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C.R.P. (PD) .No. 3797 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.09.2024

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THE HONOURABLE Mr. JUSTICE

V.LAKSHMINARAYANAN

C.R.P. (PD) .No. 3797 of 2024

&

C.M.P.No. 20789 of 2024

S.Kulsum Bee

...Petitioner

Vs.

M/s.Canara Bank,
Rep. by its Chief Manager, Authorised Signatory,
Having Office at Canara Bank,
No.226, R.K.Mutt Road, Mandavelipakkam,
Chennai – 600 028.

...Respondent

Prayer: Petition is filed under Article 227 of the Constitution of India against the order dated 31.07.2024 passed in I.A.No.3 of 2023 in C.O.S.No.1841 of 2022 on the file of the Principal Commercial Court,



C.R.P. (PD) .No. 3797 of 2024

Egmore, Chennai.

For Petitioner : Mr. V.A.Pratheep Kumar.

ORDER

The Civil Revision Petition is filed at the instance of the 2nd defendant. She filed an application in I.A.No.3 of 2023 in C.O.S.No.1841 of 2022 seeking for rejection of the plaint.

2. C.O.S.No.1841 of 2022 is a suit for recovery of a sum of Rs.47,08,462.84/- together with interest from the date of the presentation of the suit till the date of realization. The case of the plaintiff / Canara Bank is that the defendants had raised a MSME loan from the bank and had entered into a deed of Hypothecation on 26.03.2019. They had also created a security for the Hypothecation, valued at Rs.45,00,000/-. The defendants were not serving the loan account and it was classified as a non performing asset on 20.11.2020.



Since due amounts were not paid, the plaintiff bank presented the suit for recovery of money. Being a commercial transaction entered into between the plaintiff and defendants, the plaintiff invoked Section 2 of the Commercial Courts Act and presented the suit.

3. On being served with the summons in the interlocutory application for attachment before Judgement, the 2nd defendant took out an application for rejection of the plaint. The sole ground pleaded for rejection of the plaint is that the mandatory mediation, as required under Section 12 A of the Commercial Courts Act, had not been complied with. The inspiration for rejection of the plaint is the Judgement of the Supreme Court in *M/s.Patil Automation Private Limited Vs. Rakheja Engineers Private Limited - 2022 SCC Online SC 1028*. The learned Trial Judge on receipt of the counter from the respondent went on to dismiss the application. Hence, the revision.

4. Heard Mr.V.A.Pratheep Kumar for the petitioners.



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5. Mr. Pratheep Kumar would rely upon the Judgement of *Patil Automation* to plead that it is mandatory on the part of the Bank to proceed under Section 12 A of the Act and without following the said procedure, since they presented the suit, it will come within the teeth of rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure.

6. I have considered the arguments of Mr. Pratheep Kumar and perused the documents. A reading of paragraph No.84 of the Judgement in *Patil Automation* would suggest that Section 12 A is mandatory and in case it is not adhered to the suit can be rejected. However, as per Paragraph No.100 of the very same Judgement, Mr. Justice K.M. Joseph, who authored the Judgement, specifically holds that in all the cases that had come up before the Supreme Court, no urgent relief had been sought for by the plaintiff. He left the issue open as to what would be the situation in case the plaintiff were to



C.R.P. (PD) .No. 3797 of 2024

seek for urgent relief as contemplated under Section 12 A (2).

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7. Furthermore, the Supreme Court had an occasion to deal with an issue where the suit contemplated urgent relief and the defendant took out an application under Order VII Rule 11 of the Code of Civil Procedure. This is the Judgement in *Yamini Manohar Vs T.K.D.Keerthi in S.L.P.No.32275 of 2023* dated 13.10.2023. Mr.Justice Sanjiv Khanna, after relying upon the Judgement of *Patil Automation*, particularly paragraph No.100 went on to hold that in case the Trial Court had entertained the interlocutory application, then it may indicate that the Court is inclined to entertain the plaint. In paragraph No.7, he held that the prayer for urgent relief should not be a disguise or mask to get over Section 12 A.



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8. In the facts of the present case, the plaintiff had taken out an application in I.A.No.2 of 2022 seeking for attachment of the assets of the defendants. In the said application, the plaintiff had specifically pleaded that the respondents / civil revision petitioners are making efforts to sell their assets. On the basis of these averments, the plaintiff sought for furnishing of security to the tune of Rs.47,08,462.84/-. It is not in dispute that summons in this application was served on the respondents.

9. In the light of the fact that Interlocutory application was filed and the Court entertained it considering the urgency in the matter, I would necessarily have to follow the view of Mr.Justice Sanjiv Khanna in *Yamini Manohar's* case and come to the conclusion that the plea for rejection of the plaint does not deserve consideration.

10. At this stage Mr.Pratheep would state that summons had not been served on him in the suit and yet he had been set ex parte. In



C.R.P. (PD) .No. 3797 of 2024

order to set a person ex parte, summons in the suit must be served. In case the summons are not served, then it is contrary to law. Summons served in Interlocutory Application cannot be treated as summons in the suit, for the simple reason that what would be served in the summons in interlocutory application is only the affidavit and the petition filed in support of the said application. It would not be accompanied with the copy of the plaint. If the civil revision petitioner is aggrieved as against the said order, it is always open to him to prefer a Civil Revision Petition against the said order. However, in the instant case, I am not inclined to entertain the same.

11. Accordingly, the Civil Revision Petition stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

24.09.2024

Index : Yes/No
Internet : Yes/No
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C.R.P. (PD) .No. 3797 of 2027

To

The Principal Commercial Court,
Egmore,
Chennai.



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C.R.P. (PD) .No. 3797 of 2024

V.LAKSHMINARAYANAN, J.

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C.R.P. (PD) .No. 3797 of 2024



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C.R.P. (PD) .No. 3797 of 2024

24.09.2024