



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.11.2021

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P.(MD) No.40 of 2021

and

C.M.P.(MD) No.384 of 2021

M.Ayyappan

... Petitioner/Petitioner/Defendant

vs.

1.M.Ganesan (died)

2.M.Gomathi

3.G.Sreedevi

4.G.Nagarajan

[R2 to R4 have been impleaded
vide order dated 06.09.2021]

... Respondents/Respondents/Plaintiffs

PRAYER:- This Petition is filed under Section 227 of the Constitution of India, to set aside the fair and decreetal order dated 08.07.2020 passed in I.A.No.1 of 2019 in O.S.No.16 of 2017 on the file of the 2nd Additional Sub Court, Nagercoil.

For Petitioner : Mr.M.P.Senthil

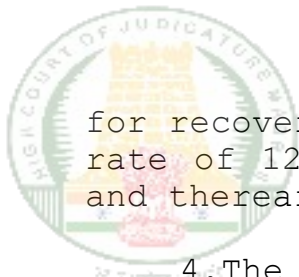
For R2 to R4 : Mr.V.Meenakshi Sundaram for
Mr.R.Murugan

ORDER

The defendant, whose application for receiving an additional written statement had been rejected, is before this Court, challenging the order passed in I.A.No.1 of 2019 in O.S.No.16 of 2017 on the file of the learned 2nd Additional Subordinate Judge, Nagercoil dated 08.07.2020.

2.It would be necessary to briefly allude to the facts, which has given rise to the present challenge.

3.The 1st respondent herein had filed a suit in O.S.No.16 of 2017 on the file of the 2nd Additional Subordinate Judge, Nagercoil,
<https://hcservices.ecourts.gov.in/hcservices/>



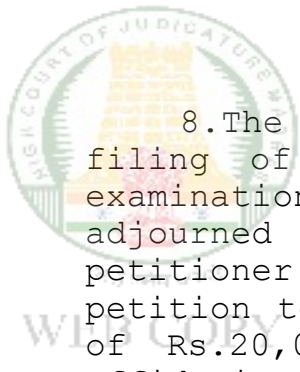
for recovery of a sum of Rs.1,50,000/- together with interest at the rate of 12% from the date of the suit till the date of the decree and thereafter, at the rate of 6%.

4.The 1st respondent's case is that on 19.02.2014, the petitioner had borrowed a sum of Rs.1,50,000/- from the 1st respondent's residence. He had agreed to repay the said amount within a period of 2 months and had issued a cheque dated 29.04.2014 bearing No.914503 drawn on the City Union Bank, Nagercoil as security for the said borrowal. When the 1st respondent had presented the cheque on 29.04.2014, the same was dishonored with an endorsement 'funds insufficient'. This prompted the 1st respondent to issue a suit notice dated 12.05.2014. However, the notice was returned with an endorsement 'Door locked intimation refused' on 15.05.2014. The 1st respondent had filed proceedings under the Negotiable Instruments Act before the Fast Track Court No.II, Nagercoil. The 1st respondent has also stated that while issuing the notice, the date of borrowal was wrongly typed as 29.02.2014 instead of 19.02.2014. Since the payments were not forthcoming, the 1st respondent had come forward with the above suit.

5.The petitioner on entering appearance in the above suit had filed a written statement *inter alia* denying the borrowal and stating that no such transaction has been taken place between the 1st respondent and the petitioner. The petitioner based his defense primarily on the date of borrowal being shown as 29.02.2014 to contend that the very fact that the date has been wrongly given would only go to show that the transaction itself is an imaginary one. He would further submit that this factor had been noticed by the 1st respondent when the argument in the criminal proceedings was on. The petitioner would therefore contend that there is no cause of action for the plaint.

6.The parties had gone to trial and after the evidence was completed on either side, the petitioner came forward with the impugned application, namely, I.A.No.1 of 2019 for filing an additional written statement. The reason given for filing the said application was the cross-examination of D.W1 by the 1st respondent.

7.The petitioner would submit that it was only then that they had come to know about the lack of pleading in the written statement. The petitioner would also submit that the earlier counsel had not bestowed his attention in preparing the written statement. Further, the 1st respondent had also amended the plaint and introduced a new cause of action and therefore, since he had elucidated the entire facts in the proof affidavit, the same has to be substantiated by pleadings and therefore, the present application.



8.The plaintiff/1st respondent had vehemently objected to the filing of the said application by contending that the cross-examination of D.W1 was completed on 05.10.2018 and the matter was adjourned on several dates for the further evidence of the petitioner. Thereafter on 24.10.2018, the petitioner had filed a petition to correct his chief affidavit by stating that the amount of Rs.20,000/- found in paragraph No.5, line 4 of his proof affidavit had to be corrected as Rs.2,00,000/-. The petition was returned by the Court and the petitioner had not taken any steps thereafter. On 20.11.2018, the petitioner had filed I.A.No.753 of 2018 to receive an additional affidavit. The case was adjourned on several dates and ultimately, on 05.08.2019, the petitioner had not pressed the said application. Thereafter, the case was adjourned to 14.08.2019 for the further evidence of the petitioner side. Since no further evidence was adduced, the petitioner side evidence was closed on 19.08.2019 and the matter stood adjourned to 26.08.2019 for arguments.

9.The 1st respondent's arguments were heard and the matter was posted to 05.09.2019 for the petitioner's arguments. At this juncture, the present petition had been filed blaming the previous counsel. The petition is nothing but an attempt to defeat the admissions that was obtained by the 1st respondent during the cross-examination of D.W1 and if this leave is granted, it would prejudice the 1st respondent's case.

10.The learned 2nd Additional Subordinate Judge, Nagercoil, by his order dated 08.07.2020, was pleased to dismiss the said application by taking into consideration the manner in which the petitioner had protracted the proceedings and the fact that the matter was at the stage of arguments. Challenging the same, the defendant/petitioner is before this Court.

11.Mr.M.P.Senthil, learned counsel appearing on behalf of the petitioner would submit that no prejudice would be caused to the 1st respondent, if the leave is granted, since it is only a case of elaborating upon the earlier defense that had been taken by the petitioner. He would also submit that the defense was already on record in the form of the proof affidavit in lieu chief examination of the petitioner and therefore, no prejudice would be caused to the 1st respondent, if the application is allowed.

12.*Per contra*, Mr.V.Meenakshi Sundaram, Counsel for Mr.R.Murugan, counsel appearing for the 1st respondent, would submit that by seeking the relief to file an additional written statement, the petitioner was trying to put across an entirely new defense and was also an attempt to set at naught the admissions that the 1st respondent was able to elicit from the petitioner during his evidence as D.W1 particularly that the contentions in the proof affidavit were not supported by pleadings.



13.The learned counsel would submit that a mere perusal of the proceedings would clearly show how the petitioner had an opportunity when the plaint was amended to file an additional written statement and thereafter even after the evidence was over, the petitioner had moved applications earlier, but had not proceeded with the same. This conduct would clearly indicate that the defendant endeavor was only to protract the proceedings.

14.Heard the learned counsels and perused the records.

15.The defendant/petitioner had filed a written statement denying the very borrowal and contending that the 1st respondent had no cause of action since no cheque had been issued by the petitioner dated 29.02.2014. In the additional written statement, the petitioner would state that the suit based on the certified copy of the cheque is not maintainable and that the suit was barred by limitation. The petitioner had introduced a case that he had transactions with the 1st respondent in the year 2007, where a blank cheque was obtained by the petitioner, which has been put into use to create the cheque, which is the subject matter of the suit. He would also contend that he has repaid a sum of Rs.2,00,000/-, which he had borrowed in the year 2006 to 2009 and that the 1st respondent had not returned the cheque, which he reported had been misplaced.

16.The petitioner would also state that the payment is proved by a mere perusal of the statement of account of the petitioner. The cheque was not of the year 2012. In all a new set of pleading has been raised as against the earlier defense that there was no borrowal. Further a perusal of the counter, which has not been refuted by the petitioner, would indicate that after the cross-examination of D.W1, the matter was adjourned on four occasions for further evidence of the defendant/petitioner. Even at this stage, the petitioner has not chosen to file the application for receiving an additional written statement. On the contrary, the petitioner had filed a petition on 24.10.2018 to correct the proof affidavit. This petition has not been processed further. Thereafter, on 20.11.2018, an application for receiving the additional affidavit in I.A.No.753 of 2018 was filed by the petitioner. This petition was posted on 10 occasions for enquiry. Thereafter, on 05.08.2019, the said petition was not pressed and the matter was adjourned to 14.08.2019 for the further evidence of the petitioner. The petitioner has not come forward to adduce further evidence and ultimately, his side evidence was closed on 19.08.2019. Thereafter, the 1st respondent's arguments were heard on 28.08.2019 and when the matter was adjourned to 05.09.2019 for the petitioner's argument, the present petition came to be filed.

17.The petitioner by filing this application is trying to bring his chief examination in tune with the pleadings as otherwise the



chief examination and the written statement originally filed do not co-relate with each other. The petitioner has not taken steps at the earliest point of time to file his additional written statement or the written statement could have been amended after the evidence of the 1st respondent at least. It is also seen that the plaint was amended and no additional written statement was filed by the petitioner. Therefore, the petitioner has wantonly not taken steps and has waited till the suit is posted for argument to take out such an application. If the petition is allowed, it would amount to once again reopening the suit in toto and this Court has to take into account the fact that the suit has been filed in the year 2017.

18.In these circumstances, I do not find any infirmity in the order passed by the learned 2nd Additional Subordinate Judge, Nagercoil dated 08.07.2020 in I.A.No.1 of 2019 in O.S.No.16 of 2017.

19.In fine, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mm

To

The Second Additional Subordinate Judge,
Nagercoil.

+1 CC to M/s.R.MURUGAN, Advocate (SR-34162[F] dated 11/11/2021)

+1 CC to M/s.M.P. SENTHIL, Advocate (SR-34159[F] dated 11/11/2021)

C.R.P. (MD) No.40 of 2021

10.11.2021

MGJ(31.12.2021) 5P 4C