



C.R.P.No.337 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.337 of 2025

and

C.M.P.No.2128 of 2025

M.Murugan

... Petitioner

Vs.

Thooyamani

... Respondent

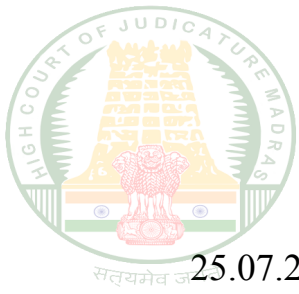
PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, against the fair and decretal order, dated 25.07.2024, in I.A.No.6 of 2024 in O.S.No.8437 of 2022 on the file of the XVII Additional City Civil Court, Chennai.

For Petitioner : Mr.K.Sasindran

For Respondent : Mr.T.Srikrishna Bhagavat

ORDER

Challenging the order passed by the XVII Additional Judge, City Civil Court, Chennai, in I.A.No.6 of 2024 in O.S.No.8437 of 2022, dated



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25.07.2024, refusing to grant leave to defend the suit, the present Civil

Revision Petition is filed.

2.Originally, the suit has been filed by the respondent for recovery of a sum of Rs.24,60,000/-. The plaint proceeded as if the plaintiff/respondent and defendant/petitioner are known to each other and there was a friendly relationship between the plaintiff and the defendant. The defendant approached the plaintiff for financial assistance and the plaintiff lent money to the tune of Rs.21,00,000/- on various dates ranging from 03.05.2021 to 19.07.2021 and executed seven promissory notes. Since the defendant failed to repay the amount, the suit has been filed.

3.An application in I.A.No.6 of 2024 was taken out by the petitioner/defendant denying the entire transaction. According to the defendant, the plaintiff is none other than his nephew. Further, there were business transactions between them in 2015. The defendant received a sum of Rs.15,00,000/- and paid that amount on various dates ranging from 02.03.2017 to 12.07.2017. According to him, he should be granted leave to defend the suit.



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4. Whereas, in the counter affidavit filed by the plaintiff in the said application, a stand is taken by the plaintiff that the amount credited in his account is in respect of a different transaction. It is the contention of the plaintiff that the defendant has taken a different stand in the criminal case in C.C.No.479 of 2023.

5. The trial Court considering the materials, dismissed the application and refused to grant leave to defend the suit. Hence, the defendant has filed the present revision.

6. Heard the learned counsel on either side and perused the entire materials available on record.

7. Learned counsel appearing for the petitioner/defendant would mainly submit that he has a valid defence to contest the suit. It is his contention that the plaint proceeds as if the parties are only third parties, whereas, the plaintiff is none other than the nephew of the defendant.



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Further, it is his contention that the amount has been repaid to the Bank account of the plaintiff and the plaintiff has also admitted the receipt of the amount in his Bank account, whereas, he sets up a different plea as if the said credit is in respect of a different transaction.

8.However, the learned counsel for the respondent would submit that the contention of the defendant that he discharged the loan, is an afterthought and the defendant has taken a different stand in C.C.No.479 of 2023 and therefore, there is no valid defence to contest the suit. Further, it is his contention that the execution of the promissory notes after the alleged payments clearly shows that the defence set up by the defendant is not *bona fide* and is only sham and nominal. Hence, the learned counsel for the respondent opposed the application.

9.The point that arise for consideration is whether the trial Court is right in dismissing the application for grant of leave to defend the suit.

10.The suit proceeds as if the defendant has borrowed money to the tune of Rs.21,00,000/- and has executed promissory notes on various dates



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ranging from 03.05.2021 to 19.07.2021. However, it is the specific contention of the defendant that he has borrowed a sum of Rs.15,00,000/- in the year 2017 and the plaintiff is none other than the nephew of the defendant, whereas the plaint proceeded as if there is only a friendly relationship between the parties. Further, it is the specific case of the defendant that he has discharged the loan by making payments to the plaintiff's Bank account. In the counter affidavit filed by the plaintiff, he has not disputed the receipt of the amounts. However, it is the contention of the plaintiff that those payments are in respect of a different transaction. As there are some transactions between the parties, as evidenced from the Bank account, this Court is of the view that the issue whether the payments are towards discharge of the loan or in respect of different transaction, has to be tested only in the trial. Though it is the contention of the plaintiff that the defendant cannot take a different stand since the defendant has executed the promissory notes subsequent to those payments, the specific stand of the defendant is that, while receiving the amount, he has delivered blank promissory notes to the plaintiff.



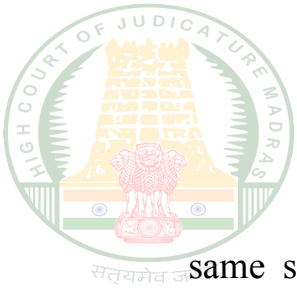
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11.Be that as it may, as there were some transactions between the parties, as evidenced from the Bank account, the question as to whether those transactions are towards discharge of the amount borrowed by the defendant or in respect of different transaction, has to be decided only in trial. From the facts established, this Court is of the view that the defence does not appear to be sham or nominal to delay the suit. Therefore, one more opportunity has to be given to the defendant to contest the suit.

12.Accordingly, this Civil Revision Petition is allowed and the impugned order is set aside, and consequently, the application in I.A.No.6 of 2024 in O.S.No.8437 of 2022, on the file of the XVII Additional City Civil Court, Chennai, is ordered. The defendant shall file his written statement within a period of one month from the date of receipt of a copy of this order. Thereafter, the trial Court shall proceed with the trial and dispose of the suit within a period of four months.

13.Now, it is stated before this Court that the trial Court has already ordered attachment over the immovable properties of the defendant. The



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same shall continue subject to the outcome of the litigation. No costs.

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Consequently, connected miscellaneous petition is closed.

02.06.2025

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Internet : Yes

Index : Yes / No

Speaking order / Nonspeaking order

Neutral Citation : Yes / No

To

The XVII Additional Judge,
City Civil Court,
Chennai.



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N. SATHISH KUMAR, J.

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