

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.2808 of 2018

S.A.Ramasamy

... Petitioner

Vs

S.Natesan

... Respondent

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order, dated 13.08.2018 made in I.A.No.175 of 2018 in O.S.No.144 of 2017 on the file of the the learned Principal District Judge, Erode by allowing the Civil Revision Petition.

For Petitioner : Mr.C.Ramaraj, for
Mr.M.Guruprasad

For Respondents : Mr.N.Manokaran

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ORDER

The defendant in O.S.No.144 of 2017 has come up with this revision, challenging the order of the Principal District Judge, Erode, dismissing his application for leave to file an additional written statement in the suit.

2. The suit was laid by the plaintiff seeking recovery of a sum of Rs.48,64,000/- allegedly due on a promissory note said to have been executed by the defendant in favour the plaintiff on 25.11.2015 in order to secure the borrowing. The suit was filed on 14.09.2017. The defendant filed written statement on 30.10.2017, denying the borrowing and the execution of the Promissory Note. The trial commenced and the plaintiff was examined in chief and cross examined during April 2018. On 06.06.2018, the defendant filed an instant application seeking leave to file the additional written statement disclosing the fact that the plaintiff had filed an Insolvency petition in I.P. No.5 of 2018 seeking to declare the defendant as an insolvent and also denying the financial capacity of the plaintiff to lend the huge sum of Rs.40 lakhs.

3. The learned trial Judge dismissed the application on the ground that it is belated and it has been filed after the cross examination of the plaintiff.

4. I have heard Mr.C.Ramaraj, for Mr.M.Guruprasad, for the petitioner and Mr.N.Manokaran, learned counsel appearing for the respondent.

5. Mr.C.Ramaraj, learned counsel appearing for the petitioner would submit that the additional written statement only sets out the factum of filing the Insolvency petition and a plea is taken regarding the ability of the plaintiff to lend such a huge sum of Rs.40,00,000/-. According to him, the additional written statement does not project a the new case or a new defence. Therefore, the learned trial Judge was not right in dismissing the petition seeking leave to file additional written statement as belated. He would also point out that a suit itself was filed in September 2017 and in fact the defendant had cooperated with the Court for conduct of trial even

during January 2018 that is 5 months of filing of the suit.

6. Contending contra, Mr.N.Manokaran, learned counsel appearing for the respondent would submit that the application has been filed after commencement of trial. According to him, the petitioner by filing additional written statement, has attempted to change the material aspects of the pleadings made in the original written statement.

7. I am unable to concur with the submissions of the learned counsel for the respondent. The suit is for recovery of a huge sum of Rs.48,64,000/-. The defendants flatly denied the execution of the Promissory note. The plaintiff has launched Insolvency proceedings pending suit. The defendant sought leave to file additional written statement raising a plea regarding the means of the plaintiff to advance the huge sum of Rs.40,00,000/-. The execution of the promissory note is not admitted. Therefore, it is open to the defendant to raise a plea regarding the means. If the application is dismissed at this stage, it would amount to denying an opportunity to raise a valid defence in the suit. Under Order

VIII rule 9 of Code of Civil Procedure, the Court can allow the defendants to file the additional written statement at any stage of the proceedings if it is necessary. There is no provision in Order VIII Rule 9, curtailing the power of the court, akin to Proviso to Order VI Rule 17. That would by itself show that the intention of the legislature was to leave it to the discretion of the Court. Of course, such discretionary powers should be excised judiciously. The suit was instituted in September 2017 and the trial in the suit has commenced in January 2018. This shows that the defendant has fully co-operated with the Court for conduct of the case. However, the filing of the Additional written statement at this stage will definitely cause certain hardship to the plaintiff which can be compensated by payment of costs.

8. Therefore, I am of the opinion that the learned Principal District Judge was not right in dismissing the application. The Civil Revision petition is therefore allowed. The application in I.A.No.175 of 2018 will stand allowed, subject to the condition that the petitioner pays a cost of Rs.10,000/- (Rupees ten thousand only) to the counsel for the respondent, before the trial court on or before 14.12.2020. Upon proof of such payment,

the learned Principal District Judge, Erode will take the additional written statement on file. It is open to the plaintiff to file the reply statement.

9. Considering the nature of the case which is in part heard stage, the trial Court namely the Principal District Court, Erode is directed to dispose of the suit within a period of six months from the date of resumption of the physical hearing in the Courts at Erode. No costs.

03.11.2020

Note: Time bound order

vum

Index: Yes/No

Speaking order / Non speaking order

To

The Principal District Judge, Erode

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R.SUBRAMANIAN, J.

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