



C.R.P.(PD).No.2943 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.2943 of 2024
and C.M.P.No.15755 of 2024

D.Pratish,
also called, Pratish Vedhapuddi

.. Petitioner

Versus

M/s.Perna Finance
Rep. by its Proprietrix Perna Bafna,

.. Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order made in I.A.No.3 of 2023 in O.S.No.7786 of 2022 dated 29.01.2024 on the file of the XXIII Additional Judge, City Civil Court, Allikulam at Chennai and thereby, allow the Civil Revision Petition.

For Petitioner : Mr.R.Thiagarajan,
for Mr.S.Saravana Kumar

For Respondents : Mr.S.R.Rajagopal, Senior Counsel,
Mr.T.Srikanth

ORDER

This Civil Revision Petition is at the instance of the petitioner/defendant. The respondent/plaintiff instituted O.S.No.7786 of



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2022 on the file of the XXIII Additional City Civil Court, Allikulam at
Chennai.

2. The suit is for recovery of a sum of Rs.64,99,160/- together with the interest at the rate of 24% per annum. The suit has been presented on the foot of three promissory notes said to have been executed by the petitioner/defendant in favour of the respondent/plaintiff. The respondent/plaintiff also pleaded that in discharge of the said amounts, the respondent/plaintiff had transferred part payments on several days commencing from 09.02.2013 and concluding with 10.01.2018. He had given the list of payments that had been made by the respondent/plaintiff as a schedule to the plaint.

3. Being an under chapter suit, on the petitioner/defendant entering appearance, he gave notice of appearance, for which, summons for judgment had also been filed by the respondent/plaintiff. Immediately, the petitioner/defendant took out an application for leave to defend. The application, seeking for leave to defend, was numbered in I.A.No.3 of 2023 and after receipt of a counter, the said application came to be dismissed by



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the learned Trial Judge on 29.01.2024, against which, the present Revision Case is filed.

4. Heard Mr.R.Thiagarajan, learned Counsel for Mr.S.Saravana Kumar, learned Counsel for the petitioner and Mr.S.R.Rajagopal, learned Senior Counsel for Mr.T.Srikanth, learned Counsel for the respondent.

5. Mr.R.Thiagarajan, learned Counsel for the petitioner/defendant would submit as follows:-

(i) This is a commercial dispute and therefore, the regular Civil Courts will not have jurisdiction;

(ii) The respondent/plaintiff, having acted as a money lender, is covered under the Money Lenders Act and the interest that has been charged by him is exorbitant way above the limits that have been fixed by the said Act.

(iii) The payment was made to one Chandra Kumar Bafna and the petitioner/defendant does not even know who the respondent/plaintiff is. All the payments that were made by the petitioner/defendant were only to Chandra Kumar Bafna and after having received the amount, since he has



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not duly accounted for the same, a Police complaint was also lodged on 23.01.2023 with the jurisdictional Police Station. This, he has substantiated by filing the document as Ex.P1 before the Court.

6. The argument of Mr.R.Thiagarajan is that at all points of time, the petitioner/defendant was under impression that Chandra Kumar Bafna had advanced his funds and not that of the respondent/plaintiff. On this basis, he would plead that he is entitled for unconditional leave to defend. In addition, he would state that the petitioner/defendant is entitled for leave to defend as the respondent/plaintiff has not issued a notice prior to the presentation of the plaint.

7. Per *contra*, Mr.S.R.Rajagopal, learned Senior Counsel for the respondent/plaintiff would contend that this is not a commercial transaction within the meaning of Section 2(1)(c) of the Commercial Courts Act, 2015 (Act 4 of 2016). He would state that this is a simple transaction of lending of money from one person to another which is not covered under the said Act. He would further draw my attention to the affidavit that has been filed in support of the leave to defend application, in particular, in paragraph



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No.16 to state that the petitioner/defendant had admitted the borrowal from the respondent/plaintiff and his only plea was that as the reconciliation of the accounts not being done properly and had it been done, then, the petitioner/defendant would not be liable to pay the amounts demanded in the plaint.

8. This itself would show, according to Mr.S.R.Rajagopal, that the petitioner/defendant has conceded to the case of the respondent/plaintiff and hence, his defence is moonshine and therefore, the order of the learned Trial Judge does not require interference. He would also rely upon the judgment of the Supreme Court in *Ajay Bansal Vs. Anup Mehta and Ors., (2007) 2 SCC 275* to state that only an appeal is maintainable and not a revision challenging the leave to defend. This, according to him, is because by virtue of the order passed under Order XXXVII Rule 2 of the Code of Civil Procedure, the Suit came to be decreed on the very same day and hence, only an appeal against the decree is maintainable and not a revision.

9. I have carefully considered the arguments on either side and have gone through the records.



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10. Since the objection on maintainability of the revision has been raised by Mr.S.R.Rajagopal, I have to address that issue first. In ***Ajay Bansal***'s case (cited *supra*), the Supreme Court had held that when there is a dismissal of the application seeking leave to defend, the passing of a decree is automatic. The Court also explained the concept of "dependent" order. The meaning of dependent order is, if there are two sets of orders, one which is the main order and the other which is the consequential order, the setting aside of the main order results in the setting order of the consequential order.

11. Though a plain reading of the judgment in ***Ajay Bansal***'s case (cited *supra*) might support the submissions of Mr.S.R.Rajagopal, a deeper scrutiny of the judgment reveals that the position of law is otherwise. The Supreme Court had an occasion to consider the ***Ajay Bansal***'s case (cited *supra*) subsequently in ***Wada Arun Asbestos Private Limited Vs. Gujarat Water Supply and Sewerage Board, (2009) 2 SCC 432***. After a survey of several High Court and Supreme Court judgments, the Court held that if the litigant had a right of appeal against the decree, then, he certainly has a right



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to challenge the order which was subject to revision in his memorandum of appeal, when an appeal is filed against the decree itself. This judgment clarified the position of law vis-à-vis Section 105 of the Code of Civil Procedure. In paragraph No.22 of the said judgment, the Supreme Court, after citing the *Ajay Bansal's* case (cited *supra*), had held that a revision is maintainable as against the order granting leave or referring to grant leave.

12. Hon'ble Mr.Justice S.Nagamuthu had considered the very issue and come to a conclusion that a revision is maintainable against an order referring leave to defend, see: *Shivsu Canadian Clear International Limited Vs. Freightcan Global Logistics Private Limited, (2013) 2 LW 949*. In light of the above discussion, I would reject the argument of Mr.S.R.Rajagopal and hold the revision is maintainable.

13. The position of law exists on grant of leave to defend has been settled by the judgment of the Supreme Court in *IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd., (2017) 1 SCC 568*. The Supreme Court held that,

(i) in case there is a meritorious plea raised by the defendant, then, he will be entitled to unconditional leave;



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(ii) leave to defend can be granted subject to conditions in case "a plausible defence" has been disclosed by the defendant;

(iii) If the defence that has been taken is absolute moonshine or an illusory one, then, the defendant is not entitled to leave to defend at all.

14. These principles have been recently affirmed by the Supreme Court in ***B.L.Kashyap and Sons Limited Vs. JMS Steels and Power Corporation and Another., (2022) 3 SCC 294***. Keeping these principles in mind, if I were to approach the present case, the defence that has been raised by the civil revision petitioner are as follows:-

- (i) He does not know the respondent/plaintiff;
- (ii) The amount that has been stated in the plaint is an exorbitant amount as it has not been preceded by reconciliation;
- (iii) The Civil Court will not have jurisdiction;
- (iv) The suit is barred by limitation by virtue of the fact that the pronotes are of the year 2013, 2015 and 2016 and the present suit has been filed only in the year 2022.



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15. Insofar as the plea on the Commercial Courts Act is concerned, the learned Trial Judge has analysed the aspect in detail and rejected the plea. I am ad idem with the view taken by the learned Judge. A reading of the plaint shows that the amounts claimed were not lent during the course of a "commercial transaction". It is a private transaction without any "commercial" or "business" link. A private transaction will not be covered by the Commercial Courts Act, 2015. The Commercial Courts Act is "transaction centric" and not "person centric". That not being the situation here, I have to conclude that the Trial Court has jurisdiction.

16. However, with respect to the other pleas namely, bar of limitation, the petitioner/defendant does not know the respondent/plaintiff and also the fact that the reconciliation of accounts have not been appreciated by the learned Trial Judge in a proper manner. Though they are contradictory, being a defendant, the civil revision petitioner is entitled to take contrary defence. They disclose a plausible defence. If he succeeds on either of the defence, then, he will not be liable to pay the entire amount as demanded by the respondent/plaintiff. However, I have to take into consideration the submission of Mr.S.R.Rajagopal that the respondent/plaintiff has agreed



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that he has no intention to default the alleged dues to the respondent/plaintiff and that the suit claim is based on error in calculation.

17. The defence being plausible but not meritorious, at the same time, not being one of moonshine, while setting aside the order of the XXIII Additional City Civil Court, Allikulam at Chennai in I.A.No.3 of 2023, dated 29.01.2024, I am inclined to impose a condition on the defendant. The leave to defend application stands allowed on the condition that the petitioner/defendant deposits 50% of the decree amount namely, Rs.64,99,160/- together with interest at the rate of 12% per annum from 21.07.2022 till the date of deposit within four weeks from today. In case the amount is not deposited, the Civil Revision Petition will stand dismissed without further notice of the Court. It is also made clear that the petitioner/defendant will not be entitled to move any application for extension of time.

18. Accordingly, this Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.



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

Note:- Issue order copy on 08.08.2024.

To

The XXIII Additional Judge,
City Civil Court,
Allikulam,
Chennai.



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V.LAKSHMINARAYANAN, J.

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