

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

CORAM

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

CRP.PD.No.707 of 2015 and
MP.No.1 of 2015

Anoop Chand Chordia

..Petitioner

Vs.

Anand

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decreetal order dated 23.12.2014 allowing IA.No.3555 of 2013 in OS.No.13420 of 2010 passed by the learned VII Assistant City Civil Judge at Chennai for amendment.

For Petitioner : Mr.N.Nagu Sah

For Respondent : M/s.Om Sai Ram

ORDER

This civil revision petition is directed as against the fair and decreetal order passed in IA.No.3555 of 2013 in OS.No.13420 of 2010 by the learned VII Assistant City Civil Judge at Chennai dated 23.12.2014

thereby allowed the petition filed by the respondent herein for amending the plaint.

2. The petitioner is the sole defendant. The respondent is the plaintiff and he filed suit for recovery of money on the strength of the pronote dated 01.04.2002. The case of the respondent is that as per the original plaint, the petitioner borrowed a sum of Rs.50,000/- on 01.04.2002 by way of cheque from the respondent herein for his urgent needs and also agreed to repay the amount with interest at the rate of 16.5% per annum. In fact on the same day, the petitioner also executed pronote for the amount borrowed by him together with interest at the rate of 15% per annum. While cross examination of PW1, namely the respondent herein, it was elicited that no statement of accounts filed in respect of suit transaction as averred in the plaint. Therefore, after completion of cross examination, the respondent filed petition to amend the plaint and stated that the petitioner had executed promissory note in favour of the respondent for a sum of Rs.50,000/- on 01.04.2002 towards the receipt of past consideration vide cheque bearing No.042500 dated 28.11.1998 drawn on Dena Bank, Sowcarpet, Chennai. Even then, the respondent failed to produce any bank statement showing that in the year 1998 a sum of Rs.50,000/- encashed by the petitioner through the cheque dated 28.11.1998. The learned counsel for the petitioner also relied upon the judgment in the case of

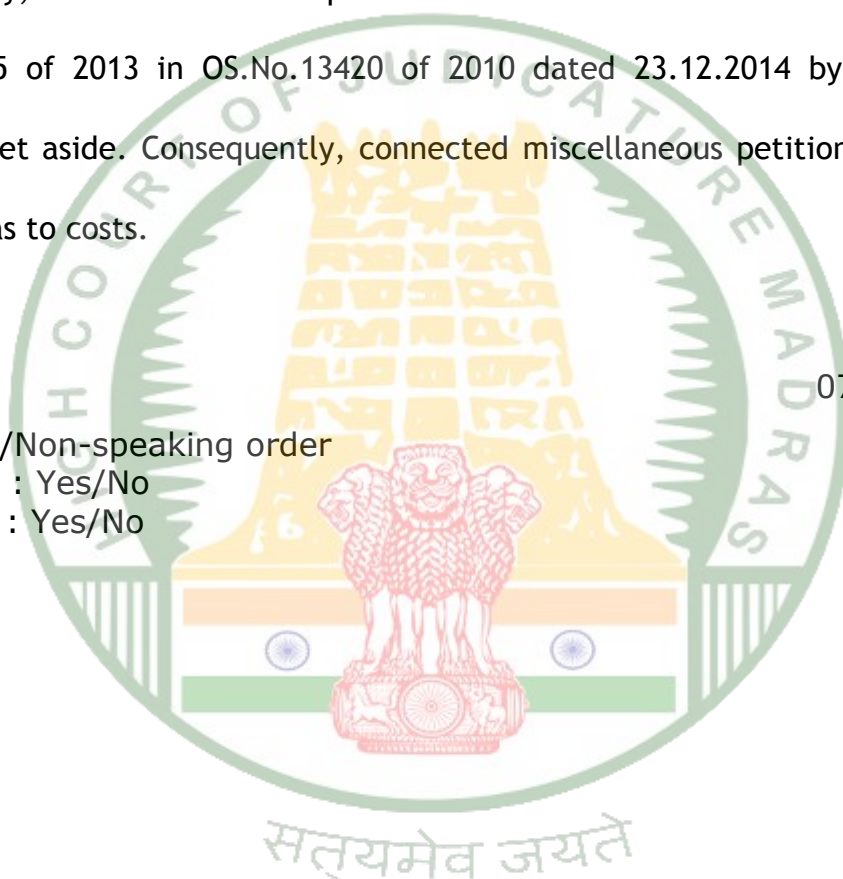
Mashyak Grihnirman Sahakari Sanstha Maryadit v. Usman Habib Dhuka and others reported in **2013 (9) SCC 485**, in which the Hon'ble Supreme Court of India has held as follows:

“The High Court has not considered these undisputed facts and passed the impugned order on the general principles of amendment as contained in Order VI Rule 17 of the Code of Civil Procedure. Hence we do not find any ground for allowing the amendment sought for by the plaintiffs which was not only a belated one but was clearly an after- thought for the obvious purpose to avert the inevitable consequence. The High Court has committed serious error of law in setting aside the order passed by the trial court whereby the amendment sought for was dismissed. The impugned order of the High Court cannot be sustained in law.”

3. It is also seen that the respondent failed to make any averment in his affidavit about the diligent steps taken by him in filing the petition for amendment before commencement of the trial, which is mandatory. Admittedly, the respondent introduced new cause of action by way of amendment since according to the respondent, the petitioner borrowed a sum of Rs.50,000/- on 01.04.2002 and filed the suit on the strength of pronote dated 01.04.2002. Even assuming that the case of the respondent is true that no prudent man would lend money without receipt of any security such as pronote, in the case on hand, as per the amendment, the petitioner borrowed a sum of Rs.50,000/- on 28.11.1998 and executed pronote on 01.04.2002.

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Speaking/Non-speaking order
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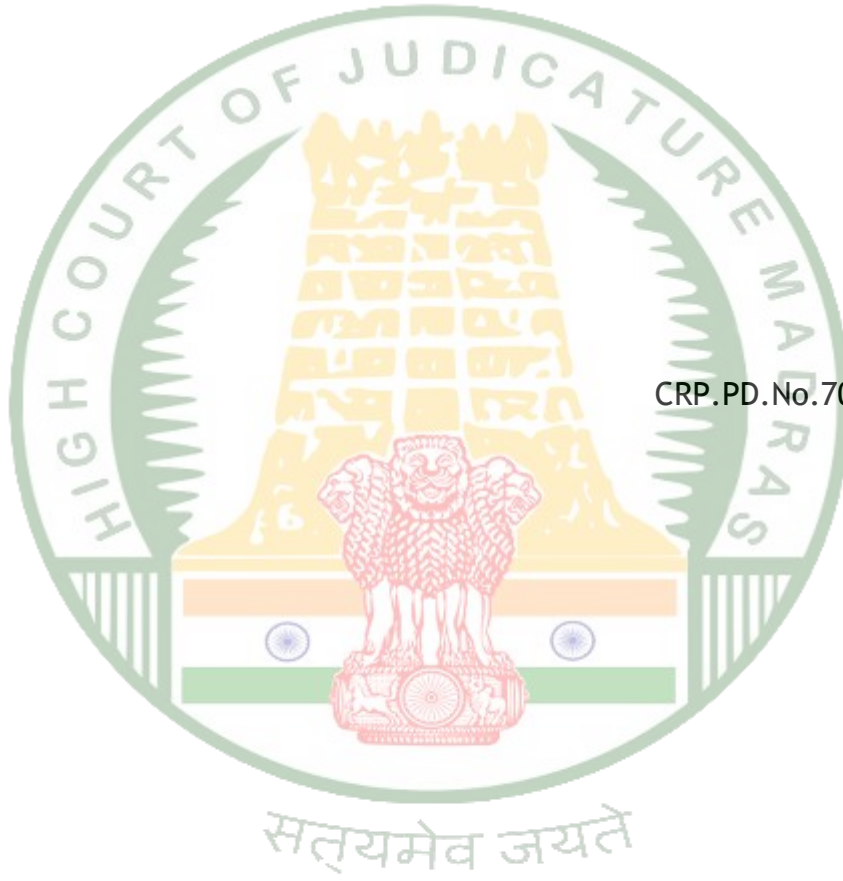
The VII Assistant City Civil Judge
at Chennai



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G.K.ILANTHIRAIYAN,J.

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