IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

CORAM:

THE HON'BLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI

C.R.P.No.4126 of 2015

A.Venkataramani ...Petitioner

Versus

Mr.Kishore Kumar ... Respondent

PRAYER: Civil Revision Petition filed under filed under Article 227 of Constitution of India, prays to set aside the fair and decreetal order passed in I.A.No.8813 of 2014 in O.S.No.1448 of 2014 dated 01.04.2015 by the Hon'ble IV Assistant City Civil Court, Chennai.

For Petitioner : Mr.V.Arunagiri

For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order passed in I.A.No.8813 of 2014 in O.S.No.1448 of 2014 dated 01.04.2015 by the learned IV Assistant City Civil Court, Chennai thereby dismissed the petition filed by the petitioner for leave to defend the suit.

2. The case of the petitioner is that the respondent herein had filed a suit for recovery of money on the promissory note dated 14.10.2010 in O.S.No.1448 of 2014 against the 1st defendant company namely M/S.Sanraa Media Limited, 2nd defendant/petitioner herein and 3rd defendant before the learned IV Assistant City Civil Court, Chennai.

3. According to the plaintiff, on 14.10.2010, the defendants approached the plaintiff through their Finance Agent namely Anil Traders for a loan amount of Rs.3,00,000/- for which, the plaintiff had issued a cheque bearing No.476842 drawn on Bank of Baroda for Rs.2,67,000/- in favour of the 1st defendant and paid a sum of Rs.33,000/- by cash in all aggregating to Rs.3,00,000/- and in consideration of the same, the 2nd and 3rd defendants, as Directors of the 1st defendant company, had executed a promissory note in favour of the plaintiff. In and by the said promissory note, the defendants not only executed the promissory note but also categorically acknowledged the receipt of the amount mentioned in the promissory note and agreed to pay the loan amount together with the interest thereon at 2% per month to the plaintiff.

4. In respect of the said promissory note, the defendants paid interest for

the period upto 29.03.2011 by cheque and the defendants paid a part payment of Rs.60,000/- by cheque bearing No.083003 dated 11.12.2010 drawn on ICICI Bank in favour of the plaintiff. Thereafter, the defendants suggested the plaintiff and their finance agent, instead of issuing part payment cheques to all the financiers, they would pay a consolidated amount through RTGS from Canara Bank in favour of their Finance Agent, Anil Traders and the finance agent were requested to distribute the amount transferred among the creditors from whom they had arranged loans to the defendants. Accordingly, the defendants had paid a consolidated amount on 03.08.2011 for Rs.3,00,000/- in favour of their finance agent. Thereafter, the said finance agent/Anil Traders had distributed the amount among the creditors and the plaintiff had received a sum of Rs.22,750 by cheque bearing No.558953 dated 08.08.2011 drawn on Royal Bank of Scotland and thus the defendants had paid a total sum of Rs.82,750/- towards part payment of principal and failed to pay the balance of principal and all the subsequently accumulated interest. Therefore, the due payable by the defendants to the plaintiff is Rs.2,17,250/- for balance of principal and Rs.1,43,385/- for interest, in all aggregating to Rs.3,60,635/-.

5. The petitioner/2nd defendant had filed a petition in I.A.No.8813 of 2014 in O.S.No.1448 of 2014 to grant leave to defend the suit on the ground

that he was not the Director of the 1st defendant company at the time of the alleged loan transaction and promissory note itself is not a valid one. He further states his signature was forged in the alleged promissory note and his name has been left blank. Further, the name of the borrower was also left blank in the promissory note. It is not clearly mentioned in the suit promissory note that who borrowed the money from the plaintiff. He further states that the suit is barred by limitation since the the suit promissory note was executed on 14.10.2010 but the suit was filed only on 25.02.2015. Hence, the petitioner/2nd defendant had raised the triable issues in the suit and prayed unconditional leave may be granted to defend the suit.

6. On the other hand, the plaintiff in his counter affidavit submitted that the averments made in the petition to defend the suit are false having borrowed money from the plaintiff and executed the suit promissory note in his favour. The said allegations in the petition are made only for the purpose of getting an unconditional leave to defend the suit.

7. The trial Court after considering the averments made in the plaint and written statement and the arguments advanced on both sides, dismissed the petition. Aggrieved over the same, the petitioner/2nd defendant had preferred

this revision petition against the order passed in I.A.No.8813 of 2014 in O.S.No.1448 of 2014.

8. Heard the learned counsel for the petitioner and there is no representation for the respondent and perused the materials available on records.

9. On perusal of the records, it is found that there are triable issues in the suit and the Court below ought to have given an opportunity to the petitioner to defend the suit. According to the petitioner, he was not the Director of the 1st defendant company at the relevant point of time and the name of the borrower is not mentioned in the suit promissory note and it would establish the fact that no money was borrowed by this petitioner/2nd defendant from the plaintiff. In view of the further contention of the petitioner/2nd defendant that the suit is barred by limitation. Therefore, there are many triable issues in the suit and as such the Court below ought to have given a sufficient opportunity to the petitioner/2nd defendant to defend the suit.

10. In view of the above discussion, the order passed by the IV Assistant

Judge, City Civil Court, Chennai in I.A.No.8813 of 2014 in O.S.No.1448 of 2014 dated 01.04.2015 is set aside and the revision petition is allowed.

11. The revision petitioner is permitted to file his written statement before the trial Court within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the Trial Court is directed to dispose the suit within three months from the date of filing written statement.

12.With the above directions, this civil revision petition is allowed. Consequently connected miscellaneous petition is closed.

28.06.2023

Index: Yes/ No
Speaking Order / Non-Speaking Order
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To

The learned IV Assistant City Civil Court, Chennai.

K.GOVINDARAJAN THILAKAVADI, J.

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