



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 10.12.2025

Judgment pronounced on : .01.2026

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THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S.No.957 of 2024
& CMP.No.25876 of 2024

1.Sarala
2.Aishwarya

..Appellants

Vs.

1.M.Uma
2.Shakila
3.Punitha
4.Kumar

..Respondents

Prayer: Appeal Suit filed under Section 96 of CPC, to set aside the judgment and decree made in O.S.No.5286 of 2023 dated 19.01.2024 on the file of the XXIII Additional Judge, City Civil Court, Chennai.

For Appellants : Mr.K.Premkumar

For Respondents : Mr.K.Govi Ganesan for R1
Mr.J.Elanjchezien for RR2 to 4

JUDGMENT

The defendants in a summary suit, having failed in their attempt to seek unconditional leave to defend the suit, are the appellants herein, challenging the judgment passed in the suit under Order XXXVII Rule 2 of the Code of Civil



Procedure.

2.I have heard Mr.K.Premkumar, learned counsel for the appellants, Mr.K.Govi Ganesan, learned counsel for the 1st respondent and Mr.J.Elanjchezien, learned counsel for the respondents 2 to 4.

3.The plaint in brief:

(a) The plaintiff and the defendants 1 and 2 have been friends from 2015. The defendants 1 and 2 are blood sisters and the 3rd defendant is their cousin brother. The 5th defendant is the maternal uncle of the defendants 1 and 2. The defendants represented to the plaintiff that they were running a Beauty Parlor and were in need of money for development of their business, borrowed monies on several occasions from the plaintiff, and in all, the defendants 1 and 2 have received a principal sum of Rs.12 lakhs. Initially the defendants 1 and 2 were prompt in repayment of interest at the rate of 2% per month.

(b) The 3rd defendant borrowed Rs.2,50,000/- from the plaintiff and repaid the same. In December 2022, the 1st defendant introduced the defendants 4 and 5 and requested the plaintiff to give a loan to the defendants 4 and 5. Trusting the 1st defendant, the plaintiff lent Rs.6 lakhs to the defendants 4 and 5. The plaintiff believed the representations of the 3rd defendant that she was living



in a luxurious house and her husband was doing silver article business. The plaintiff without even any security lent the money. From August 2022, the defendant failed to pay even interest on Rs.12 lakhs. Thereafter, after much pursuasion, on 25.03.2023, the defendants 1 and 2 executed a debt confirmation document, thereby admitting their liability of Rs.12 lakhs being the principal and accrued interest. Though the defendants 1 and 2 promised to repay the same within three months, excepting for payment of Rs.25,000/- on 25.06.2023, the defendants 1 and 2 have not made any further payment. The debt confirmation document was witnessed by none else than the mother and maternal uncle of the defendants 1 and 2.

(c) The plaintiff further states that the defendants 1 and 2, along with their mother, came to the plaintiff's residence on 07.08.2023 and requested further time for settlement, at which point of time, the defendants 3 and 4 trespassed into the house of the plaintiff and abused the plaintiff in filthy language and issued threats with dire consequences. The plaintiff has lodged a police complaint on 08.08.2023 and again on 09.08.2023. Joining hands with the defendants 3 and 4, with a view to cheat the plaintiff, the defendants 1 and 2 have taken a somersault and stated that they are liable to pay only Rs.6 lakhs. The police complaint was closed, directing the parties to workout their remedy in the appropriate forum. The plaintiff is therefore constrained to file the suit for



recovering a sum of Rs.13,25,000/-, together with future interest and costs.

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4.The suit was filed as a summary suit, invoking Order XXXVII of the Code of Civil Procedure. The defendants 1 and 2 therefore took out I.A.No.6 of 2023, seeking unconditional leave to defend the suit. In the said application, the defendants had stated that the plaintiff, and her husband are doing money lending business, charging exorbitant interest without any statutory license issued by the competent authority. The 2nd defendant was introduced to the plaintiff by her brother and initially, the 2nd defendant borrowed only Rs.50,000/- on 20.11.2017 and another sum of Rs.2 lakhs on 25.03.2016 for meeting her marriage expenses. At that point of time, according to the 2nd defendant, the plaintiff has taken signatures of the defendants 1 and 2 in blank Rs.20/- stamp paper, besides also taking blank cheque leaves as security. Though the defendants repaid the amounts borrowed in 2011 in full, the plaintiff refused to return the blank cheque leaves, as well as the blank stamp paper. The said blank stamp paper has now been fabricated as the debt confirmation deed. The 2nd defendant was in urgent need of money to meet her mother's medical expenses and therefore, she borrowed Rs.1,50,000/- from the plaintiff on 15.08.2018.

5.According to the 2nd defendant, she paid interest upto July 2023 and in



August 2023, when she requested the plaintiff to receive the principal amount, the plaintiff refused and to the shock and surprise of the 2nd defendant, the plaintiff claimed Rs.13,50,000/- under the debt confirmation deed. In the second week of August 2023, the defendants went to the plaintiff's residence only to enquire about the debt confirmation deed and when it was shown to the defendants, the defendants could clearly make out that blank stamp paper that has been signed by the defendants has been misused to bring about the debt confirmation deed. A false police complaint was lodged as if the defendants threatened and abused the plaintiff. The 2nd defendant has also preferred a complaint on 14.08.2023 to the Commissioner of Police, Chennai, which was forwarded to K-1, Sembiam Police Station. The parties were called for an enquiry on 31.08.2023. It is at that juncture that the suit has been filed. The debt confirmation deed has been fraudulently filled up and there are over writings which clearly evidence the fact that the stamp paper which had already been signed has been used to create the debt confirmation deed. The defendants therefore sought for unconditional leave to defend the suit.

6.Counter of the 1st respondent/plaintiff:

The 1st respondent filed a counter, stating that she and her husband were not doing money lending business and in fact, her husband is a regular practicing Advocate before the Madras High Court. The 1st defendant got



herself acquainted with the plaintiff, stating that even her husband is a lawyer practicing in Chennai and the defendants have back stabbed the plaintiff by making unscrupulous allegations against the plaintiff. The debt confirmation deed is a true document and only with a crooked mind to avoid payment, the defendants have joined hands and lodged a police complaint against the plaintiff. Even before the police authorities, the defendants 1 and 2 admitted that they are liable to pay Rs.6 lakhs and even on 14.06.2023, the 1st defendant came to the plaintiff's residence and admitted liability in her own handwriting. The mother and uncle of the defendants 1 and 2 are witnesses to the said debt confirmation deed and therefore to allege that the signed blank stamp paper has been misused to bring about the debt confirmation deed is totally unsustainable. The amount of Rs.12 lakhs has been borrowed by the defendants 1 and 2 at various periods and there were totally three transactions between the plaintiff and the defendants 1 and 2. No triable issue arise for consideration since the defendants have admitted their signatures in the debt confirmation deed.

7. Decision of the trial Court:

The trial Court finding that the defendants did not take any steps to get return of the unfilled stamp paper from the 1st respondent/plaintiff and that they have also admitted their signatures in Ex.A1, proceeded to hold that the defence put forth by the defendants is frivolous and vexatious and the defendants are not



entitled to leave to sign judgment. The leave to defend petition was thus dismissed.

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8.Arguments of the learned counsel for the appellants:

Mr.K.Premkumar, learned counsel for the appellants would invite my attention to Ex.A1, debt confirmation deed to contend that even on a casual look at the document, it is clear that the defendants had signed on the blank stamp paper and the contents have been clearly filled up above the signatures affixed by the defendants 1 and 2. He would also point out to the irregular spacing, as well as the contents of the document beginning to run aside the seal of the stamp vendor. He would therefore state that as there was no space for the contents to be written, the plaintiff has been constrained to create Ex.A1 in such a fashion.

9.It is also the contention of the learned counsel for the appellants that the suit was filed even without a pre-suit notice and there are no details with regard to how the amount of Rs.12 lakhs has become the principal amount due to the 1st respondent/plaintiff. In such circumstances, the learned counsel for the appellants contends that it was a clear case where the Court ought to have granted unconditional leave to the defendants and directed the parties to go for trial to establish their respective contentions. In support of his submissions, the

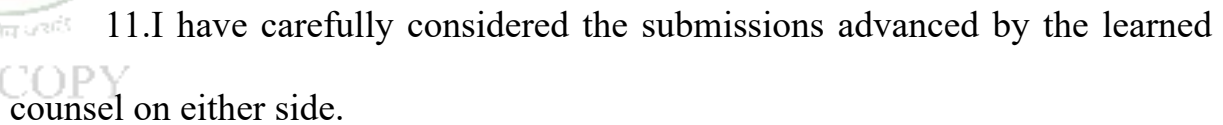


learned counsel for the appellants has relied on the following decisions:

1. *Mechalec Engineers and Manufacturers Vs. Basic Equipment Corporation, AIR 1977 Supreme Court 577.*
2. *Ajay Bansal Vs. Anup Mehta and others, (2007) 2 SCC 275.*
3. *Craft AD: Publicity and Promotion and another Vs. Next Radio Limited, CRP.(NPD).No.3222 of 2017 dated 04.03.2021.*
4. *V.Vijayakumar Vs. S.Pradeep Kumar, CRP.(NPD).No.1100 of 2017 dated 03.02.2022.*

10.Arguments of the learned counsel for the respondents:

Per contra, Mr.K.Govi Ganesan, learned counsel for the 1st respondent/plaintiff would first and foremost submit that the defendants have categorically admitted their signatures in Ex.A1 and the document is also witnessed by their own paternal uncle and mother. The trial Court has rightly found that there is absolutely defence available to the appellants and no triable issues arose for consideration, warranting leave to be granted to the defendants. He would also contend that the defendants 1 and 2 have also not disputed the fact that they have been having financial transactions with the plaintiff continuously. He would further state that the 1st defendant's husband is admittedly a practicing lawyer and it is totally unbelievable for the defendants to contend that they did not take back the signed blank stamp papers when the loans were repaid. He would therefore pray for dismissal of the appeal as the trial Court has rightly declined to grant leave to the defendants to defend the suit on merits.



13. The suit has been filed for recovery of monies allegedly due to the 1st respondent/plaintiff from the appellants/defendants 1 and 2. It is the case of the 1st respondent/plaintiff that admitting borrowings made in the past, the defendants 1 and 2 have executed a debt confirmation deed on 25.03.2023 on a Rs.20/- non-judicial stamp paper. In terms of the said confirmation deed, the defendants are allegedly admitting to have borrowed Rs.12 lakhs from the plaintiff at various points of time and that they have paid interest for few months and in all, they are liable to pay Rs.13,50,000/- which they have undertaken to repay within a period of three months from 25.03.2023. The document also mentions that as security, the defendants would also hand over cheques for the same amount. The document is witnessed by one D.Varadharajan and the mother of the defendants 1 and 2.



14. The suit has been filed in August 2023. The plaintiff has not chosen to issue any pre-suit notice making a demand on the defendants 1 and 2 and has straight away instituted the suit based on the deed of debt confirmation allegedly executed by the defendants 1 and 2. The suit has been filed as an under chapter suit invoking Order XXXVII of CPC.

15. The Hon'ble Supreme Court in *Mechalec Engineers and Manufacturer's case*, cited supra, laid down five principles, governing grant of leave under Order XXXVII of CPC. Till date the said principles have guided the Courts right from the Hon'ble Supreme Court upto the Court of Small Causes in deciding applications filed seeking grant of leave in summary suits. The Hon'ble Supreme Court approved the principles formulated by the Calcutta High Court in *S.Kiranmoyee Dassi Vs. Dr.J.Chatterjee*, reported in 49 (1945) Cal WN 246. For sake of convenience, as well as the reference, the said principles are extracted hereunder:

"(a) If the Defendant satisfies the Court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the Defendant is entitled to unconditional leave to defend.

(b) If the Defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the Defendant is entitled to unconditional leave to defend.



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(c) If the Defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet, shews such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the Plaintiff is not entitled to judgment and the Defendant is entitled to leave to defend but in such a case the Court may in its discretion impose conditions as to the time or mode of trial but not as to payment into Court or furnishing security.

(d) If the Defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the Plaintiff is entitled to leave to sign judgment and the Defendant is not entitled to leave to defend.

(e) If the Defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the Plaintiff is entitled to leave to sign judgment, the Court may protect the Plaintiff by only allowing the defence to proceed if the amount claimed is paid into Court or otherwise secured and give leave to the Defendant on such condition, and thereby show mercy to the Defendant by enabling him to try to prove a defence".

16. In *Ajay Bansal's case*, cited supra, the Hon'ble Supreme Court held that once an application for leave to defend is rejected and refused, passing of decree in the suit is almost automatic and the consequences of the decree cannot be avoided. In such circumstances, the Hon'ble Supreme Court held that the defendant may prefer an appeal against the decree and therein challenge the order refusing leave to defend in terms of the Section 105(1) of CPC. This decision has been relied on for the purposes that this course of action was also open to be pursued by the defendants, instead of challenging the order passed in the interlocutory application refusing to grant leave to the appellants.



17. In fact, this Court in *Craft AD: Publicity and Promotion's case and V. Vijayakumar's case*, cited supra, held that a revision petition, challenging the refusal to grant leave under Order XXXVII of CPC is not maintainable and a regular appeal has to be filed, challenging the order refusing to grant leave, as well as the consequential judgment passed in the suit.

18. The Hon'ble Supreme Court in *Wada Arun Asbestos Private Limited Vs. Gujarat Water Supply and Sewerage Board*, reported in (2009) 2 SCC 432, held that an order imposing a conditional leave to defend the suit was a jurisdictional question and the revision petitioner would be maintainable. However, if a right of appeal from the decree is conceded to the defendants, then he cannot be denied the right to challenge an order which was subject to revision in his memorandum of appeal filed from the decree ultimately passed. The Hon'ble Supreme Court further held that the statutory right conferred on a litigant cannot be ordinarily taken away. In view of the above, there is no difficulty in holding that the above appeal challenging the judgment and decree, as well as the findings in the leave to defend application is maintainable in the eye of law. The question that now remains to be answered is as to whether the defendants were entitled to any leave, be it unconditional or conditional.

19. The only document on which the suit has been filed is a deed of debt



confirmation alleged to have been executed by the defendants 1 and 2 on 25.03.2023 and that the said deed has been witnessed by none else than the uncle and mother of the defendants 1 and 2.

20.As already discussed, the deed does not contain any particulars as to when the amounts were borrowed by the defendants and what was the amount borrowed at each and every transaction, totaling in all three. The very document also, as rightly pointed out by the learned counsel for the appellants, does not appear to be written in normal course. There are over writings and irregular spacing, the contents of the document have commenced even right below the name of the person in whose name the stamp paper has been purchased. Prima facie it does give an indication that the contents have been written in the available space. Therefore, the argument of the appellants that they had already signed a blank Rs.20/- stamp paper which has been misused and fabricated to bring about Ex.A1, cannot be thrown out at the threshold. The plaintiff has also not been able to establish the actual borrowings made by the defendants with particulars regarding the dates on which amounts were borrowed. Equally, there is no mention about the payment of interest as well, excepting for the document stating that subsequently interest for some months have been paid and that in all, Rs.13,50,000/- has been paid. The non-issuance of the pre-suit notice also raises suspicion as to why the plaintiff rushed to Court with the suit for



recovery of money. In such circumstances, the mere fact that the defendants had admitted to the signatures cannot disentitle them from being entitled to leave to defend the suit.

21.The fall out of the above finding is whether the defendants are entitled to unconditional leave or conditional leave. However, considering the fact that the signature is admitted and the document is also witnessed by the defendants' paternal uncle and mother, the defendants having made out a case that they have reasonably good defence to defend the suit claim, I am inclined to allow the appeal, subject to the appellants depositing Rs.6 lakhs, that is 50% of the alleged principal claim before the trial Court to the credit of O.S.No.5286 of 2023 before the XXIII Additional Judge, City Civil Court, Chennai, within a period of eight weeks from the date of receipt of a copy of this judgment.

22.In fine, the Appeal Suit is allowed in part and the judgment and decree dated 19.01.2024 in O.S.No.5286 of 2023 on the file of the XXIII Additional Judge, City Civil Court, Chennai, is set aside, on condition the appellants deposit a sum of Rs.6 lakhs to the credit of O.S.No.5286 of 2023, within a period of eight weeks from the date of receipt of a copy of the judgment. It is made clear that in the event of the condition not being complied with by the appellants, then the appeal suit will stand automatically dismissed and it will be



open to the 1st respondent/plaintiff to execute the decree in O.S.No.5286 of 2023 dated 19.01.2024. The learned counsel appearing for the 1st respondent brought to my notice that the learned XXIII Additional Judge, City Civil Court, Chennai, has now been abolished. The learned Principal Judge, City Civil Court, Chennai, shall assign the suit to any of the other City Civil Courts, Chennai, in order to comply with the direction issued herein above. In the event of compliance, the trial Court shall expedite the trial of the suit by ensuring completion of pleadings and framing of issues within four weeks from the date of reporting compliance and complete the trial and dispose off the suit, on merits and in accordance with law within a period of four months thereafter. It is needless to state that the suit shall be disposed off on merits and in accordance with law and the trial Court shall not be prejudiced or carried away by any observations made in this judgment, which were only in order to decide the entitlement of the appellant to leave. The trial Court shall decide the suit on the basis of pleadings and evidence to be adduced in the suit, at trial. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

.01.2026

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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To

The XXIII Additional Judge, City Civil Court, Chennai



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P.B.BALAJI.J.

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Pre-delivery judgment made in
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