



CRP.No.2168 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 16.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP.No.2168 of 2024
and CMP.No.11567 of 2024

M.Swaminathan

... Petitioner

Versus

1.K.Dhanam
2.J.Deepa Kumar
3.K.Kamesh
4.K.Kamini

... Respondents

PRAYER : Petition filed under Article 227 of the Constitution of India, to set aside the order (Online Copy) in I.A.No.2 of 2023 in O.S.No.3174/2023 dated 26.04.2024 passed by the learned XVII Assistant Judge, City Civil Court, Chennai.

For petitioner : Mr.K.V.Sundararjan
for Mr.M.Murali

For Respondents : Mr.D.Muthukumarappa



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WEB COPY

ORDER

Challenging the impugned order dismissing the application filed for granting leave to defend the suit filed under Order XXXVII Rule 3(5) of CPC, the present revision has been filed.

2. The respondents had filed a suit for recovery of a sum of Rs.4,50,000/-. Since, the suit has been filed under Order XXXVII Rule 3(5) of CPC, the revision petitioner/defendant has filed an application for leave to defend the suit, inter-alia contending that though there was financial transactions between himself and the husband of the first plaintiff from the year 2013, he had discharge the entire loan amount by way of bank transfers. However, it is alleged that after the death of the Karthikeyan in the year 2021, the plaintiff and her henchman had forcibly obtained undertaking letter besides one pro-note and cheque. According to him, he paid the entire amount, however, the Trial Court has not gone into the documents and simply rejected the application. The said application has been objected by the plaintiffs by contending that after the death of the first plaintiff husband, when the first plaintiff approached the defendant, he has issued a cheque dated 02.05.2022



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and the said cheque when presented was dishonored. Hence, the suit. The Trial Court had dismissed the application filed by the petitioner vide the impugned order. Hence, this revision.

3. The learned counsel for the revision petitioner would submit that it is the specific case of the petitioner/defendant that the money borrowed in the year 2013 paid up to 2018-2019 through bank payments. Despite production of the bank statements, the Trial Court has not considered the same. It is the specific stand of the defendant that the cheque has been obtained by coercion and threat, which has been clearly pleaded by him. That apart one undertaking letter has been obtained by threat. These facts were never pleaded in the plaint by the plaintiffs. The so-called undertaking letter is also not pleaded in the plaint, further, one more pro-note is said to have been obtained by the plaintiffs, however, the pro-note has not seen the day of light; only based on the cheque, the suit has been filed. Therefore, seeks to set aside the impugned order.

4. Whereas, the learned counsel for the respondents submitted that after the death of the first respondent's husband, when the first respondent had approached



the defendant, he had issued a cheque dated 02.05.2022 and the said cheque was dishonored and thus, the said suit came to be filed. According to him, there is no valuable defense available to the defendant. Hence, seeks for dismissal of the revision.

5. Heard both sides and perused the materials placed on record. While granting leave to defend the suit under Order XXXVII of CPC, the real test is to find out whether the defense raised is a real issue or sham one. When the defendant has placed certain facts, particularly, to prove his discharge of liability, the Trial Court ought to have granted an opportunity to defend the suit. The bank statements of the revision petitioner clearly show that some payments have been made in the account of one Karthikeyan. Even in the counter filed by the respondents, receipt of payments have not been disputed. Whereas it was contended that it is only towards interest, whether those payments were made only towards interest or towards principal is a matter of evidence. The Trial Court ought to have granted leave in this regard also. That apart, it is the specific stand of the defendant that cheque and other documents have been obtained by coercion. The undertaking letter is also filed by the plaintiffs in that application; that letter



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indicate as if apart from the suit cheque, one pro-note is also obtained by the plaintiffs. All these facts have not been found place in the pleadings. Plaintiff proceeds as if the amount has been borrowed in the year 2013, thereafter, cheque has been issued only in the year 2022. Thus, this Court is of the view that all these facts have to be seen only in a proper trial. As the defense raised by the defendant does not appears to be a sham one and the triable issue has been raised, the Trial Court dismissing the application outrightly without going into the documents cannot be sustained in the eye of law.

6. Accordingly, the impugned order stands quashed and leave is granted to the defendant to file his written statement within a period of 15 days from the date of receipt of a copy of this order and the Trial Court shall proceed with the suit on merits and dispose of the same within a period of four months from the date of receipt of a copy of this order.

7. Accordingly, this revision stands allowed. No costs. Consequently, connected miscellaneous petition stands closed.

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Index : Yes / No
Speaking/non speaking order

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N. SATHISH KUMAR, J.

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To,

The XVII Assistant Judge
XVII Assistant City Civil Court
Chennai

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