



C.R.P(MD)No.2002 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.06.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.2002 of 2019

Peter

... Petitioner/Plaintiff

Vs.

Arumugam

... Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order, dated 05.08.2019 made in O.S.SR.No.211 of 2019 on the file of the learned Principal Subordinate Judge, Trichy and to take the plaint on file.

For Petitioner : Mr.B.Jameel Arasu

For Respondent : Mr.M.Siddharthan



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ORDER

The present revision petition has been filed challenging the rejection of the plaint in O.S.SR.No.211 of 2019 on the file of the Principal Sub Court, Tiruchirappalli.

2. The revision petitioner herein as plaintiff has filed the above said suit for recovery of a sum of Rs.5,00,000/-. In the plaint, the plaintiff has contended that, the defendant had received a sum of Rs.5,00,000/- in November 2013, another Rs.5,00,000/- in December 2013 and another Rs.5,00,000/- on 23.01.2014. In total, the defendant is alleged to have received a sum of Rs.15,00,000/- from the plaintiff. The plaintiff has further contended that, out of the said Rs.15,00,000/-, the defendant had repaid a sum of Rs.5,00,000/- on 25.09.2018 and another Rs.5,00,000/- on 01.10.2018 through cheques. For recovery of balance Rs.5,00,000/-, the present suit has been filed.



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3. The learned Subordinate Judge had rejected the plaint on the ground that, the defendant has denied the suit claim in his reply statement and therefore, the suit is not maintainable. That apart, the suit is barred by limitation. The mere issuance of legal notice would not save the period of limitation. On the above said grounds, the learned Subordinate Judge has rejected the plaint. Challenging the same, the present revision petition has been filed by the plaintiff.

4. According to the learned Counsel appearing for the plaintiff, when the defendant had repaid a sum of Rs.10,00,000/- in September and October 2018, the same would extend the period of limitation. Whether the suit claim is genuine or not has to be decided only during trial.

5. Per contra, the learned Counsel appearing for the respondent / defendant had contended that they have received only a sum of Rs.10,00,000/- as loan and not Rs.15,00,000/-. The said Rs.10,00,000/- has also been repaid. Therefore, there is no cause of action for the present suit. That apart, the pro note is dated 23.01.2014 and the suit



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having been filed in the year 2019 is clearly barred by limitation.

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6. I have carefully considered the submissions made on either side and perused the materials available on record.

7. A perusal of the plaint indicates that the defendant is alleged to have executed a pro note in favour of the plaintiff on 23.01.2014 for a sum of Rs.15,00,000/- to be repaid with interest at the rate of 18%. The plaintiff has alleged that, out of this Rs.15,00,000/-, a sum of Rs.10,00,000/- has been repaid by the defendant through cheque on 25.09.2018 and 01.10.2018 and thereby, extending the period of limitation. As per Section 25(3) of the Contract Act, the debtor may even agree to pay a time barred debt and such an agreement would be valid in the eye of law. The defendant is alleged to have repaid the loan in September and October 2010. Therefore, it is a subject matter of trial whether the defendant had agreed to repay a time barred debt and whether the defendant had actually repaid the loan amount arising out of the pro note, dated 23.01.2014 through cheques in September 2018 and



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October 2018 or not. Therefore, in such circumstances, the Trial Court was not right in rejecting the plaint on the ground that, the defendant had denied the liability in the reply notice. In such circumstances, the order of the Trial Court is set aside and the defendant is entitled to raise all the defences including the plea of limitation.

8. With the above said observation, this Civil Revision Petition stands allowed. The learned Principal Subordinate Judge, Thiruchirapalli is directed to number the suit, if it is otherwise in order and proceed in accordance with law after giving due opportunity to both the parties. There shall be no order as to costs.

11.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

Note: Registry is directed to return the original plaint after getting acknowledgement.



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- 1.The Principal Subordinate Judge,
Trichy.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Order made in
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