



A.No.2260 of 2023
in C.S.No.44 of 2020

WEB C **K.KUMARESH BABU, J.**

This application has been filed by the applicant/defendant seeking to set aside the order dated 10.12.2021 passed by the learned Master, wherein the learned Master had rejected the applicant's right to defend the suit.

2.The facts of the case is that the respondent/plaintiff had initiated a suit under Order 37 Rule 1 of C.P.C. seeking for a Judgment and Decree as against the defendant for a sum of Rs.1,35,54,000/-. An application had been filed by the applicant/defendant seeking for an unconditional leave to defend the said suit. The said application came to be dismissed by the learned Master by order dated 10.12.2021 which is sought to be challenged by the applicant/defendant in the present application by way of an appeal. It is also relevant to note that the learned Master had pronounced a judgment on 06.01.2022 decreeing the suit as prayed for.

3.Heard Mr.R.Rajaramani, learned counsel for the applicant and perused the material available on record.

4.Learned counsel for the applicant/defendant would submit that the learned

<https://www.mhc.tn.gov.in/judis> Master was not correct in rejecting the application for leave to defend as the



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parties have been in exchange of notices. He would also submit that the present suit under Order 37 of C.P.C. is not maintainable as the same is not a loan transaction between the parties but arises out of a Sale Agreement. He would further submit that the learned Master had failed to consider the admission in the presuit notice averments and the triable issue is whether the suit transaction is a loan transaction or a transaction arising out of a Sale Agreement. When that being so, without considering these aspects, the learned Master wholly erred in rejecting the application filed by the applicant seeking leave to defend himself. He would submit that the valuable right of the applicant/defendant has been snatched away by rejecting the claim of the applicant to defend the suit.

5. Countering his arguments, learned counsel for the respondent/plaintiff would submit that the defendant after the Judgment and Decree dated 06.01.2022 and by various communications intimated to the plaintiff that he would be settling the dues under the decree. He would further submit that the applicants are aware of the Judgment and Decree passed in the summary suit and by various communications as early as from 01.03.2023 had been writing to the respondent/plaintiff that they would settle the decree amount. He would further submit that the application itself is not maintainable as the said suit itself had been disposed of by a Judgment and Decree of the learned Master as early as on 06.01.2022. Utmost the grounds raised by the appellant/defendant could also be



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raised only in a regular appeal filed against the Judgment and Decree. Hence, he would submit that the application deserves no consideration and is therefore liable to be dismissed.

6.I have considered the rival submission made by the learned counsel appearing on either side and perused the material available on record.

7.From the facts narrated above, it could be seen that the learned Master had passed orders impugned in this application as early as on 10.12.2021. The learned Master had also proceeded to pass a Judgment and Decree allowing the suit claim as early as on 06.01.2022. From various documents produced by the learned counsel for the respondent/plaintiff, it is seen that the applicant's herein as early as on 01.03.2023 had accepted the Judgment and Decree and had sought time to settle the amount as decreed by this Court. So it only presupposes that the applicant/defendant have knowledge of the Judgment and Decree. Till date, they have not chosen to challenge the said Judgment and Decree. But, however, they filed the present application by way of an appeal against the order passed by the learned Master in rejecting their application seeking leave to defend the order dated 10.12.2021 which now has merged with the Judgment of the learned Master dated 06.01.2022. The letters written by the applicant/defendant to the respondent/plaintiff would itself be suffice to hold that the defendants were willing



to be bound by the Judgment of the learned Master dated 06.01.2022. The present application, in my view, is only to delay the rights of the respondent/plaintiff to enjoy the fruits of the Judgment that too without filing any appeal against the Judgment dated 06.01.2022.

8.In view of the aforesaid findings, I am not inclined to entertain the application filed by the applicant and the same is dismissed, since the order of the learned Master had already merged with the Judgment in C.S.No.44 of 2020 dated 06.01.2022, there is no necessity to further introspect with the order dated 10.12.2021.

9.In fine, the application is dismissed.

17.04.2023



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K.KUMARESH BABU, J.

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