IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:	**21.09.2021**
DELIVERED ON:	**28.09.2021**

CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD)Nos.968 & 969 of 2021
and C.M.P.Nos.7796 & 7797 of 2021
(Through Video Conference)

A.Asif Baig ...Petitioner in both C.R.P's

Versus

1) Nutan Bai ...Respondent in C.R.P.(PD) No.968 of 2021

2) Dixit D.Jain ...Respondent in C.R.P.(PD) No.969 of 2021

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the order dated 08.03.2021 made in I.A.No.3 of 2020 in O.S.Nos.9083 & 9084 of 2019 respectively on the file of the XXI Assistant City Civil Court, Chennai.

In both cases:

For Petitioner : Mr.A.E.Ravichandran

For Respondents : Mr.T.Srikanth

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COMMON ORDER

These Civil Revision Petitions are filed challenging the order passed in I.A.No.3 of 2020 in O.S.Nos.9083 & 9084 of 2019 respectively, on the file of the XXI Assistant City Civil Court, Chennai. Since the point for consideration in both the Civil Revision Petitions is similar, both the petitions are taken up together for disposal.

2. The suit in O.S.No.9083 of 2019 was filed by the respondent in C.R.P.(PD) No.968 of 2021 against the petitioner claiming a sum of Rs.1,59,830/- together with interest on the sum of Rs.1,19,500/- at 1.25% interest per month from the date of plaint till its realization. The case of the respondent in this suit is that the petitioner approached the respondent through his finance agent M/s.Nirman Finance and Investment Company for a loan of Rs.2,00,000/- On 01.07.2015, the respondent had lent a sum of Rs.1,50,000/- by NEFT and lent a sum of Rs.50,000/- in cash aggregating to Rs.2,00,000/-. The petitioner promised to pay the respondent or on order or demand, the said sum of Rs.2,00,000/- with interest at the rate of 1.25% per month. He executed a promissory note in this regard. The petitioner informed the respondent that he

will make payment through M/s.Nirman Finance and Investment Company to the respondent and other creditors from whom the said M/s.Nirman Finance and Investment Company had arranged loan to the defendant. The petitioner paid Rs.20,000/- through his finance agent towards part payment of Principal and issued consolidated cheques bearing Nos.000480 to 000485 drawn on HDFC Bank, dated 03.11.2016 for Rs.3,50,000/- each in favour of M/s.Nirman Finance and Investment Company. The said financial agent has realized the said consolidated cheques and paid part payment of Principal by cheque, drawn on Tamil Nadu Mercantile Bank Limited bearing No.350375 dated 04.11.2016 for Rs.60,000/- towards part of Principal and paid interest up to 01.03.2017. The petitioner also paid a sum of Rs.500/- by cash towards part payment of the Principal amount on 10.12.2018 and endorsed on the back side of the promissory note. Thereafter, he failed and neglected to pay the balance Principal and subsequent interest. Now, the petitioner is liable to pay a sum of Rs.1,59,830/- as claimed in the plaint with subsequent interest on balance Principal amount and Principal amount. Identical pleadings are made in O.S.No.9084 of 2019 except the bank account number of the defendant.

3. The learned counsel for the petitioner submitted that the petitioner filed leave to defend application in I.A.No.3 of 2020 alleging among other things, that the petitioner has not been served with form IV-A of Appendix B Summons for Judgment. The promissory note contains two signatures and these signatures said to have been signed by the petitioner. There is another signature on the reverse side without date. There are variations in these signatures. The promissory note was created in a printed form. It is claimed in the plaint that a sum of Rs.1,50,000/- was paid through NEFT and the remaining sum of Rs.50,000/- was paid in cash. In the promissory note, there was no mention about the cash payment. It was claimed that the entire sum of Rs.2,00,000/- was paid through NEFT. The petitioner did not know the respondent. The petitioner knew one Mr.Behrulal, a financier who runs financial company in the name and style of M/s.Nirman Finance and Investment Company. The petitioner borrowed money from him for his financial needs.

4. During the course of those financial transactions, Mr.Behrulal used to get signatures in the blank promissory notes. It appears that those stale promissory notes were misused by the respondent with the help of Mr.Behrulal. The petitioner never borrowed any money from the respondents nor did he ever

see the respondents at any point of time till today. When the petitioner contacted Mr.Behrulal, after receiving demand notices from various persons, he pacified him and asked him to ignore the notices. Suddenly, the petitioner received summons in O.S.Nos.9082 to 9085 of 2019. In all the suits similar averments / allegations were made in the name of different plaintiffs for the alleged borrowings.

5. There is no privity of contract between the petitioner and the respondents. The suit is based on time barred promissory note. The promissory notes are created by manipulations. The petitioner made the payment to M/s.Nirman Finance and Investment Company for the loan received from them through NEFT. The petitioner has not received Rs.50,000/- by cash on 01.07.2015. He did not pay any interest upto 01.03.2017. As per the averments made in the plaint, the petitioner said to have issued six cheques each for Rs.3,50,000/- for a total sum of Rs.21,00,000/- It appears that the petitioner paid huge amount of money more than the money borrowed. The respondents claims that the transaction had been done through M/s Nirman Finance and Investment Company and it is a proper and necessary party in the suit. The petitioner never paid Rs.500 on 10.12.2018 and made an endorsement. There is

no detail given in the plaint as to the payment of Rs.20,000/- and Rs.60,000/- .

6. Raising all these triable issues, the petition for seeking leave to defend was filed. However, without considering the merits of the petitioner's case, the learned XXI Assistant City Civil Judge, Chennai dismissed the petition without considering any of the allegations made in the petition. The petitioner filed leave to defend application in all the four suits. These petitions were allowed in two suits and dismissed in two suits. When the transactions are identical, allowing two applications and dismissing two applications, is nothing but perverse. Therefore, these Civil Revision Petitions have been filed.

7. Learned counsel for the respondents submitted that the petitioner has not disputed the signatures in the promissory note. The pre-suit notice was sent and was not replied. M/s.Nirman Finance and Investment Company was only a Finance Agent. Therefore, M/s.Nirman Finance and Investment Company is not a proper and necessary party. The two applications for leave to defend were allowed for a reason that there were some differences in the signatures of the petitioner. In the case before hand, the learned XXI Assistant City Civil Judge, Chennai found that the petitioner has not made out any grounds for defending

the suit and therefore, dismissed the petition. Therefore, the learned counsel for the respondents prays for the confirming the order of the learned XXI Assistant City Civil Judge, Chennai and for the dismissal of these Civil Revision Petitions.

8. Considered the rival submissions made by the learned counsel and perused the records.

9. The first attack is made against the main document in this case namely the demand promissory note. The case of the petitioner is that a sum of Rs.1,50,000/- was sent through NEFT and Rs.50,000/- was paid in cash. However, the learned counsel for the petitioner drew the attention of this Court to the demand promissory notes in both the suits to show that it is mentioned in the promissory notes that Rs.2,00,000/- was paid through NEFT. Therefore, the very claim of the petitioner that on 01.07.2015 a sum of Rs.2,00,000/- was paid through NEFT falls flat. This submission was answered by the respondents stating that only at the instance of the petitioner, Rs.50,000/- was paid in cash and Rs.1,50,000/- was paid through NEFT. Therefore, it is not open to the petitioner now to contend that Rs.2,00,000/- was not paid to the petitioner.

Whatever be the rival submissions, apparently there is a contradiction available with regard to quantum of payment on 01.07.2015 and mode of payment. This contradiction will have to be elucidated only through the examination of the parties. This one important contradiction is enough that there is an important triable issue available in this case requiring permission to be granted to the petitioner to contest the respondents claim.

10. That apart, it is seen from the plaint averments that the loan transactions have not been directly dealt by the respondent but it was managed by M/s.Nirman Finance and Investment Company. It is the case of the petitioner that he had financial loan transaction with Mr.Behrulal, who is running this M/s.Nirman Finance and Investment Company. It is also claimed that the petitioner issued cheques for a sum of Rs.3,50,000/- for a total sum of Rs.21,00,000/- Admittedly, only the alleged endorsement said to have been made by the petitioner on 10.12.2018 saved the promissory note from limitation aspect. The petitioner claimed that he has not paid Rs.500/- on 10.12.2018 and he has not made any endorsement. The issue as to whether M/s Nirman Finance and Investment Company is a proper and necessary party to this case, in view of the admitted position of the respondents that money transaction was done

through it and other pertinent issues raised by the petitioner need to be addressed. It is not known when four suits were filed with similar pleadings and leave to defend was granted in two suits, how it was denied in two suits. Therefore, this Court is of the considered view that the petitioner has made out a serious attempt in the case of the respondent by raising some disputed facts which are required to be tried in the trial.

11. These case are fit cases where the petitioner ought to have been given leave to defend the suit. However, the learned XXI Assistant City Civil Judge, Chennai has not considered the petitioner's case in right perspective and dismissed the petition. Therefore, this Court set asides the order of the learned XXI Assistant City Civil Judge, Chennai and allows the petition filed in I.A.No.3 of 2020 seeking permission to leave to defend the suit in O.S.Nos.9083 & 9084 of 2019.

12. Accordingly, these **Civil Revision Petitions stand Allowed**. No costs. Consequently, connected miscellaneous petitions are closed.

13. After pronouncing order, learned counsel for the petitioner seeks a direction of this Court to give time to file written statement. In view of the

G.CHANDRASEKHARAN, J.,

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request, the petitioner/ defendant is permitted to file written statement within a period of two weeks from the date of receipt of a copy of this order.

Index: Yes/ No **28.09.2021**
Speaking Order / Non-Speaking Order

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To:

The XXI Assistant City Civil Court,
Chennai.

Common Order made in
C.R.P.(PD)Nos.968 & 969 of 2021

Dated:
28.09.2021