



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P.(P.D) No.2606 of 2016
and C.M.P.No.13411 of 2016

P.Mohan

...Petitioner

Vs

L.Sargunam

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Indian Constitution of India to set aside the fair and final order of the IVth Assistant City Civil Judge, Chennai dated 20.04.2016 made in I.A.No.16043 of 2015 in O.S.No.5330 of 2015.

For Petitioner : Mr.S.Sounthar

For Respondent : Mr.K.Kannan

O R D E R

(The case has been heard through video conference)

This Civil Revision Petition has been filed seeking to set aside the fair and final order of the IVth Assistant City Civil Judge, Chennai dated 20.04.2016 made in I.A.No.16043 of 2015 in O.S.No.5330 of 2015.

2.The Revision Petitioner is the defendant in the suit and the respondent is the plaintiff. The plaintiff filed a suit in O.S.No. 5330 of 2015 against the defendant for recovery of amount of Rs.3,78,000/- with interest on the principal amount of Rs.3,00,000/- at 24% based on a promissory note dated 06.01.2014 executed by the defendant/Revision Petitioner.

3.After receiving a suit summon, the defendant filed an application in I.A.No.16043 of 2015 to grant leave to defend the suit. The trial Judge, after considering the argument of the counsel for the parties, dismissed the petition on the ground that the defendant had not made out any valid reasons to permit



him to defend the suit. Aggrieved by this order the defendant filed this revision petition.

4. Learned counsel for the petitioner submitted that the plaintiff claimed Rs.3,00,000/- with interest based on the promissory note dated 06.01.2014 in the affidavit filed by the defendant for granting permission to defend. It is contended that the defendant borrowed only a sum of Rs.45,000/- on 06.01.2014 as per the alleged promissory note the plaintiff stealthily filled the amount as Rs.3,00,000/-. Even though he admitted his signature in the promissory note pleaded that the promissory note is not supported by consideration.

5. Under Section 118 of the Negotiable Instrument Act, there is presumption that unless the contrary is proved the Negotiable Instruments shall be presumption to have been made of consideration. With this presumption in favour of the plaintiff burden was on the defendant to prove want of consideration.

6. Under this circumstances, the trial Court ought to have granted leave to defend the suit to prove his case. The trial Court without considering this aspect dismissed the petition to grant leave to defend the case and thus committed error and the order of the trial Court is unsustainable. Hence, the order of the trial Court is hereby set aside and defendant has granted leave to defend the suit.

7. Accordingly, this Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vsn

To

The IV th Assistant City Civil Judge,
Chennai.

+1cc to Mr.S.Sounthar, Advocate, S.R.No.30627
+1cc to Mr.K.Kannan, Advocate, S.R.No.30535

C.R.P. (P.D) .No.2606 of 2016
and C.M.P.No.13411 of 2016

NRL (CO)
HS (03/08/2021)