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CRP. No. 1566 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10. 2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP No. 1566 of 2023
& CMP No. 10268 of 2023

D.Manikandan

...Petitioner

Vs.

T.Srinivasan

....Respondent

PRAYER : This Civil Revision Petition is filed under Section 115 of CPC, to revise and set aside the order dated 14.09.2022 passed in I.A No. 1 of 2022 in O.S No. 2180 of 2022 by the learned XVIII Additional District Judge, City Civil Court, Chennai and allow the application for leave to defend the suit by allowing this CRP.

For Petitioner : Dr.S.S.Swaminathan

For Respondent : Mr.R.Magesh



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ORDER

This petition has been filed to revise and set aside the order dated 14.09.2022 passed in I.A No. 1 of 2022 in O.S No. 2180 of 2022 by the learned XVIII Additional District Judge, City Civil Court, Chennai and allow the application for leave to defend the suit.

2. Heard both sides.

3. The respondent herein filed O.S No. 2180 of 2022, for recovery of money a sum of Rs. 12,80,000/- with interest against the petitioner herein/defendant based on the alleged promissory note. Immediately, the petitioner herein filed a petition to grant leave to defend the above suit stating that he neither borrowed money nor executed promissory note in favour of the respondent. Further, the petitioner stated that he borrowed a sum of Rs.1,25,000/- as interest free hand loan from the petitioner's father-in-law and executed blank promissory note as security thereafter he handed over the said loan to his father-in-law but he had not got back the said promissory note hence he used the above promissory note as against the petitioner as if he has borrowed money from the respondent. On the other



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side, the respondent herein denied the petitioner's allegation stated that the petitioner borrowed a sum of Rs.10,00,000/- from the respondent, for which he executed a promissory note on the same day but he neither repaid the loan amount nor interest.

4. After considering the submissions on either side, the Trial Court dismissed the petition.

5. The learned counsel for the respondent submitted that while issuing reply notice dated 02.11.2011 the petitioner entirely resisted the claim of the respondent. But after filing of the suit the petitioner taking new stand that he executed the empty promissory note to the respondent's father-in-law for the borrowed a sum of Rs. 1,25,000/- a security and admitted his signature in the promissory note. Therefore he is not entitle to defend the case and the Trial Court rightly appreciated the fact which needs no interference. Hence, he prays to dismiss this petition and also the judgment of the Court

6. On considering the submissions on either side, the fact reveals the before filing the suit there was a exchange of notice between the parties, the respondent issued notice on 20.10.2021 calling upon the petitioner to pay a sum of Rs.10,00,000/- with interest for which the petitioner given his reply



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notice dated 02.11.2021 stated that he was not aware of the said promissory note. Admittedly, in the reply notice the petitioner not mentioned about the promissory note given to the respondent's father-in-law. However, while giving reply the petitioner reserves right to give detailed reply in his pleadings with regard to execution of promissory note to the respondent's father-in-law. Therefore, the petitioner not accepted the transaction nor he accepted the signature in the promissory note as alleged by him in favour of the respondent. Hence, if the opportunity is not given to the petitioner to defend his case his valuable right to defend the case will be defeated. Accordingly, the order passed by the Trial Court is set aside for the reason that the petitioner has not admitted the signature in its entirety and also it is rebuttable evidence. Hence, the order passed by the Trial Court in I.A No.1 of 2022 in O.S No. 2180 of 2022 is set aside. Accordingly, I.A No. 1 of 2022 is allowed. Further the Trial Court is directed to dispose the case within a period of three months from the date of receipt of a copy of this order as per manner known to law..



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7. In result, this Civil Revision petition is allowed. No Cost.

Consequently, connected miscellaneous petition is closed.

04.10.2023

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To

The XVIII Additional District Judge, City Civil Court, Chennai



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T.V.THAMILSELVI.J.

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