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CRP (PD) No.5099 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2024

CORAM:

THE HON'BLE MR. JUSTICE V. LAKSHMINARAYANAN

C.R.P. (PD) No.5099 of 2024 and C.M.P. No.28566 of 2024

D. Gopalsamy

Petitioner

v

N. Gopalsamy

Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the fair and final order dated 25.04.2024 made in I.A. No.4 of 2023 in O.S. No.308 of 2016 on the file of the III Additional District Court, Coimbatore.

For petitioner

Mr. Krishnakumar  
for M/s. Sarvabhauman Associates

### ORDER

This civil revision petition challenges the order dated 25.04.2024 passed by the learned III Additional District Court, Coimbatore in I.A. No.4 of 2023 in O.S. No.308 of 2016.



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2. The civil revision petitioner is the defendant in the suit.

O.S.No.308 of 2016 is a suit for recovery of a sum of Rs.14,99,000/- together with interest @ 18% per annum on the principal amount of Rs.10 lakhs from the date of the suit till the date of its realisation.

3. The case of the plaintiff is that he had advanced a sum of Rs.10 lakhs for the personal needs of the defendant on 14.05.2013. On 05.01.2016, the plaintiff and the defendant entered into a Memorandum of Understanding. In the said document, the defendant agreed to repay the loan together with interest totalling to Rs.14 lakhs on or before 15.01.2016. The defendant did not honour the same. Being left with no other option, the plaintiff brought the suit for recovery of money.

4. The defendant resisted the claim pleading that the amount paid by the plaintiff to the defendant, is not a loan. It was towards an investment in an unregistered partnership firm entered between the plaintiff and the defendant. The name and style of the firm was “M/s. Star Engineering”.



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Pleading that the business investment cannot be treated as a loan transaction, he resisted the claim.

5. When the matter was lying thus, the defendant took out an application in I.A. No.4 of 2023 seeking for rejection of plaint. The ground for rejection was that the suit is not maintainable in view of:

- i. Order III Rule 2 (a) of the Code of Civil Procedure (for brevity “the CPC”) ; and
- ii. the suit is barred by virtue of the second proviso to Section 2(1) read with Section 3(3) of the Foreign Contribution (Regulation) Act, 2010.

6. This application was resisted by the plaintiff, who filed a detailed counter.

7. The learned Trial Judge, after hearing both sides, came to the conclusion that the application is not sustainable and dismissed the same. Hence, this revision.



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8. I heard Mr. Krishnakumar for the civil revision petitioner.

9. Mr. Krishnakumar draws my attention to the document titled “AUTHORISATION” given by the plaintiff Gopalsamy in favour of the person claiming to be the power agent, viz., Sabapathy, on 24.05.2016. He points out that this is not a power of attorney deed and therefore, it does not satisfy the requirement of Order III Rule 2(a) of the CPC. In addition, he argues that under Section 3(3) of the Foreign Contribution (Regulation) Act, 2010 (in short “FCR Act”), no person can receive any currency whether, in rupees or any foreign currency, unless and until it satisfies the requirements of the Act. Hence, he pleads that the suit is barred and therefore, the order of the Trial Judge requires to be interfered with.

10. I have carefully considered the submissions of Mr.Krishnakumar.

11. With respect to the first argument, I should point out that though the title of the document is “AUTHORISATION”, the contents of



the document show that the plaintiff, N. Gopalsamy, had authorised and nominated one Sabapathy to represent him in the presentation of the suit. It also states that the said Sabapathy is authorised to contest or settle disputes or suits or arbitration and further, generally to do all acts, deeds and things which Sabapathy thinks fit and necessary in all respects, as Gopalsamy would do himself.

12. This shows that though the document is titled as an “AUTHORISATION”, in effect, it is a document appointing Sabapathy as an agent. It is too fundamental, but, I have to reiterate for the purpose of this case that the nomenclature of the document does not decide the nature and effect of the document. My reading of the document shows that it is an unregistered power of attorney, executed on a stamp paper, by Gopalsamy in favour of Sabapathy. That being the position, the first argument of Mr.Krishnakumar has to fall.

13. With respect to the second plea on the Foreign Contribution (Regulation) Act, 2010, Mr. Krishnakumar is right that the Act prohibits



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transfer of any funds from one party, who is abroad, in favour of another situated within the territories of India except without authorisation by the appropriate authority. However, there is no provision in the Act which bars presentation of a suit for recovery of money so paid. The power of the Civil Court under Section 9 of the CPC is plenary. It has to be specifically barred by way of a legislation or there should be an implied bar. I do not find any specific bar under the said Act. Further, the bar is not one across the board. Section 4 of the FCR Act, permits contribution under conditions mentioned therein. If there is any violation of the FCR Act, it is for the authorities under the said Act to take appropriate step. If it has to be an implied bar, the Act, which bars the right of a party to approach the Civil Court, should create an alternative venue for the party to recover the same. It does not lie in the mouth of the defendant who has received the amount to say that he has received the same in infraction of a legislation and therefore, the suit is not maintainable. As long there is no express or implied bar, a suit is maintainable.



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14. Both the points urged by Mr. Krishnakumar failing, I am not in a position to come to the rescue of the civil revision petitioner.

In fine, this civil revision petition stands dismissed. No costs.

Connected C.M.P. stands closed.

**20.12.2024**

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**V. LAKSHMINARAYANAN, J.**

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To

The III Additional District Court  
Coimbatore

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