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C.R.P.No.2388 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2023

CORAM:

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

C.R.P.No.2388 of 2023

and

C.M.P.No.14947 of 2023

1.E.M.Bhuvaneswari
2.E.M.Vamsi Krishnan
3.Minor E.M.Kethan Krishnan
rep. by his natural guaridan
and mother Mrs.E.M.Bhuvaneswari

... Petitioners

-Vs-

N.Rajendran

... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order of the learned Additional City Civil Judge-II, Chennai in I.A. No.3 of 2021 in O.S. No.3513 of 2021 dated 19.12.2022 and reject the plaint in O.S. No.3513 of 2021 as barred by limitation and has no cause of action.

For Petitioners : Mr.M.Venkatakrishnan

For Respondent : Mr.B.S.Jothiraman



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ORDER

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Challenging the impugned order passed in I.A. No.3 of 2021 in O.S. No.3513 of 2021 passed by the learned II Addl. Judge, City Civil Court, Chennai, the Revision Petitioners/defendants preferred this Civil Revision Petition.

2. Before the trial court, the Revision Petitioners/defendants filed an application in I.A.No.3 of 2021 under Order VII Rule 11 of C.P.C. praying to reject the plaint stating that the alleged claim made by the respondent/plaintiff is barred by limitation. However, they have also raised objection that there is no cause of action against these defendants and the alleged cause of action pleaded by respondent/plaintiff is unsustainable one and on that ground also, the plaint is liable to be rejected. Furthermore, the respondent/plaintiff has relied the alleged undertaking dated 14.12.2017 made by the deceased Munirathinam before the police, as such is not permissible under law, thereby the alleged undertaking cannot be treated as a valid document. Based on that, the respondent/plaintiff has no right to calculate the period for the cause of action and accordingly, the revision petitioners prayed to reject the plaint. The said application was strongly resisted by the respondent/plaintiff by filing counter objections before the



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trial court stating that the cause of action was clearly established that two suits filed within the limitation period. Since because the said Munirathinam is the original borrower executed an undertaking on 14.12.2017 agreed to repay the amount on three debts and also gave a cheque. When it was submitted for collection in the bank, the same was dishonoured, thereby, the cause of action arose for filing a suit. Hence, he prayed to dismiss the application. Considering both side submissions, the trial judge held that as per the plaint averments, deceased Munirathinam borrowed money from the plaintiff, for which, he has issued a cheque and thereafter, an undertaking was also said to be effected. All these facts have to be proved by evidence and so, without proper pleadings, the plaint cannot be rejected on the ground of limitation, thereby it was dismissed. Aggrieved over the same, the Revision Petitioners/defendants preferred this Civil Revision Petition.

3. The learned counsel for Revision Petitioners would submit that the alleged undertaking said to be given by deceased Munirathinam in the year of 2017, which was made before the police and the same would hit by Sec.27 of Indian Evidence Act as it has no evidencery value, but the court below failed to appreciate the said aspect and erroneously concludes that it



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needs evidence, as such is liable to be set aside. Hence, they prayed to set aside the findings of trial judge.

4. Admittedly, the undertaking said to be given by deceased Munirathinam before the police, whether it is admissible or not, it can be decided by relying the other circumstances and the same can be proved by adducing evidence. So, the observation made by the trial judge is agreeable one, which needs no interference. Hence, I do not find any merit in this Revision Petition. Accordingly, this Civil Revision Petition is dismissed as no merit. Liberty is granted to the Revision Petitioners/defendants to putforth all their defence before the trial court during trial, even by filing additional written statement. However, the trial judge is directed to complete the trial and dispose the case as expeditiously as possible. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

01.12.2023

Index : Yes/No
Speaking Order : Yes/No
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To
The II Additional Judge, City Civil Court, Chennai.



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T.V.THAMILSELVI, J.

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