

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. PD 3770 of 2019

and

C.R.P. PD 3771 of 2019 & C.M.P. 24761 of 2019

R.J. Kamala

... Petitioner
in both C.R.P.s

Versus

M/s. Mukesh K.Shah,
Proprietor of
M/s. Mantilal N.Shah

... Respondent
in both C.R.P.s

PRAYER in C.R.P. PD 3770 of 2019 : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, praying to set aside the fair and decreetal order of Hon'ble VI Additional City Civil Court at Chennai dated 16.09.2019 in I.A.No.4 of 2019 in O.S.No.9061 of 2010.

PRAYER in C.R.P. PD 3771 of 2019 : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, praying to set aside the fair and decreetal order of Hon'ble VI Additional City

Civil Court at Chennai dated 16.09.2019 in I.A.No.5 of 2019 in O.S.No.9061 of 2010.

For Petitioner : Mr.P.Premkumar

For Respondents : M/s. Shah & Shah

ORDER

These Civil Revision Petitions have been filed against the order passed by the learned VI Additional City Civil Judge, Chennai dated 16.09.2019 in I.A.s 4 & 5 of 2019 in O.S. 9061 of 2019 dismissing the petitioner's applications to reopen his evidence and also to issue subpoena to the Manager, Union Bank of India, Sowcarpet Branch to produce statement of plaintiff's account from 01.06.2005 to 30.06.2005 and 01.12.2005 to 31.12.2005.

2. The respondent/plaintiff, has filed a suit for recovery of money, and the trial was over in the suit. According to plaintiff, the defendant has borrowed a sum of Rs.19,00,600/- on various dates from 17.04.2006 to 03.01.2008, and repaid a sum of Rs.9,25,000/-. Thereafter, he has not paid the remaining amount along with interest. Hence, he has filed the suit.

3. During trial, the defendant was examined at first. Thereafter, the plaintiff was examined. During trial, the defendant pleaded that, some of the payments made subsequent to the year 2006, was not accounted by the plaintiff. But, that was disputed by the plaintiff stating that, the above payments were made in respect of previous borrowal by the defendant in the year 2005. In order to substantiate his claim, the plaintiff has filed statement of accounts during those period, which was marked as Ex.A12 and A13. Even though the petitioner/defendant has disputed the marking of documents, the Trial Court has rejected his objection, and marked the documents. Thereafter, the plaintiff has taken steps to file certified copy of two statements of accounts. Those documents are yet to be marked, and the Trial Court has closed the evidence. After closing the evidence of petitioner/defendant, he has filed the present application to issue subpoena to the Manager, Union Bank of India, Sowcarpet Branch, to produce the statement of accounts of petitioner's account on the ground that, the documents filed by the plaintiff are fabricated. The learned Trial Court judge has dismissed the application holding

that, though the petitioner has already objected for marking documents, that was rejected, and now, after closing evidence, the petitioner need not be permitted to re-open his evidence, and there is no merit in those petitions. Now, challenging the same, the present Civil Revision Petitions have been filed.

4. I have heard and considered the rival submissions made by the learned senior counsel appearing for the petitioners as well as the learned counsel appearing for respondents and perused the records carefully.

5. The dispute between the parties relates to payment of certain amounts by the defendant. According to plaintiff, those amounts were paid for discharging previous loan, and not in respect of the Suit loan amount. To substantiate the same, the plaintiff has already filed the statement of accounts relating to the defendant's account, the defendant had challenged the same on the ground that, those documents are not genuine and fabricated, and stated that, she has never borrowed any amount in the year 2005. It is also admitted by the defendant that the documents marked by her is not a certified copy.

6. Even though the copy of statement of accounts alleged to have been issued by the Bank has been marked, the defendant disputing the genuineness of the documents, alleging that it is a fabricated one. In the said circumstances, in order to clear the doubt, this Court is of the view that, it is better to call for the original statement of accounts from the Bank, and to mark the same as evidence, by that, no prejudice will be caused to the parties.

7. In the above circumstances, the impugned order passed by the Trial Court in I.A.s 4 and 5 of 2019 in O.S. 9061 of 2010 is set aside, and the learned Trial Court is directed to issue subpoena to the Manager, Union Bank of India, Sowcarpet Branch to produce the statement of accounts of the petitioner A/c. No.332405040000182, for the period from 01.06.2005 to 30.06.2005 and from 01.12.2005 to 31.12.2005, and mark the same as evidence, within a period of two weeks from the date of receipt of the copy of this order.

8. As the evidence has been already closed, and the suit is posted for arguments, after marking the documents, the learned Trial Court is directed to proceed with the arguments, and

dispose the suit within a period of six weeks thereafter. In the result, the Civil Revision Petition No.3771 of 2019 stands allowed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

9. Considering the fact that, since only the subpoena is directed to be issued to the Manager, Union Bank of India, Sowcarpet Branch for the statement of accounts, there is no necessity to reopen the defendant's evidence to mark the documents. Accordingly, the Civil Revision Petition No.3770 of 2019 stands dismissed. No costs.

02.12.2019

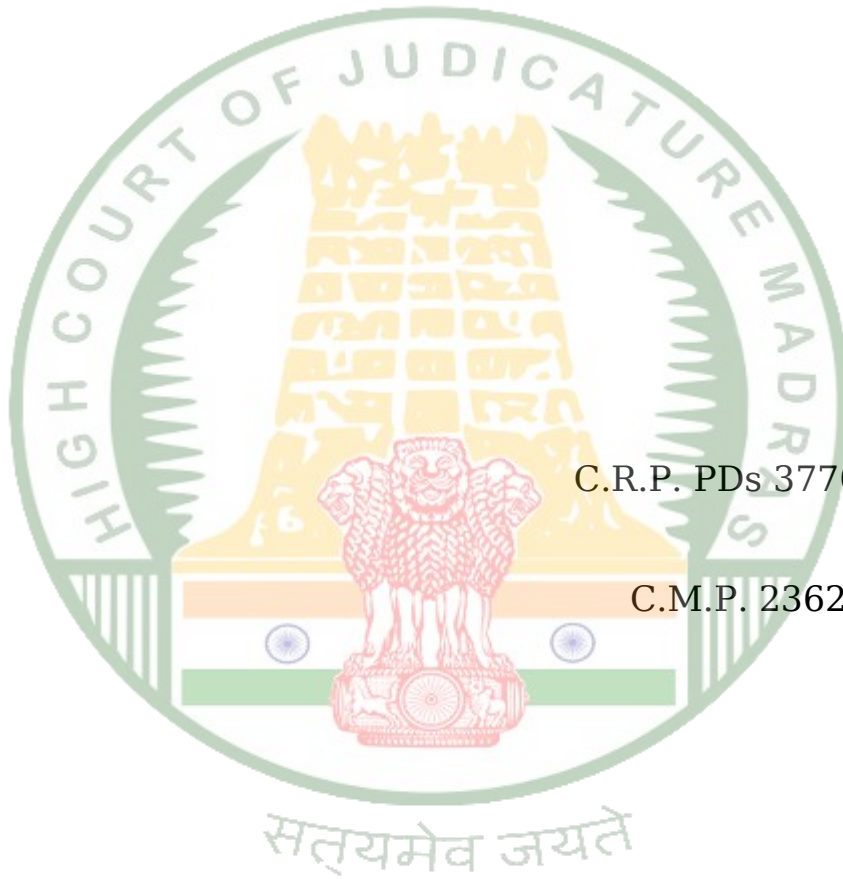
Index:Yes/No
Internet:Yes/no
Speaking Order/Non Speaking Order
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To

IX Asst. Judge,
City Civil Court, Chennai.

V.BHARATHIDASAN,J.

rpp



C.R.P. PDs 3770 & 3771
of 2019
and
C.M.P. 23626 of 2019

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