

C.R.P (PD) No. 2947 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2025

CORAM

THE HONOURABLE MS. JUSTICE P.T. ASHA

C.R.P (PD) No.2947 of 2023

and

C.M.P.No.18202 of 2023

1. K.Tamilselvi

2. K.Nithya

3. K.Goutam

... Petitioners

VS.

M. Loganathan

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 21.06.2023 made in IA.No.1 of 2022 in OS.No.166 of 2022 on the file of the Principal District Court, Salem.



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For Petitioners : Mr. R.Marudhachalamurthy

For Respondent : Mr. R.Sethuvarayan.

ORDER

Challenging the dismissal of their application seeking to strike them off from the array of parties, the defendants 2 to 4 are the petitioners before this Court. The brief facts are as follows.

2. The respondent herein had filed the suit OS.No.166 of 2022 on the file of the Principal District Court, Salem seeking recovery of money based on a pro notes dated 10.03.2019.

3. It is the case of the plaintiff that he is a practicing Advocate at Salem. That the defendants were jointly carrying on rigging operation in the name and style of Viniyaka Rig Drillers and for the purpose of the business they had approached the plaintiff with a request to give a



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loan on 01.03.2018 to the tune of Rs.1,00,00,000/-.

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4. On 10.03.2019 a sum of Rs.1,00,00,000/- had been paid by the plaintiff to the defendants. The 1st defendant executed two pro notes for a sum of Rs.50,00,000/- each, promising to repay the same at an interest of 12% per month. From the date of the borrowal a sum of Rs.24,00,000/- was paid towards interest for 24 months for which acknowledgment was given. Thereafter, the amounts not paid and despite demands defendants not repaid the said amount. Therefore, the respondent had come forward with the above suit.

5. The 1st defendant had filed a written statement inter alia contending that the plaintiff had only given a loan of Rs.20,00,000/- for which he had obtained blank pro note. A sum of Rs.24,00,000/- was repaid by him on 04.05.2021. Separate receipts for the sum of Rs.24,00,000/- had been given.



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6. When the 1st defendant requested the return of blank pro notes, the plaintiff had informed that it had been misplaced and he would return the same when it is traced. The 1st defendant would submit that these pro notes have now been misused. He would deny the averments contained in the plaint that the borrowal is for commercial purpose and that all the defendants are liable to repay the same.

7. Simultaneously the defendants 2 to 4 filed IA.No.1 of 2022 under Order I Rule 10 (2) of the CPC to strike out / delete the defendants 2 to 4 as they are neither necessary nor proper parties to the proceedings.

8. In the affidavit filed in support of the said application, the defendants would submit that allegations that the amounts were borrowed for the purpose of Viniyaka Rig Drillers is absolutely false. The defendants 2 to 4 are no way connected with the borrowal. The pro notes itself have not been signed by defendants 2 to 4 and it does



not contain any statement that the money is borrowed for the purpose of Viniyaka Rig Drillers or for the Hindu Undivided Family.

9. They would submit that no case whatsoever has been made against defendants 2 to 4. The signature of the 1st defendant alone is found in the pro notes and the 1st defendant's contention is that only a sum of Rs.20,00,000/- for personal expenses had been borrowed and the said sum had been repaid with interest as a sum of Rs.24,00,000/-. They would therefore submit that they are unnecessary to the proceedings.

10. The plaintiff filed a counter inter alia denying that the borrowal was only for the business purpose and Viniyaka Rig Drillers is a family business of the defendants. He would contend that the defendants are collectively and jointly liable to repay the loan taken by them. He therefore sought for the dismissal of the application.



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11. The learned Principal District Judge, Salem by order dated 21.06.2023 was pleased to dismiss the application. The learned Trial Judge observed that a perusal of the plaint would indicate that all the defendants had jointly approached the plaintiff for a loan and pro notes had been prepared and executed in their presence. That apart, the written statement had been filed by 1st defendant and adopted by defendants 2 to 4. Whether these defendants are necessary or proper parties can be decided only after a Trial and dismissed the same.

12. Challenging the same the petitioners are before this Court.

13. Heard the learned counsels and perused the records.

14. A perusal of the pro notes would clearly indicate that the same were executed by the 1st defendant in his personal capacity, nowhere there is a reference to the business or to the Hindu Undivided Family. The defendants 2 to 4 are not parties to the said promissory



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notes.

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15. That apart, except for the plaint averments there is nothing filed on the side of the plaintiff to show that the business is a joint Hindu Undivided Family business. Since defendants 2 to 4 are noway involved in the borrowal or the execution of pro notes they are unnecessary parties to the suit.

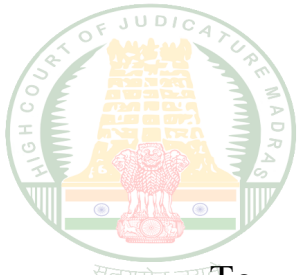
16. Therefore, the civil revision petition is allowed. The order dated 21.06.2023 made in IA.No.1 of 2022 in OS.No.166 of 2022, on the file of the Principal District Court, Salem is set aside. The defendants 2 to 4 are deleted from the array of parties. Consequently, the connected miscellaneous petition is closed. No costs.

02.04.2025

Index: Yes/No

Internet: yes/No

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To
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The Principal District Court,
Salem.

P.T. ASHA.J



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