

(2001) 08 MAD CK 0061

In the Madras High Court

Case No : C.R.P. No. 1612 of 2001 and C.M.P. No. 8820 of 2001

N. Prabakaran

APPELLANT

Vs

Manager, Citibank N.A., 766, Anna Salai, Chennai-600 002

RESPONDENT

Date of Decision : 14-08-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 4, 151

Citation : (2002) 1 LW 560

Hon'ble Judges : Prabha Sridevan, J

Bench : Single Bench

Advocate : Mr. N. Prabakaran, for the Appellant;

Final Decision : Allowed

Judgement

1. The party in person is aggrieved by the order imposing a condition of payment of Rs.2,00,000 for grant of leave to defend has filed the present

civil revision petition. The respondent though served on 4.7.2001 has not entered appearance. Today, the party in person appeared and argued

the matter.

2. The grievance of the petitioner is that the court below without considering the two documents, which clearly show that his loan account has been

settled, had still refused to grant unconditional leave to defend. The respondent has filed O.S.No.5323 of 1999 under Order 37 of CPC for

recovery of a sum of Rs.495915.74 with interest. According to the respondents a sum of Rs.6 lakhs was granted by way of professional credit on

6.1.1997. Subsequently, since the schedule of repayment could not be adhered to, there was rescheduling of the loan on the request of the

petitioner by his letter dated 25.2.1999. Subsequently, the earlier loan was closed and fresh loan agreement was entered into on 25.2.1999, where

under the petitioner was bound to repay the loan in 48 equal monthly installments of Rs.13,919. Since instead of rescheduling, the petitioner did not repay the loan and the respondent was constrained to file a suit.

3. The petitioner filed I.A.No.18151 of 1999 for leave to defend and produced before the court two documents showing that the respondent had

acknowledged the fact that the loan account is closed. Therefore, according to the petitioner, no amount remains to be paid to the respondent and

the letter referred to by the respondent, as having been issued by the petitioner seeking rescheduling of the loan, was a fabricated one and if

unconditional leave to defend is not granted, he will be put to hardship and he should be given an opportunity to demonstrate not only that the loan

has been fully paid, but also fabricated documents have been used by the respondent herein to file a suit. It is also the case of the petitioner that he

had filed O.S.No.2977 of 1999 for injunction restraining the respondent not to present the cheque obtained from the petitioner for collection and

interim injunction was granted by the City Civil Court, (Vacation Judge), after having satisfied that the petitioner has made out a prima facie case.

According to the petitioner, the respondent has till date not vacated the interim injunction and merely filed a vakalat and had not taken any steps

thereafter.

4. The petitioner is also aggrieved that his IA.SR.No.43627 dated 3.11.1999 filed u/s 151 of CPC for verification of the genuineness of the letter

dated 25.2.1999 has still not been taken on file of the court below.

5. The petitioner reiterated all the averments made in his affidavit in support of the petition to leave to defend and he also referred to the Judgment

of the Supreme Court reported in Mechelec Engineers and Manufacturers Vs. Basic Equipment Corporation, , which was followed by this Court

in Ramalingam Vs. Basavalingam, wherein principles were laid down while considering the application for granting leave to defend. A perusal of

the impugned order shows that the court below, after referring to a letter dated 6.1.1997, which speaks of the closure of the loan, comes to a

conclusion that the petitioner is bound to prove that the old loan has been discharged. This is what the learned Judge has said in his Judgment.

In an application for grant of leave to defend, the petitioner is not bound to prove to the court his case. The court is also not called upon at that

juncture to test the veracity of the defence set up by the petitioner. What the court must do is to find whether the applicant has raised triable issues

and whether defence is not sham or illusory and whether the petitioner has raised such issues, which if proved at that time of trial, will result in

dismissal of the suit, if so he is entitled to be given leave to defend.

6. In this case, two documents have been produced by the petitioner, in which there is a categorical statement made by the respondent that the

loan amount was fully paid and has been closed accordingly. There is no reference in these two letters that the loan has been subsequently

rescheduled or that new loan has been granted. A letter relied upon by the respondent to support his case of reschedule is also enclosed in the

typed set of papers and as pointed out by the party in person, there is neither any reference to the old loan account number. So, the party in

person urged that by merely sending bald letters like these without reference to an account number or loan account number it would not have been

possible for the respondent to correlate the letter with the old account. So, according to the party in person, it is clear that this letter itself is false.

7. At this stage it is not for this court to arrive at a decision as to whether the rescheduling letter is fabricated or forged one as claimed by party in

person. It is also not proper at this juncture to accept two letters given by the respondent treating the loan amount as closed. However, if the

petitioner is able to substantiate that the two documents produced by him dated 25.2.1999 and 18.1.1999 demonstrate the discharge of all the

liabilities due to the respondent and if he is also able to satisfy the court that the letter seeking rescheduling of the loan is false, then the suit is bound

to be dismissed. The petitioner has provided enough materials before the court to show that triable issues arise in this case. Therefore, following the

judgment reported in Mechelec Engineers and Manufacturers Vs. Basic Equipment Corporation, , which has been followed by this court in similar

cases, I think this case falls under principle (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 had a defence, yet, shows 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 plaintiffs 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 the payment into court or furnishing security.

and therefore, the petitioner herein is entitled to leave to defend without any condition regarding payment or furnishing security. The order of the

court below requiring the petitioner to deposit a sum of Rs.2,00,000 is set aside. The petitioner is granted unconditional leave to defend and the

court below shall take up the suit and dispose of the same expeditiously, CRP is allowed. No costs, consequently, connected C.M.P. is closed.