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CRP No.5401 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-11-2025

CORAM

THE HONOURABLE MR.JUSTICE S. SOUNTHAR

**CRP No. 5401 of 2025 and
CMP No.27202 of 2025**

1. M.R.Mohan Ratha,
S/o. Late. M.R.Ratha, E3, Third Floor,
Alsa Garden Grove, No.36 and 37,
Dr. B.N.Road, T.Nagar,
Chennai - 600017.

Petitioner(s)

Vs

M/s.Potential Constructions,
Rep. by its Partner, S.R. Prakash Babu,
13/6, 3rd Floor, Thanikachalam Street,
T.Nagar, Chennai - 600017.

Respondent(s)

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order dated 05.06.2025 in I.A.No.2/2024 in O.S.No.2431/24 passed by the XIX Additional Judge, City Civil Court, Chennai.

For Petitioner(s): MR.Tha Sirish Chowdhry
for M/s.T.M.Naidu and Co.

ORDER

This civil revision petition is filed challenging the order passed by the Trial Court, allowing the application filed by the defendant in a summary suit, seeking



leave to defend.

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2. The petitioner/plaintiff herein filed a suit for recovery of Rs.25,00,000/- against the respondent/defendant. According to the petitioner, he paid a sum of Rs.25,00,000/- to the defendant as advance towards purchase of the property developed by the respondent/defendant. Due to misunderstanding and subsequent disputes, the present suit has been laid seeking recovery of advance amount paid by the petitioner.

3. The suit is a summary suit and hence, the respondent/defendant filed an application seeking leave to defend. In the affidavit filed in support of the application, it was averred by the defendant that the petitioner/plaintiff executed a mortgage deed in favour of Potential Investments Inc., in which, the defendant is also one of the partners of the said partnership firm. It is also stated that the amount of Rs.25,00,000/- paid by the plaintiff was towards partial discharge of the mortgage debt incurred by him and since the defendant is a partner in the above said firm, the amount has been credited into the account of the defendant in his capacity as partner. The allegation of the plaintiff, as if he paid a sum of Rs.25,00,000/- as advance for purchase of the property, developed by the defendant, was specifically denied.



4. The petitioner herein filed a counter and opposed the said petition seeking leave to defend. It was the case of the petitioner/plaintiff that the documents produced by the defendant were self serving documents and have no bearing in the suit and hence, the same could not be taken into consideration.

5. The Trial Court, after considering the rival contentions of the parties and the documents filed on behalf of both parties, came to the conclusion that there were triable issues involved in the case and granted unconditional leave to the respondent/defendant to defend the suit.

6. The learned counsel for the petitioner/plaintiff would vehemently contend that the mortgage liability incurred by the petitioner was with a firm, which is a different entity and a sum of Rs.25,00,000/- paid by the petitioner is into the individual account of the respondent/defendant and therefore, the same cannot be treated as the amount paid towards discharge of mortgage debt with the mortgagee firm, namely Potential Investment. The learned counsel for the petitioner also submitted that the mortgage deed has been executed by the petitioner in favour of one individual, viz., Prabu and therefore, there is no transaction with the Potential Investment partnership firm.



7. The respondent/defendant is one of the partners in the potential Investment Firm. It is settled law that firm is not a legal personality and it is only a collective name given to the group of individual for carrying on business. Whether the amount paid by the plaintiff into the account of the defendant was towards advance for purchase of the property developed by the defendant or it was towards discharge of mortgage debt with the Potential Investment is a matter to be decided, based on evidence, in a full fledged trial. Hence, this court is of the view that the respondent/defendant has made out a case that there are triable issues involved in the case and hence, he is entitled to unconditional leave to defend the suit .

8. The learned counsel for the petitioner/plaintiff also submitted that the mortgage was entered with one private individual, namely B.Prabu and the mortgage was not with the Potential Investment. A perusal of the mortgage deed produced before this court would indicate that the mortgagee was described as V.Prabu (Potential Investment), represented by its partner. Therefore, the said contention made by the learned counsel for the petitioner is also not acceptable to this court.

9. In view of the discussions made earlier, this court is not inclined to



interfere with the well considered order passed by the learned Trial Judge granting unconditional leave to the defendant to defend the suit.

10. Accordingly, this civil revision petition is dismissed, confirming the order passed by the learned XIX Additional Judge, City Civil Court, Chennai in I.A.No.2 of 2024 in O.S.No.2431 of 2024, dated 05.06.2025. There shall be no order as to costs. Connected miscellaneous petition is closed.

06.11. 2025

Internet: yes

Index: Yes/No

Neutral citation: Yes/No

MST

To

The XIX Additional Judge,
City Civil Court, Chennai.



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S.SOUNTHAR J.

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