



C.R.P.No.2464 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.2464 of 2022
and
C.M.P.No.12720 of 2022

1.A.V.Sekar
2.K.M.Ravi

... Petitioners

VS

1.N.R.Dharmalingam
2.D.Kannan
3.D.Raja
4.D.Gopal

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order, dated 04.07.2022, passed in I.A.No.3 of 2020 in O.S.No.1783 of 2020 by the III Additional City Civil Court, Chennai and allow the revision petition thereby allowing petition, I.A.No.3 of 2020 in O.S.No.1783 of 2020 by granting leave unconditionally to defend the suit.

For Petitioners : Mr.R.Munuswamy

For Respondents : Mr.T.N.Rajagopalan

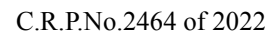
ORDER



C.R.P.No.2464 of 2022

The defendants in a summary suit for recovery of money have come up by way of this revision, aggrieved by an order passed by the Court below, imposing a condition that the petitioners/defendants shall deposit 50% of the suit pronotes amount while granting leave to defend the suit.

2. The respondents herein laid a summary suit under Order XXXVII Rule 1 and 2 of the Civil Procedure Code, for recovery of Rs.42,50,000/- based on four promissory notes on the allegation that they were jointly executed by the petitioners in favour of the respondents. The suit summons were served on the petitioners and after entering appearance, they preferred an application under Order 37 Rule 3(5) read with Section 151 of Civil Procedure Code, seeking leave of the Court to defend the suit. In the affidavit filed in support of the said application, the petitioners averred that the Plaint Documents were not served on the petitioners. It was specifically averred that the 2nd petitioner was in urgent need of money during December-2016 and he approached the 1st petitioner for financial assistance and he had taken him to 3rd respondent, a money lender, who lent a sum of Rs.5,00,000/- by cash to the 2nd petitioner on 21.12.2016. It was further averred that as a security for



3. The 3rd respondent/3rd plaintiff filed a counter contending that the defence raised by the petitioners is nothing but illusory and sham. According to the 3rd respondent, at the request of the petitioners herein, the 1st and 3rd respondents paid a sum of Rs.5,00,000/- each by cash on 05.03.2017 to the petitioners and got executed a Promissory Note dated 05.03.2017 for the same. It was also alleged that subsequently the petitioners also received a sum of Rs.15,00,000/- in cash from other respondents and executed a Promissory



C.R.P.No.2464 of 2022

Note. It was also submitted that the petitioners agreed to pay interest at the rate of 24% per annum on the amount received by them by way of loan. It was alleged that when the 3rd respondent demanded the money, the petitioners threatened him with dire consequences and consequently, the police complaint was laid by the 3rd respondent against the petitioners. The respondents also averred that they received a legal notice from the petitioners, as if they had borrowed a sum of Rs.5,00,000/- and the same was repaid in full with 80% interest. It was also alleged that the 3rd respondent had issued a reply notice to the said legal notice issued by the petitioners. On these pleadings, the 3rd respondent sought for dismissal of the petition seeking leave to defend the suit.

4. The Court below on consideration of the contentions of either side and documents produced by the respondents came to the conclusion that there were triable issues, but however, leave was granted with a condition to deposit 50% of the suit pronotes amount. Aggrieved by the same, the revision petitioners have come up with this revision.

5. The learned counsel for the petitioners by taking this Court to Order



C.R.P.No.2464 of 2022

XXXVII rule 3 of Civil Procedure Code, contended that it is obligatory on the part of the respondents/plaintiffs to serve suit summons together with plaint and annexure thereto and in the absence of service of the plaint documents along with summons, the service of summons on the petitioners cannot be said to be valid in eye of law. The learned counsel for the petitioners contended that the revision petitioners have raised a defence which involves triable issues and hence, the petitioners are entitled to unconditional leave to defend the suit. Secondly, the learned counsel for the petitioners contended that the revision petitioners had raised valid defence which involves triable issues and consequently, the Court below ought not to have imposed an onerous condition of depositing 50% of the suit pronotes amount as condition for granting leave to defend the suit.

6. The learned counsel for the respondents submitted that the suit summons were served on the revision petitioners properly by the bailiff of the Court and the revision petitioners, who entered appearance did not inform the respondents/plaintiffs about the alleged non-receipt of plaint documents and hence, it is not open to the petitioners to seek leave to defend the suit on the



C.R.P.No.2464 of 2022

ground that the suit summons were not served along with plaint documents.

The learned counsel further contended that the Court below having regard to the pleadings of the parties and *prima facie* case made out came to the conclusion that the revision petitioners should be directed to deposit 50% of the suit promissory note amount as a condition for granting leave to defend the suit and the petitioners have not made out any case to interfere with the said order.

7. Heard the arguments of the learned counsel for the petitioners and the respondents and perused the typed-set of papers and also Lower Court records.

8. The perusal of the Lower Court records would suggest that the suit summons was served along with plaint copy to the revision petitioners herein by the Court bailiff. But it is not clear whether the plaint copy was served along with annexures viz., the Plaint Documents or not. However, it is admitted fact that the defendants had entered appearance after service of summons and they had not issued any intimation to the respondents/plaintiffs



C.R.P.No.2464 of 2022

complaining of non-receipt of Plaintiff Documents.

WEB COPY

9. The perusal of the affidavit filed in support of the petition to seek leave of the Court to defend the suit would suggest that the revision petitioners had chosen to defend the suit by filing appropriate application and hence, the service of suit summons is not very much under dispute. The only point to be decided is whether the revision petitioners have made out any triable issues and if the answer on affirmative, then, it has to be decided whether they are entitled to leave without any conditions.

10. The perusal of the affidavit filed by the revision petitioners in support of the petition to seek leave of the Court to defend the suit and the counter affidavit filed by the 3rd respondent would suggest that even prior to filing of the suit there were exchange of the legal notice between the parties. Ex.R11 is a legal notice issued by the 2nd petitioner demanding return of blank signed documents, stamped receipts by the respondents on the ground that the petitioners had discharged the loan amount of Rs.5,00,000/-. Ex.R10 is a police complaint lodged by the 3rd respondent. For legal notice issued by



C.R.P.No.2464 of 2022

the 2nd petitioner, the 3rd respondent issued a reply notice nearly after four months only on 10.01.2020 under Ex.R12. The explanation offered by the 3rd respondent for a delayed response is a matter to be tested in a full fledged trial. Even the Court below in the impugned order had observed that whether the revision petitioners borrowed a sum of Rs.5,00,000/- as contended by them or a sum of Rs.25,00,000/- as contended by the respondents is a matter to be decided at the time of trial. Further, the plea of discharge made by the revision petitioners has to be tested in a full fledged trial, therefore, this Court is of the view that there are triable issues involved in this case.

11. The Court below in the impugned order had said that the revision petitioners on the one hand claimed they discharged the loan amount of Rs.5,00,000/-, on the other hand, they made a claim that the suit promissory notes are forged and concocted documents and therefore, they cannot blow hot and cold. The revision petitioners in their affidavit submitted that they borrowed a sum of Rs.5,00,000/- and executed the promissory notes for the said sum. They also pleaded that they discharged the entire loan amount. In addition to that the revision petitioners also pleaded at the time of executing



C.R.P.No.2464 of 2022

the promissory notes for a sum of Rs.5,00,000/-, as a security for proper repayment, the 3rd respondent also obtained signature in the blank promissory notes and blank papers.

12. In view of these averments, the defence raised by the revision petitioners cannot be termed as self-contradictory but it is supplemental to each other. The truth or otherwise of the defence raised by the revision petitioners has to be decided only based on the evidence at the time of final disposal.

13. The Court below further observed that under Ex.R7, the loan transactions are reflected in the Income Tax Returns of the respondents and the said documents *prima facie* proved the case of the respondents/plaintiffs. Ex.R7 is the Income Tax Returns for the Assessment Year 2017-2018 in the name of the 1st respondent.

14. The perusal of the said documents would show that the payment of



C.R.P.No.2464 of 2022

Rs.5,00,000/- to the 2nd petitioner is reflected thereon. However, other loan transactions mentioned in the Income Tax Returns are not relating to the revision petitioners, it stands in the names of Kotteswaran and Muthu who are strangers. Therefore, the payment of Rs.5,00,000/- alone is reflected in the Income Tax Returns/Ex.R7, the case of the revision petitioners is that they received only Rs.5,00,000/- from the 3rd respondent. The Court below assumed as if the payment of Rs.25,00,000/- in favour of the revision petitioners is reflected in the Income Tax Returns/Ex.R7 and the same is a result of misreading of Ex.R7. Therefore, I am inclined to interfere with the order passed by the Court below imposing a condition to deposit 50% of the suit promissory note amount to grant leave to defend the suit.

15. In view of the discussion above, this Court is of the firm view that there are triable issues involved in this case and hence, the revision petitioners are entitled to get unconditional leave to defend the suit.

16. Accordingly, the Civil Revision Petition is allowed by setting aside



C.R.P.No.2464 of 2022

the condition imposed by the Court below directing the revision petitioners to deposit 50% of the suit promissory note amount as a condition to defend the suit and the revision petitioners are entitled to unconditional leave to defend the suit. Consequently, I.A.No.4 of 2019 is allowed unconditionally. In the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

20.10.2022

Index : Yes / No
Speaking Order : Yes / No

dm

To

The III Additional City Civil Court,
Chennai.



WEB COPY



C.R.P.No.2464 of 2022

S.SOUNTHAR, J.

dm

C.R.P.No.2464 of 2022

20.10.2022