



CRP No.3569 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2024

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THE HON'BLE MR.JUSTICE **V.LAKSHMINARAYANAN**

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CMP.No.19343 of 2024

V.J.Nathaniel : Petitioner

versus

S.A.Noorul Huda : Respondent

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the fair and Decreetal order dated 22.08.2024 passed in IA No. 1 of 2024 in OS No. 2152 of 2024 by the Learned XX Assistant City Civil Court Judge at Chennai.

For Petitioner : Mr.Praveen Alexander

For Respondent : Mr.E.Suganthan
Mr.Deivasenathipathi

ORDER

This civil revision petition arises against the order of the XXVIII Assistant City Civil Court, XX Assistant City Civil Court (FAC), Chennai in I.A.No.1 of 2024 in O.S.No.2152 of 2024



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2. O.S.No.2152 of 2024 is an underchapter suit. The claim of the plaintiff is that the defendant had executed 2 promissory notes for a sum of Rs.50,000/- each and had issued a cheque for Rs.1,00,000/-, after having received the same from him. He claims that the defendant continued to take hand-loans from 2013 onwards and used to repay the same. The balance that was left out together with the fresh loan availed came to Rs.2,00,000/-. Insofar as the suit promissory note is concerned, he had defaulted on the same.

3. The plaintiff would also plead that he deposited the cheque dated 07.02.2024, drawn on the Central Bank of India, which was issued by the defendant, through his Bank namely, the State Bank of India, New Avadi Branch for clearance. The same was returned on 01.03.2024 stating that the very account that was maintained by the defendant had been closed. Being left with no other option, the plaintiff presented a suit for recovery of Rs.2,17,333/-. This figure includes the principle amount of Rs.2,00,000/- and interest therein at the rate of 12% per annum on the aforesaid amount.

4. Being a underchapter suit, the defendant filed an application seeking leave to defend. His plea is multifold. The first plea being that the



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plaintiff is a tenant under him running a commercial establishment in the name and style of “Vodafone Mini Store” and the plaintiff chronically defaulted in the payment of rents. He would state that being left with no other option, the plaintiff presented a suit for ejectment in O.S.No.2612 of 2024 on the file of the XXIV Assistant City Civil Court, Chennai. He would further plead that the defendant never took handloans from the plaintiff and the promissory note is bogus. He would state that there are lot of irregularities in the cheque purportedly issued on 05.01.2023 and that, the plaintiff's advocate had misled him to file the present suit. On these pleas, he sought for leave to defend. The learned trial judge dismissed the application and hence, the revision.

5. I have heard Mr.Praveen Alexander for the civil revision petitioner and Mr.E.Suganthan for Mr.Deivasenathipathi for the respondent.

6. Learned counsel appearing on either sides reiterated their submissions before the court below.

7. The principle governing grant of leave under Order XXXVII Rule 1 of the Code of Civil Procedure has been laid down by the Supreme Court in ***IDBI Trusteeship Services Ltd. v. Hubtown Ltd., (2017) 1 SCC 568***. The



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Supreme Court held that if the defence is meritorious, the defendant will be entitled for leave to defend unconditionally. If the defence is moonshine or absolutely worthless, then the defendant should not be granted leave to defend. If the defence were to fall within these two extremes, then the Court should grant leave to defend subject to conditions that may be imposed at the discretion of the Court.

8. The facts stated above would show that the cheque had been issued for a sum of Rs.1,00,000/- from the defendant's account in Central Bank of India. This fact cannot be disputed because it is clear from document Nos.3 & 4 that the defendant was operating an account in the Central Bank of India and it had been closed. With respect to promissory notes, Mr.Praveen Alexander would point out that the dates have been tampered with from 2013 to 2023. Therefore, this discloses a plausible defence for the defendant at least insofar as the promissory notes are concerned.

9. There being no dispute that the bank account was operated by the defendant and the cheque also is that of the defendant. Hence, I feel that leave to defend should be granted on a condition being imposed on the defendant. Accordingly, **this civil revision petition stands allowed.** No



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costs. Consequently, the connected miscellaneous petition is closed.

10. I.A.No.1 of 2024 will be allowed on the condition that the defendant deposits a sum of Rs.1,00,000/- to the credit of the suit in O.S.No.2152 of 2024 within a period of four weeks from the date of receipt of a copy of this Order. In case, deposit is not made, the benefit of leave to defend will not enure to the defendant.

11. In case the amount is deposited by the defendant and the suit proceeds for filing of a written statement, the learned Principal Judge, City Civil Court, Chennai shall transfer O.S.No.2612 of 2024 now pending on the file of the XXIV Assistant City Civil Court, Chennai to the file of the XX Assistant City Civil Court, Chennai to be heard and disposed of along with the present suit.

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Index : Yes/No
Speaking Order/Non-speaking order
Neutral Citation : Yes/No



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To
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- 1.The XX Assistant City Civil Court Judge at Chennai.
- 2.The XXIV Assistant City Civil Court, Chennai



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V. LAKSHMINARAYANAN, J.

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