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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

C.R.P.No.3295 of 2023
and
C.M.P.No.20318 of 2023

M.Janardhanam

... Petitioner

Versus

R.Mukunthan

...Respondent

PRAYER: Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the order dated 03.08.2023 passed by the IV Additional Judge, City Civil Court, Chennai in I.A.No.1 of 2023 in O.S.No.1137 of 2022 and allow the I.A.No.1 of 2023.

For Petitioner : Mr.Fedilia

ORDER

This Civil Revision Petition is filed by the defendant in the suit.

2. The suit in C.S.No.789 of 2017 was filed by the respondent/plaintiff before this Court for recovery of a sum of Rs.42,87,400/- along with interest at the rate of 12% per annum on Rs.32,98,000/- from the date of plaint till realisation. The suit was filed as a summary suit under Order VII Rule 1 of High Court Original Side Rules and under Order XXXVII Rule 1 and 2 of the Code of Civil Procedure. The suit was subsequently stood transferred to the



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file of the IV Additional Judge, City Civil Court, Chennai and re-numbered as O.S. No. 1137 of 2022.

3. On notice, the defendant filed an application seeking leave to defend the suit and leave was also granted. He has filed written statement denying the plaint averments *inter alia* admitting the borrowal of money. It is his specific case that he is liable only to pay a sum of Rs.4,59,000/- and that he had paid most of the amount borrowed from the plaintiff.

4. The suit was listed for trial. During the course of trial, the defendant examined himself as DW1 and marked documents, prominent among them is Ex.B4, statement of account issued by Canara Bank, Shenoy Nagar Branch, Chennai wherein he is maintaining his bank account.

5. When the trial was in progress, the defendant has filed the instant application in I.A. No. 1 of 2023 in O.S. No. 1137 of 2022 praying to issue subpoena to the Branch Manager, Canara Bank, Shenoy Nagar Branch, No.18, Pulla Avenue, Shenoy Nagar, Chennai - 600 030 along with related documents and record his deposition to decide the case.

6. Opposing such relief, the plaintiff has filed a counter affidavit



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contending *inter alia* that already the statement of account has been marked as Ex.B4. Further, in the light of the admission of the defendant in his written statement about the borrowal of amount the application filed by the defendant at the fag end of the trial proceedings need not be entertained and he prayed for dismissal of the application.

7. The trial court, on consideration of oral and documentary evidence, has dismissed the application by reasoning that Ex.B4, statement of account has already been marked by the defendant when he was examined as DW1. Further, in the written statement, the defendant has admitted the transaction between him and the plaintiff and it is his fervent plea that he is not liable to pay the suit amount but only Rs.4,59,000/-. In the light of such admission, the trial court concluded that the dispute sought to be raised by the defendant is a matter to be decided after trial and dismissed the application. Aggrieved by the same, the present Civil Revision Petition is filed.

8. The learned counsel for the petitioner submitted that the trial Judge, instead of issuing subpoena to the Branch Manager of the Bank has proceeded to discuss the merits of the case and dismissed the application. The trial Judge did not consider that the Bank Manager was sought to be



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examined to depose about the signing of the cheque by the respondent, which was lost sight of while dismissing the application. By issuing subpoena and examining the Bank Manager would not consume much time of the trial court or it can be construed as an attempt on the part of the defendant to protract the proceedings. The examination of the Bank Manager will only assist the trial Judge to effectively adjudicate the disputes involved in the suit and therefore, he prayed for allowing this Civil Revision Petition.

9. In spite of service of notice, there is no representation for the respondent.

10. Admittedly, the suit was filed under Order XXXVII Rule 1 and 2 of CPC as a summary proceeding on the basis of several admissions made by the defendant with regard to the borrowal of money. Even the defendant admitted the borrowal of money in his written statement, which was prominently referred to by the trial Judge. While so, the instant application has been filed by the defendant to issue subpoena to the Branch Manager of Canara Bank. It is to be noted that the defendant has referred to certain transactions taken place between him and the plaintiff through cheque. In order to bring forth such transaction, the defendant has filed the instant



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application to issue subpoena to the Manager of the Bank. The trial Judge did not take note of the purpose for which the defendant has filed the instant application. Even though Ex.B4, statement of account has been marked as a document, the examining of the Branch Manager of the Bank would probalise the defence of the defendant. While so, in order to render complete justice to the parties to the litigation and to afford an opportunity to the defendant to defend the suit proceedings, it is just and necessary that the application of the defendant has to be allowed. It is needless to mention that the examination of the Branch Manager will not in any manner prolong the adjudication and therefore, the trial Judge ought to have allowed the application of the defendant.

11. Accordingly, the Civil Revision Petition is disposed of. No costs. The trial Judge is directed to issue subpoena to the Manager of Canara Bank and to wrap up the entire suit proceedings as expeditiously as possible taking note of the scope and ambit of Order XXXVI Rule 1 and 2 of the Code.

06.10.2023

Index : Yes/No
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To

<https://www.mhc.tn.gov.in/judges> The IV Additional Judge, City Civil Court, Chennai



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