

IN THE COURT OF XVIII ADDITIONAL CITY CIVIL COURT,
CHENNAI.

Present : Tmt.Dr. R. SATHYA
XVIII Additional Judge,

Thursday the 13th day of February 2020

I.A.No.3/2019 in O.S.No.3985/2019

M/s.Konark Tradings Co.,
Rep.by its Proprietor,
Mr.Haresh R.Patel @ Haresh R.Limbani
"Umiya Tower"
No.13, Vishnu Nagar,
200 feet, Inner Ring Road,
Poonniammanmedu,
Chennai - 600 110.

... Petitioner/defendant

Vs.

Mrs.Parul K.Vyas

... Respondent / plaintiff

This petition coming on 28.01.2020 before me for final hearing in the presence of M/s.M.Stalin, K.NaveenKumar and G.Kalidoss counsel for the petitioner/defendant and of M/s.K.Jayaraman, N.Indhumathi and K.K.Kalaiventhan counsel for the Respondent /plaintiff and upon hearing the arguments of both sides and on perusing the material documents on records and upon having stood over for consideration till this day, this court delivered the following:-

ORDER

This petition has been filed by the petitioner to grant unconditional leave to defend the suit on merits.

2. The brief averments made in the petition filed by the petitioner is as follows :

Petitioner is the defendant in the suit and the suit has been filed by the plaintiff under Order XXXVII CPC stating that on 5.8.2016 petitioner had approached the respondent and requested him to lend sum of Rs.25 lakhs and respondent had arranged the said sum and on receipt of the said sum petitioner had executed a pronote in favour of the respondent/plaintiff to repay with interest at 8% and the petitioner had not met the respondent/plaintiff on 5.8.2016 and had not requested any loan and did not execute any promissory note and there is no transaction with the respondent/plaintiff and respondent/plaintiff used to work for the petitioner in accounts twice or thrice a month on part time basis and the respondent/plaintiff had conspired and used petitioner's cheque to illegally claim the money from the petitioner and the pronote is not executed and signed by the petitioner and the signature of the petitioner is forged by the respondent and the petitioner had filed a complaint against the respondent before the Commissioner of Police, Chennai and

the same was forwarded to Madhavaram Police and enquiry is pending and the petitioner is residing outside the jurisdiction of this court and petitioner has got strong and valid defence in the suit and has full chance of success in the suit and the petitioner to be granted leave to defend by allowing the petitioner to file written statement and hence the petition.

3. The brief averments made in the Counter filed by Respondent is as follows :

All the allegations are denied except those that are specifically admitted and the promissory note dated 5.8.2018 is executed by the petitioner/defendant and the same was witnessed by his brothers one Dinesh and Mansukh and the cheque was issued by the petitioner/defendant and had also sent E-mails not to present the 6 cheques given by him and the E-mail and the issuance of cheque by the petitioner indicates that the pronote was executed for valid consideration and the police complaint alleged by the petitioner was against the brother-in-law of the respondent/plaintiff and the same was closed and the petitioner/defendant had not proved triable issues in the suit and the petition is liable to be dismissed.

4. Point for consideration :-

Whether the petitioner is entitled for the unconditional leave to defend the suit on merits?

5. No oral and documentary evidence let in by petitioner side. On the side of respondent no oral evidence was let in and Ex.R1 to R12 were marked.

6. Point:-

Heard both side counsel. It is the contention of the petitioner counsel that the suit has been filed by the respondent/plaintiff for recovery of money on the basis that the petitioner had executed a pronote and borrowed a sum of Rs.25 lakhs and as per the plaint averments the respondent plaintiff had stated that the petitioner had approached the brother in law of the plaintiff one Prakash J.Viyas and petitioner had issued 6 cheques and subsequently had requested the respondent/plaintiff not to deposit the cheques but the petitioner had categorically denied the averments and had categorically stated that the pronote was not signed by the petitioner and the same is forged and a police complaint was lodged which was admitted by the respondent/plaintiff and the petitioner did not have any transaction with the respondent/plaintiff and the suit is filed

based on the forgery committed by the respondent/plaintiff and his brother in law Prakash J.Vyas and Ex.R1 is not signed by the petitioner and Ex.R12 was sent by petitioner to Prakash J.Vyas and not to the respondent/plaintiff since the said Prakash Vyas had taken the petitioners cheques and in the said mail the petitioner had categorically stated that the blank and undated cheques had been taken by the brother in law of the respondent/plaintiff whereas the pleadings in the plaint is contradictory and in all the cheques the dates are mentioned and the ink in respect of the filling of date and the amount portion is different and in whose favour the cheque was issued is not mentioned and the cheque has been misused and the respondent/plaintiff had not stated why he had not presented the cheques before the bank and the respondent/plaintiff case is full of contradiction and the 1st cheque is dated 29.6.2018 and the last cheque is dated 29.11.2018 but Ex.R12 mail is dated 27.6.2018 and the respondent/plaintiff had not stated how after sending the mail the cheques R3 to R7 was issued to the respondent/plaintiff and the petitioner has got triable issues in the suit which can be established during trial and prayed that the petition may be allowed.

7. It is the contention of the respondent/plaintiff that the promissory note dated 5.8.2018 is executed by the petitioner/defendant and the same was witnessed by his brothers one Dinesh and Mansukh and the cheque was issued by the petitioner/defendant and had also sent E-mails not to present the 6 cheques given by him and the E-mail and the issuance of cheque by the petitioner indicates that the pronote was executed for valid consideration and the police complaint alleged by the petitioner was against the brother-in-law of the respondent/plaintiff and the same was closed and the petitioner/defendant had not proved triable issues in the suit and prayed that the petition may be dismissed and relied on the citation 2017 (1) SCC 568 and marked Ex.R1 to R12.

8. In the said background of the case it is to be seen whether the petitioner had proved the existence of any triable issue for grant of leave to defend and the petitioner having not filed any documents in support of his defence on perusal of Ex.R1 it is the pronote for a sum of Rs.25 lakhs issued by the petitioner/defendant in favour of the respondent/plaintiff and Ex.R2 to R7 are the cheques for a sum of Rs.1,05,000/- each dated 29.6.2018, 29.7.2018, 29.8.2018, 29.9.2018, 29.10.2018 and 29.11.2018 respectively and Ex.R8 is the legal notice sent to the petitioner/defendant

and Ex.R9 is the acknowledgment card and Ex.R10 is the certified copy of the sale deed of the petitioner/defendant and Ex.R11 is the encumbrance certificate and Ex.R12 is the E-mail sent by the petitioner/defendant on June 27, 2018 mentioning the cheques Ex.R2 to R7. It is the respondent/plaintiff case that the petitioner/defendant had approached the respondent/plaintiff through his brother in law namely Prakash J.Vyas for obtaining loan and had issued 6 cheques in his favour and had subsequently issued Ex.R12 mail not to deposit the cheques. On perusal of Ex.R1 it is a pronote which has been denied to be executed by the petitioner/defendant contending that the same is forged and the petitioner/defendant is ready to file an application for sending the pronote to forensic experts for comparison of signature. With respect to Ex.R2 to R7 they are the cheques dated 29.6.2018 to 29.11.2018 and on perusal of the Email Ex.R12 said to have been sent by the petitioner to the respondent/plaintiff it evidences that the mail has been sent only to Prakash J.Viyas and not the respondent/plaintiff and the mail states that blank and undated cheques were issued to the said Prakash J.Viyas and the same need not be presented but whereas the plaint averments state that the mail Ex.R12 was sent to the respondent/plaintiff which is

contradictory and further the 1st cheque Ex.R2 is dated 29.6.2018 and Ex.R12 E-mail is dated 27.6.2018 prior to Ex.R2 the 1st cheque and there is no explanation by the respondent/plaintiff as to how the cheques Ex.R2 to R8 came to be issued by the petitioner/defendant after sending the mail under Ex.R12 and with respect to the above contradictions this court is of the considered view that there are triable issues in the suit and only if the petitioner is permitted to file his written statement the same could be established during trial on letting oral and documentary evidence and hence the petition may be allowed.

In the result, the petition is allowed. No costs.

This order has been dictated to the Stenographer, computerized by her to my dictation directly, corrected and pronounced by me in the open court on 13th day of February 2020.

XVIII Additional Judge,
City Civil Court, Chennai - 01.

Witnesses and documents on petitioner side :- NIL.

Witnesses on the respondent side :- NIL.

Exhibits on the respondent side :-

- | | | |
|-------|---|--|
| Ex.R1 | - | Pronote for a sum of Rs.25 lakhs dated 5.8.2016 issued by the petitioner/defendant in favour of the respondent/plaintiff |
| Ex.R2 | - | Cheque for a sum of Rs.1,05,000/- dated 29.6.2018 |

- Ex.R3 - Cheque for a sum of Rs.1,05,000/- dated 29.7.2018
- Ex.R4 - Cheque for a sum of Rs.1,05,000/- dated 29.8.2018
- Ex.R5 - Cheque for a sum of Rs.1,05,000/- dated 29.9.2018
- Ex.R6 - Cheque for a sum of Rs.1,05,000/- dated 29.10.2018
- Ex.R7 - Cheque for a sum of Rs.1,05,000/- dated 29.11.2018
- Ex.R8 - Legal notice dated 7.5.2019 issued by the respondent/
plaintiff to the petitioner/defendant
- Ex.R9 - Acknowledgment card dated 09.05.2019
- Ex.R10 - Certified copy of the sale deed of the petitioner/defendant
dated 28.02.2010
- Ex.R11 - Encumbrance certificate dated 12.6.2019
- Ex.R12 - E-mail sent by the petitioner/defendant to the
respondent/plaintiff on June 27, 2018

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