

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.2295 of 2015 and
MP.No.1 of 2015

1.Tamilselvi
2.R.Mani

..Petitioners

Vs.

G.Sivamani

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of Code of Civil Procedure against the order and decree dated 05.12.2014 passed in IA.No.13867 of 2014 in OS.No.2954 of 2014 on the file of VIII Assistant City Civil Court, Chennai.

For Petitioners : Mr.C.Subramanian

For Respondent : Mr.Yoganand
for M/s.CPG Yoganand & Assts.

ORDER

This civil revision petition is directed as against the order

and decree dated 05.12.2014 passed in IA.No.13867 of 2014 in OS.No.2954 of 2014 on the file of VIII Assistant City Civil Court, Chennai thereby dismissing the petition for leave to defend.

2. The petitioners are the defendants. The respondent is the plaintiff who filed suit for recovery of money on the pronote. While pending the suit, the petitioners filed petition for leave to defend. The case of the plaintiff is that the petitioners approached respondent on 01.05.2011 and requested for a loan of Rs.4,00,000/-. The first petitioner also promised to repay the same with interest at the rate of 36% per annum within a period of six months. Believing the words, the respondent disbursed loan of Rs.4 lakhs on 04.05.2011 by way of cheque. On the same day, the petitioners herein executed pronote in favour of the respondent herein. In fact on the same day, she also executed letter of undertaking to return the amount with interest at the rate of 36% per annum within a period of six months. Thereafter on 15.10.2011, the respondent issued letter stating that while borrowing loan, the petitioner executed letter of undertaking dated 04.05.2011 thereby undertook to register the sale deed in favour of the respondent herein and the remaining amount will be paid as such by the letter dated 15.10.2011

sent by the respondent. Thereafter on 18.12.2011, again the first petitioner's husband undertakes to register sale deed and remaining amount will be paid for which the petitioner is also liable. Thereafter the petitioners did not register any sale deed and also did not repay the loan borrowed by them.

3. Whereas the case of the petitioners is that the petitioner borrowed a sum of Rs.2,00,000/- in the year 2010 and the same was repaid in the year 2011 itself with exorbitant interest. At the time of borrowing the said loan, the respondent obtained signature in the pronote as well as blank papers. In fact, they also received cheques executed by her husband. Even after repayment of the entire loan amount with exorbitant interest, the respondent used to demand more money and had given torture to the petitioners. Therefore, the petitioners lodged complaint on 29.04.2014 on the file of the Inspector of Police, Poonamallee Police Station, Tiruvallur District. On receipt of the same, the petitioners were also issued CSR on 29.04.2014. Thereafter the Inspector of Police also conducted enquiry. In the enquiry, the respondent appeared and while pending enquiry, the

respondent caused notice on 04.05.2014 and filed suit.

4. Even then, the court below dismissed the petition for leave to defend on the ground that the petitioners failed to prove the loan amount of Rs.2,00,000/- borrowed in the year 2010 and the same was repaid to the respondent herein. Further, the undertaking letter which was marked as Ex.R2 and 3 signed by the petitioner and also she executed pronote which was marked as Ex.R1 for the loan amount of Rs.4,00,000/-. Further, the cheques issued for various sums were also marked as Ex.R8 to R11. Those documents prove the case of the respondent and dismissed the petition for leave to defend. The court below failed to consider the complaint lodged by the petitioner and she was also issued CSR. While pending enquiry, the respondent caused legal notice. Therefore, there are triable issues in the defence made by the petitioners herein and the trial court ought to have given opportunity to the petitioners to defend their case.

5. In view of the above discussion, the order and decree dated 05.12.2014 passed in IA.No.13867 of 2014 in OS.No.2954 of 2014 on the file of VIII Assistant City Civil Court, Chennai are set aside. Consequently, the judgment and decree passed in OS.No.2954 of 2014

dated 05.12.2014 on the file of VIII Assistant City Civil Court, Chennai are also set aside. The petitioners are directed to file written statement within a period of two weeks from the date of receipt of copy of this order. The trial court is directed to dispose of the suit within a period of six months from the date of receipt of copy of this order.

6. With the above directions, this civil revision petition is allowed. Consequently, connected miscellaneous petition is closed. No order as to costs.

10.02.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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WEB COPY

G.K.ILANTHIRAIYAN,J.

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To

The VIII Assistant City Civil Court,
Chennai.



CRP.NPD.No.2295 of 2015

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