



C.R.P.(PD).No.4912 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4912 of 2024
and
C.M.P.No.27612 of 2024

T.M.Backiyaraj

... Petitioner

Versus

K.Rajendran

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 25.03.2024 in I.A.No.4/2023 in O.S.No.2465/2019 on the file of the learned V Assistant City Civil Court, Chennai and grant the unconditional leave to the petitioner to leave to defend O.S.No.2465 of 2019.

For Petitioner : Mr.V.Balaji
for M/s.Shah and Shah
For Respondent : Ms.P.Velammal



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ORDER

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This civil revision petition challenges the order passed by the learned V Assistant City Civil Judge, Chennai in I.A.No.4 of 2023 in O.S.No.2465 of 2019 dated 25.03.2024.

2. The civil revision petitioner is the defendant in the suit. O.S.No.2465 of 2019 is an under chapter suit.

3. The case of the plaintiff is that the property of the defendant was to be auctioned on account of the fact that he was heavily in debts. Therefore, he requested the plaintiff to give him a sum of Rs.6,00,000/- to tide over the financial difficulty. Accordingly, he gave a sum of Rs.4,00,000/- and the defendant also executed a promissory note for the said amount on 23.10.2016. He defendant agreed to return the amount together with interest @ 24% per annum. In due discharge, the plaintiff was given a post dated cheque for Rs.6 lakhs. When the cheque was presented for collection, it was returned with the endorsement 'Funds Insufficient'. Hence, he issued a



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suit notice which was returned as 'refused'. Being left with no other option, he presented the under chapter suit for recovery of a sum of Rs.6 lakhs together with subsequent interest @ 24% per annum on the Principal sum of Rs.4,00,000/-.

4. The defendant entered appearance and filed an application for leave to defend in I.A.No.4 of 2023. He pleaded that he did not know the plaintiff and the signature on the promissory note is forgery. With respect to the cheque, he pleaded that he wanted to take a mediclaim policy and therefore, had issued a cheque to the L.I.C. agent. The agent informed him that the yearly premium would be around Rs.35,000/- and therefore, he did not want to continue further with the policy. The contract of insurance was given up. He pleaded that the plaintiff taking advantage of that cheque has present the suit for recovery of money. Hence, he sought for unconditional leave to defend.

5. The learned Trial Judge, on the basis of the affidavit and counter



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came to a conclusion that the plea of the defendant is absolute moonshine and rejected the same vide order dated 25.03.2024. Hence, this revision.

5. When the matter came up for admission on 09.12.2024, I requested Mr.Samir Shah to serve entire set of papers on M/s.P.Velammal and Mr.V.Madhavan, the learned counsel who represented for the respondent herein before the Court below. Accordingly papers have been served and Ms.P.Velammal entered appearance for the respondent.

6. I heard Mr.V.Balaji for the civil revision petitioner and Ms.P.Velammal for the respondent.

7. The parties reiterated the contentions that have been placed before the Trial Court. In ***IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd.,2017 (1) SCC 568***, the Supreme Court held where the defence by the defendant is of sterling in character, it is the case for unconditional leave. If the defence that has been raised by the defendant is moonshine or absolutely



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improbable, then the defendant is not entitled to leave at all. If the defence raised falls between these two categories, then discretion is granted to the court to grant leave on condition.

8. Applying these principles to the facts of the case, I am of the view that by virtue of the denial of the promissory note by the defendant, he has raised a triable issue. At the same, time, the explanation which has been trotted out as to how the cheque came into the hands of the plaintiff is absolutely a defense of moonshine. Therefore, I am not inclined to grant unconditional leave to the defend to the defendant. I am inclined to leave imposing condition on him.

9. Accordingly the order dated 25.03.2024 in I.A.No.4 of 2023 in O.S.No.2465 of 2019 stands modified. The defendant will be entitled to leave to defend on the condition that he deposits a sum of Rs.2,00,000/- (Rupees Two Lakhs) within a period of **six weeks** from the date of receipt of a copy of this order .



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WEB COPY This civil revision petition is partly allowed with the aforesaid modification. No costs. Consequently, connected Miscellaneous Petition is closed.

17.12.2024

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Index : yes/no

Speaking order/Non-speaking order

Neutral Citation : yes/no

To

The V Assistant City Civil Judge,
Chennai.



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V.LAKSHMINARAYANAN, J.

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