

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2021

CORAM

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

CRP.NPD.No.3874 of 2015

and

MP.No.1 of 2015 and CMP.No.5612 of 2020

O.P.Vijayalakshmi ... Petitioner

Vs.

M.Gomathi ... Respondent

PRAYER: The Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, praying set aside the order in I.A.No.55 of 2015 in O.S.No.1022 of 2015 on the file of the XVIII Additional City Civil Judge, Chennai and grant unconditional leave to defend the suit.

For Petitioner : Mr.M.Devaraj

For Respondent : Mr.C.Vigneswaran

ORDER

WEB COPY

This Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.55 of 2015 in O.S.No.1022 of 2015 dated 15.06.2015 on the file of the XVIII Additional City Civil Judge, Chennai,

thereby, dismissing the petition filed by the petitioner to grant leave to defend the suit.

2. The respondent is the plaintiff. She filed the said suit for recovery of money, on the strength of the pro-note as well as the cheques issued by the petitioner herein. On receipt of the summons, the petitioner filed a petition to grant leave to defend the suit filed by the respondent herein. According to the respondent, she is a co-employee of the petitioner herein at Government Ophthalmic Hospital, Egmore, Chennai. The respondent retired from service in the month of September 2009. During her service, the petitioner used to borrow the loan to meet out her urgent commitments and thereafter, used to repay the same with interest.

3. Accordingly, the petitioner borrowed a sum of Rs.11 lakhs on various occasions viz., a sum of Rs.2 lakhs on 28.08.2013 and issued four cheques for the said sum. When the cheques were about to be presented for collection, the petitioner endorsed that she requested further time till December 2015 for repayment of the entire amount. Immediately, the respondent filed a suit in the month of February 2015. Whereas, the

petitioner filed a petition to leave to defend the suit, on the ground that the respondent is known to her and used to lend money to various persons. Accordingly, the petitioner borrowed a sum of Rs.2,50,000/- from the respondent in the year 2008. Thereafter, she had been paying a sum of Rs.22,000/- every month regularly by cash and also cheque maintained in the Vijaya Bank, Egmore Branch, Chennai.

4. After repaying the entire loan amount borrowed by her. She filed the suit, on the strength of undertaking letter given by the petitioner herein. While borrowing the loan, the petitioner signed various papers in favour of the respondent herein. Even according to the respondent, the petitioner borrowed only a sum of Rs.2 lakhs on 28.08.2013, for which she also issued four cheques. Now the respondent arrived at Rs.11 lakhs and filed a suit. Therefore, the petitioner has got valid defense to defend the suit.

5. On a perusal of the records, it is seen that the document dated 16.10.2012 was issued by the petitioner herein, undertaking to repay the amount of Rs.1,50,000/- on 20.11.2012. On a perusal of the four cheques issued by the petitioner for a sum of Rs.50,000/- each signed by the

petitioner in English. Further, by the letter dated 10.03.2014, undertaking to repay the amount, which is signed by her in Tamil. Seeing all the signatures in all the documents are completely differs and also the document dated 09.01.2015 issued by the petitioner herein for a sum of Rs.11 lakhs.

6. On a perusal of the said letter, she requested further time to repay the amount of Rs.11 lakhs till December 2015. In the said document the signatures differs. Further, as per undertaking letter dated 09.01.2015, the petitioner sought time till December 2015. Whereas, the respondent filed a suit even in the month of February 2015 itself. Therefore, there are so many triable issues and the petitioner has got valid defends to defend the suit.

7. The learned counsel for the respondent raised only one ground that the Civil Revision Petition is not maintainable when the suit itself was decreed after dismissing the petition to leave to defend, by the judgment and decree dated 15.06.2015. In this regard, the learned counsel for the petitioner cited the judgment reported in 2009(2) SCC 432 (*Wada Arun Asbestos Private Limited -vs- Gujarat Water Supply & Sewerage Board*), in which, this Court held as follows:-

“15. Where a conditional leave is granted and the conditions therefor are not complied with, a judgment in favour of the plaintiff can be passed. It is not in dispute that the first appeal was maintainable. Where a decree is appealed from, any error, defect or irregularity in any order affecting the decision of the case may be set forth as a ground of objection in the memorandum of appeal as envisaged under Section 105 of the Code of Civil Procedure.

16. It is in the aforementioned backdrop, the question as to whether a revision petition was maintainable against an order granting conditional leave must be considered. We will proceed on the basis that an order imposing a conditional leave to defend the suit was a jurisdictional question and, thus, a revision application would be maintainable as has been held by various High Courts, notable amongst them are New Ashapuri Coop. Housing Society Ltd. v. Arvindkumar Manilal Patel [AIR 1975 Guj 76], Fateh Lal v. Sunder Lal [AIR 1980 Raj 220], Modi Ram v. Sugan Bai [AIR 2005 Raj 12] and A.K. Velan v. Narayanan and Co. (P) Ltd. [AIR 1972 Mad 118].

17. But if a right of appeal from the decree is conceded to a defendant, in our opinion, he cannot be denied a right to challenge an order which was subject to revision in his memorandum of appeal filed from the decree ultimately passed.

22. A statutory right conferred on a litigant cannot ordinarily be taken away. A civil revision application might have been maintainable as against the order dated 27-11-2002 granting conditional leave. The said remedy was also available where leave to defend a suit is refused. Leave to defend a suit, as noticed hereinbefore, should ordinarily be granted. It was, therefore, permissible for the defendant to raise the said contention in the appeal although it had asked for time to comply with the conditions.

26. Keeping in view the facts and circumstances of this case, we are of the opinion that it is not a fit case where the impugned judgment of the High Court should be interfered with. This appeal is dismissed accordingly. However, in the facts and circumstances of this case, there shall be no order as to costs.”

8. The Hon'ble Supreme Court of India held that the Civil Revision is maintainable as against the order passed in the leave to defend the application.

9. In view of the above discussion, this Civil Revision Petition is allowed and the order passed in I.A.No.55 of 2015 in O.S.No.1022 of 2015 dated 15.06.2015 is set aside. The petitioner is at liberty to file a written statement and proceed with the trial. The trial Court is directed to complete the trial within a period of nine months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petitions are closed. No costs.

01.02.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

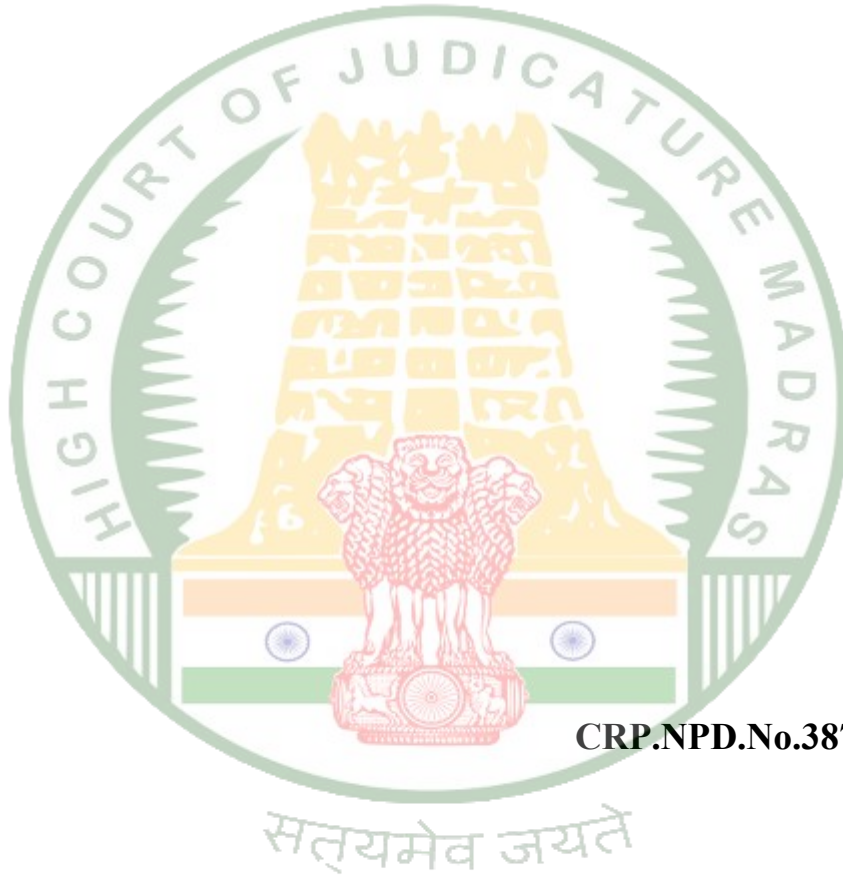
kv

To

The XVIII Additional City Civil Judge, Chennai

G.K.ILANTHIRAIYAN,J.

Kv



CRP.NPD.No.3874 of 2015

WEB COPY

01.02.2021



WEB COPY