

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2021

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P(PD)No.347 of 2017
& C.M.P.No. 1582 of 2017

R.Ravinder Kumar

.... Petitioner

Vs

Sarada Subramoniam

.... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decreetal order dated 10.11.2016 in I.A.No.8480 of 2016 in I.A.No.4499 of 2016 in O.S.No.216 of 2016 on the file of the III Additional City Civil Court, Chennai.

For Petitioner : Mr.M.Nandhakumar

For Respondent : Mr.N.c.Ashok Kumar

For Mr.K.S.V.Sethuraman

ORDER

This Civil Revision Petition is directed as against the fair and decreetal order dated 10.11.2016 passed by the learned III Additional Judge, City Civil Court, Chennai, in I.A.No.8480 of 2016 in I.A.No.4499 of 2016 in O.S.No.216 of 2016, thereby allowing the petition to raise additional ground in the petition to leave to defend the suit.

2. The petitioner is the plaintiff and the respondent is the defendant. The petitioner filed summary suit in O.S.No.216 of 2016 for recovery of money on the strength of pro-note. The respondent filed petition to leave to defend the suit in I.A.No.4499 of 2016. While the said petition was pending, after filing the counter by the petitioner herein, the respondent again filed petition in I.A.No.8480 of 2016 for seeking permission to raise additional ground in the petition for leave to defend the suit. The trial Court allowed the said petition as against which the petitioner filed this present Civil Revision Petition.

3. The learned counsel appearing for the petitioner would submit that the petitioner filed summary suit for recovery of money. On receipt of the private notice, the respondent filed his vakalath on 27.01.2016. Therefore, there is absolutely no necessity for the petitioner to serve notice to the respondent herein. In fact summons for judgment served on the respondent on 22.02.2016 and therefore he had knowledge about the suit and now the respondent filed this petition to raise the additional ground as that he was not served the suit summons.

4. Per contra, the learned counsel appearing for the respondent would submit that he was served with notice on the application for attachment before the judgment in I.A.No.497 of 2016 on 12.01.2016. On receipt of the same on the next hearing date i.e., on 27.01.2016, the respondent filed his vakalath. Thereafter, the case was posted on 22.02.2016 and even on that date he was not served with copies of annexure along with plaint. He further submit that suit summon was not served as contemplated under Form No.4 in Appendix B of C.P.C. Thereafter he came to understand that the suit itself was filed under Order 37 of C.P.C., and his counsel sent notice of appearance on 24.02.2016 and requested the counsel for plaintiff to serve the documents which was annexed along with the plaint. On receipt of the same, the counsel for plaintiff by letter dated 26.02.2016, served the annexure of the plaint to his counsel. Therefore, these ground are not raised at the time of filing the petition to leave to defend the suit application only due to inadvertence. Therefore, the Court below rightly allowed the petition and hence he prayed for dismissal of the present petition.

5. Heard Mr.M.Nandhakumar, learned counsel appearing for the petitioner and Mr.N.C.Ashok Kumar, learned counsel appearing for the respondent.

6. The petitioner is the plaintiff. He filed summary suit in O.S.No.216 of 2016 as against the respondent for recovery of money. The respondent filed petition in I.A.No.4499 of 2016 to leave to defend the suit and the petitioner also filed his counter. While pending the said petition, the respondent filed another petition in I.A.No.8480 of 2016 to permit him to file additional ground in I.A.No.4499 of 2016 i.e., leave to defend petition on the ground that the suit summon was not served on him as prescribed under the Code in Form No.4 in Appendix B. The annexure of the plaint was not served to the respondent. The plaint copy along with annexure served on the respondent only on 26.02.2016 and only on the letter dated 24.02.2016 sent by the respondent's counsel, the annexure of the plaint copy was served to the respondent herein.

7. The only contention of the petitioner is that if these grounds are not allowed to raise in the leave to defend application, the nature of the

suit would be affected, since, the petitioner filed a summary suit. If these grounds are not considered by the trial Court, while considering the petition to leave to defend petition, the nature of the suit will be changed and the respondent will be prejudiced. Further these ground can be considered only in the leave to defend application by the Court below. Therefore the trial Court rightly allowed the petition and permitted the respondent to raise additional ground in the leave to defend application. Therefore this Court finds no illegality or infirmity in the order passed by the Court below.

8. Accordingly, this Civil Revision Petition stands dismissed.

There shall be no orders as to costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

15.02.2021

Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order

rts

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G.K.ILANTHIRAIYAN, J.

rts

To

1. The III Additional Judge,
City Civil Court, Chennai.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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