

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 2807 of 2018
and
C.M.P.Nos. 16406 & 16407 of 2018

V.Nachiyappan ...Petitioner/Defendant

Vs.

N.Durai ...Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil procedure against the fair and decreetal order dated 15.03.2018 made in I.A.No. 12865 of 2017 in O.S.No. 3204 of 2017 passed by the XII Assistant City Civil Court, Chennai.

For Petitioner : Mr.K.Kulandaivelu

For Respondent : Mr.T.Subramanian

O R D E R

The defendant in O.S.No. 3204 of 2017, whose application for leave to defend the suit was dismissed by the Trial Court has come up with this revision.

2. The suit was filed for recovery of money based on a loan agreement said to have been executed by the defendant in favour of the plaintiff, upon borrowal of a sum of Rs.3,00,000/-. It is also stated that the defendant had agreed to pay interest at 2% per annum. Upon receipt of summons, the defendant filed an application in I.A.No.12865 of 2017 seeking leave to defend claiming that he has discharged the entire loan and giving details of denomination of notes tendered at such repayment. It is also stated that he had met the plaintiff along with a friend and made the repayments.

3. The Trial Court disbelieved the claim of repayment on the ground that the defendant had not issued a reply notice. Even in the affidavit filed in support of the leave to defend application, it has been stated that the defendant is a poor Carpenter and he is not very much acquainted with the legal

procedure. In such case, non-issuance of reply to the legal notice cannot be used to non-suit the defendant.

4. A perusal of the affidavit filed in support of the application, shows that finer details of the repayment including the denomination of the currency with which the loan amount was repaid has also been specifically pleaded. In such circumstances, I conclude that the defendant has projected a plausible defence and it cannot be said to be a moon shine. I find that there is a prima facie case, which has to be tested at the time of Trial.

5. In view of the same, this Civil revision petition is allowed, I.A.No.12865 of 2017 will stand allowed, the decree granted in O.S.No.3204 of 2017 is set aside invoking Order 37 Rule 4(4) of the Code of Civil Procedure. O.S.No. 3204 of 2017 will stand restored. The defendant is required to file his written statement within a month from today and the Trial Court shall dispose of the suit within a period of eight months from the date of resumption of physical hearings in the Courts at Chennai. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

KKN

To:

The XII Assistant Judge,
City Civil Court,
Chennai.

WEB COPY C.R.P.No. 2807 of 2018
and
C.M.P.Nos. 16406 & 16407 of 2018

SAI (CO)
GMY (28/10/2020)