



CRP No.4326 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02-01-2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

CRP No.4326 of 2022

And

CMP No.22736 of 2022

G.M.Vikranth

.. Petitioner

VS.

M.C.Ravikumar

.. Respondent

PRAYER : This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the conditional order dated 01.11.2022 as per fair and decretal order passed in IA No.1 of 2022 in OS No.9670 of 2021 on the file of XXI Additional City Civil Court, Chennai.

For Petitioner : Mr.B.Sudarshan



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ORDER

The present Civil Revision Petition has been filed against the order dated 01.11.2022 passed in IA No.1 of 2022 in OS No.9670 of 2021 on the file of the learned XXI Additional Judge, City Civil Court, Chennai.

2. The revision petitioner herein is the defendant in the suit instituted by the respondent for recovery of money based on the Promissory Note executed by the revision petitioner-defendant.

3. The revision petitioner-defendant filed an Interlocutory Application to defend the suit in Order XXXVII, Rule 3 (5) of CPC in IA No.1 of 2022 . The application was adjudicated by the Trial Court and the Trial Court found that the revision petitioner-defendant has not disputed the execution of Promissory Note in favour of the plaintiff. But the revision petitioner raised a ground by stating that the amount as per the Promissory



Note had not been paid to him.

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4. The Trial Court made a finding that the defence raised in this regard is to be established by the revision petitioner-defendant, while defending the suit. However, the Trial Court directed the revision petitioner to deposit 50% of the Promissory Note amount within a period of two months from the date of passing of the order on 01.11.2022.

5. The learned counsel for the petitioner made a submission that the revision petitioner has raised a ground that the amount as per the Promissory Note has not been paid to him and he was being cheated by the plaintiff and therefore, the Trial Court ought to have granted leave without imposing any condition.

6. Order XXXVII, Rule 3 (5) stipulates that leave to defend may be granted unconditionally or upon such terms as may appear to the Court or Judge to be just. Therefore, the nature of the defence taken is also to be



considered by the Trial Court, while granting leave as well as at the time of imposing condition for allowing the Interlocutory Applications filed under Order XXXVII, Rule 3 (5) of CPC.

7. No doubt, in the present case, the revision petitioner raised a ground that the amount was not actually paid to him. However, he has not disputed the execution of the Promissory Note in favour of the plaintiff. Thus the Trial Court has formed an opinion that the suit was instituted for recovery of money based on the Promissory Note, which was executed by the revision petitioner-defendant.

8. Regarding the defence taken by the revision petitioner that he had not received the amount, the same is to be established by the revision petitioner while defending his case in the suit. Thus the Trial Court thought fit and considered it as just and imposed the condition that the petitioner should deposit 50% of the Promissory Note amount within a period of two months from the date of passing of the order.



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9. This Court is of the considered opinion that Order XXXVII, Rule 3 (5) of the Code of Civil Procedure, unambiguously stipulates that the Interlocutory Application filed to defend the suit, leave to defend may be granted unconditionally or upon such terms as may appear to the Court or Judge to be just. Thus the Court has to consider mitigating factors involved in the application and the nature of the defence taken by the person, who filed an application to defend the suit.

10. However, the Trial Court found that it is just to impose a condition directing the revision petitioner to deposit 50% of the Promissory Note amount. The rationale applied by the Trial Court is absolutely in consonance with the spirit of Order XXXVII, Rule 3 (5) CPC and the Trial Court applied its mind in a reasonable and balanced manner and therefore, this Court do not find any infirmity or perversity in imposing condition, while granting leave to defend the suit in favour of the revision petitioner-



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defendant.

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11. That apart, the revision petitioner-defendant ought to have complied with the condition to establish his bona fide. Contrarily, he has chosen to file the present Civil Revision Petition. Thus this Court is not inclined to entertain the present Civil Revision Petition.

12. Accordingly, the present Civil Revision Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

02-01-2023

Speaking Order/Non-Speaking Order.

Neutral Citation : Yes/No.

Internet : Yes/No.

Index: Yes/No.

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To

The XXI Additional Judge,
City Civil Court,
Chennai.



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S.M.SUBRAMANIAM, J.

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