



CRP No.5013 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.5013 of 2023 and
CMP No.29227 of 2023

N.Ramamoorthy

... Petitioner

Vs.

P.Palani

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed by the Subordinate Judge, Gingee in I.A.No.786/2022 in O.S.No.8/2021, dated 10.11.2023.

For Petitioner

: Mr.N.Elumalai

ORDER

This Civil Revision Petition has been filed to set aside the order passed by the learned Subordinate Judge, Gingee in I.A.No.786/2022 in O.S.No.8/2021, dated 10.11.2023.

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2. The petitioner herein, who is the plaintiff in O.S.No.8/2021 has filed the above suit against the respondent/defendant for recovery of a sum of Rs.2,26,560/- under Order XXXVII Rule 1 of CPC. In the above said suit, as the respondent/defendant was not entered appearance, he was set exparte on 09.04.2021 in the suit as well as the application to attach the property in I.A.No.17/2021. To set aside the above exparte order, the respondent had filed applications in I.A.No.167 and 168/2022 and the same were allowed by the Trial Court, by common order, dated 12.10.2022. Subsequently, the respondent/defendant has filed an application in I.A.No.786/2022 seeking leave to defend the suit and it was also allowed on 10.11.2022. Now, challenging the above order dated 10.11.2022, the petitioner/ plaintiff has filed the present civil revision petition.

3. Heard the learned counsel for the petitioners and I have perused the materials on record.



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4. According to the petitioner/plaintiff, as stated in the plaint, the respondent/defendant had borrowed a sum of Rs.1,80,000/- from the petitioner on executing a promissory note dated 2.11.2018, agreeing to repay the amount along with interest at the rate of 12% p.a. and afterwards, the respondent did not pay either principal nor interest. Hence, the petitioner has sent a legal notice to settle the entire amount along with interest. Since there was no response from the respondent/defendant, the petitioner had filed the above suit, in which, the respondent/defendant was set exparte and subsequently, order of exparte was set aside.

5. The main contention of the petitioner/plaintiff is that the respondent/ defendant has to serve notice appearance to the plaintiff, within 10 days from 12.10.2022 (on which date, the exparte order against the defendant was set aside); and thereafter, only after receipt of summons for judgment under Order XXXVII Rule (4) from the petitioner/plaintiff, the respondent can file an application to leave to defend the suit. But, without following the procedure as contemplated under the CPC, the respondent/



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defendant has straight away filed the leave to defend petition; and the trial Court, has also allowed the petition, without considering the above lack of procedural law. Therefore, the order of the trial court is liable to be set aside.

6. At this juncture, it is worthwhile to extract Order XXXVII Rule 3 of CPC, which run as follows.

3. Procedure for the appearance of defendant

(1) In suit to which this Order applies, the plaintiff shall, together with summons under Rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time within 10 days of such service, enter an appearance either in person or by pleader and in either case, he shall file in court an address for service of notices on him

(2)...

(3) On the day of entering appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader or if the plaintiff sues in person, to the plaintiff himself either by notice delivered at or sent by a pre-paid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.

(4) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No.4A in Appendix B or such Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the case of action and the amount claimed and stating that in his belief there is no defence to the suit.

(5) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally



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or upon such terms as may appear to the court or judge to be just:

provided that leave to defend shall not be refused, unless the court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

Admittedly, the exparte order passed against the respondent was set aside on 12.10.2022. Therefore, the learned Trial Judge has observed that after setting aside the exparte order, the petitioner came to know that the respondent has entered appearance; and hence, the petitioner ought to have served summons for judgment to the respondent/defendant, but he has not done so; as such, the contention of the petitioner that the petition filed by the respondent/defendant seeking leave to defend is affected by the Limitation Act, is not acceptable one. Further, the learned Judge has taken into consideration the defence made by the respondent/ defendant that the suit promissory note is not a genuine one. Considering all the above, the learned Judge has allowed the application. In such circumstances, this Court is of the view that when the respondent/defendant has raised a substantial defence that he had disputed the genuineness of the suit promissory note, he shall be permitted to defend the suit. Therefore, the reasons assigned by the learned Judge for granting leave to defend the suit are well-founded and I do



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not find any infirmity in the order passed by the Trial Court and hence, the civil revision petition is liable to be dismissed, as it has no merits.

7. In fine, this Civil Revision Petition is dismissed and the impugned order passed by the Trial Court is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

11.01.2024

Index: Yes/No
Internet: Yes/No
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To

The Subordinate Judge, Gingee



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V.SIVAGNANAM, J.,

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