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C.R.P.(PD) No.1505 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (PD) No.1505 of 2019
and C.M.P. No.9835 of 2019

1. R.Venkatesh
2. Shanthi

.. Petitioners

Vs.

K.Kandasamy

.. Respondent

Civil Revision Petition is filed under Section 227 of Consitution of India, against the fair and decretal orders of the learned Subordinate Judge of Mettupalayam dated 30.01.2019 in I.A. No.705 of 2018 in O.S. No.113 of 2017.

For Petitioners : Mr. Hariharan. J

For Respondent : Mr. Babu Rangasamy

O R D E R

The defendants in the suit in O.S. No.113 of 2017 before the Sub Court, Metupalayam are the revision petitioners before this Court. Aggrieved by the



C.R.P.(PD) No.1505 of 2019

order dismissing the application in I.A. No.705 of 2018 in O.S. No.113 of 2017, seeking permission to summon four of the witnesses to support the case of defendant, the above Civil Revision Petition is filed.

2. The respondent filed a suit in O.S. No.113 of 2017 for recovery of a sum of Rs.7,50,000/- based on a mortgage by deposit of title deeds and to pass a preliminary decree for bringing the suit schedule property for sale in case the defendants failed to pay the amount as prayed for. A written statement was filed by the defendants denying the plaint averments particularly with reference to the liability and the entire transaction alleged in the plaint. After closing of evidence on the plaintiffs' side, the revision petitioners filed an application in I.A. No.705 of 2018 in O.S. No.113 of 2017 for summoning four witnesses on defendant's side. The said application was to examine one Dinesh Kumar and two other Branch Managers of Bank in which the defendants have accounts and the Income Tax Officer under whose jurisdiction the defendants are residing. The application was contested by the plaintiff. The lower Court dismissed the application mainly on the ground that the plaintiff has to prove the mortgage and that the defendants are not expected to disprove the lending capacity of the plaintiff.



C.R.P.(PD) No.1505 of 2019

WEB COPY

3. Since the defendants were also given liberty to examine any individual including one of witnesses when the defendants side evidence is taken, the learned counsel appearing for the respondent submitted that the order of the lower Court is perfectly valid and cannot be interfered with. Having regard to the nature of pleadings, the application filed by the revision petitioners to examine certain witnesses cannot be dismissed for the reason stated in the order. It should be the rule to give a fair opportunity to parties to the lis to examine any number of witnesses to prove his or her case unless there are reasons to doubt the bonafides. The Court cannot refuse to issue summons to witnesses on the ground that burden lies on the other side to prove their case and not on the applicant to disprove the case of other side. Having regard to the present factual background, this Court is of the view that it cannot be stated that there is no bonafides in the application. Whenever permission of Court is required to avail benefit of Court to substantiate the case pleaded by the defendants in defense, the Court cannot reject unless the ultimate object behind the application is to drag on the proceedings or to cause serious prejudice to the other side. In this case it is not the case that the respondent will be put to any loss or prejudice on account of the application.



C.R.P.(PD) No.1505 of 2019

WEB COPY

4. Since it is stated that the examination of witnesses is necessary to establish the defense taken by the defendants, this Court is unable to sustain the order of the learned Subordinate Judge, Mettupalayam in I.A. No.705 of 2018 in O.S. No.113 of 2017 and the same is hereby set aside. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed. The application in I.A. No.705 of 2018 in O.S. No.113 of 2017 stands allowed.

11.01.2022

Speaking order / Non-speaking order

Index: Yes / No

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To

The Subordinate Judge, Mettupalayam.



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C.R.P.(PD) No.1505 of 2019

S.S.SUNDAR, J.,

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C.R.P. (PD) No.1505 of 2019

11.01.2022