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C.R.P.(PD).No.567 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 01.10.2024

CORAM :

**THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN**

C.R.P.(PD).No.567 of 2024  
and C.M.P.No.2821 of 2024

D.Dhanalakshmi

.. Petitioner

**Versus**

A.Vanitha

.. Respondent

**Prayer :** Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records and set aside the order, dated 08.01.2024 passed in I.A.No.2 of 2023 in O.S.No.2914 of 2023 on the file of the II Assistant City Civil Court at Chennai.

For Petitioner : Mr.Hasmukh S Surana

For Respondent : Mr.S.Kathiravan

**ORDER**

This Civil Revision Petition arises against the order of the II Additional City Civil Court in I.A.No.2 of 2023 in O.S.No.2914 of 2023, dated 08.01.2024.



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2. The civil revision petitioner is the defendant in the suit. O.S.No.2914 of 2023 is an under chapter suit. The respondent/plaintiff presented the suit for recovery of a sum of Rs.3,96,865/- together with interest at the rate of 18% per annum from the date of presentation of the plaint till date of realisation. The cause of action for the suit is that on 03.01.2020 and 06.01.2020, the petitioner/defendant executed promissory notes for a sum of Rs.2,00,000/- and a further sum of Rs.41,000/-. She agreed to repay the amount at the rate of 24% per annum. Since the petitioner/defendant stop paying the interest from 10.07.2020, the respondent/plaintiff issued a notice on 15.02.2023 and presented the suit.

3. Being an under chapter suit, the petitioner/defendant took out an application for grant of leave. According to the petitioner/defendant, she had borrowed only a sum of Rs.30,000/- from the respondent/plaintiff and had executed two blank promissory notes. She pleads that she discharged the sum of Rs.30,000/-. When she demanded for return of the promissory notes, the respondent/plaintiff stated that the same had been misplaced and gave an assurance that she would return it as soon as she comes across the same. It was further pointed out that the parties had approached the Police



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allegedly on the ground that the respondent/plaintiff demanded exorbitant amount towards interest in order to enrich herself illegally. It was specifically pleaded that the pronotes were fabricated and created for the purpose of the case and that the documents had been altered from Rs.40,000/- to Rs.2,00,000/- and from Rs.4,500/- to Rs.41,500/-. The learned Trial Judge, following the view of the Supreme Court in ***IDBI Trusteeship Services Limited Vs. Hubtown Limited, (2017) 1 SCC 568***, granted leave on a condition that the petitioner/defendant deposits a sum of Rs.2,41,500/-. This amount represents the amount payable under the two promissory notes. Hence this revision at the instance of the petitioner/defendant.

4. Heard Mr.Hasmukh S Surana, learned Counsel for the petitioner/defendant and Mr.S.Kathiravan, learned Counsel for the respondent/plaintiff.

5. Mr.Hasmukh S Surana would argue that on the basis of the judgment of this Court in ***M.Mallika Vs. Kasi Pillai, AIR 2019 Mad 318***, if there is an insertion or alteration in the promissory note, the



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respondent/plaintiff is not entitled to recover any amount under the said document. He relies upon Section 87 of the Negotiable Instruments Act, 1881.

6. Per *contra*, Mr.S.Kathiravan would assert that there is no alteration in the document and a perusal of the documents would show that while the figures show some alteration, in the body of the pronotes, it specifically shows that a sum of Rs.2,00,000/- had been received by the petitioner/defendant.

7. I have carefully considered the submission of both sides.

8. As pointed out by the Supreme Court in ***IDBI Trusteeship Services Limited's*** case (cited *supra*), if the defence taken by the petitioner/defendant is absolutely moonshine or speculative, he is not entitled to leave to defend. If the defence taken by the petitioner/defendant is sterling in character, he is entitled to an unconditional leave to defend. If the amounts are admitted, the petitioner/defendant would have to deposit the amount prior to considering the leave to defend application. In case, the



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case falls within the two extremes, then, the Court can grant leave by imposing conditions.

9. Insofar as the second promissory note is concerned, though Mr.Hasmukh S Surana would argue that there is an insertion, the photostat copy of the same does not show any such alterations. However, with respect to the first promissory note for a sum of Rs.2,00,000/-, I am able to discern an insertion of the letter "4" and scored out and subsequently written as "0" in the area given to enter the figure of the promissory note. The fact remains that the petitioner/defendant did not deny the execution of the promissory note.

10. Under Section 20 of Negotiable Instruments Act, 1881, if a blank promissory note is handed over as pleaded by the petitioner/defendant, it gives a right to the holder of the document to fill up the same. Whether the document has been altered or had been given originally as a blank document, are all the matters which have to be proved at the time of the trial. Further, the question of payment of interest at the rate of 24% per annum would also have to be gone into by the Trial Court. For the purpose



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of grant of leave, I am satisfied that the petitioner/defendant has raised a plausible defence, yet, as he admitted the execution of the document, I am inclined to impose a condition on the petitioner/defendant to contest the proceedings.

11. Accordingly, while sustaining the order of the learned Judge granting conditional leave to the civil revision petitioner/defendant, I modify the amount from Rs.2,41,000/- to Rs.1,00,000/-. The said amount shall be deposited within a period of eight weeks from the date of receipt of a copy of this order.

12. With the above directions, this Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

01.10.2024

Index : yes/no  
Speaking order/Non-speaking order  
Neutral Citation : yes/no  
grs

To

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Chennai.



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**V.LAKSHMINARAYANAN, J.**

grs

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