

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 05.03.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD)No.304 of 2021

and

C.M.P.No.2667 of 2021

Sharjudeen

...Petitioner

Vs

S.M.Hariganesh

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.3 of 2020 in O.S.No.182 of 2018 dated 10.11.2020 on the file of the I Additional District Judge, Salem.

For Petitioner : Mr.J.Sudhakaran

ORDER

The limited prayer sought for in the present petition to set aside the fair and decreetal order passed in I.A.No.3 of 2020 in O.S.No.182 of 2018 dated 10.11.2020, on the file of the learned I Additional District Judge, Salem.

2. The petitioner herein had filed a suit in O.S.No.182 of 2018 before the learned Principal District Judge, Salem, for directing the defendant to pay to the plaintiff a sum of Rs.25,00,000/- together with interest at the rate of Rs.100/- perper month i.e., 12% per annum from the date of the suit till the date of its realization.

3. The petitioner herein is the plaintiff and the respondent herein is the defendant in the suit in O.S.No.182 of 2018. The plaintiff is a business person and doing Silver business under the name and style of “Imran Trading Company” at Salem. The plaintiff and the defendant are close friends and the defendant had borrowed money on good will from the plaintiff for his business purpose, on several occasions. In the month of February 2018, the defendant approached the plaintiff and borrowed a sum of Rs.25,00,000/- and the defendant assured the plaintiff to discharge the borrowed money within three months. On 20.02.2018, the defendant had issued a post dated cheque, which is drawn on “HDFC Bank” Salem 5 Road branch, bearing cheque number “000032” for a sum of Rs.25,00,000/- post dated 23.05.2018, in favour of the plaintiff. The plaintiff has presented the above post dated cheque issued by the

defendant in favour of the plaintiff through his banker “Indian Overseas Bank” Salem Shevapet branch on 25.05.2018 for encashment, but the above cheque was dishonoured on 28.05.2015. On 18.06.2018, the plaintiff has issued a legal notice to the defendant through his lawyer, but it was returned on 21.06.2018 with the endorsement “addressee absent door locked”. The plaintiff came to know through the land Brokers that the defendant was trying to alienate his only immovable property which was situated in Salem town. Hence, the plaintiff has come forward with the money claim suit in O.S.No.182 of 2018. Thereafter, the respondent herein had filed interlocutory applications against the petitioner. As against the interlocutory application in I.A.No.3 of 2020, which came to be allowed by the trial Court, the present revision petition has been filed.

4. The learned counsel for the petitioner submitted that the trial Court seriously erred in allowing the petition filed to receive the document and the Court below ought to have taken into account the legal right that accrued in favour of the petitioner. Further, the learned counsel submitted that the learned trial Court erred in allowing the application when the above suit was in part-heard stage as the same was filed only to

protract the proceedings without any basis. It was further contended that the Court below ought to have considered that the receipt sought to be produced by the respondent herein was not at all mentioned even during the cross examination of P.W.1. Further, he would state that the trial Court ought to have considered that assuming that the documents sought to be produced were genuine, the respondent herein ought to have mentioned either in the written statement or mentioned to P.W.1, when the petitioner was recalled to examine. The Court below has not considered the objections filed by the petitioner had allowed the said application on the ground that the said documents may be necessary for deciding the issue on hand and allowed the said application for marking the same. Hence, the learned counsel for the petitioner prays to allow this application.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. On going through the averments, it is seen that the suit in O.S.No.182 of 2018 was filed by petitioner before the learned

Principal District Judge, Salem, for directing the defendant to pay the plaintiff a sum of Rs.25,00,000/- together with interest at the rate of Rs.100/- per month i.e., 12% per annum from the date of filing of the suit till the date of realization. The petitioner and the respondent are friends and there were several transactions which took place between them and the present transaction is also one of the same nature and not as a loan. Since the cheque which was issued by the respondent came to be dishonoured, the plaintiff has filed the suit.

7. Per contra, the defendant therein had filed I.A.No.3 of 2019 alleging that the petitioner/plaintiff has utilized the firm name of the respondent/defendant ufor his silver business and has purchased silver bars from several dealers. It was further contended therein that the defendant had traced out several invoice bills, through which the plaintiff has purchased silver bars from his dealers and he has also acknowledged the receipt by affixing his signature.

8. On being satisfied with the contentions raised by the defendant in the interlocutory application and also the fact that invoice bills are

necessary to decide the issue, the learned trial Judge has allowed the application in favour of the defendant. This Court is of the view that the stand of the defendant in the interlocutory application to the extent that the invoice bill is the important document for deciding the issue on hand, is justifiable. Hence, the invoice bills plays a major role in deciding the issue on hand. This Court is of the view that the invoice bills may be produced before the Court below for examination and a consequent direction to the petitioner and respondent herein to let in their evidences to prove their case before the trial Court might meet the ends of justice.

9. In the light of the above observations, the petitioner and the respondent herein are hereby granted liberty to produce the relevant records along with the invoice bills and the petitioner herein is also at liberty to cross examine DW1. On receipt of the relevant documents, the learned trial Judge may decide the issue and proceed further with the matter, in accordance with law.

10. Accordingly, the present Civil revision petition stands disposed off. No costs. Consequently, connected miscellaneous petition is also closed.

05.03.2021

Index: Yes/No
Speaking order/Non Speaking order
sbn

To

The I Additional District Court,
Salem.



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V.BHAVANI SUBBAROYAN, J.

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