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C.R.P. No.3255 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

C.R.P. No.3255 of 2022

S.J. Hussain S/o. Syed

... Petitioner / Plaintiff

Vs.

K.L. Sampath Nagaraj

S/o. K.S. Lakshmi Narayana Setty

..... Respondent / Defendant.

PRAYER: Civil Revision Petition is filed under section 227 of the Constitution of India, to set aside the order of the learned Principal Subordinate Judge, Hosur dated 02.11.2021 in O.S. No.Nil of 2021.

For Petitioner : Mr. B. Bharath Kumar for
Mr. V. Nicholas

For Respondent : Mr. R. Poornima

ORDER

The Civil Revision Petition has been preferred as against the docket order passed by the learned Principal Subordinate Judge, Hosur by rejecting the plaint presented by the petitioner / plaintiff.

2. According to the petitioner, he filed the Suit for the relief of recovery of money based on a post dated cheque. The respondent borrowed a sum of



C.R.P. No.3255 of 2022

Rs.3 lakhs as hand loan on 10.06.2019. Since the respondent is the friend of the petitioner, he bought the said amount without any interest and also he assured to return the said amount within 4 months. Further, he issued a post dated cheque dated 27.10.2019 for an amount of Rs.3 lakhs. Thereafter, the respondent did not pay the amount and thereby, the petitioner filed the Suit for the relief of recovery of money. But the Trial Court, rejected the Plaint on the ground that the Plaintiff has not presented the cheque before the bank for collection. When the cheque was not presented before the bank, there is no cause of action in the Suit and therefore, the Suit is rejected. As against the said order, the present Civil Revision Petition is filed.

3. The learned counsel appearing for the petitioner would contend that the petitioner has filed the Suit before the Principal Subordinate Judge, Hosur based on the post date cheque. In fact, on 10.06.2019, the respondent borrowed a sum of Rs.3 lakhs as hand loan and after receiving the amount, he issued a post dated cheque for an amount of Rs.3 lakhs and thereafter he assured to pay the said amount within 4 months and thereafter, he did not repay the amount. Therefore, he issued a notice dated 28.07.2021 and the same was returned as 'unclaimed'. Thereafter, he filed a Suit for recovery of money, but the Trial Court rejected the Suit on the ground that there is no cause of action, since the cheque was not presented before the bank. The



C.R.P. No.3255 of 2022

above said order by the Trial Court is erroneous and without even numbering the Plaintiff, the Trial Court rejected the Suit when there is pleading that the respondent borrowed a sum of Rs.3 lakhs on 10.06.2019, that is the real cause of action. But the Trial Court erroneously rejected the Suit and the same is liable to be set aside.

4. In this case, though the respondent appeared through his counsel, as per the judgment of Hon'ble Supreme Court in ***P.K. Palanisamy vs. N. Arumugam and another reported in 2009 (9) SCC 173***, he has no right to audience before numbering the Suit. Hence, this Court heard the petitioner alone.

5. According to the petitioner, he filed a Suit as against the respondent for recovery of money and according to the plaint, on 10.06.2019, the respondent approached the Plaintiff for hand loan of Rs.3 lakhs and he also paid the same, since the respondent / defendant is his friend and the respondent assured to repay the same within 4 months by giving a post dated cheque 27.10.2019. Thereafter, the respondent failed to pay the said amount and therefore, the petitioner issued a notice dated 28.07.2021 and the same was returned 'unclaimed'. Therefore, he presented a Plaintiff before the Trial Court. The Trial Court rejected the Plaintiff stating that the cheque was not presented for collection and therefore, there is no cause of action. In fact, the

Trial Court failed to see from the averments of the Plaintiff that the cause of



C.R.P. No.3255 of 2022

action for the Suit arose on 10.06.2019 when the defendant borrowed the money from the Plaintiff for a sum of Rs.3 lakhs, that is the real cause of action. But the cheque was issued for that amount as post dated cheque on 27.10.2019. Therefore, the Trial Court miserably misconstrued the facts of the case and erroneously held that without presenting the cheque before the bank, no cause of action would arise for the Suit.

6. It is well settled law that if the Plaintiff does not disclose any cause of action, the Plaint can be rejected, but if the Plaint discloses cause of action, then the genuity of the cause of action, can be tested through trial, not at the stage of numbering the Plaint. Already this Court issued guidelines in respect of numbering the Plaint, but the Trial Court failed to follow the said guidelines. The Trial Court might have under impression that the cheque complaint is filed under Section 138 of Negotiable Instruments Act and thereby, wrongly interpreted that cause of action would not arise, since the cheque was not presented for collection. Therefore, the order passed by the trial Court is baseless and the same is liable to be set aside.

7. In the result, this civil revision petition is allowed and the rejection order passed by the Trial Court is set aside. The Trial Court is directed to number the Plaint, if otherwise in order and proceed the case in accordance with law.



C.R.P. No.3255 of 2022

The Registry is directed to return the original documents, if any, produced before this Court. No costs.

03.07.2024

Index : Yes/No
Speaking order/non-speaking order
mjs

To

The Principal Subordinate Judge, Hosur



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C.R.P. No.3255 of 2022

P.DHANABAL, J.,

mjs

CRP. No.3255 of 2022

03.07.2024