

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2020

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP(NPD).No.3622 of 2013
and
M.P.No.1 of 2013

M.Mohammed Shammer Jawahar ...Petitioner/Defendant

Vs.

P.Srikanth ... Respondent/Plaintiff

PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India against the order and decretal order of the learned II Assistant Judge, City Civil Court, Chennai, dated 05.12.2012, made in I.A.No.12871 of 2012 in O.S.No.2779 of 2012.

For Petitioner : Mr.G.Jeremiah

For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed against the order passed by the learned II Assistant Judge, City Civil Court, Chennai, in I.A.No.12871 of 2012 in O.S.No.2779 of 2012, dated 05.12.2012.

2. The defendant in the suit O.S.No.2779 of 2012 is the revision petitioner herein.

3. Brief facts of the case are as follows:

(i) The respondent herein/plaintiff has filed a suit in O.S.No.2779 of 2012, under Order 37 Rule 1 & 2 of CPC for recovery of money due on pro-note for a sum of Rs.3,00,000/- along with the interest therein. Despite the notice served on the defendant under Section 138 of the Negotiable Instrument Act and received by him, no payment has been made by the defendant. On receipt of the summons, the defendant has filed an application in I.A.No.12871 of 2012 before the learned II Assistant Judge, City Civil Court, Chennai, to permit the defendant to leave to defend the suit on the ground that there was a transaction to sell the property with common name viz., Anburaj. As the amount is not paid, he has executed the blank pro-note and blank cheques and the same has been utilized and the said application was dismissed on the ground that there is no triable issue.

(ii) Before the Trial Court, Ex.P1/Sale agreement was marked on behalf of the defendant, while, on behalf of the plaintiff, Ex.R1/Pro-note Executed by the Defendant, Ex.R2/Legal Notice and Ex.R3/Acknowledgment Card were marked.

(iii) The learned II Assistant City Civil Judge, Chennai, after going through the records has held that the scope of Order 37 Rule 1 & 2 of CPC is very much limited and has taken note of Ex.R1/Pro-note Executed by the Defendant and held that the suit is liable to be decreed and accordingly, dismissed the application. As against the order passed in the I.A., the revision petitioner has filed this Civil Revision Petition before this Court.

4. Heard the learned counsel for the petitioner and perused the materials placed on record.

5. After going through Ex.P1/Sale Agreement and also Ex.R2/Legal Notice, I find that there is a triable issue in the suit since, the very existence of Ex.R1/Pro-note executed by the Defendant, itself is surrounded with suspicion and in view of the specific stand in the affidavit as to the coming into existence of Ex.R1/Pro-note executed by the Defendant, and hence on this point evidence has been let in to prove his stand.

6. In the result, the Civil Revision Petition stands allowed. No Costs. The impugned order passed by the learned II Assistant Judge, City Civil Court, dated 05.12.2012 is set aside and I.A.No.

12871 of 2012 is allowed and leave to defend the case is permitted.

RMT.TEEKAA RAMAN., J.

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The revision petitioner/defendant has to file written statement within a period of three weeks from the date of receipt of a copy of this order and the Trial Court is directed to dispose of the suit within a period of twelve weeks thereafter. The observation made in the above CRP is only for the purpose of dispose of the CRP and the Trial Court is required to dispose of the suit without being influenced by the above finding.

21.02.2020

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Speaking Order: Yes/No

To
The II Assistant Judge,
City Civil Court,
Chennai.

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and
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