



C.R.P.(PD)No.4630 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.4630 of 2023

and

C.M.P.No.27608 of 2023

1.B.Sudhakaran

2.Amudha

.. Petitioners

Vs.

B.Mahaveer

.. Respondent

Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 06.10.2023 passed in I.A.No.1 of 2023 in O.S.No.371 of 2023 (Old O.S.No.306 of 2020) by the learned Subordinate Judge at Ambattur.

For Petitioners : Mr.K.Venkateswaran

For Respondent : Ms.A.Preethi
for Mr.K.R.Samratt

ORDER

The defendants in a suit for recovery of money are the petitioners before me.

2. For the sake of convenience, the parties will be referred to as per



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their ranks in the suit.

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3. O.S.No.306 of 2020 was presented by the plaintiff before the Subordinate Court at Poonamallee for recovery of a sum of Rs.8,31,000/- from the defendants. The suit is on the foot of a promissory note.

4. The case of the plaintiff is that the defendants had approached the plaintiff on 10.07.2017, and had received a sum of Rs.5,00,000/-. The plaintiff specifically pleads that though the amount was received by both the defendants, the promissory note was executed only by the 1st defendant. The defendants had also issued a cheque bearing No.000007 drawn on HDFC Bank, Anna Nagar Branch, Chennai for a sum of Rs.7,95,000/-. The plaintiff also states that on 14.02.2020, the cheque was dishonored for the want of funds. Despite the demand from the plaintiff as the defendants did not discharge the debt, he came forward with the suit under Order XXXVII Rule 1 of the Code of Civil Procedure.

5. After being served with the summons, the suit being a summary



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suit, the defendants took out an application seeking leave to defend and the said application is said to be still pending. While the application to grant leave is pending, the defendants have come forward with a petition under Order VII Rule 11 of the Code of the Civil Procedure to reject the plaint.

6. The ground on which the plaint is sought to be rejected is that the promissory note has only the signature of the 1st defendant and the 2nd defendant name has been added to it. The argument is that being a suit on a promissory note, both the defendants would have to sign the document and failure thereof, would result in the rejection of plaint. After receiving the counter from the respondent/plaintiff, the learned trial Judge dismissed the petition on 06.10.2023. Challenging the same, the present revision has been presented before this Court.

7. Mr.K.Venkateswaran would submit that as only the 1st defendant has signed the document, the suit as against the 2nd defendant is not maintainable and it ought to be rejected.

8. Heard Mr.K.Venkateswaran, appearing on behalf of the petitioners



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and Ms.A.Preethi, for Mr.K.R.Samratt, appearing behalf of the respondent.

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9. While dealing with an application for rejection of plaint, I have to take the averments made in the plaint to be true. The specific averment is that the defendants had borrowed the money together and it was the 1st defendant who had executed the pro note. The plaint cannot be rejected in part. If the defendants make out a case that it was only the 1st defendant who had executed the document and it is not the 2nd defendant, and if the plaintiff fails to let in any evidence to prove the original cause of action of borrowal by both the defendants, then the Court would certainly enter a finding upon the same on the merits of the case at the time of its final disposal.

10. The fact that only one defendant had executed the document does not mean the plaint can be rejected as against both the defendants. There is no dispute that the 1st defendant had executed the promissory note.

11. The principles stated above that the plaint cannot be rejected in part, applying to the facts of this case, I am not in agreement with



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Mr.K.Venkateswaran. In fact, the learned trial Judge has reserved the rights of the petitioner to agitate this issue at the time of the application seeking leave to defend. Therefore, it is upto the plaintiff to prove the existence of the original cause of action, and for the 2nd defendant to prove that she never received any money from the plaintiff. These being issues of evidence, it cannot be gone into at the stage of Order VII Rule 11 of the Code of Civil Procedure.

12. Leaving open all the defences to the defendants at the time of arguments in leave to defend application, the Civil Revision Petition stands dismissed. No costs. The connected Civil Miscellaneous Petition is closed.

25.06.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

V. LAKSHMINARAYANAN, J.



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WEB COPY To

The learned Subordinate Judge,
Ambattur

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