



C.R.P.(NPD).No.157 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2022

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).No.157 of 2022

and

C.M.P.No.849 of 2022

Muralimohan

...Petitioner/Petitioner/Defendant

-Vs-

J.Gopinad

...Respondent/Respondent/Plaintiff

Prayer: Petition filed under Section 115 of the Code of Civil Procedure as against the Fair and Decreetal order dated 22.11.2021 passed in I.A.No.1 of 2019 in O.S.No.1694 of 2019 on the file of the learned V Assistant Judge, (FAC) III Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.A. Prabhakaran



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ORDER

The defendant in an under Chapter suit is the revision petitioner before this Court. The revision petitioner seeks to challenge the dismissal of an application filed by him under Order 37 Rule 3(5) of the Code of Civil Procedure granting him leave to defend the above suit.

2.The facts in brief are as follows:

The respondent/plaintiff has filed the suit O.S.No.1694 of 2019 on the file of the learned V Assistant Judge, City Civil Court, Chennai, for recovery of a sum of Rs.3,16,000/- with interest @ 24% per annum from the date of Plaint till the date of realisation.

3.The plaintiff's case is that the defendant/revision petitioner herein had borrowed money from him but he failed to repay the same. Since the defendant has failed to pay the interest the plaintiff had



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caused a Legal Notice dated 18.02.2010 to the defendant calling upon him to the amounts due. The defendant who received the said notice on 20.02.2019 had neither issued a reply notice nor come forward to clear the outstanding and therefore, the plaintiff has come forward with suit.

4.The defendant had entered appearance in person and filed I.A.No.10 of 2019 seeking leave to defend the suit. The defense put forward was that the entire loan with interest had been cleared on 21.12.2018. Despite settling the loan, the plaintiff had not returned the original title deed and pro-notes which has now been used to create the suit pro-notes. The defense was that the defendant had admitted the borrowed but had not proved its settlement. The learned Judge has discussed the case laws in detail and ultimately, come to the conclusion that the plaintiff has not made out a triable issue and therefore, there was no necessary to grant leave to the petitioner/defendant. Challenging the same, the revision petitioner is



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before this Court. Thereafter, the suit was also decreed on 26.11.2021.

5.The ground on which the revision petitioner seeks to challenge the order is that the Court below has not considered as to whether the defence raised by the revision petitioner is a triable one. The revision petitioner would contend that in his reply dated 01.03.2019 to the notice issued, the defendant has clearly stated that he had only borrowed a sum of Rs.2,00,000/- in September 2016 and that had set out the fact that the amount which is borrowed in September 2016 had been fully repaid, but however, the plaintiff had not returned the property documents and cancel the Pro-Note as requested by the defendant and it is this document that has now been put to use to create the Pro-Note. Therefore, he would contend that there is a triable issue and the learned has committed a grave error and injustice.



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6.The learned counsel would submit that there has been no reply/ re-joinder to this reply which only implies that the plaintiff had tacitly admitted the contentions of the defendant. The learned counsel has also relied heavily on the provision of Order 37 Rule 3 (5) of the Code of Civil Procedure to advance his argument that the Court has the power to condone the delay and set aside the order.

7.Heard the learned counsel for the petitioner and perused the papers.

8.The suit in question is one filed under the provision of Order 37 Rule 3(5) of the Code of Civil Procedure. The suit filed is an under Chapter suit. The said procedure is framed and the parties are bound to adhere to the time schedule thereunder. The defendant/revision petitioner has filed a petition seeking leave to defend. In that, he has submitted that he has repaid the amount due



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under the Pro-note and the plaintiff had not returned the original documents and pro-notes. Despite stating that the said amount has been settled, no action whatsoever has been taken by the defendant seeking the return of a Pro-Note. Except for the statement in the affidavit there is no proof for the above. Therefore, considering the fact that the suit in question is an under Chapter suit and also taking note of the fact that a triable issue has not been raised by the defendant in the defense is moonshine and an illusory one. The order passed by the learned IV Assistant Judge, (FAC) III Assistant Judge, City Civil Court, Chennai, is in order and does not require to be revised.

In the result, this Civil Revision Petition stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

08.02.2022

Internet : Yes/No
Index :Yes/No



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Speaking / Non-Speaking
mps/shr

To

The IV Assistant Judge,
(FAC) III Assistant Judge,
City Civil Court,
Chennai.



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P.T. ASHA, J,

mps

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