



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.No.747 of 2019

and

C.M.P.No.4976 of 2019

V.G.Srinivasan

..Petitioner/Plaintiff

Versus

S.Parthasarathy

..Respondent/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order passed by the learned II Assistant Judge, City Civil Court, Chennai in I.A.No.10298 of 2018 in O.S.No.9001 of 2008, dated 07.01.2019.

For Petitioner : Mr.Santhosh Kumar
for Mr.K.Azhagu Raman

For Respondent: No appearance

ORDER

The petitioner has challenged the order passed by the learned II Assistant Judge, City Civil Court, Chennai in I.A.No.10298 of 2018 in O.S.No.9001 of 2008, dated 07.01.2019.

2. Heard Mr.Santhosh Kumar learned counsel for the petitioner and there is no representation on behalf of the respondent.

3. The petitioner herein is the plaintiff. The suit was filed in the year 2008 for recovery of money against the defendant in O.S.No.9001 of 2008. The defendant also filed his written statement in January 2015. Thereafter, issues were framed, trial began in July 2015. During trial, P.W.1 was cross-examined by the defendant and the suit promissory note was marked as Ex.A1.



4. After cross-examination of P.W.1, the defendant filed an application in I.A.No.10298 of 2018, to amend the written statement, as detailed in that petition. In spite of the objection raised by the plaintiff, the trial Court allowed that application. Aggrieved by the said order, this revision was preferred by the petitioner/ plaintiff.

5. At the time of argument, the learned counsel for the petitioner submitted that, after cross-examination of the plaintiff, in order to fill up the lacuna, the defendant filed the said amendment petition which is not permissible in law.

6. The affidavit as well as the amendment sought by the defendant is perused.

7. In the written statement, the respondent wants to add a paragraph and number it as 12(a), which states as follows:

"The Defendant humbly submits that the crux of his case in defence to the suit is the basic infirmities in the Exhibit A-1, namely the promissory note executed by him as security only, in favour of the plaintiff on the basis of mutual understanding in the course of his relationship with the plaintiff. Hence, the suit is not a mere money claim implication and the sustainability of the suit will depend on a proper construction put on Exhibit A-1 which is the promissory note signed by the Defendant and his contention is that he put his signature only in the promissory note in his hand whereas the date of promissory note and the place of construction found in the promissory note were not written by him. It is added by the defendant that the suit being one based on a promissory note, it is for the plaintiff to plead and prove that it was executed by the defendant in the suit for valuable consideration. "

8. This Court is able to notice that he described the said promissory note as Ex.A1, which clearly proves that after examination and marking of the document, the defendant filed this amendment petition, in order to disprove the contention of the plaintiff, who gave evidence before the trial Court. The defendant is entitled to take any number of defence, but he is not entitled to file a number of applications to fill up the lacuna after the trial has begun.



9. But the learned trial Judge, without observing this aspect, erroneously allowed the said application by taking a liberal view, by relying on a proposition laid in "the State of Bihar and Ors. Vs. Modern Tent House & Anr. Reported in (2017) SCC 567 and Smt. Kunti Vs. Muniraj (Dead) through Lrs. & Org. of Hon'ble High Court of Madhya Pradesh".

10. But those propositions are not applicable to the facts of the case, for the reason that the plaintiff / P.W.1 was cross-examined and he also cross-examined the defendant. After that only, he preferred this application for amendment. So to fill up the lacuna purposely the respondent has filed the amendment petition. The findings given by the trial Judge is unsustainable. Hence, the order passed by the learned trial Judge is liable to be set aside.

11. Accordingly the Civil Revision Petition is allowed and the order passed by the learned II Assistant Judge, City Civil Court, Chennai in I.A.No.10298 of 2018 in O.S.No.9001 of 2008, dated 07.01.2019 is set aside. The case is of the year 2008, therefore the trial Court is directed to dispose of the case within a period of three months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rri

To

1.The II Assistant Judge
City Civil Court, Chennai

2.The Section Officer,
V.R.Section, High Court of Madras

+1 CC to Mr.K.Azhagu Raman, Advocate sr 54377.

C.R.P.No.747 of 2019
and
C.M.P.No.4976 of 2019

SR(CO)
SP(25/01/2022)