



C.R.P. No. 3089 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2024

CORAM

THE HON'BLE MR. JUSTICE V. LAKSHMINARAYANAN

C.R.P. No. 3089 of 2024

&

C.M.P. No. 16674 of 2024

Mr. Vinay Anand

..Petitioner

Vs.

M/s. APJ Family Trust,
Rep. by its Trustee,
Mr. S. Bhanu Prasad,
Having Office at
No.45, Padmanabhan Street,
T. Nagar, Chennai – 600 017.

..Respondent

Prayer: Civil Revision Petition as against the fair and decretal order dated 26.06.2024 made in I.A. No. 2 of 2024 in C.O.S. No. 125 of 2023 on the file of the Commercial Court at Egmore, Chennai.

For Petitioner :: Mr.B. Manimaran

For Respondent :: Mr. Anish Gopi



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ORDER

The Civil Revision Petition is directed against the order dated 26.06.2024 made in I.A. No. 2 of 2024 in C.O.S. No. 125 of 2023 on the file of Commercial Court at Egmore, Chennai.

2. The respondent/plaintiff presented C.O.S. No. 125 of 2023 seeking the relief of recovery of money on the basis of a mortgage. The civil revision petitioner is the defendant in the suit.

3. The case of the respondent/plaintiff is that on 04.07.2012, the civil revision petitioner/defendant had borrowed a sum of Rs.35 lakhs by mortgaging the suit schedule mentioned property. Furthermore, on 10.07.2012, the civil revision petitioner had borrowed a further sum of Rs.15 lakhs and had executed another mortgage deed. Both mortgage deeds were registered on the file of SRO, Joint II Central, Chennai.

4. On 20.06.2017, the plaintiff demanded the defendant to pay the amounts under the mortgage deeds. However, the defendant did not clear the amounts. On 03.07.2017, the defendant issued a reply. Being left with no other option, invoking the provisions of Section 2(1)(c)(i) read with



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Section 6 of 'The Commercial Courts Act, 2015' (hereinafter 'CCA' for the sake of brevity and convenience), the plaintiff presented the suit.

5. It is admitted by both sides that the defendant did not present his defence as required under CCA within a period of 120 days. Therefore, he had forfeited his right to set up defence in the suit. Having lost his right, he filed an application for rejection of plaint. This application was received in I.A. No. 2 of 2024.

6. The grounds on which the defendant sought rejection of plaint are two-fold and they are:

- (i) It is not a "commercial dispute" within the meaning of Section 2(1)(c)(i) of CCA and
- (ii) The suit is barred by time.

The learned District Judge dismissed the application on 26.06.2024 as against which the present revision is filed.

7. Heard Mr.B. Manimaran, learned counsel for the civil revision petitioner and Mr. Anish Gopi, learned counsel for the respondent/caveator.

8. Mr.B. Manimaran reiterated the submissions made before the Commercial Court. First, he would state that although the mortgage deeds



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had been executed in the year 2012, the suit was instituted only in the year 2023. Therefore, according to him, the suit is barred by time.

9. Secondly, he would state that the suit, being one on mortgage, is not covered by Section 2(1)(c)(i) of CCA.

10. Insofar as the plea of limitation is concerned, the suit is for recovery of money on registered mortgage deeds. The period of limitation for such a suit is governed by Article 62 of The Limitation Act, 1963. In terms of Article 62 of the said Act, the plaintiff is entitled to enforce payment of money secured on a mortgage by presentation of a suit within 12 years from the date on which the money becomes due. In this case, the plaintiff had made a demand on the defendant by virtue of an advocate's notice dated 20.06.2017. If that date is taken for calculation of limitation, then the plaintiff, having filed the suit in 2023, it is well within time. Even if the date of execution of the mortgage deeds is taken as the date of commencement of limitation, the suit having been filed on 03.03.2023, it is atleast one year and 6 months prior to the expiry of the period of limitation. Therefore, the argument of the learned counsel for the civil revision petitioner that the suit is barred by time fails.



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11. With respect to the plea that the dispute involved in the suit does not fall within the definition of ‘commercial dispute’ as specified under Section 2(1)(c)(i) of CCA is concerned, it is pertinent to point out that the plaintiff is a financier. That being so, the plaintiff is covered under Section 2(1)(c)(i) of CCA. The defendant, having borrowed the amounts for the purpose of business, he is also covered under the said provision. The CCA is not person specific but transaction specific. The borrowal being for commercial purpose is covered by the said Act. Therefore, the second point raised by the learned counsel for the revision petitioner also fails. Both the points raised by the learned counsel for the revision petitioner having failed, this Court is not in a position to come to his rescue and the civil revision petition is liable to be dismissed.

12. At this stage, Mr.B. Manimaran would point out that he did not cross-examine the plaintiff on account of the fact that he wanted to pursue the remedy in this revision. He would draw the attention of this Court to the order passed by the learned District Judge, Commercial Court, Egmore, Chennai, dated 06.08.2024, whereby the cross-examination of the plaintiff



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by the defendant was closed. He would submit that he has receipts with him which would show that his liability is not as projected by the plaintiff.

13. The mere fact that the right to file a written statement is forfeited does not mean that the defendant is not entitled to cross-examine the plaintiff. A skillful cross-examiner can always get the suit dismissed by the cross-examination of the plaintiff. Taking into consideration the fact that as the defendant was pursuing the revision, he did not proceed with the cross-examination, this Court is inclined to grant an opportunity to the civil revision petitioner to cross-examine the respondent/plaintiff.

14. Mr. Anish Gopi has no objection to the said course of action.

15. Accordingly, the respondent/plaintiff shall be present for cross-examination on 12.08.2024 and the civil revision petitioner/defendant shall cross-examine the plaintiff on 12.08.2024 and continue on the subsequent date, if necessary. Learned District Judge, Commercial Court, Egmore, Chennai, is requested to grant the said benefit to the defendant and ensure that the cross-examination is completed by 14.08.2024 and thereafter, after hearing the arguments, she can proceed to pronounce the judgment. The learned District Judge is requested to act on a web-copy of this order for the



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purpose of enabling the defendant to cross-examine the plaintiff.

16. The civil revision petition stands dismissed with the above directions. No costs. Connected C.M.P. is closed.

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To
The Commercial Court,
Egmore, Chennai.

(Note to Office: *Order copy to be
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V. LAKSHMINARAYANAN,J.

nv

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