

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10.11.2020	Delivered on: 03.12.2020
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CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRP.(PD).No.2478 of 2015

and

MP.No.1 of 2015

R.Ravikumar

...Petitioner

Vs.

M.Mallika

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree in I.A.No.19042 of 2014 in O.S.No.5951 of 2014 dated 20.03.2015 on the file of the II Assistant Judge, City Civil Court, Chennai.

For Petitioner

: Mr.N.Baskaran

For Respondent

: Mr.P.Sampath

for Mr.M.Chidambaram

ORDER

This Civil Revision Petition has been filed by the petitioner/defendant against the dismissal of his application in I.A.No.19042 of 2014 in O.S.No.5951 of 2014 dated 20.03.2015 on the file of the II Assistant Judge, City Civil Court, Chennai.

2. The petitioner/defendant had filed an application in I.A.No.19042 of 2014 in O.S.No.5951 of 2014 on the file of the II Assistant Judge, City Civil Court, Chennai, under Order 37 Rule 5 of CPC, seeking leave of the Court to defend the suit. The learned II Assistant Judge, City Civil Court, Chennai, by the order dated 20.03.2015, had dismissed the said application. Feeling aggrieved, the petitioner/defendant has filed the present Civil Revision Petition.

3. Heard, Mr.N.Baskaran, the learned counsel for the petitioner/defendant and Mr.P.Sampath, for Mr.M.Chidambaram, the learned counsel for the respondent/plaintiff.

4. The learned counsel for the petitioner has submitted that the

petitioner has specifically stated in his affidavit filed in support of the application seeking leave to defend the suit that the signature found in the suit promissory note does not belong to him and the said suit promissory note is a forged one. He further submitted that, due to family commitment, occasionally the petitioner/defendant borrowed small amounts from the husband of the respondent but, he has not borrowed any amount from the respondent. He further submitted that, at the time of borrowing the amounts from the husband of the respondent, the husband of the respondent insisted to issue a blank cheque as security and accordingly, the petitioner had issued the cheque to him by way of security.

5. He further submitted that, subsequently, the petitioner repaid the said debts and made a request to return the said cheque, but, he did not return the said cheque and hence, the petitioner had lodged a complaint before the police and enraged by the same, the respondent's husband had filed a false suit by creating a forged promissory note in favour of his wife. He further submitted that the petitioner has not borrowed any amount from the respondent and executed any pro-note in her favour and hence, there is no privity of contract between them. He further submitted that after receipt

of notice from the respondent's counsel, the petitioner has sent reply notice through his counsel but, suppressing the said fact, the respondent has filed the aforesaid suit. He further submitted that the petitioner is having a valid defence in the suit and hence, he filed an application seeking leave to defend the suit but, the trial Court had dismissed the said application by recording a finding that it had compared the signature found in the said promissory note with the signatures found in the affidavit and vakalat of the petitioner and they are found to be one and the same and hence, the petitioner has no valid defence.

6. He further submitted that the procedure adopted by the trial Court is against the settled principles of law and that the trial Court ought not to have arrived at such a conclusion by venturing into comparing the signatures without the assistance of the handwriting expert. He further submitted that the petitioner is having a valid defence and therefore, he prayed to allow this Civil Revision Petition and set aside the order passed by the trial Court in I.A.No.19042 of 2014 and permit the petitioner to defend the aforesaid suit.

7. Per contra, the learned counsel for the respondent/plaintiff has submitted that, for the pre-suit notice, the petitioner had sent a reply only after filing of the suit. He further submitted that the petitioner had admitted in his affidavit that he used to borrow money from the respondent's husband, likewise, he borrowed the suit amount from the respondent through respondent's husband and executed the suit promissory note. He further submitted that inspite of repeated oral demands made by the respondent, the petitioner did not come forward to pay the suit amount and hence, the respondent was constrained to issue a notice through her counsel and after receipt of the said notice, the petitioner has not come forward to pay the amount and hence, the respondent was constrained to file the suit.

8. He further submitted that, only after receipt of the suit summons, the petitioner has sent a reply notice as an after-thought and taking into consideration the aforesaid facts and also by comparing the disputed signature found in the suit promissory note with the admitted signatures found in the vakalat and affidavit filed by the petitioner herein, the trial Court came to the conclusion that the suit promissory note has been executed by the petitioner herein only, and hence, the defence set up by the

petitioner is frivolous one and accordingly dismissed the application filed by the petitioner seeking leave to defend the suit and thereafter, decreed the suit as prayed for with costs. He further submitted that, since after dismissal of the application seeking leave to defend the suit, the suit has been decreed, the Civil Revision Petition is not maintainable and therefore, he prayed to dismiss this Civil Revision Petition.

9. In ***Shivsu Canadian Clear International Limited Vs. Freightcan Global Logistics Private Limited***, CRP.(NPD).No.97 of 2013 dated 10.04.2013 this Court has held that the Civil Revision Petition filed against the order rejecting the application filed under Order 37 Rule 3 (5) of CPC is maintainable. Following the aforesaid decision, subsequently, in ***S.Sudha Vs. Rangaswamy Builders Pvt. Ltd***, represented by its Managing Director, CRP.(NPD).No.3936 of 2009 dated 12.06.2013 also this Court has held that the Civil Revision Petition filed against the order rejecting the application filed under Order 37 Rule 3 (5) of CPC is maintainable. Therefore, I am inclined to hold that the present Civil Revision Petition is maintainable.

10. On coming to the facts of the present case, the respondent herein had filed a suit in O.S.No.5951 of 2014 on the file of the II Assistant Judge, City Civil Court, Chennai, for recovery of a sum of Rs.2,75,200/- with interest at the rate of 24% per annum on the principal of a sum of Rs.1,60,000/- from the date of plaint till the date of realization and for costs. The said suit was filed under Order 37 Rule 1 of CPC, against the petitioner herein. The petitioner herein had entered appearance through an advocate and filed his address for service of notice on him. Thereafter, the respondent served on the petitioner a summon for judgment.

11. After receipt of the said summons, the petitioner/defendant has filed an application under Order 37 Rule 3 (5) of CPC, seeking leave to defend the suit stating that he used to borrow money from the respondent's husband namely, P.S.Mani and at that time, he issued a blank cheque as per his directions, but, subsequently he repaid the said debts and made a request to return the said cheque but, the said P.S.Mani did not return the cheque and hence, he lodged a complaint before the police and enraged by the same, the said P.S.Mani set up his wife (respondent) and filed a suit as if

he borrowed the amount of Rs.1,60,000/- from the respondent by executing the suit promissory note. He further stated that he did not borrow any amount from the respondent and executed the said promissory note in favour of the respondent and the alleged promissory note is a forged one. He specifically stated that the signature found in the suit promissory note is not his signature. He also stated that, after receipt of the notice which was sent by the respondent through her counsel, he sent a reply through his counsel denying the borrowal of the same mentioned in the said notice and also denying the execution of the suit promissory note.

12. A perusal of the impugned order passed by the trial Court shows that the suit promissory note has been marked as Ex.R1 and the copy of the advocate notice which was sent by the respondent through her Advocate was marked as Ex.R2 and the reply notice which was sent by the petitioner dated 20.09.2014 with acknowledgement was marked as Ex.P1. But, the suit was filed only on 16.10.2014. So, it is clear that, after receipt of Ex.R2 notice, the petitioner herein had sent a reply notice on 20.09.2014 itself vide Ex.P1 but suppressing the said fact, the respondent/plaintiff in her plaint has stated that the petitioner has not sent any reply for her legal

notice.

13. It is also to be pointed out that in the plaint it is stated that the defendant has borrowed money on two or three occasions from the plaintiff through her husband for his family urgent needs and repaid the said amount promptly and on the said understanding, the defendant has borrowed a sum of Rs.1,60,000/- from her on 19.10.2011 under pro-note but, in the counter affidavit filed in I.A.No.19042 of 2014 she has stated that the petitioner borrowed a sum of Rs.1,60,000/- from her through her husband under a pro-note. So, it is not known whether the suit amount was borrowed directly from the respondent or through her husband.

14. Further, the petitioner in his reply notice and also in the affidavit filed in support of I.A.No.19042 of 2014 has categorically stated that he has not borrowed any amount from the respondent herein and executed the suit promissory note in her favour. He further stated that the signature found in the said promissory note does not belong to him and the said promissory note is a forged one. Under the said circumstances, the trial Court should have allowed the application which was filed by the petitioner

seeking leave to defend the suit but, on the contrary, it has compared the signature found in the said promissory note with the signature found in the affidavit filed by the petitioner and also vakalat and has come to the conclusion that the petitioner had executed the suit promissory note. The procedure adopted by the trial Court is not proper. The trial Court has not given any reason as to how, it came to such a conclusion. Thus, both the sides have raised some issues which have to be necessarily gone into by conducting a regular trial. Hence, this court is of the view that the petitioner shall be permitted to defend the suit. Therefore, this Civil Revision Petition deserves to be allowed.

15. It is seen from the order passed by the Court below that the Court below has dismissed the application filed under Order 37 Rule 3(5) of CPC and there is no indication as to whether the suit itself was decreed immediately consequent upon the dismissal of the said application. At any event, it is settled law that once the rejection order passed under Order 37 Rule 3(5) is set aside in the revision, then the decree passed in the suit shall not stand automatically set aside and it is for the defendant to approach the Civil Court under Order 37 Rule 4 of CPC, to reopen the decree. To this

effect, it is useful to refer to the judgment of this Court in *Shivsu Canadian Clear International Limited Vs. Freightcan Global Logistics Private Limited*, (cited supra) wherein, it has been held that the defendant has to approach the trial Court under Order 37 Rule 4 of CPC, to re-open the decree once the Civil Revision Petition is allowed by the court. Therefore, if any consequential decree is passed in this case by the court below, the petitioner is at liberty to make an application under Order 37 Rule 4 of CPC before the trial court seeking for setting aside the decree in view of the order passed in this Civil Revision Petition.

16. With these observations, this Civil Revision Petition is allowed and the order passed by the Court below is set aside. No costs. Consequently, connected Miscellaneous Petition is also closed.

03.12.2020

Index : Yes/No
Internet : Yes/No
dna

CRP.(PD)No.2478 of 2015

P.RAJAMANICKAM.J.,

dna

To

The II Assistant Judge, City Civil Court,
Chennai.



**Pre-Delivery Order in
CRP.(PD).No.2478 of 2015
and
MP.No.1 of 2015**

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03.12.2020