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CRP (NPD)No. 3262 of 2017



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-08-2025

CORAM

THE HONOURABLE MR JUSTICE P. VELMURUGAN

CRP (NPD)No. 3262 of 2017

S.Prabakaran

S/o.Late.Srinivasan,

No.4/4, 2nd Cross Muniswamyappa

Road,Pns Layout, Subbanapalya,

Maruthi Sevanagar, Bangalore-33

Petitioner

Vs

Thiru.A.R.Govardhan

S/o.P.C.Balakrishnan,189,Habibullah

Road,T.Nagar,Chennai-17

Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C. to set aside the Fair and Decretal in IA.No.11252/2011 in O.S.No.14281/2010 dated 23/01/2012 passed by the 1st Additional Judge, City civil Court, Chennai and thereby allow the above CRP.

For Petitioner : Mr.C.Prabakaran

For Respondent : Mr.D.Rajagopal

**ORDER**

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The Civil Revision Petition has been filed by the petitioner challenging the order passed by the learned I Additional Judge, City Civil Court, Chennai in I.A.No.11252 of 2011 in O.S.No.14281 of 2010, dated 23.01.2012.

2. The case of the petitioner/defendant is that the respondent filed a suit against the petitioner in O.S.No.14281 of 2010 on the file of the City Civil Court, Chennai, for recovery of a sum of Rs.6,50,000/- and subsequent interest, invoking Order 37 Rules 1 & 2 of CPC. Pending suit, the petitioner filed an application in I.A.No.11252 of 2011 invoking Order XXXVII Rule 3 of CPC to grant leave to defend the case in O.S.No.14281 of 2010. The said petition was dismissed by the trial Court by order dated 23.01.2012. Challenging the same, the defendant has filed the present revision petition invoking Section 115 CPC.

3.The learned counsel for the petitioner/defendant submitted that though the petitioner has got triable issues, the trial court failed to consider the scope and object of Order XXXVII Rule 3 (5) CPC and dismissed the petition filed by



the petitioner on the ground that there was no triable issues. Therefore, the petitioner is before this Court.

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4. The learned counsel for the respondent/plaintiff submitted that present revision petition filed against the order passed by the trial Court under Order 37 Rule 3(5), is not maintainable, since the same has been filed under Article 227 of Constitution of India. He also placed reliance on a judgment of this Court in CRP (NDP) No.1100 of 2019 dated 03.02.2022 , wherein, this Court has held that a similar revision petition filed under Article 227 of the Constitution of India was dismissed by this Court following the judgment of the Hon'ble Supreme Court in *Ajay Bansal Vs. Anup Mehta and Others*, reported in **2007 (2) SCC 275**. Since the present revision petition is also filed under Article 227 of the Constitution of India, the same is not maintainable.

5. Heard both sides and perused the materials available on record.

6. Admittedly, the respondent/plaintiff has filed the suit in O.S.No.14281 of 2010 on the file of the City Civil Court, Chennai for recovery of money. Pending suit, the petitioner/defendant filed a petition in I.A.No.11252 of 2011 invoking Order XXXVII Rule 3 (5) CPC to grant leave to defend the case in



O.S.No.14281 of 2010. The said petition was dismissed by the trial Court on the ground that there was no triable issues.

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7. According to the learned counsel for the petitioner/defendant, prior to the filing of the suit, the respondent/plaintiff sent a legal notice, in which he had stated about the borrowal of money of Rs.1 lakh only and subsequently, he created a promissory note and filed the suit for recovery of money of Rs.6,50,000/- and that the execution of suit promissory note itself is doubtful, which itself creates triable issues.

8. However, a reading of the affidavit filed before the Court below in I.A.No.11252 of 2011 shows that the petitioner/defendant has not stated the date of receipt of summons and the date on which he filed the said application. It is seen from the records that the suit in O.S.No.14281 of 2010 was filed in the year 2010, whereas, the petitioner filed the said application in I.A.No.11252 of 2011 only in the year 2011. Therefore, it is the duty of the petitioner to prove that within 10 days from the date of service of summons, he filed the application under Order XXXVII Rule 3 (5) CPC. In the absence of the same, the petitioner is not entitled to the relief sought for. Therefore, the trial Court



rightly dismissed the petition and there is no merit in this revision petition.

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8. Though the citation referred to by the learned counsel for the respondent/plaintiff is not applicable to the present case on hand, as the issue relating to maintainability had been decided under Article 227 of Constitution of India, whereas, in this case, the petitioner has filed the present revision petition under Section 115 of CPC, however, the petitioner has not established that he filed the application within 10 days from the date of service of summons. Therefore, the petitioner is not entitled to the relief sought for.

9. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs.

18-08-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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The 1st Additional Judge,
City civil Court, Chennai



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P.VELMURUGAN J.

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