

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

O.S.A.Nos.208 & 209 of 2019
and
C.M.P.Nos.18833 & 18837 of 2019

M.Kamaraj ... Appellant in both O.S.A's

Vs

Dr.M.Sudeer ... Respondent in both O.S.A's

Appeals preferred under Order XXXVI Rule 9 of O.S. Rules r/w Clause 15 of Letters Patent against the order dated 10.07.2019 made in A.Nos.3330 & 3331 of 2019 in A.No.1172 of 2018 in C.S.No.940 of 2016.

A.No.3330/2019:

Application praying that this Hon'ble Court be pleased to set aside the order dated 22.03.2018 and passed in A.No.1172 of 2018 in C.S.No.940 of 2016.

A.No.3331/2019:

Application praying that this Hon'ble Court be pleased to set aside the order of the Master, dated 26.04.2018 grant unconditional leave to defend C.S.No.940 of 2016 by filing the Written Statement.

For both Appeals:

For Appellant .. Mr.P.Satheesh Kumar

For Respondent .. Mr.Sriram for

M/s.A.S.Kailasam and Associates

COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

These appeals have been preferred against the order dated 10.07.2019 passed by the learned Single Judge in A.Nos.3330 & 3331 of 2019 in A.No.1172 of 2018 in C.S.No.940 of 2016.

2. By virtue of the impugned order, the learned Judge though granted unconditional leave to the appellant to defend the suit, however, set aside the conditional order passed by the learned Master, directing the defendant to furnish security for the suit claim of Rs.30,00,000/-.

3. Learned counsel appearing for the appellant submitted that there is no material produced by the respondent to substantiate that repayment was made. It is an admitted fact that respondent had received the money and therefore, duty is cast upon on him to substantiate the same.

4. Learned counsel appearing for the respondent submitted that the appellant/plaintiff filed the suit claiming a sum of Rs.30,00,000/- with interest fixed 25%, which is contrary to law.

5. We are not going into the merits of the case. However, one thing is clear that the respondent has borrowed some amount from the appellant. The question as to whether the respondent has repaid the money or not is the matter for trial. While considering the application seeking leave to defend the suit, normally, the Court has to keep in mind as to whether the defence taken is reasonable one or not.

6. Considering the facts of the case, more particularly, the fact that the suit is for recovery of money, we deem it appropriate that the respondent shall furnish the security for a sum of Rs.15,00,000/, inasmuch as, the suit is liable to be tried. Insofar as jurisdiction is concerned, in view of the fact that the suit claim is for Rs. 31,84,000/-, Registry is directed to make sure that transfer of suit is effected at the earliest.

7. Accordingly, the appeals are partly allowed. No costs. Connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

rst

To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

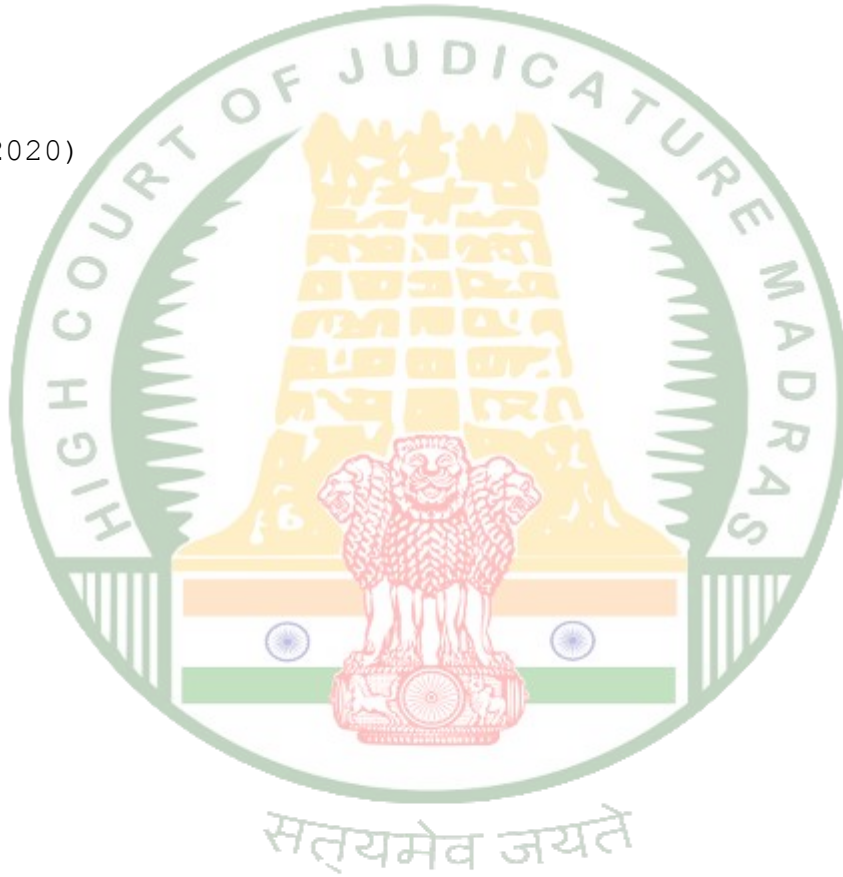
+2 CCS to Mr.P.Satheesh Kumar, Advocate sr 106355 & 106356.

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and

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GJ(CO)
SP(12/03/2020)



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