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C.R.P.(PD).No. 550 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.03.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No. 550 of 2025

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C.M.P.Nos. 3159 & 3160 of 2025

K.J.Sridhar

...Petitioner

Vs.

1.M.A.Balasubramanian

2.T.Thangakumar

...Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order passed by the XVII Additional City Civil Court, Chennai in IA.No.5 of 2024 in OS.No.4110 of 2020 dated 30.01.2025.



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For Petitioner : Mr. B.Thilak Narayanan

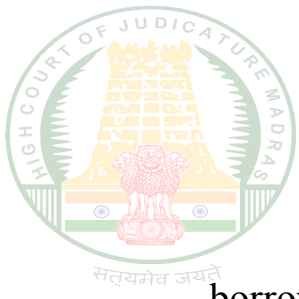
For Respondent 1 : Mr. C.Shankar

For Respondent 2 : No Appearance.

ORDER

Challenging the order passed by the XVII Additional City Civil Court, Chennai in IA.No.5 of 2024 in OS.No.4110 of 2020 in and by which the plaintiff's request for reopening the evidence has been allowed, the 1st defendant is before this Court. The short facts which has resulted in the filing of the civil revision petition is herein below set out.

2. The plaintiff had filed a suit for recovery of money against the defendant. The 1st defendant alone has been contesting the matter and the 2nd defendant has not participated in the proceedings.



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3. The case of the plaintiff is that the defendants had jointly borrowed a sum of Rs.23,00,000/- from the plaintiff at his residence and on the very same day the defendants had jointly executed a pro note for a sum of Rs.23,00,000/-. The defendants failed to pay interest and despite demand had not come forward to repay the said sum. Therefore, the plaintiff has come forward with the suit in question.

4. The 1st defendant had filed a written statement inter alia denying the very cause of action of the borrowal and execution of the pro note. The 1st defendant would submit that he had inducted the 2nd defendant as a tenant in a flat on a monthly rental of Rs.3,000/- which has been increased periodically, last of which was in the year 2017. The 1st defendant would submit that he had instructed the 2nd defendant to deposit the rent into the 1st defendant's account and the same was being done so. In case any of the 1st defendant's family members went to Madurai, he would direct the 2nd defendant to send the rent through them. On some occasion when the 1st defendant went to Madurai he would collect the rents by himself.



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5. The 1st defendant would submit that after 2017, the 2nd defendant stopped paying rents and when demanded he gave evasive answers. The 1st defendant's attempts to contact him also went in vein. The premises was also continuously locked. Thereafter, the petitioner issued a legal notice dated 29.01.2018, which was returned unserved. Since the 2nd defendant could not be traced the 1st defendant had made a police complaint on 15.02.2018 and in their presence the possession of the property was taken up by the 1st defendant.

6. It was thereafter on 06.09.2018 that the 1st defendant had come to know from the neighbours that the Court order has been posted on the flat. The 1st defendant immediately came to chennai on 10.09.2018 and he came to learn about the suit and the ex parte decree obtained by the plaintiff in collusion with the 2nd defendant.

7. The 1st defendant would further contend that the plaintiff's son B.Jayakumar and the 2nd defendant had business associations and



mutual financial transaction. Therefore, the 1st defendant denied the liability. This written statement was filed on 23.09.2021.

8. After the examination of DW1 the plaintiff has come forward with an application in IA.No.5 of 2024 for reopening the plaintiff's side evidence which was closed on 25.06.2024 for the sole purpose of examining the plaintiff's son who is the witness to the alleged pro note. The plaintiff in his affidavit would submit that his son had a busy schedule and it was not possible for him to come over and adduce evidence. Now he has returned to chennai and would be available for a month. Therefore, he had taken out this application.

9. The said application was very strongly objected to by the 1st defendant who would contend that the plaintiff's son who is now sought to be examined as PW2 was available through out in the Court during the chief and cross examination of the parties. The 1st defendant would submit that despite giving several opportunities after the examination of PW1 on 29.04.2004 the matter was adjourned twice for further



evidence on the side of the plaintiff on 12.06.2024 and 20.06.2024.

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10. Thereafter, the matter was posted for the defendants side evidence and the same was concluded on 09.09.2024. He would further submit that during the cross examination of the 1st defendant the plaintiff's son was assisting the counsel. Therefore, he would seek for dismissal of the petition in question.

11. The learned XVII Additional City Civil Judge, Chennai by order dated 30.01.2025 was pleased to allow the application on cost of Rs.2,000/-.

12. Aggrieved by which the 1st defendant is before this court.

13. Heard the learned counsels and perused the records.

14. A perusal of the impugned order clearly shows that the



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learned Judge has not addressed the objection of the 1st defendant regarding the presence of the witness during the evidence on the side of the plaintiff and during the cross examination of DW1 and the fact that he was instructing the counsel while cross examination was going on.

15. The reason that has been given for filing the application belatedly is that the witnesses namely PW2 was not in town. However, the fact that he was present in the Court during the evidence clearly shows that the statement made in the affidavit is absolutely false. Once that reason goes there is no other reason given on the side of the plaintiff as to why it had taken them so long to examine PW2.

16. The 1st defendant in his written statement stated that he has not signed pro note and that the pro note is a rank forgery. The plaintiff not even given the name of PW2 in the list of witness. Under the provisions of Order XVI Rule 1 within 15 days of the issues being framed, the parties are directed to provide the list of witnesses whom they propose to call either to give evidence or to produce documents.



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This exercise has not been done by the plaintiff. The fact that the proposed witness was present throughout the examination of PW1 and PW2 and his assisting the counsel for the plaintiff has not been denied and therefore the present attempt to examine him is only to fill up the lacuna. The application is also highly belated. The Trial Court has mechanically allowed the application with cost.

17. For the reasons set out above, the CRP is allowed. Consequently, the connected miscellaneous petitions are closed. No costs.

07.03.2025

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The XVII Additional City Civil Court,
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P.T. ASHA, J.



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