



CMP(MD) No.15973 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Thursday, the Thirtieth day of November Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice G.CHANDRASEKHARAN

CMP(MD) No.15973 of 2023

in

SA.(MD) No.41 of 2021

S.RAJARAM

... PETITIONER/ APPELLANT

Vs

A.RAJALAKSHMI

... RESPONDENT/RESPONDENT

Civil Miscellaneous Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to amend the plaint in O.S.No. 295 of 2013 as detailed hereunder and pass such other or further orders as this Honourable Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

PRAYER IN SA.(MD) No.41 of 2021:

To set aside the Decree and Judgment dated 26.02.2019 passed in A.S 45 of 2016 on the file of Additional District Judge, Dindigul, by reversing the decree and judgment dated 02.03.2016 passed in O.S. 295/2013 by the Principal Subordinate Judge, Dindigul and allow the second appeal.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.K.SURESH, Advocate for the petitioner and of MR.T.VADIVELAN, on behalf of the Respondent the court made the following order:-



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This Civil Miscellaneous Petition is filed for amendment seeking alternative prayer of the return of advance amount.

2.It is the submission of the learned counsel appearing for the petitioner that the petitioner filed a suit in O.S.No.295 of 2013 on the file of the learned Principal Subordinate Judge, Dindigul, for specific performance on the basis of the sale agreement, dated 01.10.2011 against the respondent. Both the Courts below have found against the petitioner.

3.It is his further submission that the defence taken by the respondent is that there was loan transaction between the petitioner and the respondent and in the course of loan transaction, the respondent was made made to part with empty papers with his signature alone. Using that signature, the sale agreement was created and the suit was filed. In the said circumstances, it is necessary to seek alternative prayer for return of advance amount in the event of failing to succeed in the second appeal.

4.In reply, the learned counsel appearing for the respondent submitted that though the trial Court found in favour of the petitioner, the first appellate Court reversed the findings of the trial Court on the ground that the sale agreement is not



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genuine agreement. In the said circumstances, the present petition filed for amendment is not warranted.

5.Considered the rival submissions and perused the records.

6.The second appeal is filed against the reversal judgment of the first appellate Court. Paragraph 14 of the written statement of the respondent brought to the notice of this Court, wherein it is admitted by the respondent that he borrowed Rs.1,00,000/- each on two different occasions as loan from the petitioner. It is further averred that he demanded another Rs.3,00,000/- from the petitioner, but the petitioner after promising to pay the amount failed to pay the amount. The blank document with signature of the respondent is used for filing the suit. From the written statement of the respondent, it is evident that he admitted the loan transaction to the extent of Rs.2,00,000/-. It appears that there is no evidence produced in respect of the respondent's case that this amount was repaid.

7.In the said circumstances, this Court is of the view that the amendment sought for by the appellant can be entertained to meet the ends of justice. In this view of the matter, this Civil Miscellaneous Petition is allowed. Registry is directed to



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make appropriate amendment in the original plaint in O.S.No.295 of 2013 and list the second appeal on 12.12.2023 under the caption for 'final hearing'.

sd/-
30/11/2023

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11/12/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

1.THE ADDITIONAL DISTRICT JUDGE, DINDIGUL,
2.THE PRINCIPAL SUBORDINATE JUDGE, DINDIGUL

ORDER
IN
CMP(MD) No.15973 of 2023
in
SA.(MD) No.41 of 2021
Date :30/11/2023

RK/VR (11/12/2023) 4P / 3C

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