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CRP (NPD) No. 143 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **25.01.2022**

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) No. 143 of 2022

and

CMP No. 807 of 2022

S.Sundar

... Petitioner/Plaintiff

Vs

1. Mr.R.Desikan

2. Mr.V.Viswanathan

3. Mr.Jayakar Abraham Henry

... Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 29.11.2021 in unnumbered O.S.(Commercial Division) S.R.No.15083/2021 passed by the Principal Judge, City Civil Court, Chennai.

For Petitioner : Mr. Ravi Raja Bappu



ORDER

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Challenge in this Revision is to the order of the learned Principal Judge, City Civil Court, Chennai, returning the plaint requiring the plaintiff to delete the defendants 1 & 2 from the party array and to file the suit as an ordinary suit instead of a commercial suit.

2. Heard Mr. Ravi Raja Bappu, learned counsel appearing for the petitioner. In view of the fact that the plaint has been returned without being numbered, notice to the respondents is deemed unnecessary.

3. Mr. Ravi Raja Bappu, learned counsel appearing for the petitioner would contend that the Court must look into the allegations in the plaint and decide as to whether it is a commercial suit or not. According to him, a loan transaction which done for a commercial purpose, namely, production of a movie would be a commercial transaction and therefore, a suit filed for recovery of money based on such loan transaction would be a commercial suit.



4. The learned counsel is supported by the Judgment of the

Hon'ble Supreme Court in *Ambalal Sarabai Enterprises Ltd., Vs. K.S.*

Infraspac LLP and another reported in (2020) 15 SCC 585 and the

Judgment of Bombay High Court in *Bharat Muddanna Shetty Vs. Ahuja*

Properties and Developers. The learned Principal Judge has taken a very

strict interpretation of the provision particularly Section 2(c)(i) of the

Commercial Courts Act to come to the conclusion that the suit transaction

will not qualify as a commercial transaction. I am unable to subscribe the

view of the learned Principal Judge. Once the plaintiff avers that advance

was made for commercial purpose and claims a decree for recovery of

money, the same would be a commercial transaction and any other view

cannot be justified.

5. As regards the second aspect, namely, to delete the defendants 1

and 2, I am of the considered opinion that the direction of the learned

Principal Judge, City Civil Court, Chennai, is in order. The prayer for

recovery of money is only made against the third defendant and the

defendants 1 and 2 have been roped in as persons, who have introduced the

third defendant to the plaintiff. They cannot be made liable. The lis being a



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money suit based on the promissory note only parties to the transaction can be made parties to the suit. Therefore, the learned Principal Judge was justified in directing the plaintiff to strike off the defendants 1 and 2 from the party array.

6. This Civil Revision Petition is partly allowed. The Plaintiff is permitted to represent the suit as commercial suit after deleting the defendants 1 and 2 from the party array and the learned Principal Judge is directed to number the suit as commercial suit and dispose it of. No costs. Consequently, connected Miscellaneous Petition is closed.

25.01.2022

vsg
Index: Yes/No
Speaking order / Non speaking order

To:

1. Principal Judge, City Civil Court, Chennai.

2. The Section Officer,
VR Section,
Madras High Court, Chennai.

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R.SUBRAMANIAN, J.

Vsg

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