

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRP(NPD).No.4134 of 2015

and

M.P.No.1 of 2015

1. Caliber Valves Pvt.Ltd.,
Rep.by its Managing Director,
No.101, 1st Floor, 4th Stree,
Anna Nagar, Chennai – 600 040.

2. E.Sekar

3. G.Nirmala

... Petitioners

Vs.

S.Dimple Bathija

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and decretal order passed in I.A.No.10222 of 2015 in Original Suit No.2824 of 2015, on the file of II Assistant City Civil Court, Chennai, dated 28.08.2015 and consequently direct the Lower Court to dispose the suit on merits by giving opportunity to the petitioner for conducting trial.

For Petitioners : M/s.S.Ambigapathy

For Respondent : Notice Served (No Appearance)

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.10222 of 2015 in O.S.No.2824 of 2015 dated 28.08.2015 on the file of the learned II Assistant Judge, City Civil Court, Chennai, thereby, dismissing the petition filed seeking leave to defend the suit.

2. The petitioners are the defendants in the suit filed by the respondent herein for recovery of money. After receipt of the notice, the petitioners filed a petition seeking leave to defend the suit. According to the petitioners, they borrowed a sum of Rs.4,12,500/- by cheque out of 5 lakhs and the balance amount of Rs.87,500/- has been deducted towards advance interest. For the said loan amount, the petitioners have to pay by 10 installments each Rs.50,000/- and they issued 10 post dated cheques. Out of 10 cheques, two cheques have been honoured and thereafter, remaining 7 installments paid by way of cash to the respondent. According to the petitioners, the last one installment alone is due and while being so, the respondent presented 3 cheques on the same day i.e., on 11.03.2015 without

any instructions from the petitioners. All the cheques were returned dishonoured. Therefore, the present suit is filed only to extract more money from the entire family members. Hence, the petitioners have got very good case to defend the main suit.

3. Though notice was served on the respondent and the name is also printed in the cause list, no one appeared on behalf of the respondent. Heard the learned counsel for the petitioners.

4. The Court below dismissed the petition seeking leave to defend the suit, on the ground that the petitioners admitted the issuance of the cheques for the loan borrowed by him and as such, dismissed the petition seeking leave to defend the suit. Even according to the respondent, the petitioners requested to lend a sum of Rs.5 lakhs in which the respondent issue a cheque for a sum of Rs.4,12,500/- and remaining the balance amount of Rs.87,500/- paid by way of cash. It shows that the remaining amount was deducted by the respondent for advance interest, even while lending loan. Thereafter, the respondent deposited only 3 cheques for a sum of Rs.1,50,000/- for the balance principal of Rs.4 lakhs. Therefore, there are

defense to defend the suit by the petitioners herein. However, even according to the petitioners, they failed to pay the last due.

5. Considering the same, this Civil Revision Petition is allowed and the order passed in I.A.No.10222 of 2015 in O.S. No.2824 of 2015 dated 28.08.2015 is set aside. The petitioners are permitted to defend the suit on condition that the petitioners shall deposit a sum of Rs.1 lakh to the credit of the suit in O.S.No.2824 of 2015 within a period of four weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. No costs.

22.02.2021

Speaking/Non-speaking order
Index : Yes/No
kv

To

The II Assistant Judge, City Civil Court, Chennai.

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G.K.ILANTHIRAIYAN,J.

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