



S.A. No. 42 of 2013

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

S.A. No.42 of 2013

and

M.P.No. 1 of 2013

B.Rajendran,
S/o. Bangaru

... Appellant

Versus

K.Murugesan (deceased)

2. Veilukanthammal,

3. Nagalingam

4. Saraswathi

5. Kalaiselvi

6. Udhayakumar

(R2 to R6 are brought on record as LR's of
deceased sole respondent vide order
dt. 27.11.2018 made in C.M.P. No.9093 to
9095 of 2016)

... Respondents



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Prayer:- Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree in A.S.No.55 of 2011 dated 09.01.2012 on the file of V Addl. City Civil Judge at Chennai in O.S.No.480 of 2008 dated 22.08.2008 on the file of V Asst. City Civil Court at Chennai.

For Appellant : Mr.G.Appavu

For Respondents : Mr. K.G.Vasudevan for R2 to R6

R1 - died

JUDGEMENT

The appellant herein is the defendant in the suit filed in O.S.No.480 of 2008 under Order 37 Rule 3 of C.P.C. on the file of V Asst. City Civil Court at Chennai by the respondent/plaintiff herein for recovery of money on pronote.

2. The filing of suit on pronote claimed under summary suit proceedings is admitted by both parties and for the sake of convenience, the parties are referred as per the ranking in the suit.



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WEB COPY 3. In that suit, the defendant has filed an application under Order 37

Rule 3 of C.P.C. seeking to grant unconditional leave to defend the case, submitting that from one Ponnusamy, a loan amount was borrowed by the by the plaintiff through the defendant. Subsequently, the amount was discharged to the said Ponnusamy, but as a mediator, the plaintiff, who retained the pronote and other cheque leaves, and he has manipulated the same and filed a suit. Hence, he filed an application seeking to grant unconditional leave to defend the case. But, the learned trial judge dismissed the application concluding that the defence sought to be raised cannot be said to be substantial, as a result, the leave to defend was refused and the suit was decreed as prayed for. Aggrieved over that, the defendant has filed an appeal before the appellate forum in A.S.No. 55 of 2011 along with C.M.P. No. 1288 of 2011 challenging the order passed by the trial judge. On considering the both sides submissions, the learned appellate judge has held that from the beginning, the defendant seeking permission to adduce evidence in the summary suit proceedings and as per the defence sought to be raised by the defendant, it is found that none of defence raised



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by him is tenable in law and the defendant also failed to show that he is having documentary evidence to prove his case, and the claim has not been filed by way of affidavit in the trial court. Accordingly, the appeal was dismissed confirming the judgment passed by the trial court. Aggrieved over that, the appellant has filed the present Second Appeal framing the following substantial question of law :-

- 1) Is not the discharge of debt is triable issue under the provisions of C.P.C. entitling to get leave to defend the suit?
- 2) Is not he real lender of money is proper and necessary party to the suit when raised in L.P. Petition and the plaintiff/Respondent had not taken positive steps to implead?
- 3) Whether the courts below are justified in raising the presumption under Sec.118 of N.I. Act, when the document is not pronote strictly under Sec. 4 of N.I.Act?
- 4) Is not the pre-suit notice is mandatory on promissory notes and in granting cost of the suit?



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4. The learned counsel appearing for the defendant would submit that immediately after filing of the suit, he has filed an application under Order 37 Rule 3 of C.P.C. seeking to grant unconditional leave to defend the case for the reason that already the loan amount was discharged to one Ponnusamy, who is a real money lender and the plaintiff is the mediator, he mediated between the parties and to discharge the said amount he is having sufficient documentary evidence. Hence, he has filed an application. But, the trial court as well as first appellate court without giving an opportunity to defend his case, have dismissed his application. The defendant also produced a letter, which contains the recitals of discharge of loan before this court and based upon that, he prayed to remand the matter back to the trial court to prove his defence of discharge of loan through documents.

5. The learned counsel for plaintiff raised objections contending that before the trial court, the defendant has not produced any documentary evidence to prove that the loan was already discharged. On considering the same, the trial judge as well as first appellate court rejected his claim and for



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the first time he has submitted before this court that he is having documentary evidence. Hence, he prayed to dismiss the Second Appeal.

6. Heard and considered rival submissions made by learned counsel for appellant as well as respondents and perused the records.

7. On perusal of records, it reveals that before the trial court, the defendant has not enclosed any documentary evidence to show that the loan was already was discharged, but at the time of argument, he has produced a letter showing the recitals of discharge of loan to one Ponnusamy and the date mentioned in the letter was also prior to the date of filing suit. As per the dictum laid down by the Hon'ble Supreme Court in the case of *M/s.Mechelec Engineers and Manufacturers vs. M/s. Basic Equipment Corporation* reported in *1976 (4) SCC 687*, enumerated certain prepositions as to when an unconditional leave can be granted or the defendant can be put on terms. The said prepositions, as enumerated by the Hon'ble Supreme Court in the aforesaid decision, may be stated as follows :-

a) If the defendant satisfies the court that he has a good



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defence to the claim on its merits, the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend.

b) If the defendant raises a triable issue indicating that he has a fair or bonafide or reasonable defence although not a positively good defence, the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

Therefore, if the defendant satisfy the court that he has good defence, and not enabling the defendant to indicate defence, which merely give a raise to the triable issue, but the defendant should satisfy the court that he has substantial defence to rise. Case in hand, the defendant submitted that he is having piece of documentary evidence to establish the discharge of loan and to prove his defence. Hence, he has filed the said application seeking to grant unconditional leave to defend. When the defendant is having sufficient material evidence to defend the case, an opportunity may be given, otherwise, his right will be defeated. But, the court below failed to



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appreciate the legal aspect and erroneously rejected the claim of the defendant. Hence, this Second Appeal is liable to be allowed.

8. In the result, this Second Appeal is allowed and the judgment and decree passed by the trial court as well as first appellate court are set aside and the matter is remanded back to the trial court. Accordingly, the petition filed by the defendant under Order 37 Rule 3 seeking to grant unconditional leave to defend the case is allowed and the trial court is directed to give opportunity to the defendant to rise substantial defence. However, the Trial Court is directed to dispose the suit within a period of three months as per the manner known to law from the date of receipt of copy of this order. No costs. Consequently, the connected M.P. stands closed.

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rpp

To

V Addl. Judge,
City Civil Court,
Chennai.

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T.V.THAMILSELVI, J.

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