IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM:

**THE HON'BLE MR.JUSTICE V.BHARATHIDASAN**

C.R.P(PD).No.4634 of 2017
and
C.M.P.No.21806 of 2017

K. Shajahan ... Petitioner

Vs.

1. Syndicate Bank,
   Royapettah Branch,
   No.16, Masilamani Road,
   rep. by its Senior Branch Manager,

2. S. Thameem ... Respondents



**PRAYER :** Civil Revision Petition filed under article 227 of the Constitution of India to allow the C.R.P. by setting aside the order and decree dated 24.08.2017 made in I.A.No.16050/2016 in O.S.No.2936 of 2016 on the file of the V Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr. A. Amal Raj

**ORDER**

This Civil Revision Petition has been filed against the order of dismissing the petitioner's application filed under Order VII Rule 11 CPC .

2. The first respondent/plaintiff filed a suit in O.S.No.2936 of 2016 on the file of the V Assistant City Civil Court, Chennai for recovery of a sum of Rs.2,83,218.04/- with interest on the ground that the petitioner, who is the first defendant in the suit, had borrowed a sum of Rs.2,00,000/- on 21.07.2010 and also executed a Hypothecation Agreement and

failed to repay the loan amount. The petitioner was also having Pigmy Deposit Account with the plaintiff bank and the plaintiff is also authorized and empowered by the petitioner/first defendant to have a lien over the above said deposit and by virtue of the lien, the plaintiff bank has transferred a sum of Rs.4000/ from the amount available in the Pigmy Deposit on 18.03.2014. When the petitioner failed to repay the loan, the plaintiff has issued a legal notice dated 16.12.2015 directed the petitioner to repay the amount. Since the petitioner failed to do so, the suit has been filed.

3. Pending suit, the petitioner herein filed an application in I.A.No.16050 of 2016 in the suit under Order VII Rule 11 CPC to reject the plaint on the ground that, no cause of action arises for filing the suit and the suit is barred by limitation. According to the petitioner, after obtaining the loan, he had paid the loan amount and various monthly installments. Subsequently, due to his illness, he closed business and some

amount due to the plaintiff. According to the petitioner, the another account maintained by the petitioner is Pigmy Deposit, in which, he has authorized the bank to withdraw the amount. Now, in order to save the limitation, the plaintiff has stated that they have adjusted the amount available in the petitioner's Pigmy Deposit Account. Without petitioner's authorization, the amount ought not have withdrawn and the above averments has been made only to save the limitation. Hence, the suit is barred by limitation and no cause of action arises for the same.

4. The trial Court by an order dated 24.08.2017 dismissed the application on the ground that whether the petitioner has authorized the plaintiff Bank to withdraw the amount is all disputed question and the same can be decided only in the suit. As per the avernment made in the plaint, the limitation starts only when the last payment made on 18.03.2014 and the plaint disclose the cause of auction to file the suit. Now, challenging the same the present revision has been filed.

5. The learned counsel for the petitioner would submit that the plaintiff has made false averments as if the petitioner has authorized the bank to withdraw the amount from the Pigmy Deposit Account. Only in order to save the limitation, has made false allegations, as if the plaint has been filed in time and hence, the plaint is liable to be rejected.

6. I have considered the submission made by the learned counsel for the petitioner and perused the materials available on records carefully.

7. The suit has been filed for recovery of amount on the ground that the petitioner borrowed money from the plaintiff bank and after paying some installments, he has committed default and in the year 2014. The plaintiff said to have withdrawn some amount from another account stands in the name of the petitioner, they were authorized, and they have also lien over the

amount. Hence, the limitation starts from that date. However, the petitioner has disputed the fact that they have never authorized the bank to withdraw the amount and the bank also is not having any lien over the Pigmy Deposit Account. It is settled law that the averments made in the plaint is only germane to consider the application filed under Order VII Rule 11 C.P.C., unless the plaint is manifestly vexatious, and meritless or failed to disclose the clear right to sue, the suit cannot be rejected at the threshhold. But in the instant case, the averments made in the plaint clearly discloses the cause of action. Whether the withdrawal of a sum of Rs.4000/- from the Pigmy Deposit Account, is authorized or not and whether the petitioner has authorized the plaintiff bank to withdraw the amount and whether the plaintiff bank has any lien over the account are one of the issues to be decided in the trial. Now, based on the statement of the petitioner/defendant, the plaint cannot be rejected. Considering the above circumstances, the trial Court, rightly dismissed the application. Hence, I find no illegality or irregularity in the order passed by the trial Court and I find no merit in the revision.

8. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. It is always open to the petitioner to file written statement disputing all those averments made in the plaint, and produce all relevant evidence before the trial Court to substantiate his contention.

**06.01.2020**

Index:Yes/No

Internet:Yes
Speaking/Non-speaking order

mrp



To

V Assistant City Civil Court,
Chennai.

**V.BHARATHIDASAN, J**

mrp



**C.R.P.(PD) No.4634 of 2017**
**and**
**C.M.P.No.21806 of 2017**

**06.01.2020**