

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD)No.147 of 2021

and

C.M.P.No.1357 of 2021

K.Kothandan,
S/o.Late Krishnappa Naicker,
62, Bajanai Koil Street, Perumaleri Village,
Vadakadampadi Post (Via),
Mahabalipuram,
Kancheepuram District.
Pin No.603 104. ... Petitioner

Vs.

1.Praful H.Bhandari,
Flat No.B, PTR Apartment,
No.53, New No.153, Habibullah Road,
T.Nagar, Chennai - 600 017.

2.E.Dhanakodi,
S/o.Late Elumalai,
No.30, Bajanai Koil Street, Perumaleri Village,
Vadakadampadi Post (Via),
Mahabalipuram,
Kancheepuram District.
Pin No.603 104. ... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Judgment and Decree dated 18.12.2020 passed in I.A.No.3/2019 in O.S.No.3640/2018, on the file of the XVIII Assistant City Civil Court, Chennai.

For Petitioner : Mr.R.Dhamodaran

ORDER

This matter is taken up through Web hearing.

2. This Civil Revision Petition has been filed against the order made in I.A.No.3 of 2019 in O.S.No.3640 of 2018 dated 18.2.2020 on the file of the XVIII Assistant City Civil Court, Chennai, allowing the application filed by the petitioner/1st defendant, seeking to grant leave to defend the suit subject to the condition that he shall deposit a sum of Rs.1,68,000/- on or before 22.01.2020.

3.The brief facts which led to the filing of the present Civil Revision Petition, are as follows:

The petitioner herein is the 1st defendant in the suit in O.S.No.3640 of 2018 on the file of the XVIII Assistant City Civil Court, Chennai, filed by the 1st respondent herein/plaintiff for recovery of the suit amount of

Rs.1,68,000/- with interest. During the pendency of the suit, the petitioner herein has moved interim application in I.A.No.3 of 2019 under Order 37 Rule (3)(5) r/w. Section 151 of CPC seeking to grant leave to defend the above said suit. According to the petitioner, the suit itself is not maintainable since the alleged loan agreement executed by him is not a valid and genuine document since it contains many discrepancies such as, it is stated in the plaint that the petitioner/1st defendant executed the loan agreement on 16.07.2015, whereas it shows that the petitioner/1st defendant signed the agreement on 20.08.2015 and such loan agreement has to be executed only on Rs.20/- non-judicial stamp paper but the present non judicial stamp paper was purchased four years back and thereby it lacks limitation and there is a huge space left out in the first page of the loan agreement and there is no recital found that the 2nd defendant stood as Guarantor. Therefore, all this would raise the genuinity of the loan agreement. Therefore, the petitioner/1st defendant sought leave of the Court to defend the suit. By order dated 18.12.2020 the Court below having considered the rival submissions, allowed the application with a condition that the petitioner shall deposit a sum of Rs.1,68,000/- to the credit of the suit on or before 22.01.2021 failing which the application shall stands

dismissed. Aggrieved by the same, the petitioner is before this Court.

4.The learned counsel appearing for the petitioner would contend that the Court below has not dealt with the issue in a proper perspective and allowed the application with a condition to deposit a huge amount i.e., entire suit amount to the credit of the suit. The learned counsel would point out that the very purpose to defend the suit would get defeated if the condition imposed by the Court below is complied with. He would also contend that the petitioner has specifically pointed out the defects in the matter of execution of the loan agreement and its genuineness, however, the Court below though came to the conclusion that there are triable issues and the same have to be decided in full fledged trial, but erroneously imposed condition to deposit the huge amount of Rs.1,68,000/- on or before 22.01.2021 which is onerous and liable to be set aside.

5.On perusal of the order passed by the Court below, it appears that the Court below has accepted the version of the petitioner/1st defendant that there are triable issues to be decided in full fledged trial, however, having followed dictum of the Hon'ble Supreme Court while allowing the petition,

imposed condition that the petitioner shall deposit a sum of Rs.1,68,000/-.

No doubt it is settled law that if the Court is of the opinion that the case arises the triable issues, then leave to defend should ordinarily be granted unconditionally. However, it is pertinent to note that it is also settled law that in case where the Court entertains the genuine doubt on the question as to whether the defence is genuine or sham or whether it arises the triable issues or not, the Court may impose condition while granting leave to defend. In this case, though the Court below has rightly held that there are triable issues, but it has taken note of the fact that the petitioner/1st defendant though raised issues with regard to genuineness of the loan agreement alleged to have been executed by the petitioner/1st defendant, but the petitioner/1st defendant has nowhere denied the execution of the loan agreement and admitted his signature in the loan agreement. In such circumstances, the Court below while allowing the application to defend the suit, imposed a condition to deposit a sum of Rs.1,68,000/- on or before 22.01.2021. This conclusion of the Court below is in the opinion of this Court, quite reasonable and does not require any interference. In the cse of **"IDBI Trusteeship Services Limited Vs Hubtown Limited"** reported in **"2017(1)SCC 568"** the Hon'ble Supreme Court has categorically held as

follows:

“18. Accordingly, the principles stated in paragraph 8 of Mechelec’s case will now stand superseded, given the amendment of O.XXXVII R.3, and the binding decision of four judges in Milkhiram’s case, as follows: If the defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit; if the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend; even if the defendant raises triable issues, if a doubt is left with the trial judge about the defendant’s good faith, or the genuineness of the triable issues, the trial judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security;

if the Defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

if the Defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith;

if any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court".

In the above decision, it has been held that even if the defendant raises triable issues, if a doubt is left with the trial judge about the defendant's good faith, or the genuineness of the triable issues, the trial judge may impose conditions both as to time or mode of trial, as well as payment into

court or furnishing security. Therefore, if the defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. In the present case, though the Court below comes to the conclusion that there are triable issues, however, taking note of the fact that the petitioner/1st defendant nowhere denied the execution of the document, arises doubt about the petitioner's good faith and the genuineness of the triable issues. In such circumstances, the Court below has imposed the condition to deposit a sum of Rs.1,68,000/-.

6.However, as regards the quantum of amount to be deposited is concerned, this Court is of the view that as rightly submitted by the learned counsel for the petitioner, it is onerous one, this Court is inclined to reduce the same to a sum of Rs.50,000/-.

7.Accordingly, this Civil Revision Petition is allowed, modifying the order of the Court below to the extent that the petitioner/1st defendant shall deposit a sum of Rs.50,000/- on or before 05.03.2021 and the Court below shall proceed further and on deposit of such amount, the application to

defend the suit, can be taken on record and the trial can be commenced thereafter in accordance with the procedure established under law. No costs. Consequently, connected Miscellaneous Petition is closed.

04.02.2021

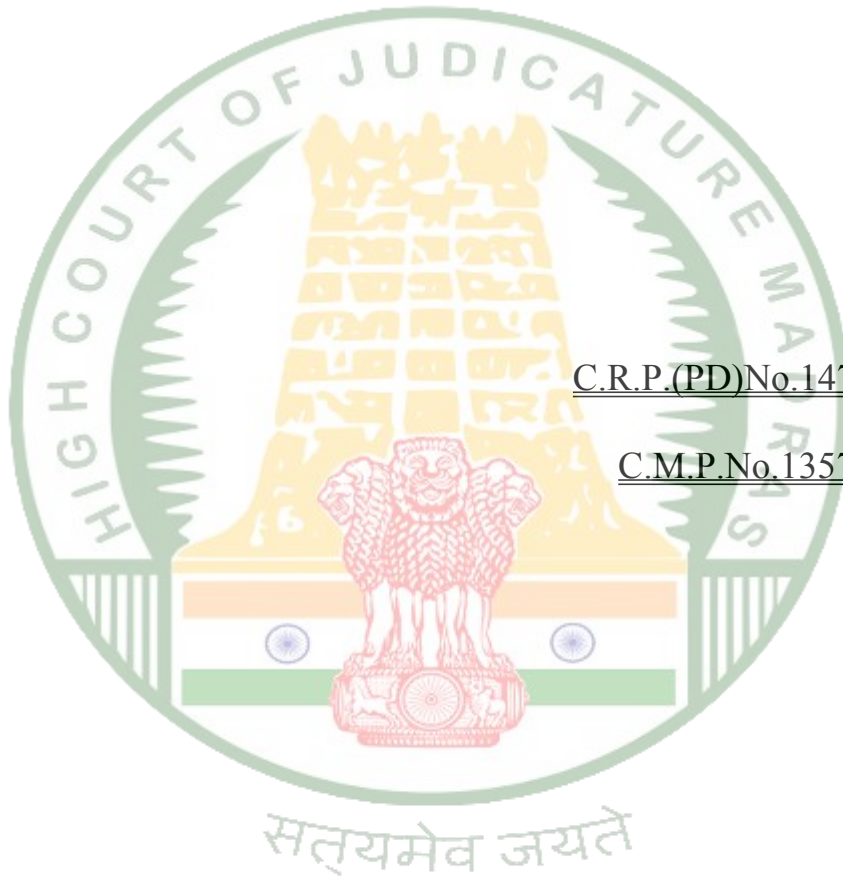
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Index : Yes/No
Speaking / Non-speaking order



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V.BHAVANI SUBBAROYAN. J.
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