

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2019

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THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP(PD)No.4260 of 2018

and

C.M.P.Nos.23347 & 23349 of 2018

A.Sasikumar

... Petitioner

Vs

D.Amuthavel

...Respondent

PRAYER: This Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 20.11.2018, made in I.A.No. 7059 of 2018 in O.S.No.1309 of 2018, on the file of the XV Assistant City Civil Court, Chennai.

For Petitioner : Mr.M.Rajasekar

For Respondent : No appearance

ORDER

The above Civil Revision petition is filed challenging the leave granted to defend the suit in O.S.No.1309 of 2018 by the XV Assistant City Civil Court, Chennai.

2.The suit in O.S.No.1309 of 2018 has been filed by the revision petitioner herein under Order 37 Rules 1 & 2 of the Code of Civil Procedure for recovery for a sum of Rs.4,50,000/- together with interest at the rate of 9% per annum, due from the respondent in connection with the loan borrowed by the defendant for settling the

payment to Uma Maheshwari. The defendant has issued two post dated cheques as security for the said loan and when the cheques were deposited for collection, the same had been dis-honoured. The plaintiff tried to keep in touch with the defendant. However, the defendant deliberately evaded to meet the plaintiff and the plaintiff was given assurance by the defendant when the plaintiff contacted the defendant over phone. Since, the defendant has not cleared the debts, the suit has been instituted by the revision petitioner/plaintiff.

3. After receiving the summons in the above suit and observing the procedure contemplated under Order 37 Rules 1 & 2, the defendant had come forward to file I.A.No.7059 of 2018 for seeking leave to defend the said suit. In the said application the defendant had contended that there was no privity of contract between him and the plaintiff since he had not borrowed any amount from the plaintiff and dispute was only between the petitioner and the said Uma Maheshwari. The cheques had been issued to the said Uma Maheshwari who had handed over the same to the plaintiff, as a result of which the suit has been filed. The cheques were only intended as a security for the loan borrowed from the said Uma Maheshwari.

4. The plaintiff had countered the said application by denying the allegations and stating that the defendant is taking an illusory defense, the defendant had taken diametrically opposite views, one in the reply notice dated 12.02.2018, issued on behalf of the

defendant and the other in the affidavit filed in support of the leave to defend application. The learned XV Assistant Judge, after hearing both parties, proceeded to allow the said application, on the ground that there was dispute between the defendant and Uma Maheshwari, and the cheques which had been handed over to Uma Maheshwari for security purpose had been misused and these were triable issues, which had to be considered. Challenging the said order, the plaintiff is before this Court.

5.Heard Mr.M.Rajasekar, learned counsel appearing on behalf of the petitioner. The learned counsel who had entered appearance for the respondent namely, Mr.D.Kumar had on 04.03.2019, sought time to get instructions from his client to settle the suit amount and the matter was adjourned at his request by two weeks. Thereafter, when the matter came up on 18.03.2019, there was no representation on behalf of the respondent and the matter was posted on 20.03.2019, under the caption for orders. On 20.03.2019, the learned counsel for the respondent prayed that a final chance may be given to verify from his client and hence this Court directed the learned counsel for the respondent, to come back with the necessary instructions. However, when the matter was called today, once again there is no appearance on behalf of the respondent and thereafter this Court has decided to hear the matter and pass orders on merits.

6. As pointed out by the revision petitioner, the defendant's case in the reply notice is that he had borrowed money from the plaintiff, but had cleared the entire dues on 04.01.2018, and that despite his request for handing over the cheques, which had been given as security purpose, the plaintiff had not returned the same. However, in the affidavit which is filed in support of the leave to defend application, the defendant has taken out stand that he does not know the plaintiff and that he has no privity of contract with the plaintiff and that he has only transactions with one Uma Maheshwari to whom, he had issued cheques, which is now sought to be misused. This defence in the light of the defendant's stand in the reply notice appears to be an after thought and illusiory and taken only for creating an illusion that there is triable issue in the suit. This contradiction in the defense coupled with the admission of the learned counsel for the respondent that the defendant is willing to settle the payment to the plaintiff, it is clear that the defendant has no triable issue in the suit, particularly, when both the cheques given a security, had been dis-honoured and steps have been initiated under the Negotiable Instruments Act.

7. The learned Judge has failed to sift through the defence that has been put forward in the affidavit filed in support of the leave to defend application to conclude that the defendant is purely illusionary. The learned Judge ought to have dismissed the

application for leave to defend on the ground that there was no triable issues.

8.In the result, the Civil Revision Petition stands allowed and the order dated 20.11.2018, passed in I.A.No. 7059 of 2018 in O.S.No.1309 of 2018, by the learned XV Assistant City Civil Court, Chennai, is set aside. No costs. In view of the leave to defend application being dismissed, the learned Judge is directed to follow the procedure contemplated under the provision of Order 37 Rules 1&2. Consequently, connected miscellaneous petitions are also closed.

24.04.2019

Index: Yes/No
Internet: Yes/No
Speaking order / Non-speaking order

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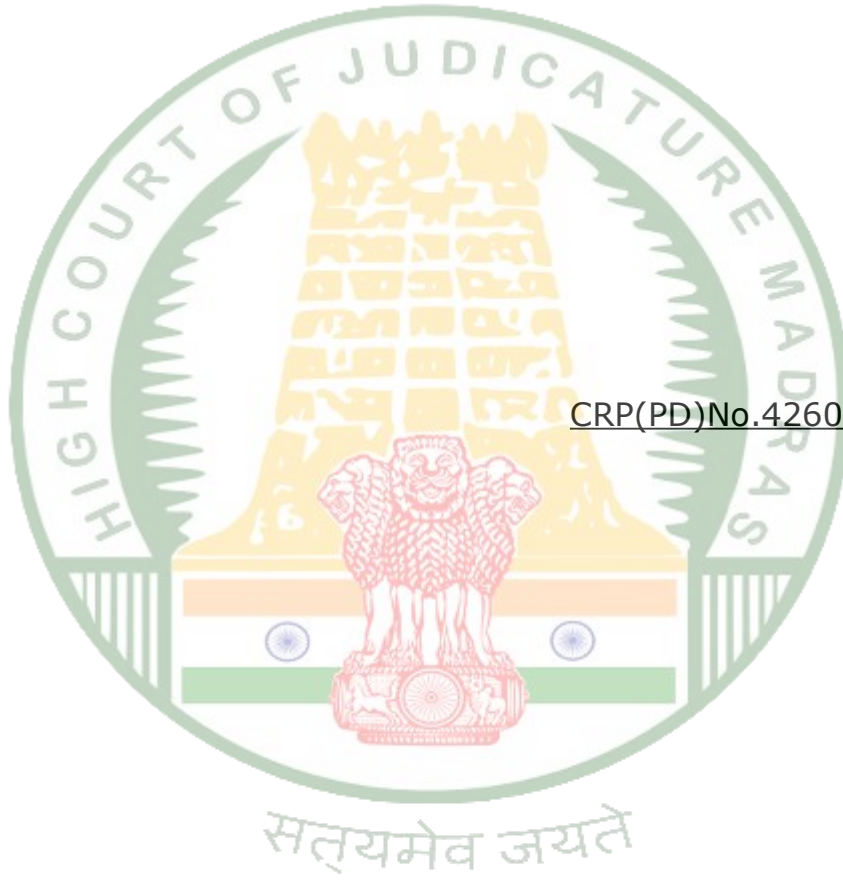
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To: The XV Assistant City Civil Court, Chennai.

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P.T.ASHA, J.

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CRP(PD)No.4260 of 2018

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