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A.No.2083 of 2020
in
C.S.No.138 of 2020

MASTER

08.06.2026

ORDER

1. This application is filed by the applicant/defendant to grant unconditional leave to defend the suit in C.S No.138 of 2020.

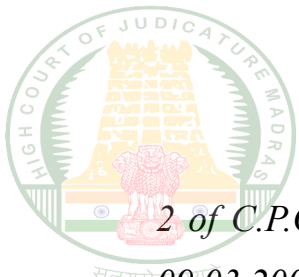
2. The above suit has been filed by the respondent/plaintiff seeking the relief to pass a Judgment and decree directing the defendant to pay a sum of Rs.2,84,24,000/- only together with interest of Rs.2,09,00,000/- @ 2% per month from the date of plaint till realization.

3. After service of summons the defendant entered his appearance and filed this application for leave to defend the suit. The respondent/plaintiff has filed his counter.

4. Heard both side counsels and materials on record perused. Written arguments filed by the respondent/plaintiff. The learned counsel for the applicant/defendant submitted that the suit has been filed on the basis of a deed of assignment obtained by the plaintiff from a third party to the suit and that the defendant never authorised third party to execute any deed of assignment. Further, it is submitted that the suit is not based on any negotiable instrument or a bond or a



contract for payment of liquidated amount executed by the defendant in favour of the plaintiff and hence the suit cannot be maintained as an under chapter suit under Order 7, Rule 1 of Madras High Court, Original side Rules r/w Order 37, Rule 1 & 2 of C.P.C. There is no privity of contract between this applicant and the respondent. The learned counsel further submitted that the suit is filed on the basis of loan agreement dated 16.03.2017 plaint Document No.1 and deed of assignment in favour of plaintiff dated 19.02.2020 plaint Document No.2. The respondent/plaintiff is not a party to the loan agreement and further in the absence of any contract authorising the plaintiff's son who is a party to the loan agreement, the deed of assignment executed in favour of plaintiff is not a valid document. Further, the counsel for the applicant argued that the suit is not maintainable without making the assignor as a necessary party. When there is no contractual obligation on the part of defendant nor any agreement in favour of the plaintiff and even according to the plaint, the plaintiff has got only right to sue, which cannot be enforced either under Order 7 of the Madras High Court Original Side Rules or under Order 37, Rule 1 & 2 of C.P.C. All the above said issue can be decided only after full trial by way of letting in evidence and not as an under chapter suit. The learned counsel for the applicant in support of his contention that institution of the present suit as summary suit on the strength of deed of assignment to which the defendant is not a party is not maintainable, relied upon the Judgment in **Standard Chartered Bank –Vs-- India FinTrade Limited** 2009(1)Mh.L.J wherein it is held that *“The transaction dated 09.03.2006 would go to show that actionable claim became to be transferred in favour of the plaintiff. If this be so, considering the Provisions Order 37, Rule 2 of C.P.C, instruction of the present suit as summary suit on the strength of deed of assignment to which the present defendants are not the party will have to be termed as suit not within the parametres of Order 37, Rule*



2 of C.P.C and hence institution of suit on the basis of deed of assignment dated 09.03.2006 and 3 bills of exchange as summary suit is not maintainable.”

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5. Yet another decision in **Alphabetics Business Machines Private Limited –Vs-- Zilla Parishad Nashik 2022 SCC online Bombay 9188** wherein it is held that *“There is no concluded contract inter se between the petitioner/plaintiff and respondent/defendant. Petitioner is claiming his right to recover the amount through third party in whose favour it is alleged that there was concluded contract. In that view of the matter it cannot be held at this stage that there is admitted debt inter se between the petitioner and the respondent. Appropriate support can be drawn from the Judgments of the Apex Court in the matter of IDBI Trusteeship Services Limited –Vs-- HubTown Limited reported in (2017) 1 SCC 568. Even if we consider that there was implied contract through 3rd party viz., PCS Industries Limited in favour of the petitioner by the respondent such a contract cannot be formed to be the basis for refusing unconditional leave to defend.”*

6. Per contra, the learned counsel for the respondent/plaintiff argued that the assignment of loan is not barred by law and is an act recognised by law and enforced by courts. Therefore, in the absence of any explicit covenant to restrict assignment in the loan agreement dated 16.03.2017, the assignment is valid. He further submitted that the defendant did not deny the execution of loan agreement and also the receipt of loan amount of Rs.2,09,00,000/- from the plaintiff's son and the rate of interest agreed thereon. Similarly, the defendant also did not deny the receipt of legal notice dated 20.02.2020 demanding the loan amount and the said notice explicitly states about the assignment deed. The learned counsel for



respondent further submitted that section 130 of the Transfer of the Property Act, 1882 recognizes the transfer of an actionable claim whether with or without consideration and in support of his contention the learned counsel for the respondent relied on various Judgments wherein it is held that the loan and monies becoming due under the loans are actionable claims, the assignment or transfer of loans and actionable claims are permitted. When an assignment or transfer of actionable claim is effected, all adjoining rights and remedies of the actionable claim also gets automatically assigned. Therefore, the transferee under the assignment deed alone is permitted to file a law suit to recovery monies due under the loan or actionable claim and the transferor is not a necessary party to the suit that the transferee is permitted to file. Therefore, the application filed by the applicant/defendant is liable to be dismissed as he had not raised any triable issues.

7. Before going into the merits of this application it would be relevant to look into the provisions of Madras High Court, Original Side Rules which deals with the subject procedure in respect of certain suits.

Order VII, Rule 1 reads as follows:

“A suit to recover a debt or a liquidated demand in money evidenced by a document, or any money payable by the defendant with or without interest, assigned on a Negotiable Instrument or on a bond or a contract for payment of liquidated amount of money evidenced by a document or on a guarantee whether the claim arises against the principle in the manner aforesaid, may, in case the



plaintiff desires to proceed herein be instituted by presenting a plaint in the form prescribed.”

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For the purposes of this Order “liquidated demand” means a demand for the amount stated or so expressed that the ascertainment of the amount is a mere matter of calculation.

Order VII, Rule 5 reads as follows;

“In any case in which the plaint and summons or in the form prescribed in this Order, the defendant shall not defend the suit unless he obtains leave to defend from the Master as herein after provided. Any default of the defendant obtaining such leave, or if he fails to defend in pursuance of such leave, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for the sum claimed in the plaint and in cases where, interest is payable either by contract or statute, interest till the passing of the decree and further interest @ 6% per annum from the date of decree to the date of payment, and such sum for cost as may be prescribed.”

8. Admittedly, the suit was filed by the plaintiff as a summary suit. The defendant entered into appearance and has filed the present application seeking leave to defend the suit. At this juncture, it is useful to look into the provision of **Order VII, Rule 6 reads as follows:**



(1) *An application for leave to defend the suit shall be made to the Master supported by such evidence by way of affidavit as the defendant desires to place before the court.*

(2) *Leave to defend may be given unconditionally or subject to such terms and the directions as the Master thinks fit.*

(3) *The Master shall, (a) if the defendant shall not appear, on proof by affidavit of service of the summons on the defendant, or (b) if leave to defend is not granted, pass a decree for the amount amount claimed and costs.*

9. This court obliges to refer the decision in ***IDBI Trusteeship Services Limited Vs Hub Town Limited CIVIL APPEAL NO.10860 of 2016 (Arising out of SLP (Civil) No.31439 of 2015)*** in Para 18 held that “18. Accordingly, the principles stated in paragraph 8 of Mechelec’s case will now stand superseded, given the amendment of O.XXXVII R.3, and the binding decision of four judges in Milkhiram’s case, as follows: *If the defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit;*

if the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend; even if the defendant raises triable issues, if a doubt is left with the trial judge about the defendant’s good faith, or the genuineness of the triable issues, the trial



judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security;

if the Defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

if the Defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith;

if any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.”

10. Keeping the above principles in mind, now this court is to decide whether the applicant/defendant has raised any bona fide, proper or plausible triable issues to allow this application to grant unconditional leave to defend.

11. The plaintiff has filed the suit for recovery of money based on a loan agreement dated 16.03.2017 executed between the defendant and the plaintiff's son. It is the case of the plaintiff that the defendant is his family friend approached him for obtaining a short term loan, since at that point of time the



funds were available only in his son Mr.Nirmaleswar's account, the loan was given to the defendant after execution of loan agreement between his son and the defendant which is the plaint Document No.1. Thereafter, the plaintiff's son executed a deed of assignment in favour of the plaintiff for the purpose to recover the debt from the defendant which is the plaint Document No.2. The contention of the defendant is that there is no privity of contract between himself and the plaintiff and since this suit is not based on any negotiable instrument or a bond or a contract for payment of liquidated amount executed by him in favour of the plaintiff and the above suit filed as an under chapter suit is not at all maintainable under law. Admittedly, the loan agreement was executed between the applicant/defendant and the plaintiff's son and the above suit is filed based on the loan agreement and the deed of assignment executed by the plaintiff's son in favour of the plaintiff to which the defendant is not a party.

12. The summary suit under Order VII, Rule (1) & (2) of Madras High Court (Original Side) Rules, r/w Order 37 of C.P.C is maintainable only when the suit is based upon a negotiable instrument or the written contract whereby the defendant has undertaken liability towards the plaintiff for a liquidated amount. In the present case, admittedly the loan agreement was executed between the defendant and the plaintiff's son and not with the plaintiff. The plaintiff claims right only through a deed of assignment by a third party and when the applicant/defendant specifically disputes the privity of contract and also disputes the authorization of such assignment. Therefore, the case of the enforceability of liability in favour of the plaintiff itself becomes disputed question requiring trial. Though sec 130 of the Transfer of Property Act, 1882 permits assignment of actionable claims, the mere existence of the assignment deed does not



automatically dis entitle the defendant from contesting the plaintiff's locus or the enforceability to the assignment of loan. Whether the assignment in favour of the plaintiff is valid and whether the plaintiff can maintain a summary suit on such deed of assignment are matters requiring evidence and trial. In view of the above discussion this court is of the opinion that in the present case on hand the defendant has raised substantial triable issues regarding maintainability of the summary suit, existence of privity of contract and enforceability of the alleged assignment deed relied on by the plaintiff to file the summary suit. The suit claim is not found directly upon any negotiable instrument or written contract executed by the defendant in favour of the plaintiff. Therefore, the defence raised by the defendant cannot be said to be illusory or sham or moonshine. Therefore, this court is satisfied that the defendant is entitled to leave to defend.

In fine, this application is allowed and unconditional leave to defend the suit is granted to the defendant. No cost.

MASTER