



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(PD) (MD)No.538 of 2017

and

C.M.P(MD) No.2484 of 2017

WEB COPY

R.Swaminathan ... Revision Petitioner/Petitioner/Defendant

Vs.

R.D.Rengasamy ... Respondent/Respondent/Plaintiff

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order passed in I.A.No.491 of 2016 in O.S.No.117 of 2008 dated 16.11.2016 on the file of learned Subordinate Judge, Pattukottai.

For Petitioner : Ms.S.Vijayashanthi
For Respondent : Mr.K.Guhan

ORDER

The defendant has challenged the order passed by the learned Subordinate Judge, Pattukottai, rejecting his application filed in I.A.No.491 of 2016 in O.S.No. 117 of 2008 seeking leave of the Court to condone the delay in filing the documents along with the written statement and to receive the same.

2.The petitioner /defendant sought permission for filing three documents. The respondent herein filed a mortgage suit seeking recovery of a sum of Rs.5,70,050/- from the petitioner/defendant together with interest, failing which, the respondent had sought to have the property sold through Court auction.

3.The petitioner herein has resisted the above suit *inter alia* contending that he had not handed over the document of title with an intent to create an equitable mortgage and that the alleged confirmation letter of the equitable mortgage, dated 09.04.2008 is a rank forgery one. It was the case that he had borrowed a sum of Rs.1,00,000/- from the plaintiff and agreed to repay the same with interest and that the entire sum had been paid on 31.01.2000. The respondent received the said amount and had promised to return all the documents. However, thereafter he demanded exorbitant interest of 48% per annum which was refused by the defendant. Angered by the above, this confirmation letter appears to have been created.

4.The written statement was filed on 04.06.2010. When the matter was posted for defence's side evidence, the petitioner/defendant had come forward with the application impugned in this civil revision petition. In the affidavit filed in support



of the said petition, the petitioner would contend that it was after a great deal of search, that he had come across the documents, which he now seeks to file. He would submit that these documents are very vital for proving his defences.

5.The respondent/plaintiff had filed a counter denying the averments contained in the affidavit filed in support of the petition.

6.The learned Subordinate Judge, Pattukottai, by her order dated 16.11.2016 dismissed the said application stating that the documents do not in any fashion Co-relate to the suit on hand and that there was no pleading in support of the said documents and its contents. Challenging the same, the petitioner/defendant is before this Court.

7.A perusal of the written statement filed by the defendant would indicate that the defendant had raised two major defences; one is that the confirmation letter is a forged document and created by the plaintiff and that on 31.01.2000, the defendant had repaid a sum of Rs.1,00,000/-. The first of the documents that sought to be filed is a receipt dated 31.01.2000 and the other two documents are the documents relating to the plaintiff's employment and his transfer. There is a sufficient pleading for receiving the said documents. It is needless to state that the reception of the documents and marking of the documents, are two different procedures. The marking of the document is always subject to proof and relevancy. The defendant has prima facie made out a case for receiving the documents. The learned Subordinate Judge has totally erred in holding that the documents have no relationship to the suit in question and that there are no pleadings to that effect.

8.In these circumstances, this Civil Revision Petition is allowed and the order dated 16.11.2016 passed in I.A.No.491 of 2016 in O.S.No.117 of 2008 on the file of the learned Subordinate Judge, Pattukottai, is set aside. It is made clear that marking of the documents shall be subject to the proof and relevancy. Considering the fact that this petition has been filed at the stage when the defence evidence was underway, the learned Subordinate Judge, Pattukottai, shall endeavour to dispose of the suit in O.S.No.117 of 2008 within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

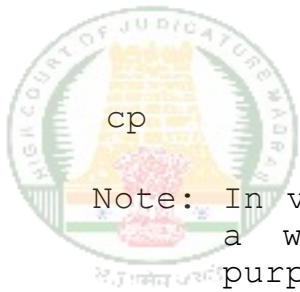
Sd/-

Assistant Registrar (A.D II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:-

The Subordinate Judge,
Pattukottai.

+1 CC to M/s.K.GUHAN, Advocate (SR-34616[F] dated 16/11/2021)

+1 CC to M/s.S.VIJAYASHANTHI, Advocate (SR-34553[F] dated 16/11/2021)

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