



WEB COPY

A No. 5884 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-02-2025

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THE HONOURABLE MR JUSTICE A.A.NAKKIRAN

A No. 5884 of 2024

in

CS No. 610 of 2016

N.P.Abdulla
Baithul Arifeen, PT Road, Vadakara 1 Calicut Dt Kerala and 5
Others

Applicant(s)

Vs

T.Abdul Jabbar
No.5 Vepery Church Road, Vepery, Chennai 7

Respondent(s)

CS No. 610 of 2016

N.P.Abdulla
Baithul Arifeen, PT Road, Vadakara 1 Calicut Dt Kerala and 5
Others

Plaintiff(s)

Vs

T.Abdul Jabbar
No.5 Vepery Church Road, Vepery, Chennai 7

Defendant(s)

A No. 5884 of 2024

For Applicant(s):

M/s.G.Veerapathiran
M.Surfudeen Ali Ahemed

For Respondent(s):

Mr.N.Santosh Nagarajan



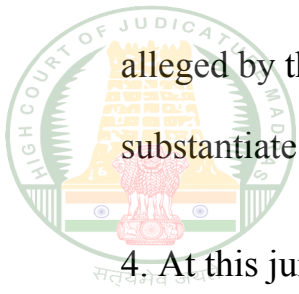
ORDER

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This application is filed by the applicants/plaintiffs to direct the respondent/defendant to examine himself in the beginning as per the order XVIII (1) of CPC and after his examination, the applicants/plaintiffs may be permitted to examine themselves.

2. The learned counsel for the applicants/plaintiffs submitted that the suit has been filed for recovery of a sum of Rs.2,99,42,500/- with future interest at the rate of 18% per annum from the date of plaint till the date of realization on the principal amount of Rs.1,95,50,000/-. In the written statement filed by the respondent/defendant, he admitted the borrowing from the applicants/plaintiffs and pleads discharge stating that they have paid the said amount. Hence, it is very clear that the respondent/defendant is claiming only discharge and therefore, the burden is only on him to prove that he has paid the said amount. As per the provision of Order XVIII(1), if the claim is admitted by the respondent/defendant and pleads discharge, then the right to begin is only with the respondent/defendant and not by the plaintiffs. Hence, he prays to allow this application.

3. The learned counsel for the respondent/defendant submitted that the applicants are wholly misunderstood the object of the provision of Order XVIII of Rule (1) of CPC. The applicants filed the suit for recovery of money and hence they ought to have adduce the evidence to prove their claim. The respondent has never admitted the facts



alleged by the plaintiffs and therefore, the applicants have to let in evidence to substantiate their claim.

4. At this juncture, it is pertinent to state that the initial burden of proof would be on the plaintiffs in view of Section 101 (104 of BSA) of the Evidence Act and when the person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. The element rule in Section 101 is inflexible and in terms of Section 102 (105 of BSA) the initial onus is always on the plaintiff and if he discharges that onus and make out a case which entitle him to a relief, the onus shift to the defendant to prove those circumstances, if any which would dis entitled the plaintiffs to the same. Hence, he prays for dismissal of the present application.

5. This Court heard both sides and also perused the documents available on record.

6. In the written statement filed by the respondent/defendant, he has stated that he had borrowed funds from various persons including the plaintiff. It seems that it is not a clear admission made by the defendants. Under such circumstances, the plaintiff has to prove his case. Hence this Court is not inclined to allow this application and the same is liable to be dismissed.

7. Accordingly, this application is dismissed.

25-02-2025

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A No. 5884 of 2024

To

1. T.Abdul Jabbar

No.5 Vepery Church Road, Vepery, Chennai 7



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