hearing of the summons for judgment, if the defendant does not apply for leave or if such an application is made and is refused, the plaintiff shall be entitled to judgment forthwith. Under Sub-clause (6)(b) of Order 37, Rule 3, C.P.C. where the defendant is permitted to defend the whole or any part of the claim, the court may direct him to furnish security within such time as may be fixed by the court and in the event of a failure to furnish

security within the time so prescribed by the court or to carry out such other directions as may have been given by the court, the plaintiff shall be entitled to judgment forthwith. Order 37, Rule 3(7), C.P.C. clothes the Court with power to excuse the delay in entering an appearance or in applying for leave to defend the suit by the defendant for a sufficient cause shown. A careful consideration of these two vital provisions establish that a defendant is not entitled to defend unless he enters appearance and in default of appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff will be entitled to a decree. When, however, the defendant enters appearance in response to the service of summons in Form 4 in Appendix B under Order 37, Rule 2(1), C.P.C. he has to do so within ten days of such service and he is obliged to file an address for service of notice on him, on that day, he has also to give notice of appearance to the plaintiff or his counsel. After the defendant enters appearance under Order 37, Rule 2, C.P.C. a summons for judgment in Form 4-A in Appendix B has to be served by the plaintiff on the defendant not less than ten days from the date of service supported by an affidavit verifying the particulars or cause of action and the amount of claim and setting out the belief of the plaintiff that the defendant has no defence to the suit and within ten days from the service of such summons for judgment, the defendant may, by affidavit or otherwise, disclose such facts as may be deemed sufficient to entitle

him to raise a defence and apply for leave to defend the suit and thereafter the court may grant leave either unconditionally or upon such terms as may appear to the court to be just. If a part of the amount claimed is admitted by the defendant to be due from him, leave to defend should not be granted unless the admitted amount is deposited. If, at the hearing of such summons for judgment, the defendant does not apply for leave to defend or if such an application has been made and refused, the plaintiff will be entitled to judgment forthwith.'

9. In view of the judgment cited above, the trial court shall strictly follow the procedure laid down under Order XXXVII, Rule 6 CPC and to dispose of the suit in accordance with law.

10. The Civil Revision Petition is ordered accordingly. No costs. Consequently, the connected CMP.No.18576 of 2019 is closed.

30.08.2019

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Index:Yes/No
Internet: Yes/No
Issue today

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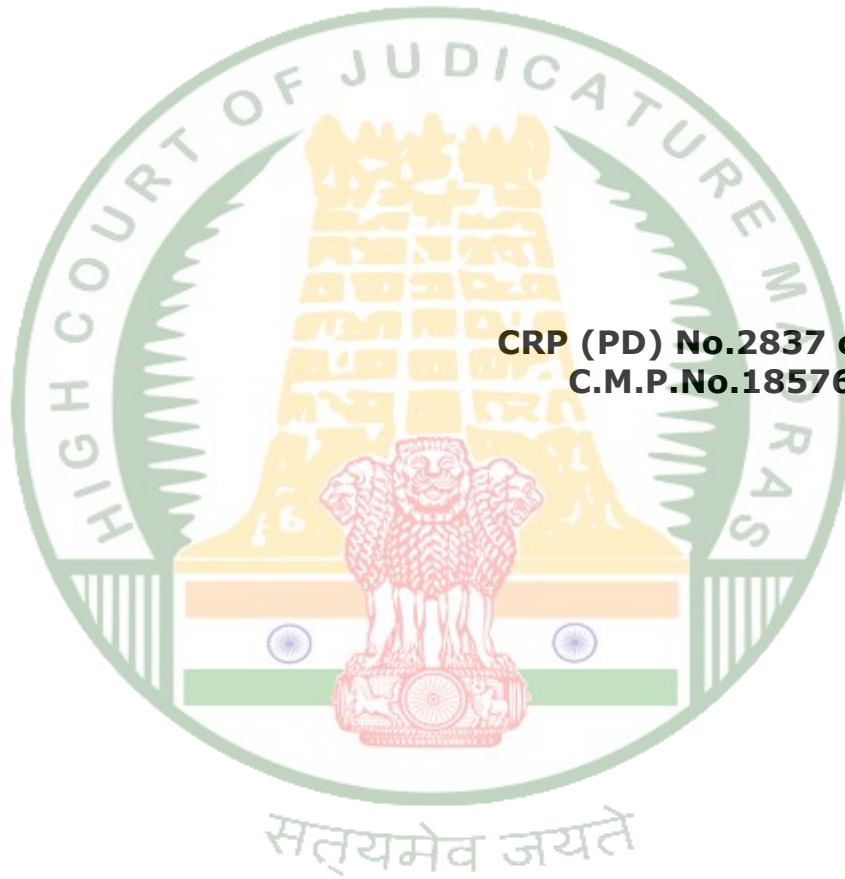
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M.GOVINDARAJ, J.

msr

To

The 17th Additional City Civil Court, chennai.



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