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C.R.P.No.5225 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.5225 of 2024

A.Veeramani

...

Petitioner

Vs.

1.Ravi Kandasamy

2.Dr.Suresh

3.Dr.Tamil Selvi

4.Shanmuha priya

...

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the docket order dated 10.12.2024 passed in O.P.Sr.No.12704 of 2024 on the file of the IX Assistant City Civil Judge cum Special Judge for Tamil Nadu Prohibition of charging Exorbitant Interest Act, 2003, Chennai and set aside the same and number the OP.

For Petitioner

: Mr.Om Sai Ram

ORDER

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This civil revision petition challenges the order passed by the learned IX Assistant City Civil Judge, Chennai, in O.P.Sr.No.12704 of 2024, dated 10.12.2024.

2.O.P.SR.No.12704 of 2024 has been presented invoking Sections 5 & 6 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. The claim of the petitioner is that he had taken a loan of Rs.89,50,000/- from the respondents between 2021 and 2022. Towards security for the said amount, documents had been entered into which had been titled as “partnership deed” on 30.09.2021, 09.06.2022 & 30.11.2022. He pleaded that though the documents are titled, it is only a loan transaction that had been entered into between the parties.

3.He alleges that on 17.11.2024, the respondents threatened the petitioner with dire consequences including a demand for execution of sale deed of the immovable property standing in his name. He alleges that he has paid a sum of Rs.1,71,60,000/- towards interest and principal to the



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respondents through his banker to the respondents' bank accounts. As the harassment continues, he came forward with the said petition.

4. When the matter was taken up for numbering, the learned IX Assistant City Civil Judge held that the transaction is an investment and a profit sharing one and it is titled as deed of partnership. He had taken a view that by virtue of a loan agreement being designed as a partnership agreement, the provisions of Section 2 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act is not established. He further held that the place of execution of the deed should be the place for presentation of the petition and not the place where the bank of the petitioner is situated. Consequently, he returned the petition on 10.12.2024. Challenging the same, the present civil revision petition.

5. I heard Mr. Om Sai Ram for the civil revision petitioner. Mr. Om Sai Ram invited my attention to the Clause 7 of the deed styled as partnership



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deed, dated 09.06.2024 and urged that though states fixed profit sharing, as the liability to pay the amount commenced from 10.06.2022, it should only be treated as a loan agreement. He further points out that the agreement had been entered into at Chennai and therefore, the City Civil Court at Chennai possesses the necessary jurisdiction to try the proceedings.

6.I have carefully considered the submissions of Mr.Sai Ram.

7.For the purpose of a partnership to exist, under Section 6 of the Partnership Act, the Court has to take into consideration, “*the real relationship between the parties together with all the relevant facts*”. Explanations 1 & 2 appended to Section 6 makes it clear that the mere sharing of profits or gross returns does not by itself make a person a partner. It also points out that receipt of a share of profits of a business or of a payment contingent upon the earning of profits also does not make a person a partner. The Section further points out that receipt of a share by a lender of money to persons engaged or about to engage in any business also does not make the receiver, a partner with the persons, carrying on the business.



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8.It is settled that for the mere fact that parties called themselves as partners, a partnership cannot said to exist. Partnership has to be pleaded and the essential requirements of Section 4 of the Act has to be proved. Partnership cannot be concluded on the basis of sharing of profits alone. A creditor could supervise the conduct of a debtor's business with an agreement that he will be paid out of the profits of the business. That will not make the former a partner of the latter. See, *Mohammed Musa Sahib (Died) and others vs. N.K.Mohammed Ghouse Sahib and another* reported in *AIR 1959 Mad 379*. When it appears from the facts presented before the Court during the course of trial, if any one party does nothing more and advance money to the other, which has to be repaid along with interest in the share of the profits, they cannot be treated as partners. The relationship between such partners is only as a debtor and creditor. Further, in terms of Section 2 (6), the word loan is not a restricted meaning, but it means an advance of money for Daily Vatti, Hourly Vatti, Kandhu Vatti, Meter Vatti or Thandal.



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9.Under Section 7 (1) of the Money Lenders Act, 1957, no money lender shall charge interest at the rate exceeding the rate that has been fixed by the Government. The Government of Tamil Nadu has fixed the rate for mortgage loan at 9% and for unsecured loan at 12%. Whether the relationship is the one of partnership or whether it is a loan transaction or whether the payments that have been made in terms of clause Nos.7 to 9 of the partnership deed, are all facts which require evidence.

10.This Court in *Selvaraj Vs.Koodankulam Nuclear Plant India Limited*, (2021) 3 LW 677 held that at the time of numbering a petition, matters which require evidence to be recorded and findings given thereon, should not be agitated at that stage. This Court further had held that it is not the duty of the Trial Court to don on itself the role of the respondents and ask queries which have to be appropriately addressed after the numbering and after the parties have let on their respective pleadings and evidence .



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11.In the light of the above discussions, I am not in a position to sustain the return made by the learned Trial Judge.

12.The learned Trial Judge shall number the O.P.Sr.No.12704 of 2024. It is always open to the respondents to plead before the Court that what has been entered into is in fact a partnership agreement and not a loan agreement as alleged by the petitioner.

13.The civil revision petition is ordered. No costs.

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Internet: Yes
Index: Yes/No
Speaking/Non speaking order
NCC: Yes/No

02.01.2025

V.LAKSHMINARAYANAN,J.

Sli

To:
The IX Assistant City Civil Judge cum
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Special Judge for Tamil Nadu Prohibition
of charging Exorbitant Interest Act, 2003,
Chennai.

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