



C.R.P.[NPD].No.4063 of 2015

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 28.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].No.4063 of 2015 & MP.No.1 of 2015

Bomman M.Irani

. . . Petitioner

Versus

Babu Raj

. . . Respondent

PRAYER : Petition filed under Article 227 of Constitution of India to allow this Civil Revision Petition and set aside the Fair and decretal Order dated 08.09.2014 passed in I.A.No.11378 of 2013 in O.S.No.2904 of 2013 by the learned XI Assistant Judge, City Civil Court at Chennai.

For petitioner : Mr.B.Balachander
For Mr.Ashok Menon

Respondent : Mr.S.D.Nagasaila



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ORDER

Challenge has been made to the Order dismissing the application filed under Order XXXVII Rule 2 and 3 of Code of Civil Procedure, the present Civil Revision Petition has been filed.

2. The suit has been filed by the plaintiff for recovery of a sum of Rs.2,50,000/- said to have been borrowed by the revision petitioner as a loan on 25.12.2009 and executed a receipt. Therefore, a suit for recovery of the said amount along with interest at the rate of 18% per annum has been filed under Order 37 of Code of Civil Procedure. In the said suit, an application has been filed by the revision petitioner inter alia contending that he never borrowed any amount from the plaintiff at any point of time. Infact, the plaintiff was a tenant under him and that apart, he has already filed a suit for recovery of money in O.S.No.2658 of 2011 as against the plaintiff and in the above suit, a specific stand has been taken by the plaintiff in the present suit that he has paid an



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advance of Rs.2,50,000/- to the revision petitioner. Therefore, it is the stand of the revision petitioner that in the present suit she is having valid defence and sought leave to defend the suit. However, the trial Court has rejected the contention of the revision petitioner and dismissed the application. Challenging the same, the present revision petition has been filed.

3. The application filed to leave to defend the suit, under Order 37 Rule 2 of Code of Civil Procedure, has to be approached in the context to find out whether the defence raised by the petitioner is real and not a sham one. If the grounds raised in the application give rise to the substantial dispute, which can be established in trial, normally, leave has to be granted. Dismissal of such an application is only exceptional. It is the specific contention in the leave application that the plaintiff was a tenant under the defendant, namely, the revision petitioner and he never borrowed any amount as a loan. That apart, he has already filed a suit in O.S.No.2658 of 2011 wherein it is the categorical assertion by the plaintiff in the suit filed by the revision petitioner that he has paid only an advance amount of Rs.2,50,000/- on 24.12.2009 for which the



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plaintiff has issued a receipt. Now it is pleaded in the present suit as if the landlord had borrowed a loan of Rs.2,50,000/- on 25.12.2009, i.e., one day after the advance paid by the tenant. Therefore, this Court is of the view that the trial Court has mechanically dismissed the application, without going into the grounds, which is infact not a sham one. The issue requires proper consideration and the revision petitioner has, in fact, raised triable issues. In such view of the matter, the leave has to granted to the revision petitioner to defend the suit.

4. Accordingly, this Civil Revision Petition is allowed and the Order passed in I.A.No.11378 of 2013 in O.S.No.2904 of 20123 is set aside and consequently the judgment passed in O.S.No.2904 of 2018 is also set aside. The revision petition shall file written statement within a period of one month from the date of receipt of a copy of this Order. Thereafter, the trial hall be completed within a period of four months. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

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N. SATHISH KUMAR, J.

VTC

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