

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2021

CORAM

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

CRP.PD.No.302 of 2018

and

CMP.No.1644 of 2018

K.Vetrivel

..Petitioner

Vs.

1.A.Amutha

2.A.Arun

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the docket order dated 18.12.2017 made in OS.No.3613 of 2017 pending on the file of XV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.T.K.Kulasekaran

For Respondents : No Appearance

ORDER

This civil revision petition is filed against the docket order dated 18.12.2017 passed in OS.No.3613 of 2017 pending on the

file of XV Assistant Judge, City Civil Court, Chennai, thereby treated the written statement as valid defence and it would amount to waiver of the compliance of Order 37 Rule 3 of CPC.

2. The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed suit for recovery of money on the strength of the loan bond executed by the respondents herein and as such the petitioner filed summary suit under Order 37 Rule 2 of CPC. When the suit is filed under Order 37 Rule 2 of CPC, the statute requires the defendants to seek leave to defend the suit. It is relevant to extract the provision under Order 37 Rule 3 of CPC as follows:

" In a suit to which this order applies, the plaintiff shall, together with the summons under Rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in court an address for service of notice on him"

3. Admittedly, the present suit is filed for recovery of money on the strength of the loan bond executed by the respondents. In the absence of the leave to defend application, the suit shall not be proceeded with, for in the event of any conditional order, the defendant, to show his bonafide has to necessarily deposit a

substantial portion of the suit, pending trial.

4. on perusal of the docket order passed by the trial court revealed that the respondents filed written statement and thereby specifically denied the loan transaction between the first respondent and the petitioner herein. Further, the petitioner obtained loan bond in his name and also forged the signature of the first respondent and filed suit. Therefore, the trial court found that the respondents have made valid defence and at the time of framing of issues, the counsel for the petitioner did not raise any objection. It would amount to waiver of the compliance of Order 37 Rule 3 of CPC.

5. Order 37 Rule 3 of CPC mandates that the defendant, within ten days from the date of receipt of summon in the suit, shall file petition to leave to defend. Unfortunately, the court below erred in holding that the respondents are not required to adhere to the mandatory provision of Order 37 Rule 3 of CPC when the suit was filed for recovery of money under Order 37 Rule 2 of CPC. Therefore, the order passed by the court below is perverse, illegal and liable to be set aside.

6. Accordingly, this civil revision petition is allowed and the docket order dated 18.12.2017 passed in OS.No.3613 of 2017

pending on the file of XV Assistant Judge, City Civil Court, Chennai is set aside. However, the respondents are permitted to file petition to leave to defend the suit within a period of 10 days from the date of receipt of copy of this order, failing which the trial court is directed to decree the suit in accordance with law. Consequently, connected miscellaneous petition is closed. No order as to costs.

08.04.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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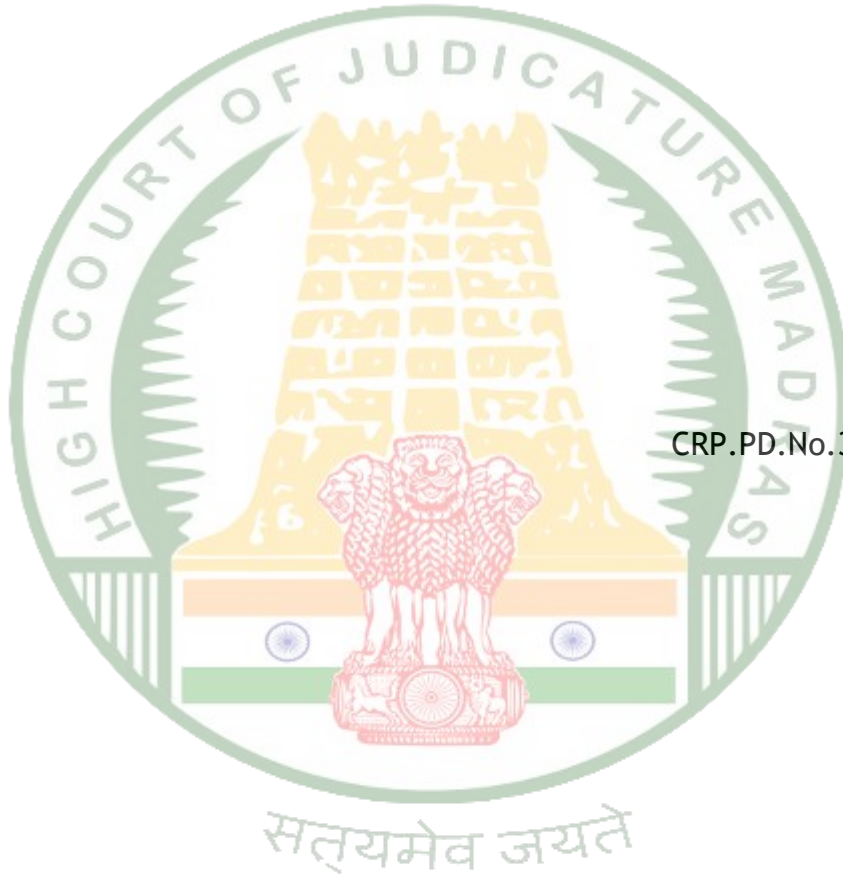
The XV Assistant Judge,
City Civil Court, Chennai.



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G.K.ILANTHIRAIYAN,J.

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