

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.04.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.445 of 2021 and
C.M.P.No.3866 of 2021

K.A.Raman Kutty

...Petitioner /Defendant

Vs.

Rahul Raveendran
Proprietor
M/s Sree Ravees Finance,
No.12, (Old No.38) Marchetty Street,
Mandaveli, Chennai

... Respondent /Plaintiff

Civil Revision Petition is filed under Section 115 of Civil Procedure Code to set aside the fair and decreetal order dated 21.02.2020 made in I.A.No.1 of 2019 in O.S.Nos.4849 of 2019 on the file of learned I Assistant City Civil Court, Chennai.

For Petitioner : Mr.J.James

For Respondent : Mr.B.Dineshkumar

O R D E R

The present Revision Petition is filed under Section 115 of Civil Procedure Code as against the fair and decreetal order in I.A.No.1 of 2019 in O.S.No.4849 of 2019 dated 21.12.2020 and the said I.A. was filed by the petitioner seeking leave of the Court to defend the suit filed under Order 37 Rule 1 of Civil Procedure Code.

2. The O.S.No.4849 of 2019 was filed by the respondent against the petitioner, under Order 37 Rule 1 Civil Procedure Code to direct the said petitioner to pay the respondent a sum of Rs.1,68,000/- along with contracted interest of 24% per annum on the principal amount of Rs.1,00,000/- from the date of suit till realization. The respondent / plaintiff had asserted that the petitioner / defendant has taken a loan from the respondent to the tune of Rs.1,00,000/- on 20.07.2016 for developing the respondent/ defendant's business and executed two promissory notes dated 20.07.2016 for Rs.1,00,000/- assuring to repay the

said amounts with interest 24% interest per annum respectively as and when the respondent / plaintiff demanded for repayment of the said sum. In spite of the same, the petitioner / defendant failed to pay the arrears along with interest and the same was accumulated to Rs.1,68,000/- as on the date of filing the suit.

3. The respondent claimed that he is entitled to a sum of Rs.1,00,000/- towards the principal loan amount and a sum of Rs.68,000/- towards arrears of interest after giving credit to a sum of Rs.2,000/- paid on 20.08.2016 by the petitioner towards interest and making cumulatively, the petitioner / defendant has to pay a sum of Rs.1,68,000/- with 24% interest per annum. The petitioner / defendant had filed an application in I.A.No.1 of 2019 under Order 37 Rule 3 Civil Procedure seeking leave of the Court to defend the suit. The said application came to be dismissed by order dated 21.02.2020. As against which, the present Civil Revision Petition is filed.

4. The learned counsel for the petitioner would submit that the court below had not exercise the jurisdiction vested with it properly and did not appreciate the reasons assigned in the affidavit filed by the petitioner for grant of leave to defend the suit. Further, the court below failed to take note the contention of the petitioner that he never received any amount from the respondent in the year 2016. That apart, the respondent is always in the habit of filing suit individually and also jointly alleging borrowable of money from the petitioner. Also, the respondent has filed another suit against the petitioner in O.S.No.5117 of 2019 on the file of learned VII Assistant Judge, City Civil Court for recovery of money, hence pleaded to set aside the order dated 21.02.2020 passed in I.A.No.1 of 2019 in O.S.No.2019.

5. The learned counsel for the respondent submits that earlier, petitioner availed loan and settled the same only on that basis, the respondent has given loan to the petitioner. Further, the petitioner has not stated any substantial defence, however, denied the averment of the respondent in a casual manner, hence seeks to dismiss the petition.

6. Heard the learned counsel on either side and perused the documents placed on record.

7. It is not in dispute that in the summary suit, leave has to be obtained by the respondent / defendant, however, it is to be seen as to the ground on which such leave has been sought by the respondent / defendant. On a plain reading of the affidavit filed in support for leave to defend the petition, it is seen that the petitioner / defendant, in Paragraph Nos.4 and 5 had pleaded that earlier, he had received an amount in past from the

respondent, however, the quantum, as stated by the respondent / plaintiff is disputed and the execution of the promissory note is not been disputed. Considering the pleadings in the affidavit and taking note of the fact that the petitioner has not raised any substantial defence to defend the suit and it is settled law that when there is no triable issues and the substantial defence has not been raised by the defendant / petitioner, the leave to defend the suit cannot be granted.

8. On the perusal of the affidavit filed by the petitioner, it is clear that the petitioner has not even issued any notice to reclaim the promissory note from the respondent / plaintiff, if at all he has paid the said amount. As far as leave to defend the suit is concerned, a clear unambiguous and substantial defence has to be putforth by the petitioner, who has filed a petition seeking leave to defend. In the absence of any substantial defence made out and mere illusory averments would not be sufficient to grant leave to defend the suit and hence this Court is of the view that the petitioner has not pleaded any substantial defence permitting him to defend the suit.

9. Under these circumstances the order passed by the learned I Assistant Judge, City Civil Court in I.A.No.1 of 2019 in O.S.No.4848 of 2019 dated 21.02.2020 cannot be faulted and the revision petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The I Assistant City Civil Court,
Chennai.

+1cc to Mr.J.James, Advocate, S.R.No.26640

+1cc to Mr.B.Dineshkumar, Advocate, S.R.No.26847

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C.M.P.No.3866 of 2021

SJ(CO)
CB(15/06/2021)