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C.R.P.(PD)No.337



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P.(NPD)No.3371 of 2015
and M.P.No.1 of 2015**

S.Thyagaraja Gurukkal

... Petitioner

Vs.

Rajaram

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 29.06.2015 in I.A.No.1692 of 2015 in O.S.No.6883 of 2014 on the file of the learned II Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.K.Ramaiah

For Respondent : Mr.V.R.Karthikeyan

ORDER

The Civil Revision Petition is preferred against an order dismissing the leave to defend the application in I.A.No.1692 of 2015 in O.S.No.6883 of 2014 on the file of the learned II Assistant Judge, City Civil Court, Chennai.



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2. The suit in O.S.No.6883 of 2014 is filed under Order XXXVII Rule 2 of C.P.C. In the said suit, the Civil Revision Petitioner is the sole defendant. A sum of Rs.3,00,000/- is said to have been transferred under the pro-note from the plaintiff to the defendant. He admits to the pro-note, but denies the fact that money had been transferred under it.

3. It is his case that pro-note had been given for security purpose. Apart from that, it is his case that endorsement made on the rear side of the pro-note is a fraudulent one, it is not his signature and it is an act of forgery. Therefore, the petitioner filed I.A.No.1692 of 2015 in O.S.No.6883 of 2014 for grant of unconditional leave to defend the application to enable him to file written statement. The learned II Assistant Judge, City Civil Court, Chennai, dismissed the leave to defend the application, against which the present revision is preferred.

4. I heard Mr.R.K.Ramaiah, learned counsel appearing for the Civil Revision Petitioner and Mr.V.R.Karthikeyan, learned counsel appearing for the respondent.

5. The only issue to be considered is whether the petitioner is entitled to unconditional leave to defend the application. The case as narrated above would show that the petitioner is not disputing the pro-note, but would state that it had been executed under different circumstances. There is a presumption under Section 118 of



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the Negotiable Instruments Act, which of course is a rebuttable presumption. The very fact that it is rebuttable presumption shows there is triable issue to be gone into by the Court. Therefore, I would grant leave to defend the application to the petitioner:

(1) as he has taken the defence of forgery of the endorsement made on the rear end of the pro-note

(2) as he states that pro-note itself was executed for different purposes without any money passing under the document. However, this leave is not unconditional as sought for by the revision petitioner. Leave to defend is granted on deposit of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) to the credit of O.S.No.6883 of 2014 on the file of the learned II Assistant Judge, City Civil Court, Chennai.

6. If the deposit is not made, the order passed by the learned II Assistant Judge, City Civil Court, Chennai, in I.A.No.1692 of 2015 dated 29.06.2015 will stand confirmed. In other words, leave to defend the application is conditional only on the deposit of Rs.1,50,000/-. On such deposit, the amount shall be kept in interest bearing account pending disposal of the suit.

7. In fine,

(i) This Civil Revision Petition is allowed setting aside the fair and decretal order dated 29.06.2015 made in I.A.No.1692 of 2015 in O.S.No.6883 of 2014 on the file of the learned II Assistant Judge, City Civil Court, Chennai.



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(ii) Conditional leave to defend is granted to the Civil Revision Petitioner, the condition being he shall deposit a sum of Rs.1,50,000/- (Rupees One lakh fifty thousand only) to the credit of the suit in O.S.No.6883 of 2014 on the file of the learned II Assistant Judge, City Civil Court, Chennai.

(iii) Learned counsel for the petitioner undertakes to deposit the said amount on or before 04.09.2023.

(iv) It is made clear that if the deposit is not made, leave to defend granted will stand automatically rejected without further reference to this Court. No costs. Consequently, connected Miscellaneous Petition is closed.

05.07.2023

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

II Assistant Judge

City Civil Court, Chennai.



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V.LAKSHMINARAYANAN,J.

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