



C.R.P.(PD).No.2211 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.06.2022

Pronounced on : 04.07.2022

CORAM

THE HONOURABLE Mrs. JUSTICE S.KANNAMMAL

C.R.P.(PD).No.2211 of 2020

and

C.M.P.No.13911 of 2020

M.Yuvaraj

.. Petitioner

Versus

Adhishesha Rao

.. Respondent

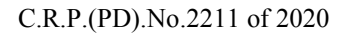
Civil Revision Petition is filed under Article 227 of Constitution of India, against the plaint and order dated 22.07.2019 passed in O.S.No.85 of 2018 on the file of Subordinate Court, Ponneri.

For Petitioner	..	Mr. S. Veeraraghavan
For Respondent	..	Mr. A.E. Ravichandran

ORDER

This Civil Revision Petition is filed by the plaintiff, aggrieved by the order dated 22.07.2019 passed in O.S. No. 85 of 2018 on the file of Subordinate Court, Ponneri. The order dated 22.07.2019 passed by the trial Court, which is impugned in this Civil Revision Petition, reads as follows:

“Plaint, petition, affidavit, oral and written submission filed by the plaintiff and the defendant sides are perused. Both the sides, Heard.



On perusal of the records, though the suit has been filed as a summary suit that the suit has not been filed in compliance of the procedure under Or.37, Rule 2 and 3 of CPC. The request process has not been followed in serving the summon/process under form IV. There has been no plausible reply on the part of the plaintiff that they have served process in format IV to the defendant. Considering the all other averments by the both sides, the suit not falls within the ambit of money suit tried summarily. Hence, the suit tried summarily. Hence, the suit stands converted as money suit simplicitor requires hearings and other process accordingly.”

3. According to the plaintiff, his nephew by name Naresh Kumar was employed as driver under the defendant. The defendant is a Doctor by profession. The plaintiff is also working as a car driver. The plaintiff used to meet his nephew Naresh Kumar at the place of his employment. During such



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time, he came into close proximity with the defendant. According to the plaintiff the defendant lured him to pay a sum of Rs.6,00,000/- to him so that he will purchase a car for him. Believing such representation to be true, the plaintiff, by pledging the jewels and by arranging hand loan, paid a sum of Rs.6,00,000/- to the defendant. The sum of Rs.6,00,000/- was deposited into the bank account of the defendant by NEFT in Account No.P15082512167896 from his Canara Bank Account bearing Account No.3725101008940 on 25.08.2015. While so, on 17.07.2016 when his nephew Naresh Kumar was driving the car, in which the wife of the defendant was an occupant, the car met with an accident in which the Naresh Kumar as well as the wife of the defendant died. Thereafter, when the plaintiff demanded the defendant to repay the amount inasmuch as the defendant did not purchase a car as promised, the defendant said to have threatened the plaintiff with dire consequences. Therefore, the plaintiff through his counsel has sent a legal notice on 15.07.2007 demanding repayment of a sum of Rs.6,00,000/- with interest. On receipt of the notice a reply notice dated 04.08.2017 was sent by the defendant denying averments in the notice. Thereafter, the plaintiff has filed the instant suit and Order XXXVII Rule 1 and 2 of the Code of Civil Procedure (in short, CPC), so as to be tried as a summary proceeding.



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4. On presentation of the plaint, a notice was sent to the defendant by a summon dated 11.08.2018. On receipt of the summon, the defendant filed a memo stating that the suit appears to have been filed under Order XXXVII Rule 1 and 2 CPC. However, the summons sent to him is not in Form 4 Appendix B of the CPC. The summons have been sent ordinarily as that of a suit filed Order VII Rule 1 and 2 of CPC. Therefore, the defendant, in the memo, pointed out such procedural irregularity in the matter of issuing summons to him and prayed the Court to convert the proceedings into that of an ordinary proceeding under Order VII Rule 1 and 2 of CPC so as to enable him to disprove the plaint averments in the normal trial.

5. Accepting the plea of the defendant, the trial Court passed the order, which is impugned in this Civil Revision Petition, converting the plaint filed under Order XXXVII Rule 1 and 2 into that of Order VII Rule 1 and 2 of CPC.

6. The learned counsel appearing for the revision petitioner would vehemently contend the suit filed by the revision petitioner under Order XXXVII Rule 1 and 2, as such, is maintainable. However, the trial Court without any rhyme or reason, has passed the impugned order converting the



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summary proceedings into that of a trial proceedings as envisaged under Order VII Rule 1 and 2. According to the learned counsel for the revision petitioner-plaintiff, the defendant is fully aware of the institution of the suit by the plaintiff and he also appeared before the trial Court. While so, it is incumbent on the part of the defendant to file an application seeking leave to defend the suit. Instead, he has filed a memo to the effect that the plaintiff did not comply with the procedures contemplated under Appendix B in Form 4 of the CPC. The object of issuing summons under Appendix B in Form 4 of the Code of Civil Procedure is to put the defendant on notice about the institution of the suit. When the defendant is fully aware of the institution of the suit by appearing before the trial court, the trial court ought not to have accepted the plea of the defendant and converted the summary proceeding into a trial proceeding. In this context, the learned counsel for the plaintiff relied on judgments namely

(i) **Projects and Equipment Corporation of India Ltd., Vs. H.C.Suri and Others**, reported in 1991 SCC Online Del 282 :AIR 1992 Del 159.

(ii) **Haryana Breweries Ltd., Vs.Aluminium Manufacturing Co.Ltd., and Others**, reported in AIR 1980 Delhi 311 (DB).



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7. Per contra, the learned counsel for the defendant-respondent, on the other hand, would submit that the trial Court is fully justified in converting the summary proceedings into that of a trial proceedings. According to the counsel for the defendant-respondent, even for the notice issued by the plaintiff before instituting the present suit, he has sent a reply repudiating the liability to pay a sum of Rs.6,00,000/-. Therefore, the instant suit filed by the plaintiff under Order XXXVII Rule 1 and 2 is not maintainable and the respondent need not file an application seeking leave to defend in as much as the averments made in the plaint constitute a triable issue. Therefore, the learned counsel for the defendant-respondent prayed for dismissal of the Civil Revision Petition.

8. Heard the learned counsel for both sides and perused the materials placed on record.

9. The plaintiff has filed the suit on 28.03.2018 under Order XXXVII Rule 1 and 2 of CPC. Order XXXVII Rule 1 and 2 reads as follows:

1. Courts and classes of suits to which the order is to apply.- (1) This Order shall apply to the following Courts, namely:—

(a) High Courts, City Civil Courts and Courts of Small Causes; and

(b) other Courts:



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Provided that in respect of the Courts referred to in clause (b), the High Court may, by notification in the Official Gazette restrict the operation of this Order only to such categories of suits as it deems proper, and may also, from time to time, as the circumstances of the case may require, by subsequent notification in the Official Gazette, further restrict, enlarge or vary, the categories of suits to be brought under the operation of this Order as it deems proper.

(2) Subject to the provisions of sub-rule (1), the Order applies to the following classes of suits, namely:—

(a) suits upon bills of exchange, hundies and promissory notes;

(b) suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising,—

(i) on a written contract; or

(ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

(iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.]

[(iv) suit for recovery of receivables instituted by any assignee of a receivable.]

2. Institution of summary suits.—(1) A suit, to which this Order applies, may if the plaintiff desires to proceed hereunder, be instituted by presenting a plaint which shall contain,—

(a) a specific averment to the effect that the suit is filed under this Order;

(b) that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint; and

(c) the following inscription, immediately below the number of the suit in the title of the suit, namely:—

“(Under Order XXXVII of the Code of Civil Procedure, 1908).”



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(2) The summons of the suit shall be in Form No. 4 in Appendix B or in such other Form as may, from time to time, be prescribed.

(3) The defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.]

10. The object with which Order XXXVII Rule 1 and 2 of CPC has been enacted is that the defendant is not, as in an ordinary suit, entitled as of right to defend the suit and he must apply for leave to defend the suit on receipt of summons duly served in form 4 of Appendix B of CPC. However, if the affidavit filed by the defendant discloses such fact as will make it incumbent upon the plaintiff to prove consideration or such other facts as may be sufficient for granting leave, the Court can grant leave to the defendant to defend the suit. If no leave to defend is granted, then the plaintiff is entitled to a decree, without being contested by the defendant. Thus, Order XXXVII Rule 1 and 2 is to ensure that a fact, which a defendant admitted, need not be



tested and tried before a Court of law by examining witnesses and by marking documents. In other words, a suit under Order XXXVII Rule 1 and 2 CPC can be filed in the event of the defendant admitting his liability or any of his action that has given rise to the filing of the plaint, as may be pleaded in the plaint. In such a suit filed under Order XXXVII Rule 1 and 2 of CPC, the parties need not be subjected to the rigor of a lengthy trial. When there is such admission on the part of the defendant, then the plaintiff need not file a suit under Order VII Rule 1 and 2, which entail a lengthy trial. Thus, in the event of such admission on the part of the defendant, then the suit can be filed as a summary suit as envisaged under Order XXXVII Rule 1 and 2 CPC. Thus, admission of the action or any liability is a condition precedent for entertaining a plaint presented under Order XXXVII Rule 1 and 2.

11. In the present case, even before the institution of suit, a notice was issued to the plaintiff. The defendant categorically denied his liability to pay the sum of Rs.6,00,000/- to the plaintiff, being the suit claim. Therefore, there is nothing on record to show that the defendant herein has admitted his liability to pay the suit amount, as claimed by the plaintiff. In such view of the matter the present suit filed by the plaintiff Order XXXVII Rule 1 and 2, to try it as a summary proceedings is not maintainable. When there is a



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categorical denial and assertion on the part of the defendant, denying the relief sought for in the plaint. Then it is but proper to file the suit under Order VII Rule 1 and 2 CPC.

12. In all the decisions relied on by the counsel for the revision petitioner / plaintiff, the suits were filed under Order XXXVII Rule 1 and 2 in which the defendant appeared before the Court and filed an application seeking leave to defend. In those cases, there was no quarrel or dispute as to the maintainability of the suit, as filed under Order XXXVII Rule 1 and 2 CPC. In those cases, the Courts have dealt with an application filed by the defendant either to condone the delay in filing an application seeking leave to defend or dealt with an application filed seeking leave to defend the suit. Therefore, those decisions relied on by the counsel for the revision petitioner/plaintiff cannot be applicable to the facts of the present case. In the present case, what is sought to be adjudicated is whether the plaint filed by the plaintiff under Order XXXVII Rule 1 and 2 of CPC is maintainable or not. When there is a denial of the suit claim made by the plaintiff, by the defendant, then the plaintiff, in the opinion of this Court, ought to have instituted the suit only under Order VII Rule 1 and 2 CPC and subject himself to trial, examine witness and mark documentary evidence to prove the plaint averments. On the



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other hand, the plaintiff has devised a novel and ingenious method to institute the suit under Order XXXVII Rule 1 and 2 CPC especially when there is a categorical denial on the part of the defendant to pay the suit amount to the plaintiff.

13. In such view of the matter, the trial Court is wholly justified and is legally correct in converting the plaint into one under Order VII Rule 1 and 2 CPC. This Court does not find any reason to interfere with a such an order passed by the trial Court. It is open to the revision petitioner/plaintiff to subject himself to the process of trial, examine witnesses on his side and prove the plaint averments so as to get a decree as prayed for by him.

14. Accordingly, this Civil Revision Petition stands dismissed, confirming the order dated 22.07.2019 passed in O.S.No.85 of 2018 on the file of Subordinate Court, Ponneri. No Costs. Consequently, connected Miscellaneous Petition is closed.

04.07.2022

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To
The Subordinate Judge,
Ponneri.



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S.KANNAMMAL, J.

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Pre-delivery Judgment in
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