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C.R.P. (NPD) No. 1946 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2023

CORAM:

THE HON'BLE Mr. JUSTICE V. LAKSHMINARAYANAN

C.R.P. (NPD) No. 1946 of 2016

and

C.M.P. No. 10183 of 2016

1. Easwarammam Prema Bharathi

2. R.Devaraj

... Petitioners

Vs.

1. Canara Bank

Represented by its Senior Manager

Vellacherry Branch

Chennai – 600042.

2. Sudha

... Respondents

Prayer:- Petition filed under Article 227 of the Constitution of India praying to allow the above C.R.P. by setting aside the fair and decretal order passed in I.A. No. 19360 of 2012 in O.S. No. 5630 of 2012 dated 28.03.2013 on the file of the learned XIII Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr. K.Vellayaraj

For Respondents : Mr. B.S.Sundaramoorthi (R1)

R2 – Not ready notice

ORDER



C.R.P. (NPD) No. 1946 of 2016

WEB COPY

This civil revision petition arises against the order dated 28.03.2013 passed in I.A. No. 19360 of 2012 in O.S. No. 5630 of 2012. The suit had been presented by the Canara Bank for recovery of a sum of Rs. 6,09,894/-. The said amount had been given as a loan for educating the daughter of the petitioner in China. The agreement was that on completion of the course, the said amount would be repaid in 84 equal installments and since the daughter of the petitioner did not complete the course, the defendants are not liable to pay the amount.

2. They further pleaded that as the third year amounts had not been released, the daughter of the petitioner had discontinued the course and even on that score, they are entitled for unconditional leave to defend the the suit.

3. The learned trial judge took note of the fact that the sanction of the loan and the enjoyment of the benefit of the amount of Rs.3,07,000/- is not in dispute. He has further held that the non-payment of the loan for the period of third year and above does not mean that the plaintiff is not entitled to recover the amounts already paid by them towards education of the child.



C.R.P. (NPD) No. 1946 of 2016

WEB COPY

4. Under Order XXXVII, leave to defend can normally be granted unless and until the defence is moonshine. To state that the plaintiff is not entitled to the amount till the daughter of the petitioner completes her education is certainly a moonshine defence. The following aspects are not in dispute:-

- (i) filing of the application for grant of loan;
- (ii) disbursement of the loan amount;
- (iii) the daughter of the defendant having undergone the course;
- (iv) the said student discontinued her course, after the completion of three years.

All these aspects would go to show that the loan amount was not only received, but was also consumed. The candidate also underwent education. The fact that she did not continue her course further, does not mean that the bank is not entitled to recover the amount. As there is no other defence it has been rightly rejected by the learned trial court.

5. I find no reason to differ from the reasoning granted by the trial



C.R.P. (NPD) No. 1946 of 2016

Judge in refusing to grant leave to defend.

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6. With the above observations, this Civil revision petition is dismissed. Consequently, the connected miscellaneous petition is closed.

No costs.

04.07.2023

Maya

NCS : Yes/No

Index : Yes/No

To

1. The XIII Assistant Judge,
City Civil Court,
Chennai.



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C.R.P. (NPD) No. 1946 of 2016

V.LAKSHMINARANAN, J.

Maya

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