

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2021

CORAM

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

CRP (NPD) Nos.3686, 3687, 3720 & 3721 of 2014
and MP Nos.1,1,1,1,2,2,2 and 2 of 2014

1. Sekar Stores Home Mart,
Rep. by its Partner

2. S.V.S.Manivannan

3. Geetha Manivannan ... Petitioners in all CRPs

Vs

Pista Devi Nahar ... Respondent in
CRP (NPD) No.3686 & 3687/ 2014

P.Prakash Chand ... Respondent in
CRP (NPD) No.3720/2014

D.Vasantha Devi ... Respondent in
CRP (NPD) No.3721/2014

Common Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 22.01.2014 made in I.A.Nos.12557, 12559, 12554 & 12555 of 2013 respectively in O.S.Nos. 2111, 2113, 2018 & 2109 of 2013 respectively on the file of the VII Assistant City Civil Court, Chennai.

For Petitioners : Mr.T.T.Ravichandran

COMMON ORDER

These Civil Revision Petitions are filed against the fair and decreetal orders dated 22.01.2014 made in I.A.Nos.12557, 12559, 12554 & 12555 of 2013 respectively in O.S.Nos. 2111, 2113, 2018 & 2109 of 2013 respectively on the file of the VII Assistant City Civil Court, Chennai, thereby dismissing the petitions seeking leave to defend the suit in all the CRPs.

2. The petitioners are the defendants in the suit filed by the respondents for recovery of money.

3. A perusal of the plaint reveals that the suit has filed for recovery of money on the promissory note. The petitioners paid a part amount on the principal and they failed to pay the balance principal amount along with accumulated interest as agreed by them. Whereas, the petitioners contended that there are totally three defendants, in which, the first defendant is a partnership firm and the second respondent is one of the partners in the first defendant firm and the third defendant is not a partner of the first defendant firm.

4. Admittedly, the promissory note was executed by the first

defendant signed through the second defendant as a partner. Further, the second defendant issued two cheques for a sum of Rs.10,000/- each and subsequently, he paid the amount. But, the respondents have not properly accounted the same and have evidence to defend the suit.

5. The learned counsel for the petitioners would submit that the Trial Court conducted the trial instead of considering the petition to leave the defend. The Trial Court ought to have seen that whether there are triable issue or not. In spite of that the Trial Court dismissed the petition only on the ground that the petitioners did not produce any material to prove their contentions for repayment. He also submitted that the petitioners were not served with plaint copy in the interest of justice as contemplated under Order 37 Rule 7 of CPC. Therefore, the suit itself cannot be maintainable under Order 37 Rule 7 of CPC. Hence, the petitioners have valid evidence to defend the suit.

6. Heard the learned counsel for the petitioner and perused the materials available on record.

7. As rightly pointed out by the learned counsel for the petitioners, the first defendant is a partnership firm represented by its partner viz., the

second defendant. The third defendant is none other than the wife of the second defendant and not a partner of the first defendant. That apart, they have clearly mentioned the cheque number which was issued to the respondents herein towards part repayment of the amount borrowed by them. Therefore the petitioners have valid evidence to defend the suit and they may be given an opportunity to the petitioner in the manner known to law.

8. Accordingly, the order passed in I.A.Nos.12557, 12559, 12554 & 12555 of 2013 respectively in O.S.Nos. 2111, 2113, 2018 & 2109 of 2013 respectively dated 22.01.2014 on the file of the VII Assistant City Civil Court, Chennai, is hereby set aside and these Civil Revision Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitioners are closed.

25.03.2021

Speaking/Non-speaking order

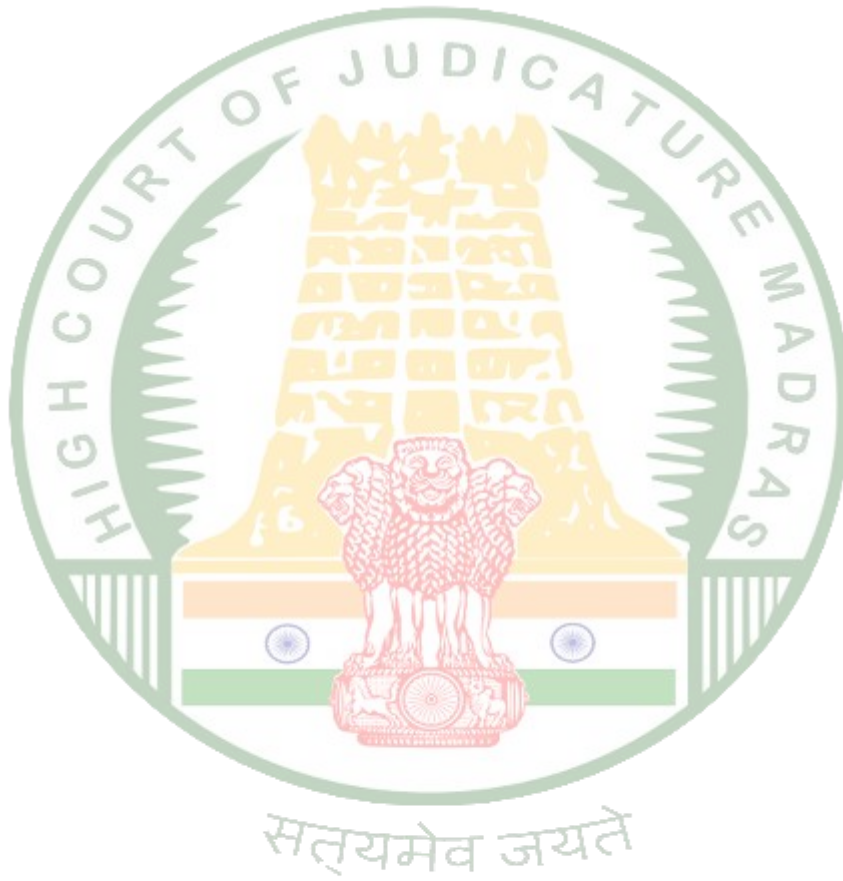
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To

The VII Assistant City Civil Court,
Chennai.

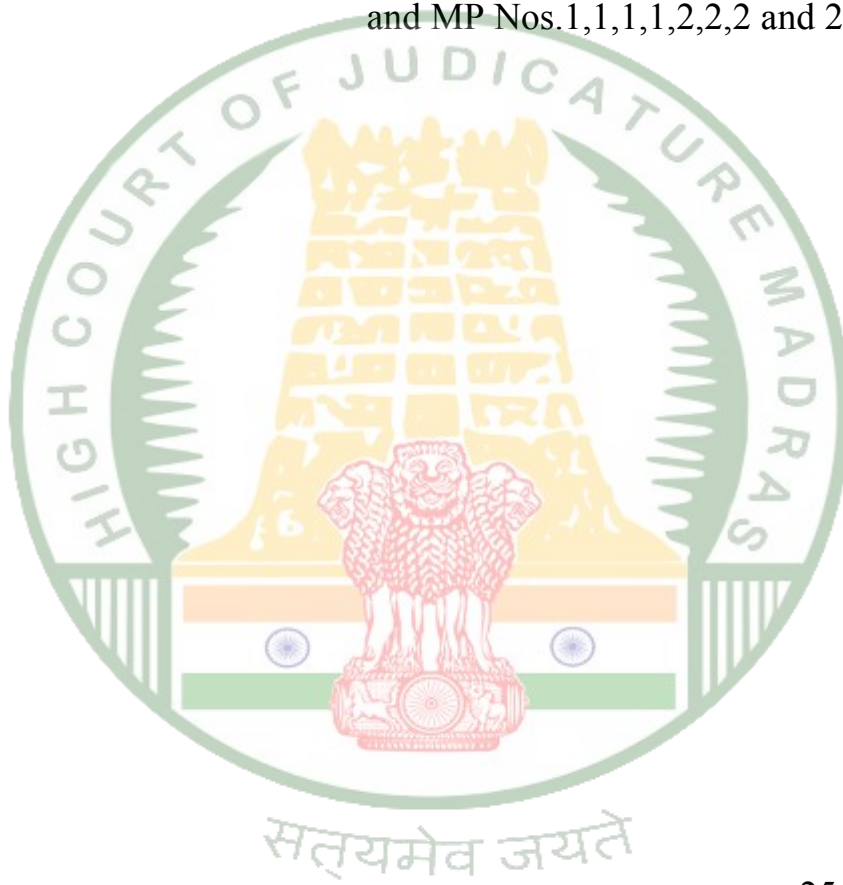


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G.K.ILANTHIRAIYAN, J.

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