



WEB COPY

CRP No. 356 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-02-2026

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THE HON'BLE MR.JUSTICE S. SOUNTHAR

**CRP No. 356 of 2026 and
CMP.No.2020 of 2026**

1. G. Saravanan
2. Uma Saravanan

..Petitioner(s)

Vs

D. Masilamani

..Respondent(s)

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the Order and Decreetal dated 6.2.2024 made in IA.No.4/2023 in OS.No. 4589/2023 passed by the XX Additional District and Sessions Judge, City Civil Court, Allikulam, Chennai.

For Petitioner(s): M/s.S.Ganesh

For Respondent(s): M/s.R. Thiagarajan

ORDER

The Civil Revision Petition is filed challenging the order passed by the trial court dismissing the application filed by the petitioners/defendants seeking leave to defend the summary suit instituted under Order XXXVII Rule 3 of CPC.



2. The respondent/plaintiff instituted a suit seeking recovery of Rs. 8,50,000/- together with interest at the rate of 24% per annum. It is the case of the respondent that in the year 2016, the first petitioner/ first defendant sought financial assistance from the respondent/plaintiff to meet his business commitments and accordingly, the plaintiff availed a loan from Indian Bank for a sum of Rs. 15 lakhs. Out of the above said amount, a sum of Rs.8,33,000/- was transferred from the respondent's account to the first petitioner's bank account on 06-09-2016. The balance amount was paid by the respondent to the first petitioner on various dates during the period from September 2016 to August 2019. It was also stated that there was understanding between the parties whereunder the petitioners agreed to pay interest at the rate of 24% per annum. The first petitioner paid only Rs. 3,50,000/- to the respondent and hence, the balance principal amount of Rs. 8,50,000/- remains unpaid. As the respondent approached the first petitioner seeking payment of amount due from him, he issued a cheque on 27-02-2022 drawn from the joint account of the petitioners for face value of Rs.5,00,000 and the said cheque was dishonoured on the ground "funds insufficient". The respondent issued a legal notice on 22-03-2022 calling upon the defendants to pay face value of the cheque. However, the petitioners issued reply with false allegations. The first petitioner also issued another cheque on 15-04-2022 for a face value of Rs. 1,70,000/- in favour of respondent and the same was also dishonoured. The legal notice issued by the respondent was encountered with false reply by petitioners. In these



circumstances, the respondent instituted the above suit for recovery of money under Order XXXVII Rule 1 of CPC treating the same as a summary suit.

3. The petitioners filed instant application seeking leave to defend the suit. In the affidavit filed in support of the petition seeking leave to defend the suit, the petitioners raised the following points:-

i) the plaint document No.1, statement of account would indicate that the amount was transferred from the bank account of the respondent to the bank account of “I Shines”, a business entity run by the first petitioner, but the same was not paid to the first petitioner in his individual capacity.

ii) there was no contract between the parties to pay interest at the rate of 24% per annum.

iii) a perusal of the plaint document No. 1 would indicate that a sum of Rs. 8,23,100/- was transferred to the account of “I Shines” and hence, the averment in the plaint as if Rs.8,33,000/- was transferred was not correct.

iv)The respondent failed to specify the exact date on which the remaining amount of Rs.3,50,000/- was paid to the petitioners by cash.

v)The amount of Rs.8,23,100/- was transferred to the bank account of the first petitioner's business entity towards discharging the amount due to the first petitioner in the interior designing work done by him in the residence of the respondent.

4.The respondent filed counter and opposed the application on the ground that various points raised by the petitioners were not substantiated by any



documents and all the allegations were illusory one.

5. The trial court, after hearing both the parties on the petition seeking leave to defend the suit, was pleased to dismiss the application filed by the petitioners. Aggrieved by the same, they have come before this court

6. The learned counsel for the petitioners, reiterating the points raised by them in the petition seeking leave to defend the suit, submitted that the petitioners raised triable issues and hence, the trial court ought not have dismissed the petition seeking leave to defend the suit.

7. It is seen from the pleadings of the parties that the business entity “I Shines” is a proprietary concern of the first petitioner. Therefore, any payment transferred to the proprietary concern of the first petitioner can be treated as a payment to the 1st petitioner in his individual capacity as proprietary concern is not a separate legal entity different from the proprietor. Therefore, the submission made by the learned counsel for the petitioners is not acceptable to this court.

8. It is contended by the learned counsel for the petitioners that alleged cheques produced by the plaintiff were stolen by the respondent from first petitioner's possession. The said submission made by the learned counsel for the petitioners is also highly doubtful because there is no need for the first petitioner to keep the signed blank cheques to enable the plaintiff to commit theft of the cheques. Further, the petitioners have not produced any document to show that immediately after realising the alleged theft, he made any police



complaint. Further, a holder of the blank cheque is entitled to fill up blanks in the cheque. However, whether the said legal position is available to the stolen cheque is a question to be decided at the time of final disposal.

9. As per the plaint Document No.1, the plaintiff transferred a sum of Rs. 8,23,100/-. However, in the plaint, it was stated that a sum of Rs. 8,33,000/- was transferred to the account of the first defendant. The discrepancy in the figure has to be explained by the plaintiff. In the plaint, the interest was claimed at the rate of 24% per annum. However, the plaintiff has not produced any prima facie material to suggest that there was a contract to pay interest at the rate of 24% per annum. Therefore, the claim of the plaintiff with regard to the interest component also raises a triable issue. The said claim of the plaintiff has to be established by evidence. The defendant raised a plea that a sum of Rs. 8,23,000/- was transferred to the business account of the first petitioner towards the services rendered by him in designing interior work in the residence of the plaintiff. Whether the first defendant rendered any service to the plaintiff is a matter to be decided based on the evidence to be let in by the parties at the time of final disposal. Therefore, this Court feels that the defendants shall be given an opportunity to lead evidence with regard to the plea raised by them.

10. In the light of the discussion made earlier, this Court feels that the defence raised by the first petitioner regarding the interior work done by him in the residence of the plaintiff and the contract for payment of 24% per annum interest etc., raises triable issue in the suit. Therefore, the petitioners/defendants



are entitled to leave to defend the suit. However, taking into consideration the documents filed in support of the plaint and absence of any document in support of the defence raised by the defendants, this Court feels that the petitioners/defendants are entitled to conditional leave.

11. Accordingly, the civil revision petition stands allowed by setting aside the impugned order passed by the trial court and the petitioners/defendants are granted conditional leave by directing them to deposit a sum of Rs. 5,00,000/- (rupees five lakhs only) to the credit of OS.No.4589 of 2023 within a period of four weeks from the date of receipt of copy of this order. Failing which, the petition seeking leave to defend the suit shall stand automatically dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

16-02-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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To

The XX Additional District and Sessions Judge,
City Civil Court, Allikulam, Chennai.



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S.SOUNTHAR, J.

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