

(2013) 12 MAD CK 0031

In the Madras High Court

Case No : C.R.P. (NPD) No. 2081 of 2013

M/s. Madras Polymoulds Exports (P) Ltd. and Others

APPELLANT

Vs

M/s. Pradeep investments

RESPONDENT

Date of Decision : 18-12-2013

Acts Referred:

Citation : (2014) 1 LW 301

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : P.B. Sampathkumar, for the Appellant; T. Srikanth for Mr. T.S. Kandhakumaar, for the Respondent

Judgement

P.R. Shivakumar, J.—The defendants in the original suit O.S. No. 6842 of 2012 filed as a summary suit under Order XXXVII on the file of

the XII Assistant Judge, City Civil Court, Chennai are the petitioners in the present Civil Revision Petition. In the suit instituted by submitting a

plaint under Order XXXVII CPC, the plaintiff had alleged that the plaintiff lent a sum of Rs. 1,00,000/- on the suit promissory note dated

13.10.2008 wherein the defendants had agreed to repay the same with an interest at the rate of 18% per annum; that subsequently, the defendants

paid interest on the principal upto 12.08.2009 and two more payments were made by cheques drawn on Vijaya Bank bearing Cheque Nos.

095310 and 095283 dated 20.11.2008, and 19.12.2008 respectively and that thereafter the defendants informed the plaintiff that they were

indebted to many other creditors besides the plaintiff and that they would issue consolidated cheques to their financial agents who in turn would

make payments to the creditors including the plaintiff. It was further averred in the plaint that the plaintiff firm agreed for such payment pursuant to

which a number of cheques were issued to the financial agents and the financial agents in turn issued as many as 8 cheques from 02.03.2009 to

12.07.2012 towards the discharge of the amount due under the suit promissory note; that after adjusting all those payments, a sum of Rs. 70,595/-

(consisting of Rs. 45,845/- towards principal and Rs. 24,750/- towards interest) was due and a demand was made for the payment of the said

amount by issuing a pre-suit notice dated 10.08.2012 and that since the defendants did not come forward to make payment, the plaintiff was

constrained to file the suit as a summary suit on the promissory note.

2. The defendants who received summons for judgment filed an application I.A. No. 1991 of 2013 under Order XXXVII Rule 3(5) CPC seeking

leave of the Court to defend the suit on merits. The said application was resisted by the respondent firm/plaintiff by filing a counter. The learned

trial Judge, after hearing both sides, came to the conclusion that the facts disclosed by the revision petitioners (defendants) in the affidavit filed in

support of the application seeking leave to defend do not indicate that they had a substantial defence to be raised and that the defence intended to

be put forth by the revision petitioners/defendants was frivolous and vexatious. Based on the said finding, the learned trial Judge dismissed the said

application I.A. No. 1991 of 2013 by an order dated 25.03.2013, which is assailed by the revision petitioners in the present revision.

3. Notice before admission was given and the parties are represented by counsel. The arguments advanced by Mr. Sampathkumar, learned

counsel for the revision petitioners and by Mr. T. Srikanth, learned counsel for the respondent are heard. The materials produced in the form of

typed-sets of papers on both sides are also perused.

4. The original suit came to be filed by the respondent herein as a summary suit under Order XXXVII CPC on the file of the trial Court based on a

negotiable instrument, namely promissory note. The suit instituted as a summary suit is not challenged by the defendants therein on the ground that

the suit ought not to have been filed as a summary suit. On the other hand, admitting that the suit was instituted under the proper provision, the

defendants therein, who are the petitioners in the present revision, chose to file I.A. No. 1991 of 2013 seeking the leave of the Court to defend the

suit based on their contention that they did have valid pleas of defence to be

raised in the suit against the claim made against them. The mere filing of an application under Order XXXVII Rule 3(5) CPC seeking the leave of the Court to defend the suit will not result in the automatic grant of leave. If the Court comes to the conclusion that there are valid defences to be raised, which cannot be decided without conducting a full fledged trial, the defendants shall be entitled to an order granting unconditional leave to defend the suit. If certain facts are to be established by adducing evidence, then the same shall be a ground on which the defendants shall be granted leave to defend. But even in such cases, depending on the facts and circumstances, the Court may impose any condition. On the other hand, if the Court, on the basis of the averments made in the affidavit of the defendants disclosing the line in which the defendants propose to defend the suit, is of the view that the facts disclosed therein do not indicate the presence of a substantial defence to be raised by the defendants or that the said plea of defence intended to be put by the defendants is nothing but a frivolous and vexatious plea, then the Court is bound to dismiss the application seeking leave of the Court to defend the suit.

5. Reproducing sub-clause (5) of Rule 3 under Order XXXVII CPC will be of immense help to understand the scope of consideration to be made

by the Court in an application seeking leave to defend. It reads as follows:

(5) The defendant may, at any time within ten days from service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just:

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

6. In the case on hand, the case of the plaintiff (respondent in the revision

petition) is that the defendants borrowed a sum of Rs. 1,00,000/- for the business of the first defendant by executing the suit promissory note on 13.10.2008 agreeing to repay the said amount with an interest at the rate of 18% per annum; that thereafter upto the month of August 2009, more precisely upto 12.08.2009, interest was paid and thereafter amounts were paid with specific request to adjust the same towards the principal alone and that after such adjustments, there remained a balance principal of Rs. 45,845/- and a further sum of Rs. 24,750/- towards interest. In this regard, the plaintiff has also stated that the interest upto 12.08.2009 was paid by the defendants directly and a sum of (Rs. 10,000/- + Rs. 10,000/- = Rs. 20,000) came to be paid on 20.11.2008 and 19.12.2008 by way of two cheques drawn on the account of the first defendant maintained with the Vijaya Bank and that thereafter citing indebtedness to more extent towards more number of creditors, the defendants wanted to make payments to various creditors through their financial agents, namely M/s. Sunil Enterprises, M/s. Anil Traders and M/s. Bhajandas Jhamandas by issuing consolidated cheques in favour of the said financial agents with the understanding that the creditors including the plaintiff should accept payment from the said financial agents and that subsequently 8 payments were thus made by the financial agents of the defendants through cheques after receiving payment of consolidated amounts from the defendants. The said payments have been projected as factors giving raise to fresh start of limitation for the filing of the suit.

7. The defendants, who were served with a pre-suit notice calling upon them to discharge the debt, did not make payment and they even failed to respond by issuing a reply denying the allegations made in the pre-suit notice issued by the plaintiff. After the filing of the suit and after getting the summons for judgment, the defendants came forward with the application stating the grounds proposed to be taken as defence in the affidavit filed in support of the application. In the affidavit, they have stated that there was no privity of contract and they did have no connection, much less any loan transaction with the plaintiff. The further contention raised in the affidavit is that since the payments were alleged to have been made through the financial agents of the defendants, the suit was bad for non-joinder of necessary parties insofar as the financial agents through whom payments

were allegedly made in partial discharge of the promissory note debt. The third plea of proposed defence spelt out in the affidavit is that the suit was hopelessly barred by limitation.

8. The learned trial Judge, after considering the nature of averments made in the affidavit filed in support of the application, found that there was admission of payments made through the financial agents which would give rise to a new start of limitation and that hence the plea sought to be taken relying on the question of limitation was nothing but a frivolous and vexatious plea. In support of his conclusion, the learned trial Judge also referred to the admission made in Paragraph 7 of the affidavit regarding payments made through the financial agents of the defendants.

9. However, the learned counsel for the revision petitioners made an attempt before this Court to contend that the payments allegedly made by the financial agents of the defendants were not admitted. But the learned counsel for the respondent has rightly contended that the literal meaning of the language used in paragraph 7 of the affidavit will show an unambiguous admission made by the defendants regarding the payments made by the defendants through their financial agents, which were referred to in paragraph 4 of the plaint. It shall be helpful to extract paragraph 7 of the affidavit of the revision petitioners filed in support of the application for the grant of leave:

A close perusal of the averments contained in paragraph 4 would clearly reveal that the alleged amounts have been paid by the defendants

10. The said averment made in the affidavit will clearly show that the defendants have admitted the payments referred to in paragraph 4 of the plaint. The same will lead to a further inference that the payments were made by the financial agents of the defendants with the authorization of the defendants and based on the consent of the plaintiff to receive the payment from the financial agents of the defendants. Paragraph 4 of the plaint also contains various amounts paid by the defendants to the financial agents by cheques to enable them to make payment to the various creditors of the defendants. The defendants did not deny such payment to the financial agents. On the other hand, such payments to the financial agents to enable them to make payments on behalf of the defendants to their creditors, including the plaintiff, stands admitted by the defendants. Therefore,

the proposed plea of defence on the ground that there was no payment within three years prior to the date of filing of the suit is nothing but a plea

sought to be taken as a vexatious and frivolous plea. In this regard, the finding of the Court below cannot be found fault with.

11. Regarding the plea of non-joinder of necessary parties, it is the case of the plaintiff that the defendants, after borrowing the amount from the

plaintiff and making direct payments upto a particular point of time, with the consent of the plaintiff, made payments through their financial agents

and such payments have also been accepted and appropriated not towards interest but towards the principal as requested by the financial agents in

their covering letters issued to which the cheques for payments were annexed and sent. When payment was allegedly made by the defendants

through their agents, the plaintiff, who does not want to hold the agent liable, need not make the agent a party defendant and the failure to make the

agent a party defendant will not cause a dent in the maintainability of the suit on the ground of non-joinder of necessary parties.

12. The next contention of the defendants that they did not have any transaction with the plaintiff is also frivolous and vexatious in the light of the

fact that they do not dispute their signatures found in the suit promissory note and in the light of the fact that they do not dispute the payments made

by them till 12.08.2009 towards interest and two direct payments made by issuing cheques drawn on Vijaya Bank dated 20.11.2008 and

19.12.2008 each one for a sum of Rs. 10,000/- bearing cheque numbers 095310 and 095283 respectively. If at all there was no transaction

between the plaintiff and the defendants, such payments could not have been made. The learned trial Judge, based on proper reasoning, came to a

correct conclusion that the defendants' prayer for the leave of the Court to defend the suit on the basis of the proposed grounds of defence are

nothing but frivolous and vexatious grounds of defence. The trial Court, on proper appreciation of facts and proper application of the principal of

law governing the grant or refusal of the leave to defend in a summary suit, has arrived at a correct conclusion that the defendants are not entitled to

the grant of leave and on the other hand, the application seeking the leave of the Court to defend the suit is liable to be dismissed. This Court does

not find any defect or infirmity in the order of the trial Judge warranting interference in exercise of the power of revision of this Court. There is no

merit in the revision and the same deserves to be dismissed.

In the result, the Civil Revision Petition is dismissed. However, there shall be no order as to costs.