



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2021

CORAM :

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P.No.2236 of 2021
and
C.M.P.No.16990 of 2021

S.Thanigachalam

... Petitioner

Vs

M.Perumal

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the Fair and Decretal order passed in I.A.No.64 of 2020 in O.S.No.118 of 2016 on the file of Special Court for trial of cases under SC/ST (PoA) Act, Cuddalore and allow the Civil Revision Petition.

For Petitioner : Mr.V.Rajesh Babu

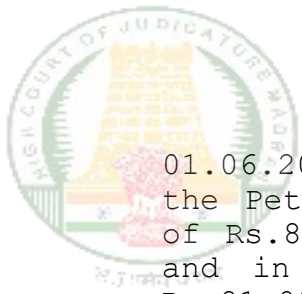
For Respondent : Mr.D.Ravichander

O R D E R

This Petition is filed challenging the order passed in I.A.No.64 of 2020 in O.S.No.118 of 2016 on the file of Special Court for trial of cases under SC/ST (PoA) Act, Cuddalore.

2.The Learned Counsel for the Petitioner submitted that the Respondent filed Suit in O.S.No.118 of 2016 claiming a sum of Rs.86,37,300/- with interest at the rate of 12% per annum thereon from the date of plaint till the date of realization and costs. This Suit, according to the Learned Counsel for the Petitioner has no cause of action. The Learned Counsel for the Petitioner drew the attention of this Court to the notice issued by the Respondent on 22.06.2016 wherein it was stated that the Petitioner borrowed a sum of Rs.81,00,000/- on 01.06.2016 and issued cheque for discharging the said amount.

3.The Respondent had also filed complaint under Sections 138 and 142 of Negotiable Instrument Act against the Petitioner. Therein also it was specifically alleged that the Petitioner borrowed a sum of Rs.81,00,000/- from the Respondent on



01.06.2016. However, the submission of the Learned Counsel for the Petitioner is that the Petitioner had never borrowed a sum of Rs.81,00,000/- on 01.06.2016. The claim made in the notice and in the complaint that the Petitioner borrowed a sum of Rs.81,00,000/- on 01.06.2016 is not true and therefore, the Suit has no cause of action. The Petitioner filed Petition to reject the complaint stating that Suit has no cause of action in I.A.No.64 of 2020. However without considering the merits of the Petitioner's case, the Petition was dismissed. Against the said dismissal order, this Civil Revision Petition is preferred.

4.The Learned Counsel for the Respondent submitted that whether the amount of Rs.81,00,000/- was borrowed on a single date or different dates, is a matter to be considered in the course of trial. He also submitted that even in the plaint averments, it was not said that amount was borrowed on a single date.

5.A perusal of the plaint averments shows that a sum of Rs.81,00,000/- is said to have been borrowed on different dates viz., 13 dates starting from 03.05.2012 to 20.10.2014. It is also claimed there are hand receipts available for evidencing the said borrowings.

6.It is also specifically pleaded that though transactions 1 to 9 are more than three year old, all the borrowings were consolidated and acknowledged by the Petitioner by issuing cheque on 01.06.2016. Therefore, the Suit was well within the time. Cause of action paragraph also shows that it was specifically mentioned that cause of action for the Suit arose on various dates when the Petitioner borrowed money as detailed above and on 01.06.2016, when the Petitioner issued cheque for the aforesaid borrowings by consolidating the borrowed amounts.

7.Therefore, the Learned Counsel for the Respondent submitted that Suit has sufficient cause of action and Suit was filed in time and therefore, the Learned Sessions Judge, Cuddalore has rightly dismissed the Petition and he prayed for confirming the order of the Learned Sessions Judge, Cuddalore and for dismissing this Petition.

8.Considered the rival submissions of the Learned Counsel for the Petitioner and the Respondent and perused the records.

9.As narrated above, it is specifically pleaded in the plaint that borrowings are from 03.05.2012 to 20.10.2014 of various sums of money totaling Rs.81,00,000/-. When the Respondent claimed the amount on 01.06.2016, the Petitioner is said to have issued cheque for Rs.81,00,000/- for the aforesaid borrowings. It appears that the Respondent issued notice on



22.06.2016 on the basis of dishonor of cheque and also filed complaint under Sections 138 and 142 of Negotiable Instrument Act.

10.It is alleged in the complaint that on 01.06.2016, the Petitioner borrowed a sum of Rs.81,00,000/- from the Respondent for the purpose of discharging loan amounts borrowed by the Petitioner and issued cheque for the said amount of Rs.81,00,000/-. Thus, it is clear from the averments made in the plaint and allegations made in the complaint that there were loan transactions between the Petitioner and the Respondent and it was for the discharge of the said loan transaction, cheque was issued for Rs.81,00,000/- on 01.06.2016.

11.Whether the claim of the Respondent that the cheque for Rs.81,00,000/- was issued for discharging the loan transaction claimed in the plaint, is a matter for consideration in the course of trial. This Court cannot go deep into the merits of the case in this Petition. Only after examination of parties to the Suit and the, witnesses, this issue will have to be decided.

12.Be that as it may, it is not for the Court to investigate truth or falsity of the averments made in the plaint now. The averments, on a prima facie reading makes out the cause of action for filing the Suit and therefore, this Court finds that this Suit must go for trial. Therefore, dismissal of the Petition filed for rejecting the plaint cannot be faulted. In this view of the matter, the order of the Learned Sessions Judge, Cuddalore is confirmed.

13.Resultantly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

14.This Suit is of the year 2016 and comes under the category of cases pending for five years. Therefore, the Learned Sessions Judge, Cuddalore is directed to dispose the case as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ay/jai



To

The Sessions Judge,
Special Court for trial of cases under SC/ST (PoA) Act,
Cuddalore.

Copy to:

The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.V.Rajesh Babu, Advocate Sr No.53994

+1cc to Mr.D.Ravichander, Advocate Sr No.53847

C.R.P.No.2236 of 2021
and
C.M.P.No.16990 of 2021

SS (CO)
PR (10/11/2021)