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C.R.P. No.2354 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **01.11.2021**

CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) No.2354 of 2021

P.Sandeep

..Petitioner

Versus

1. A.VijayAnand

2.Bharani Vijayanand

...Respondents

Civil Revision Petition is filed under Article 227 of Constitution of India, to expunge the remarks made in fair order and decreetal order dated 12.12.2019 in Tr.O.P. No.148 of 2019 on the file of In the Court of the Principal Judge, City Civil Court, Chennai and allow this Civil Revision Petition.

For Petitioner : Mr. K.P.Shanthosh

ORDER

This petition is filed challenging the observation made by the learned Principal Judge, City Civil Court, Chennai, in Tr. O.P. No.148 of 2019.



2. The submission of the learned counsel for the petitioner is that the transfer petition is filed by the petitioner to transfer the suits in O.S. Nos.3066 and 3067 of 2018 from the file of III Assistant City Civil Court, Chennai, to some other Court. These suits were contested by the respondents. After hearing both the parties, learned Principal Judge, City Civil Court, Chennai, has ordered transfer of suits from the file of III Assistant City Civil Court, Chennai, to the I Assistant City Civil Court, Chennai. However, the learned Judge, has touched upon the merits of the case while ordering transfer. The observation of the learned Judge is extracted hereunder:

“The elaborate docket entry made by the Presiding Officer in the Notes-paper also would go to show some friction between the Presiding Officer and the counsel appearing for the petitioner / plaintiff. No doubt, though the suit was filed summarily, in both the cases, the suit promissory notes were executed only by the 1st defendant. How in a summary suit a non-executant was impleaded as a party? is not known. When such being the thing, objecting for granting leave seriously might have invited some comments by the Presiding Officer. Impleading a non-executant as a defendant and seeking a summary decree is prima facie, mischievous. Under such circumstances, it cannot be contended that the plaintiff is a bona fide person. Even otherwise, the learned Trial Judge made comments about the merits in open Court, it is to be reserved in mind for orders. By disclosing or pointing out the lacuna in the case of the plaintiffs, the learned Judge invited unnecessary comments and culminated into transfer applications with serious allegation.”



3. With reference to the above observation of the learned Judge, the learned counsel for the petitioner submitted that it would affect the merits of the case and therefore, prayed to expunge this particular observation. It is seen that the observation of the learned Judge is with regard to impleading of non-executant as a defendant and on maintainability of the suit.

4. Learned counsel for the petitioner pressed into service the order of this Court in the case of *Rajini Sukumar Vs. Poooja K.Hirani*, in C.R.P. (NPD) No.567 of 2009, for the proposition that it is unnecessary to have any written contract for guarantee. As per Section 126 of the Indian Contract Act, a guarantee may be expressed by words of mouth or it may be tacit or implied and may be inferred from the conduct of the parties. This order makes it clear that it is unnecessary that contract of guarantee has to be reduced in writing. Therefore, questioning the maintainability of the suit by impleading a non-executant, is no doubt touches upon the merits of the case.

5. In this view of the matter, the following portion of the order alone that is, *'Impleading a non-executant as a defendant and seeking a summary decree is prima facie, mischievous. Under such circumstances, it cannot be contended that the plaintiff is a bona fide person.'* is expunged and the



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remaining portions of order of learned Principal Judge, City Civil Court,

Chennai, in Tr.O.P. No. 148 of 2019, remains unaltered.

6. With the above directions, this Civil Revision Petition is disposed of.

No costs.

01.11.2021

Index: Yes/ No

Speaking Order / Non-Speaking Order

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Copy to:

The Principal Judge,

City Civil Court, Chennai



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G.CHANDRASEKHARAN, J.,

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