



C.R.P.(PD).No.4905 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.4905 of 2024
and
C.M.P.No.27521 of 2024

S.Sundararajan

... Petitioner

Versus

1. Sheeba
2. Paul Titus
3. Bennett

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair order and decretal order dated 21.10.2024 passed in I.A.No.3 of 2023 in O.S.No.668 of 2022 on the file of learned Additional District Judge at Chengalpattu by allowing this civil revision petition.

For Petitioner : Mr.S.Ruban Prabhu
For Respondents : Mr.G.V.Sridharan



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ORDER

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This Civil Revision Petition challenges the order dated 21.10.2024 in I.A.No.3 of 2023 in summary suit in O.S.No.668 of 2022 passed by the learned Additional District Judge at Chengalpattu.

2.The civil revision petitioner is the plaintiff in the suit. O.S.No.668 of 2022 was presented seeking recovery of money from the defendants. It is the case of the plaintiff that one Sekar, the husband of the 1st defendant and the father of the defendants 2 and 3, had borrowed a sum of Rs.10 lakhs from the plaintiff. He had promised to repay the amount @ 2% per month viz., @24% per annum. In order to discharge the amount he had issued a cheque bearing No.106375 dated 29.10.2021. The plaintiff pleads that till the month of June 2021, the interest were being serviced regularly. In other words, from November 2020 till June 2021, there were no issues. The default commenced in July 2021. On verification, the plaintiff came to know that the borrower, Sekar, had passed away on 18-08.2021, leaving



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behind the defendants to succeed to his estate. According to Plaintiff, the property in which the defendants are residing belongs to Sekar and the defendants are making fervent efforts to alienate the property. Hence, he presented the suit for the aforesaid amount. Being one based on a negotiable instrument, it was presented as a under chapter suit.

3. Summons were served on the defendants and they entered appearance. The first defendant filed an application seeking unconditional leave to defend. According to her, the loan was availed by Sekar in 2021 as alleged, but she pleaded he had discharged the loan in July 2021 itself. As per the market practice, once the loan is discharged, the pronote or negotiable instrument-cheque have to be destroyed. Apart from this plea of discharge, she also raised a plea that the plaintiff had forged the cheque and therefore the negotiable instrument has to be sent for forensic examination.

4. The learned trial Judge considered these pleas and came to a conclusion that there is a probable defense in favor of the defendant and



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therefore, granted unconditional leave. Hence this revision at the instance of the plaintiff.

5. When the revision came up for admission on 9-12-2024, I requested Mr. Ruban Prabhu to serve the entire papers on Mr. G. V. Sridharan, the learned counsel who represented the respondents in the court below. Accordingly, papers have been served and Mr. G. V. Sridharan has entered appearance.

6. I heard Mr. Ruban Prabhu and Mr. G.V. Sridharan. They reiterated the contentions that have been placed in the court below.

7. I have carefully considered the submissions of both sides.

8. The manner in which an application under Order XXXVII of Code of Civil Procedure, seeking leave should be considered has been laid down by the Supreme Court In ***IDBI Trusteeship Services Ltd. Vs. Hubtown***



Ltd.,2017 (1) SCC 568. It held where the defense that has been raised by the defendant is of sterling in character, it is a case for unconditional leave. If the defense that has been raised by the defendant is moonshine or absolutely improbable, then the defendant is not entitled to leave at all. If the defense raised falls between these two categories, then discretion is granted to the court to grant leave on condition.

9. Remembering these principles, I approach the case on hand. It is not in dispute that money has been paid by the plaintiff to Sekar. The plea of the defendants is one of discharge. At the same time, a plea that the negotiable instrument is forged has also been raised. However, there is no plea in the affidavit filed in support of the leave to defend application that the plaintiff did not advance any amount to the deceased Sekar. It is also not in dispute that the property in which the summons were served on the defendants is a property which belongs to the deceased Sekar. Legal representatives are not only entitled to the benefits that comes to them by virtue of the death of their predecessor, but they are also answerable to the debts of the deceased to the extent to which the property has come to their



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hands. The defense that has been projected by Mr. G.V. Sreedharan is certainly probable. Therefore, the Court ought to have exercised a discretion and granted conditional leave to defendant instead of unconditional leave, as has been granted in the present case.

10. Therefore, while sustaining the order of the learned Additional District Judge, Chengalpattu granting leave, I modify the same to one into conditional leave. The defendants will be entitled to contest the suit, in case, they deposit a sum of Rs. 2,50,000 (Rupees Two Lakhs Fifty Thousand) within a period of twelve weeks from the date of receipt of a copy of this order. If the amount is not deposited, the leave to defend application will stand dismissed.

11. With the above directions, this civil revision petition is partly allowed. 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 Additional District Judge at Chengalpattu



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V.LAKSHMINARAYANAN, J.

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