



C.R.P.No.168 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.168 of 2019
and
C.M.P.No.1375 of 2018

1.J.Murali Manohar
2.J.Jayakumar

.. Petitioners

vs

Chhaganlal Jain (died)
Prop.Jeet Traders
Govindappa Naicken Street
Chennai 600 001.

1.Vimala C Jain
2.Rajesh C Jain
3.Ashwin C Jain
4.Rikesh C Jain
(R1 to R4 brought on record
vide order dated 11.07.2023)

.. Respondents

Petition filed under Article 227 of the Constitution of India to challenge the decree and fair order passed by the VII Assistant City Civil Court at Chennai dated 04.09.2018 in I.A.No.10357 of 2016 in O.S.No.5822 of 2015.

For Petitioner : Mr.T.T.Ravichandran

For Respondents : Mr.Srikanth



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ORDER

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This civil revision petition arises against an order dismissing I.A.No.10357 of 2016 in O.S.No.5822 of 2015.

2. The said application was filed for leave to defend the suit presented on a promissory note. The suit is an under chapter suit which was filed on 14.09.2015. Soon after entering appearance, the civil revision petitioners took up an application under Order 37 Rule 3 of CPC seeking for leave to defend.

3. The case of the petitioner is that
- (i) he does not know the plaintiff
 - (ii) there is no privity of contract,
 - (iii) the documents on the basis of which the pro note have been filed are fabricated,
 - (iv) the signature is a forgery and
 - (v) the plaintiff is a financier.

4. He would concede that the defendant is a film producer, who has numerous transactions with several financiers and brokers and had executed his signature on blank papers.



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5. Learned counsel for the respondent filed counter denying the statement and had pleaded that he had lent money by way of account payee cheque for a tune of Rs.4 lakhs and the plaintiff had also adjusted interest to the tune of about Rs. 1 lakh on 27.11.2013. The said payment was also done by way of account payee transfer. In other words, out of a sum of Rs. 5 lakhs, Rs.1 lakh had been paid towards interest, leaving the principal amount together with subsequent interest.

6. The learned Judge did not consider the defendant's plea that the pro-note, on the basis of which the suit has been presented, is a forgery. That is a triable issue which has to be gone into. Therefore, I am of the view that the defendant should be granted leave to defend the suit. However, I am not inclined to grant unconditional additional leave because of Ex.R3, which has been produced before the Court. R3 is a Bank certificate to state the payment have been made by the plaintiff to the defendant by way of bank transfer (cheque). Rs.1 lakh having been admitted by the plaintiff leaves the remaining amount of Rs.4 lakh.

7. Therefore, the civil revision petition is allowed on the following terms.



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- (i) The order passed in I.A.No.10357 of 2016 in O.S.No.5822 of 2015 dated 04.09.2018 is set aside;*
- (ii) Conditional leave is granted to the defendant. The defendant shall deposit a sum of Rs.4 lakh within a period of four weeks from today to the credit of O.S.No.5822 of 2015;*
- (ii) On such deposit, the Court shall receive the written statement from the defendant and proceed with the suit;*
- (iii) In case, if the defendant does not make the payment of Rs.4 lakh, the Civil Revision Petition shall stand dismissed automatically.*

8. There shall be no order as to costs. Connected miscellaneous petition is closed.

11.07.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To

The VII Assistant City Civil Court,
Chennai.



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V. LAKSHMINARAYANAN,J.

ssm

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