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C.R.P. (NPD) Nos.1144 to 1146 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.08.2022

PRONOUNCED ON : 19.10.2022

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (NPD) Nos.1144 to 1146 of 2006
and M.P.Nos.1, 1, 1 of 2006
and C.M.P.Nos.3221 and 3012 of 2006

P.Sundareshwar

... Petitioner
/Defendant/Petitioner
in all C.R.P's

vs.

1. Dilip Kumar

... Respondent/Plaintiff
/Respondent in C.R.P.No.1144 of 2006

2. Manoj Kumar

... Respondent/Plaintiff
/Respondent in C.R.P.No.1145 of 2006

3. Tina Jain

... Respondent/Plaintiff
/Respondent in C.R.P.No.1146 of 2006

Prayer in C.R.P.No.1144 of 2006 : _Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and decretal order dated 05.12.2003 in I.A.No.14558 of 2003 in O.S.No.3110 of 2003 on the file of the XIV Assistant City Civil Court, Chennai.



C.R.P. (NPD) Nos.1144 to 1146 of 2006

Prayer in C.R.P.No.1145 of 2006 : Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and decreetal order dated 02.01.2004 in I.A.No.15066 of 2003 in O.S.No.3111 of 2003 on the file of the XIV Assistant City Civil Court, Chennai.

Prayer in C.R.P.No.1146 of 2006 : Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and decreetal order dated 06.08.2004 in I.A.No.15009 of 2003 in O.S.No.3108 of 2003 on the file of the XIV Assistant City Civil Court, Chennai.

For petitioner : Mr.P.Valliappan
(for all C.R.P's)

For respondents : Mr.Sandeep S.Shah for
M/s.Shah and Shah

COMMON ORDER

The revision petitioner in all the above CRPs is the defendant in O.S.No.3110/2003, O.S.No.3111 of 2003 and O.S.No.3108 of 2003 on the file of the XIV Assistant City Civil Court, Chennai. The respondents in the above revision petitions are the plaintiff in the above suits.



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2. The above referred suits were filed by the plaintiffs for the direction to the defendant to pay the amounts borrowed by him along with interest.

3. The plaintiffs claimed that the defendant obtained loan from each of the plaintiff to the tune of Rs.40,000/- and executed a promissory note undertaking to repay the same amount together with interest at 30% per annum.

4. The plaintiffs submitted in their plaint that the defendant has failed and neglected to pay the principal and interest inspite of the repeated demands. In the plaint, memo of calculation is given which amount is directed to be paid by the defendant.

5. In the said suit, the defendant/revision petitioner herein filed I.A.Nos.14558 of 2003, 15066/2003 and 15009/2003 praying to grant “leave to defend the suit”. It is averred in the I.As., that the defendant do not know anything about the plaintiff, he did not borrow any amount from



the plaintiff as averred in the plaint.

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6. It is further averred in the affidavit filed in support of the IAs., that for the notice sent by the plaintiff, suitable reply has been sent by him denying the suit transactions and called for the plaintiff to produce the suit promissory note for perusal and verification. But the plaintiff stated that he can inspect the document during particular timing and specified the same.

7. The defendant's contention is that he want to send the document to forensic department and if the promissory note is a forged one, he can initiate criminal prosecution against the plaintiff.

8. According to the revision petitioner/defendant, the counsel who appeared for the earlier suit wherein, suit was decreed in favour of the one Sanjay Kumar Changanlal/plaintiff is appearing in all the other five suits and the date of execution of the promissory note is one on the same day ie., on 10.06.2000 and the borrowed amount is Rs.40,000/- and the rate of interest is also 30 % per annum are all same.



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9. It is the contention of the learned counsel for the revision petitioner that all the promissory notes are forged, forging the signature of defendant and frivolous suits have been filed under the instigation of one Sanjay Kumar Changanlal. The plaintiffs and other persons who filed other suits are the relatives of the said Sanjay Kumar Changanlal.

10. According to the revision petitioner, the suits are filed with a malafide intention and so to prove that his signature is forged in the promissory note, it is necessary to send it to forensic science department for expert opinion.

11. The learned Judge, while dismissing the I.As., filed by the revision petitioner/defendant, held that the defendant has not come up with any counter raising the triable issues to be framed in the suit for enquiry and so the prayer seeking leave to raise his defence cannot be considered.

12. The learned counsel for the petitioner relied on catena of



decisions in support of his submission that in a money suit on promissory note, the defendant by denying the very existence and execution of the suit promissory note, in fact, had raised a probable defence and thereby a 'triable issue', so leave must be given to defend. The Rulings are as under:-

- 1.AIR 1958 SC 321. [Santosh Kumar V. Bhai Mool Singh]
- 2.AIR 1990 SC 2218 [Raj Duggal Vs. Ramesh Kumar Bansal]
3. AIR 1998 SC 2317 [M/s.Sunil Enterprises and another Vs. SBI Commercial and International Bank Ltd]

13. Per contra, the learned counsel for the defendant would submit that the learned Judge while dismissing the I.As., has pointed out that the defendant has not raised substantial defence or filed counter to the claim made in the suit and in such circumstances, when there is no triable issue raised in the IAs., the same had been rejected, which requires no interference by this court. In support of his contentions, he relied on the decision of the Honourable Supreme Court in the case of ***IDBI Trusteeship services Ltd., Vs. Hubtown Ltd., dated 15.11.2016 [2016***



Lawsuit(SC)1084].

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14. I have gone through the citations relied on both sides counsel and perused the records carefully.

15. The settled legal proposition in the subject matter is that by and large, the object is to see that the defendant does not unnecessarily prolong the litigation and prevent the plaintiff from obtaining an early decree by raising untenable and frivolous defences in a case.

16. In the case on hand, it is alleged by the defendant that as against him, number of suits have been filed on the claim that he executed promissory notes while borrowing amount and he failed to make repayment of loan amounts. The main defence of the defendant is that the suits are frivolous and his signature is forged. To determine whether the points raised by the defendant is bona fide or not, it is absolutely necessary to see whether the defence raised is a real issue and not a sham one. In that sense, it is necessary to allow the defendant to raise his defence. Accordingly to grant leave to the defendant to raise his defence would not cause any prejudice to the plaintiff. Further, sending the



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promissory notes for expert opinion in respect of the signature of the defendant, would disclose the veracity of the promissory notes.

17. In the light of the above reasonings, the above civil revision petitions stand allowed on the following terms:-

(i) The petition in I.A.Nos.14558, 15066 and 15009 of 2003 are allowed.

(ii) The learned Judge, XVII Assistant City Civil Court, Chennai, shall pass appropriate directions for sending the signature of the defendant in the promissory notes to the Forensic Department for obtaining Expert opinion in a time frame.

(iii) Since the suits are of the year 2003, learned Judge, trial court is directed to complete the trial and dispose of the suit within a period of four months from the date of receipt of a copy of this order.

No costs. Interim stay stands vacated.

19.10.2022

Index :Yes/No

Internet:Yes/No

Speaking order/Non-speaking order



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To

- 1.The learned Judge,
XIV Assistant City Civil Court, Chennai.
- 2.The Section Officer,
V.R.Section, High Court of Madras.



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J.NISHA BANU, J.

nvsri/pm

PRE-DELIVERY
COMMON ORDER
IN
C.R.P. Nos.1144 to 1146 of 2006

19.10.2022