



Orders Reserved on
10.09.2024

Orders Pronounced on
29.10.2024

A.No.3860 of 2024
in
C.S.No.39 of 2022

RMT. TEEKAA RAMAN., J.

This application has been filed by the respondent to set aside the order setting him as ex-parte on 10.06.2024 in the above C.S.No.39 of 2022.

2. The respondent / plaintiff has filed the above suit as against the applicant / defendant seeking to recover a sum of Rs.1,05,69,500/- based upon the promissory note.

3. By an order dated 10.06.2024, the defendant was set ex-parte and hence the application.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

5. On perusal of the court records, I find that the suit is filed as a Summary Suit under Order 37 Rule 2 of C.P.C., and hence necessary application has to be filed under Order VII Rule 5 of Madras High Court O.S.Rules namely leave to defend has to be obtained from the Master.



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6. A.No.1224 of 2022 was filed by the defendant / applicant seeking leave of the court to defend.

7. By an order dated 28.04.2023, the learned Master has allowed the application and the leave was granted unconditionally.

8. Records also shows that the plaintiff has filed A.No.631 of 2022 to furnish security for the suit claim, failing which, prayed for an order of attachment of the defendant property. By an order dated 28.03.2022, the said application is dismissed as withdrawn.

9. The learned counsel drew my attention in the affidavit filed by the present petitioner wherein, it is stated that, the suit pro-note is a forged pro-note and does not contained the signature of the plaintiff's name is nowhere in the pro-note and name of the defendant is also wrongly returned in pro-note and pro-notes are incomplete.

10. The plaintiff is a father and the defendant is a son.

11. It appears that O.S.No.6159 of 2021 is filed by the defendant in the suit against the plaintiff before the learned VI Assistant City Civil Court, Chennai. Thereafter, the present suit appears to have been filed.

12. It is to be stated that since the suit has been filed under Order 37 Rule 2 C.P.C as a Summary Suit, necessary orders has to be obtained leave to



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defend has to be obtained under the Madras High Court Original Side Rules.

In the instant case, A.No.1224 of 2022 for the said purpose was allowed on 28.04.2023 and thereafter, he has to file the written statement.

14. In the affidavit, he has stated that the earlier counsel has signed in the written statement and he has not filed, which resulted in passing of the ex-parte order setting the defendant as ex-parte in the suit.

15. Considering the relationship between the parties and the nature litigation and leave to defend has also been granted by the learned Master, I find that necessary opportunity has to be given to the defendant to defend the suit and accordingly, the order dated 10.06.2024 setting the defendant as ex-parte is set aside. The written statement filed along with the application is ordered to be taken on file.

16. Accordingly, this application is allowed.

29.10.2024

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RMT.TEEKAA RAMAN,J.,

nvi

order in
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