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C.R.P(NPD).No.2816 of 2007

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

|                      |          |                   |
|----------------------|----------|-------------------|
| <b>RESERVED ON</b>   | <b>:</b> | <b>29.03.2022</b> |
| <b>PRONOUNCED ON</b> | <b>:</b> | <b>29.06.2022</b> |

**CORAM:**

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

**C.R.P.(NPD) No.2816 of 2007**

P.Pandian

.. Petitioner/  
Defendant

Versus

S.Arumugam

.. Respondent/  
Plaintiff

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 27.04.2006 made in O.S.No.1478 of 2006 in C.S.No.6495 of 2006 on the file of the learned 15<sup>th</sup> Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.T.G.Ravichandran

For Respondent : Mr.K.R.V.Muthukrishnan

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**ORDER**

Aggrieved against the order of dismissal, dated 27.04.2006, passed in C.S.No.6495 of 2006 in O.S.No.1478 of 2006 on the file of the learned XV



**C.R.P(NPD).No.2816 of 2007**

Assistant Judge, City Civil Court, Chennai, the petitioner has preferred the present revision.

**2.** Facts barely needed for the disposal of the present Civil Revision Petition are as follows:-

**2.1.** The case of the plaintiff/ respondent herein, before the Court below is that the defendant/ petitioner herein had borrowed a sum of Rs.3,00,000/- from the plaintiff/ petitioner for the purpose of purchasing a house. Agreeing to pay an interest of 18% per annum for the aforesaid amount, the defendant had executed two demand promissory notes for a sum of Rs.1,50,000/-. In spite of several reminders being made by the plaintiff, the defendant failed to repay the loan amount and the interest for the same.

**2.2.** Agonized by the same, on 21.01.2006 the plaintiff issued a legal notice through telegram. Having receipt of the said legal notice, the defendant did not take any steps to repay the loan amount. Consequently, the plaintiff filed a suit in O.S.No.1478 of 2006 seeking for a direction to the defendant to pay a sum of Rs.4,62,000/- together with interest at the rate of 18% per annum on the principal amount of Rs.3,00,000/- from the date of the plaint till the date of realisation and for other reliefs.



**C.R.P(NPD).No.2816 of 2007**

**2.3.** Meanwhile, the respondent filed a petition under Order XXXVII and Rule 3 of the Civil Procedure Code in I.A.No.6495 of 2006 on the file of the learned 15<sup>th</sup> Assistant Judge, City Civil Court, Chennai seeking to grant leave to defend the above suit unconditionally.

**3.** The learned trial Judge had dismissed the above said application by relying on the principles laid down in the case of *V.K.K.Nair vs. Mr.D.Shittal Kumar* reported in **2004 (5) CTC page 734** , wherein it has been held that the defendant should satisfy the Court that he has a good defence on merits, that the defendant should raise triable issues indicating that he has a fair bona fide and reasonable defence and if it is not there and if the defence is sham and illusory, the defendant is not entitled to defend in which event, the Court may on ground of mercy enable the defendant to try to prove the defence but protect the plaintiff imposing the condition that the amount claimed should be paid into Court or otherwise secured.

**4.** The learned Judge has rendered his findings that the defendant has not produced any document to prove the fact that the two promissory notes, produced by the plaintiff, are fabricated and false documents. The said objection has also not been raised by the defendant either by way of filing



**C.R.P(NPD).No.2816 of 2007**

counter or in reply to the notice which was sent through telegram, dated 21.01.2006 by the plaintiff .

5. In the considered opinion of this Court, the order passed by the learned XV Assistant Judge, City Civil Court, Chennai does not warrant any interference. Meanwhile, this Court, vide its earlier order, dated 13.04.2020, while condoning the delay of 3571 days in filing the restoration petition, had directed the revision petitioner/defendant to deposit a sum of Rs.5,00,000/- on the total amount claimed in the Execution Petition before the lower Court. The said order also permitted the respondent/plaintiff to withdraw Rs.4,00,000/-. As per the submission made by the learned counsel for the respondent/plaintiff, the respondent/plaintiff has withdrawn Rs.4,00,000/- as per the direction of this Court and since the balance of Rs.1,00,000/- is available in the deposit before the Lower Court, the respondent/plaintiff is permitted to withdraw the same.

6. With the above observations, this Civil Revision Petition stands dismissed. However, there shall be no order as to costs.

**29.06.2022**



**C.R.P(NPD).No.2816 of 2007**

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Index : Yes / No

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To:

The XV Assistant Judge,  
City Civil Court,  
Chennai.



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**C.R.P(NPD).No.2816 of 2007**

**J.NISHA BANU, J.,**

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Order made in  
**C.R.P.(NPD) No.2816 of 2007**

Dated:  
**29.06.2022**