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CRP NO.13 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 16 / 12 / 2025

ORDER PRONOUNCED ON : 06 / 01 / 2026

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

CIVIL REVISION PETITION NO.13 OF 2023

AND

C.M.P. NO.119 OF 2023

K. Balasathiya Narayanan,
No.24, Sastri Nagar 3rd Street,
Erode – 638 002.
Erode District.

... Petitioner / Petitioner / Plaintiff

Versus

1. K. Manokar,
S/o. Kondusamy,
No.8/63, A.V. P.J.S. Garden,
No.11, Chittepalayam,
Angaripalayam (Post)
Tirupur District.

... First Respondent /
First Respondent /
Defendant

2. Meena,
Proprietor of Sri Shastivel Garments,
W/o. K. Manokar, S/o. Kondusamy,
residing at No.8/63, A.V. P.J.S. Garden,
No.11, Chittepalayam,
Angaripalayam (Post)
Tirupur District.

Business at No.14,
Thalampoo Street, Asha Nagar (West),



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Gandhi Nagar Post, Tirupur – 641 603.

... Second Respondent /
Second Respondent /
Proposed Party

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PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated October 17, 2022 made in I.A. No.507 of 2019 in O.S. No.176 of 2019 on the file of the Principal District Judge, Erode.

For Petitioner : Ms. Sopiya for Mr. S. Angamuthu
For Respondents : Notice Served- No Appearance

ORDER

Feeling aggrieved by the order dated October 17, 2022, passed by 'the Principal District Court, Erode' ['Trial Court'], in I.A. No.507 of 2019 in O.S. No.176 of 2019 filed under Order I Rule 10 (2) of 'the Code of Civil Procedure, 1908' ['CPC'], the present Revision petition has been filed by the petitioner therein / plaintiff under Article 227 of Constitution of India, to set aside the same.

2. The revision petitioner herein is the plaintiff in the Original Suit. The first respondent herein is the defendant, and the second respondent herein is the proposed defendant and wife of the first respondent herein.

3. The petitioner / plaintiff filed the suit in O.S. No.176 of 2019



against the first respondent/defendant seeking money decree. The case of the plaintiff is that the first respondent/defendant was engaged in garment business in the name and style of M/s. Shastivel Garments. He approached the plaintiff for financial assistance in the last week of January 2019 and borrowed a sum of Rupees Twenty Lakhs from the plaintiff for his urgent business expenses on February 02, 2019 agreeing to repay the amount with interest at the rate of 18% per annum. On the same date, the first respondent/defendant issued Post Dated Cheque bearing No.366732 dated March 02, 2019 for a sum of Rupees Twenty Lakhs Only. The plaintiff presented the said cheque for collection on March 02, 2019 and the same was dishonoured with an endorsement as Account Closed. Hence, the plaintiff issued a legal notice on March 9, 2019 calling upon the first respondent/defendant to pay the Cheque amount within a period of 15 days. Even on receipt of the said notice, the 1st respondent/defendant did not pay the loan amount. Hence, the plaintiff filed a complaint under Section 138 Negotiable Instrument Act, 1881 against the 1st respondent/defendant before the Judicial Magistrate, Fast Track Court No.2, Erode and the same was taken on file in S.T.C. No.242 of 2011 which is pending for Trial. The plaintiff also filed the Suit in O.S. No.176 of 2019 on the file of the Trial Court, for recovery of a sum of Rs.20,86,000/- (Principal Amount Rs.20,00,000/- + Interest Rs.86,000/-),



with subsequent interest thereon against the 1st respondent/defendant.

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4. The 1st respondent / defendant entered into appearance and filed written statement denying borrowal of Rupees Twenty lakhs and the execution of Cheque in favour of the plaintiff as alleged. The case of first respondent/defendant is that one Elango was working as Manager in the Second Sales Textile Business run by the 1st respondent/defendant. The said Elango misappropriated money to the tune of Rupees Twenty Five Lakhs from the first respondent/defendant's business. When the misappropriation came to light, the said Elango accepted the misappropriation, assured to repay a sum of Rupees Twenty Lakhs within a period of 1 ½ years and issued a Post Dated Cheque dated February 25, 2019 in favour of the first respondent/defendant. It also came to light that the said Elango had taken some Cheques of the 1st respondent/defendant. The said Elango assured in writing on August 1, 2017 that he would not misuse them in any manner and that he would hold full responsibility for those Cheques. The plaintiff is a friend of Elango and they both are doing business together in Tirupur. With a view to bend and harass the first respondent / defendant and prevent from presenting the Rupees Twenty Lakhs Cheque for collection, the present Suit has been filed with false averments in active collusion with the said Elango. Further, the first



respondent / defendant is not the owner of M/s. Sri Shastivel Garments.

His wife – Meena is its proprietor and he is merely an authorized signatory. There is no creditor – debtor relationship between the petitioner / plaintiff and the first respondent / defendant. The said Cheque has been created fraudulently by the Plaintiff and said Elango with a view to bend the 1st respondent and get unjust and unlawful enrichment.

5. After filing of the written statement, the plaintiff filed the application in I.A. No.507 of 2019 under Order I Rule 10(2) of CPC to implead Mrs.Meena, the wife of first respondent/defendant as second defendant in the suit. The Trial court after hearing both sides came to the conclusion that the plaintiff in his plaint has no pleadings to the effect that the 1st respondent/defendant borrowed the money for the benefit of the proposed party Mrs.Meena or her business. On the other hand, the petitioner/plaintiff categorically pleaded that the first respondent/defendant borrowed a sum of Rupees Twenty Lakhs and issued a Cheque as authorized signatory of M/s. Sri Shastivel Garments in favour of the petitioner / plaintiff. In the affidavit filed in support of the petition also, the petitioner / plaintiff categorically averred that the first respondent/defendant borrowed a sum of Rupees Twenty Lakhs for his urgent business expenses. Hence, the proposed party - Meena is neither a



necessary party nor a proper party to the suit. Accordingly, the Interlocutory Application was dismissed. Feeling aggrieved, the petitioner/ plaintiff has filed this Revision Petition.

6. Despite notice served on the respondents, they did not appear before this Court either through counsel or in person.

7. Ms.J.Sobiya learned Counsel representing Mr.S.Angamuthu, Counsel on record for the Revision Petitioner / Petitioner / Plaintiff would draw the attention of this Court to Paragraph No. 3 of the plaint and argue that the proposed party - Mrs.Meena is the wife of the first respondent/defendant and the Proprietor of M/s. Sri Shastivel Garments, who had given authorization to the 1st respondent/defendant for signing Cheques drawn in the name of M/s. Sri Shastivel Garments. Both the 1st respondent/defendant and his wife are running and looking after the day-to-day affairs of M/s. Sri Shastivel Garments. Further, the plaintiff *bonafidely* believed that the first respondent/defendant borrowed a sum of Rupees Twenty lakhs from the plaintiff for his urgent business expenses and issued a Cheque for the money borrowed. As the suit for recovery of money is based on the Cheque drawn in the name of M/s. Sri Shastivel Garments and its proprietor is the proposed party - Meena, she is a



necessary party to the suit for proper adjudication and no prejudice will be caused to the respondents if the application is allowed. However, the Trial Court without appreciating the entire facts and circumstances of the case wrongly dismissed the application. Hence, she prays this Court to set aside the Order of dismissal by allowing the present Revision petition.

8. This Court has considered the arguments submitted by the learned Counsel, and also perused the copy of the pleadings and annexed papers available on record in the Civil Revision Petition.

9. Sum and substance of the case of the petitioner / plaintiff as put forth in the plaint is that he advanced a sum of Rupees Twenty Lakhs to the first respondent/defendant for the purpose of meeting out business expenses of M/s. Sri Shastivel Garments, whose proprietor is the first respondent / defendant's wife - Meena and in turn, the first respondent/defendant issued a Post Dated Cheque drawn in the name of M/s. Sri Shastivel Garments as its authorized Signatory. This Court deems fit to extract the relevant portion of the plaint hereunder:

'III. The plaintiff submits that, the defendant have approached the plaintiff for financial assistance in the last



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week of January 2019. The Defendant is doing garments business in the name of Sri Shatival Garments. Its proprietor is the defendant of his wife Mrs.Meena. The present defendant is authorizing signatory of concerned. The each and everyday business transaction actively doing by the defendant. The defendant have a borrowed amount Rs.20,00,000/-, from the plaintiff for his urgent and Business expenses on 02-02-2019. The rate of interest is 18% Per Annam. For that amount and valuable consideration and prompt repayment of the said amount and as well as acknowledging legally enforceable debt, on the same day, the Defendant have issued posted date cheque infavour of Plaintiff. The Cheque date on 02-03-2019, the amount is Rs.20,00,000/- (Twenty lakhs only). The cheque drawn on the Tamilnadu Mercantile Bank Ltd. D.No.233-236 Kamarajar Road, (Palladam Road), Tirupur District. The cheque bearing No.366732.'

10. Though the plaint is not happily worded, a wholistic reading would show that the loan was meant for the benefit of M/s.Sri Shastivel Garments whose proprietor is Meena, wife of the first respondent / defendant and second respondent herein.

11. The Trial Court dismissed the Application filed under Order I Rule 10(2) of CPC citing absence of pleadings establishing a nexus between the loan and the second respondent. In other words, the Trial Court dismissed the Application on the ground that no where in the



pleadings, the petitioner / plaintiff has stated that the first respondent / defendant borrowed the money for the benefit of the proposed party - Meena or for the benefit of her business.

12. As stated *supra*, as it could be understood from the pleadings, the loan was meant to be for the benefit of the second respondent's business. Hence, the reason assigned by the Trial Court for dismissal of the Application is not justifiable.

13. Further, the Suit is based on the Cheque issued by the first respondent / defendant. The said Cheque is drawn in the name of M/s.Sri Shastivel Garments. As per the case of the plaintiff, the first respondent / defendant has signed the same as its authorized signatory and he is also actively involved in the day to day affairs of M/s. Sri Shastivel Garments. The first respondent / defendant and the proposed party are husband and wife. Considering the cumulative facts and circumstances of this case, this Court is of the view that the proposed party – Meena is a necessary party to the Suit. Hence, the I.A. No.507 of 2019 in O.S. No.176 of 2019 deserves to be allowed in the considered opinion of this Court.

14. In fine, this Civil Revision Petition is allowed, the Fair and Decretal Order dated October 17, 2022 made in I.A. No.507 of 2019 in



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O.S. No.176 of 2019 is set aside and the Interlocutory Application is allowed. No costs in view of the facts and circumstances of the case.

Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Speaking order : Yes/No
Neutral Case Citation : Yes/No
lbm/tk

To:

The Principal District Judge, Erode.



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R.SAKTHIVEL, J.

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PRE-DELIVERY ORDER MADE IN
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