



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P (MD) No.609 of 2019

and

C.M.P. (MD) .No. 3078 of 2019

K.Guruchev :Petitioner/Appellant/Defendant

Vs.

M.Gurusamy :Respondent/Petitioner/Plaintiff

PRAYER : This Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure to set aside the order dated 25.03.2019 passed in E.P.No.50 of 2017 in O.S.No.509 of 2004 on the file of the learned District Munsif Court Melur, Madurai.

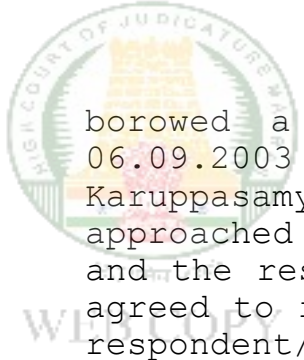
For Petitioner : Mr.K.Guruchev
Party in person

O R D E R

This Civil Revision petition has been preferred against the order dated 25.03.2019 passed in E.P.No.50 of 2017 in O.S.No.509 of 2004 on the file of the learned District Munsif Court Melur, Madurai.

2.The brief facts of the case are that the petitioner herein/defendant borrowed a sum of Rs.30,000/- at the rate of 12 % pa., from the respondent/plaintiff on 06.09.2003 to meet his urgent family expenses and as security for the above said loan amount, the petitioner /defendant executed the suit promissory note for Rs.30,000/- in favour of the respondent/plaintiff. Thereafter, in spite of repeated demands made orally by the respondent/plaintiff, the petitioner/defendant has not paid any amount either for the interest or for the principal due on suit promissory note. Hence, the respondent/plaintiff filed the suit in O.S.No.509 of 2004 before the learned District Munsif, Melur for directing the petitioner/defendant to pay the said loan amount along with interest and for other reliefs.

<https://hcservices.courtservice.in/hcservices/> was resisted by the petitioner/defendant stating that the respondent/plaintiff is not entitled for any relief as claimed by him. The allegations that the petitioner/defendant



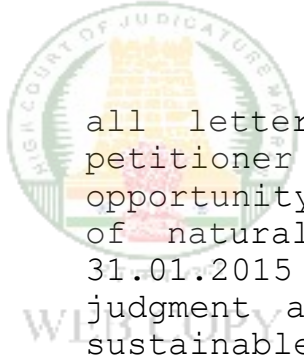
borrowed a sum of Rs.30,000/- from the respondent/plaintiff on 06.09.2003 are denied. On 03.09.2003 the petitioner and one Karuppasamy, an employee of Hindu Permanent Fund Office had approached the respondent requesting a loan amount of Rs.10,000/- and the respondent also agreed to pay the same. The petitioner also agreed to repay the loan amount with interest at 12% per annum. The respondent/plaintiff insisted the petitioner/defendant to sign in a blank promissory note and due to the monetary urgency the petitioner/defendant agreed to sign in an unfilled pronote in favour of the respondent/plaintiff on 06.09.2003 and borrowed a sum of Rs.10,000/- from the respondent by signing the blank pronote. The said Karuppasamy also witness the same. The petitioner/defendant further contended that as he was tenant in respondent's house, some problem arose between them and to revenge the same, the respondent/plaintiff has filed the suit with fraudulent pro note. Hence, he sought before the Court below to dismiss the suit.

4. On the side of the plaintiff, the Tribunal has examined 4 witnesses viz., P.W.1 to P.W.4 and 2 documents were marked viz., Ex.P.1 & Ex.P2. On the side of the defendant, one witness was examined as R.W.1 and no document has been marked.

5. On perusal of oral and documentary evidence and the submission made by both counsel, the trial Court decreed the suit as prayed for by the respondent/plaintiff. Against which, the petitioner herein preferred an appeal in A.S.No.48 of 2009 before the Subordinate Court, Melur Camp, Madurai District. In the said appeal, the First Appellate Court has observed the evidence placed before the trial court and the arguments advanced by both parties and also on perusal of the documents, found that the respondent/plaintiff has clearly proved the case and hence, the First Appellate Court confirmed the judgment and decree passed by the trial Court on 30.01.2015 and accordingly, dismissed the appeal in A.S.No.48 of 2009. Against which the petitioner preferred the second appeal and the same is pending.

6. Against the decretal oral passed by the trial Court, the respondent/decree holder has filed E.P.No.50 of 2017 before the Executing Court for recovery of the amount of Rs.33,000/- and sought for attachment of the property, since already the proceedings for order of attachment which was passed on 04.04.2005 in I.A.No.424 of 2004 was made absolute. The Executing Court observed all these proceedings and allowed the said E.P., on 03.01.2019 and the order of sale notice was also issued on 21.01.2019. Against which, the petitioner/defendant preferred this civil revision petition.

7. In the grounds of revision, the petitioner/defendant has contended that the lower Court committed an error in rejecting the I.A.Nos.37 and 38 of 2010 and no opportunity was given to him to prove his case. The lower Court has also rejected the document without any reason and the said document ought to have been decided by the lower appellate Court as an additional evidence and those are



all letters written by the respondent herein/plaintiff to the petitioner herein/defendant. The lower Court has denied the opportunity of hearing in A.S.No.48 of 2009 is against the principle of natural justice and the exparte judgment and decree dated 31.01.2015 is against law by ignoring the procedure. Hence, the judgment and decree passed by the lower appellate Court is not sustainable and it is not passed on merits. The petitioner further contended that the suit was filed without proof of consideration of the suit pro note alleged to have been given by the petitioner/defendant. Both the Courts below failed to see that the pro note has been witnessed only by the relatives of the respondent herein/plaintiff and no independent witness has signed in the pro note. Hence, the petitioner sought before this Court to set aside the order passed in E.P.No.50 of 2017.

8.The petitioner further contended that the decree passed by the Courts below are not on merits. Hence, he has also preferred the second appeal and the same is pending. The grievance of the petitioner herein is that only two documents he tried to file before the trial court and the same was not considered and he was also not in a position to get of the said order to prove the case and he was denied the opportunity to furnish the copy of the said order. Hence, he stated that the judgment and decree passed by the trial Court as well as the first Appellate Court are not on merits and the E.P., against the said decree is also improper one by raising grounds regarding the evidence given by the plaintiff and also the witnesses for all the close relative of the plaintiff. These are all observed by the Executing Court and the Executing Court has passed an order only on merits. Hence, the petitioner filed this petition to quash the proceedings in E.P.No.50 of 2017 is unsustainable and the order in the E.P., does not require any interference of this Court.

9.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

/ True Copy /

Sub Assistant Registrar(CS)

To

The District Munsif, Melur, Madurai.

+2CC to M/s.K.GURUCHEV, Party in Person (SR-56339[F] dated 25/03/2019)

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