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C.R.P.No.5276 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2025

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.5276 of 2024
and CMP.No.29487 of 2024

Arokia Delcy

.. Petitioner

Versus

A.Marlin

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 06.09.2024 passed in I.A.No.3 of 2024 in O.S.No.4681 of 2023 on the file of VII Assistant Judge, City Civil Court, Chennai, dismissing the leave to defend petition filed by the revision petitioner under Order XXXVII Rule 5 CPC and grant unconditional leave to the revision petitioner to defend the suit.

For Petitioner : Ms.Prethika JA

For Respondent : Mr.P.C.Ramesh



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ORDER

This Civil Revision Petition challenges the order passed by the learned VII Assistant Judge, City Civil Court, Chennai in I.A.No.3 of 2024 in O.S.No.4681 of 2023 dated 06.09.2024.

2.O.S.No.4681 of 2023 is a suit for recovery of a sum of Rs.3,00,000/-. It is an under chapter suit. According to the plaintiff, the defendant is well-known to her and belongs to the same Church. The defendant had approached the plaintiff for financial assistance for some urgent financial needs. Therefore, the plaintiff, with great difficulty, had arranged a sum of Rs.3,00,000/- and paid the same to the defendant. The defendant executed a promissory note agreeing to repay the amount on demand. Thereafter, no payment was made. Each time the plaintiff approached the defendant for repayment of the loan, she gave evasive replies. As the principal and the interest bloomed to Rs.4,12,500/- and the plaintiff could not get any assurance for the repayment, she presented the under chapter suit.



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3.Summons was served on the defendant. Notice of appearance was issued. Thereafter, an application was taken out for leave to defend. This application was numbered as I.A.No.3 of 2024.

4.In the leave to defend application, the plea of the defendant was that she came to know that one Ravikumar @ Jagadish is arranging for “allotment of houses” from the Tamil Nadu Urban Habitat Development Board. On being paid some amount, the said Ravikumar @ Jagadish would arrange for allotments for an amount lesser than what is actually payable. She pleaded that she paid an advance of Rs.1,50,000/- towards such out of turn allotment. However, the allotment did not fructify. She pleaded that she had issued a blank cheque and promissory note to her sister Elbina. This document, somehow found its way, into the hands of the plaintiff. She pleaded that it is on the basis of this document that the suit has come to be filed.



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5.This application for leave to defend was resisted by the plaintiff.

The plaintiff filed a detailed counter pointing out that the defendant did not deny her signatures on the promissory note. Hence, she sought for dismissal. The plea made by the plaintiff found favour with the learned Trial Judge, who dismissed the leave to defend application. Hence, this revision.

6.I heard Ms.Prethika JA and Mr.P.C.Ramesh for the respective parties.

7.Ms.Prethika JA points out that her specific plea is that a blank promissory note was given to her sister, and this document had somehow found its way into the hands of the plaintiff. She states that the relationship between the plaintiff and the defendant is that of being members of the same Church. She had given the document to her sister in order to procure an out of the normal allotment of the house property. Hence, she pleads that she has made out for grant of unconditional leave.



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8.Per contra, Mr.P.C.Ramesh points out that the signature of the defendant in the promissory note has not been denied. He adds that the defendant did not issue any reply, even, when the suit notice was issued by the plaintiff on 30.06.2023. He pleads that it was with great difficulty including pledging of her jewels, the plaintiffs raised the amounts to advance the loan sought for by the defendant. He states that the order of the learned Trial Judge need not be interfered with as it has rendered justice between the parties.

9.I have carefully considered the submissions of both sides.

10.The principles relating to grant of leave has been settled by the Supreme Court in ***IDBI Trusteeship Services Limited vs. Hubtown limited 2017 (1) SCC 568***. The Hon'ble Mr.Justice R.F.Nariman had observed that in case the defence is moonshine or totally improbable, then the defendant is not entitled to leave. He pointed out that in case the defence is one of sterling in character, then the defendant is entitled to unconditional leave. If



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the defence raised, falls within these two categories, then a Court is entitled to grant leave to defend but after imposing conditions.

11.The facts setforth above make it clear that the defence is not one of sterling in character. The defendant has admitted the signature in the promissory note but gives an explanation that this promissory note had been handed over to her sister, and that utilizing the same, the plaintiff has presented the suit. If that be the situation, it only gives raise to a probable defence.

12.By applying the principles in *IDBI* case to the facts of the present case, I am inclined to set aside the order passed by the learned VII Assistant Judge, City Civil Court, Chennai which is impugned before me. Leave to defend is granted on the condition that the plaintiff will deposit 50% of the suit claim, to the credit of O.S.No.4681 of 2023, within a period of **four weeks** from the date of receipt of a copy of this order. In case the amount is



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not deposited, the leave to defend application will stand dismissed without further notice to the Court.

13. Accordingly, the civil revision petition is allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

08.01.2025

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
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V.LAKSHMINARAYANAN, J.

cse

To

The VII Assistant Judge,
City Civil Court,
Chennai.

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