IN THE XII ASSISTANT CITY CIVIL COURT AT CHENNAI
Present : Thiru. N. Sachidhanantham, L.L.M.,
XII Assistant Judge
Wednesday, the 27th day of November, 2024
I.A.No. 3/2023
in
O.S.No.7967/2022

N. K. Kumaran ….Petitioner/1st Defendant

-Vs -

1. Bhavana ...1st Respondent/Plaintiff
2. K. Naveen ...2nd Respondent/2nd Defendant

This petition came up before this court for final hearing on 18.11.2024 in the presence of M/s. S. Selvakumari, Counsel for the Petitioner/1st Defendant and of M/s. T. Srikanth, T. Shrinikethan, Counsel for the 1st Respondent/Plaintiff and of M/s. R. Thiyagarajan, Vasudha Thiagarajan, K. Seetharaman, Counsel for the 2nd respondent/2nd defendant and upon hearing both side arguments, upon perusal of records, having stood over for consideration till this date, this court delivers the following:-

ORDER

This petition is filed under Order XXXVII Rule 3(5) r/w. Sec.151 of C.P.C to grant an unconditional leave to the Petitioner/1st Defendant to defend the suit by filing a detailed written statement with supporting documents in O.S.No. 7967 of 2022.

1. Brief averments in the petition are as follows:

The petitioner is the 1st defendant in the above suit. The present suit had been filed by the 1st respondent/plaintiff for recovery of a sum of Rs.92,640/- with interest on Rs.32,640/- @ 1.6 per month based on an alleged cheque and promissory notes that are alleged to have been executed by the petitioner along with the 1st defendant in favour of the plaintiff.

2. The plaintiff inter-alia alleged that he along with the 2nd respondent/2nd defendant are jointly and severally liable to pay the alleged claim of money to the plaintiff. Further, the plaintiff claimed that one alleged finance agent, Vijay M.Jain had borrowed a sum of Rs.2,00,000/- on 3.12.2018 on our behalf from the plaintiff for which

3. That the petitioner did not promise to repay any amount to the plaintiff or his assignor, as such the signature found in the promissory notes dated 3.12.2018 is seriously disputed and questioned by the petitioner. The petitioner stoutly deny having executed any promissory note along with 1st defendant and as such the promissory notes dated 3.12.2018 is forged concocted and fabricated document.

4. That the petitioner had previously availed certain individual loans from Vijay M.Jain and had executed various blank, inchoate papers, deeds, documents, promissory notes etc., Evidently those blank, unfilled, undated promissory notes have been misused by Mr.Vijay M.Jain who has manipulated and concocted documents in collusion and connivance with the plaintiff and others who are purported to have assigned alleged debts in favour of the plaintiff.

5. That the petitioner had not signed any document promising to repay the same and further he is not aware of the alleged payment by Mr.Vijay M.Jain to the plaintiff and other persons is an internal transfer. There were other transactions

between Vijay M.Jain and the plaintiff and his assignors and those transactions are being roped in.

6. That at no point of time, the plaintiff or the alleged assignor issued a notice calling upon the petitioner to pay any alleged amount prior to the present suit or present notice. The alleged lending dated 3.12.2018 is denied and to overcome the bar of limitation, right before the expiry of the 3 years period the present suit had been filed.

7. That the petitioner is not liable to pay any amount much less the suit claims since the petitioner is connected with the alleged suit transaction. Furthermore, since various persons to file a civil suit before the Hon'ble High Court, Madras for accounts and redemption. The said suit in C.S.No.185/2022 is pending consideration and the plaintiff arrayed as the body of creditor therein and seriously disputed lender-borrower relationship between the parties hereto.

8. That the documents filed the petitioner would amply prove and establish that the petitioner have valid and tenable defence with regard to the suit claims. Unless an opportunity is afforded to the petitioner to file the written statement setting out in detail the fraud committed by the plaintiff in collusion and connivance with his assignors and finance agent, truth will not come to surface. The defence that is likely to be raised by the petitioner is substantial and formidable in nature and that could be elucidated only if any opportunity is granted to the petitioner/2nd defendant to file written statement and substantiate the defence with supporting documents at the time of trial by letting oral and documentary evidence.

9. That by making use of the blank, unfilled, undated pronotes Mr.Vijay M.Jain in collusion and connivance with the plaintiff has concocted and created fabricated and forged documents as if there is a financial transaction between them. Thus, under these circumstances, the petitioner is constrained to file the present application seeking unconditional leave to defend the suit in O.S.No.7967/2022 as against the plaintiff. Therefore, the petitioner seeks permission of unconditional leave to 2nd defendant to defend the suit. Hence the petition.

10. Brief averments in the counter are as follows:

That the 1st Respondent is the plaintiff in the above suit. The said allegations are bundle of lies, falsely created for the purpose of getting an unconditional leave to defend and delay the progress of the suit. On 3.12.2018, the defendants approached plaintiff/1st respondent seeking loan of Rs.2,00,000/- through their finance agent Mr.Vijay M.Jain and promised to repay the same along with interest at the rate of 1.6% per month and would repay the same as and when demanded by the 1st respondent and further the defendant offered to execute promissory note in respect of the loans advanced by the plaintiff/1st respondent to them. On the very same day i.e., 3.12.2018, at Chennai, the plaintiff/1st respondent had lent a sum of Rs.2,00,000/- by cheque bearing No.273060 drawn on United Bank of India. On receipt of the said sum of Rs.2,00,000/-, the defendants had executed the promissory note which is filed as document No.1 along with the plaint.

11. That the perusal of the said promissory note shows the details of execution of promissory note and the defendant promised to repay the sum due as

and when demanded by the plaintiff/1st respondent with interest at the rate of 1.6% per month.

12. That the payments made by the defendants to the plaintiff/1st respondent there remains a sum of Rs.60,000/- for balance of principal and Rs.32,640/- for interest in all aggregating to Rs.92,640/-, which sum the defendants have failed and neglected to pay, in spite of repeated demands and notice date 18.7.2022.

13. That the 2nd defendant alleges that he had borrowed money from Vijay M.Jain and not from the plaintiff/1st respondent. The bank statement/bank certificate filed by the plaintiff/1st respondent along with this counter will amply show the amount advanced by the plaintiff, had been credited to the account of the 1st defendant and the 2nd defendant had joined as co obligant, unless the 2nd defendant had not joined as co obligant for the loan, the petitioner would not have advanced money to the defendants.

14. That the 2nd defendant in his leave to defend application that he did not borrow any money from the plaintiff/1st respondent, he execute any promissory note is denied. Further that the 1st defendant were introduced by the 2nd defendant only on representation of 2nd defendant, he would join as co-obligant of the loan requested by the defendants. Based on the said understanding and upon being the receipt of the loan amount, the defendants executed promissory note in the favour of the plaintiff/1st respondent.

15. That there is no lender borrower relationship as alleged by the 2nd defendant in leave to defend application. A mere perusal of the promissory note, notices filed along with the plaint and the bank certificates/statement filed by the plaintiff would establish that the promisory note was executed by 1st and 2nd defendants only upon being receipt of the loan amount from the plaintiff which clearly establishes the existence of lender borrower relationship with the plaintiff and defendants.

16. The signatures in the suit promissory note and in the leave to defend application filed by the 2nd defendant are one and the leave to defend application filed by the 2nd defendant are one and the same and therefore, the 2nd defendant had joined along with the 1st defendant as co obligant and therefore, all the defendants are jointly and severally liable to repay the sums due to the plaintiffs. The defence thus raised by the defendants are moonshine, sham, nominal and had not raised substantial defence and therefore, leave to defend applications filed by the defendants. Hence prays for dismissal.

<u>17. Point for consideration:-</u>

Whether this petition can be allowed or not?

18. Heard the arguments on both side and perused the records. Exhibits R1 to R9 were marked on the side of 1st Respondent/Plaintiff in another application filed by second defendant and the same can be considered to decide this petition. No documents marked on the side of the petitioner.

19. Order XXXVII rule 3 C.P.C. provides a specific right to the defendant to seek leave to defend. The court shall grant unconditional leave to the defendant if it is satisfied triable issues raised in the defense. 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. The primary object underlying summary procedure is to prevent unreasonable obstruction by the defendant who has no defense thereby assisting and securing speedy and expeditious disposal of cases. It is noted that the respondent/plaintiff has filed the suit against the petitioner/defendant based on a promissory note allegedly executed by the defendant.

20. The suit is for recovery of money arises on promissory note. According to Section 118 of Negotiable Instruments Act, *presumption arises as to consideration, as to date, as to time of acceptance, as to transfer, as to endorsement, as to stamp. Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or for, or has been obtained from the maker or acceptor thereof, by means of an offence or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.* The petitioner strenuously denied the execution of negotiable instrument stating there was no valid consideration passed upon. The plaintiff claimed that he

credited the loan amount into the bank account of petitioner as per the request by the petitioner/second defendant and obtained a certificate issued by the bank which is marked as document.

21. It could be seen from the submissions on either side, the petitioner herein is arrayed as first defendant in the suit and the plaintiff contended the loan extended into the bank account of the first defendant as per the request made by the second defendant. It is noted the second defendant has filed separate application seeking to grant unconditional leave to defend wherein this court has passed a detailed order and concluded the second defendant is entitled for leave to defend the suit filed by the plaintiff.

22. In the present case, the petitioner has agitated the claim of plaintiff and contended the plaintiff is not entitled for the relief based in respect of the promissory note. The learned petitioner counsel has argued in line with the submissions made by the second defendant. This court found sufficient force in the arguments of the petitioner and it is necessary to decide the plea of limitation in regard to the negotiable instrument, the payment of exact interest and principal amount allegedly paid by the financial agents of defendants. In view of the order passed in the connected application filed by second defendant, who is the alleged joint borrower, this court find no further discussion required to determine the point now raised for consideration in this petition.

23. Therefore this court is of view, the defense set out by the petitioner cannot be said as illusory, sham and moonshine and triable issues were shown to convert the case into an ordinary suit. With the above observation, this court is inclined to allow this petition. Accordingly this point is decided.

In fine, this petition is allowed. No costs.

Directly dictated to the Steno-Typist, typed by her in computer and after made necessary corrections, pronounced by me in the Open Court on this, the 27th day of November 2024.

N SACHIDHANANTHAM Digitally signed by N SACHIDHANANTHAM

XII Assistant Judge
City Civil Court, Chennai

List of Witnesses & Exhibits on the Petitioner side: Nil

List of Witnesses on the respondent side: Nil

List of Exhibits on the respondent side marked in I.A.4/2023

Ex.R1	03.12.2018	Promissory note executed in favour of 1st respondent/plaintiff (Original)
Ex.R2	02.02.2019	Letter sent to the 1st respondent (Original)
Ex.R3	20.03.2019	Letter sent to the 1st respondent (Original)
Ex.R4	10.04.2019	Letter sent to the 1st respondent (Original)
Ex.R5	16.05.2019	Letter sent to the 1st respondent (Original)
Ex.R6	21.06.2019	Letter sent to the 1st respondent (Original)
Ex.R7	06.08.2019	Letter sent to the 1st respondent (Original)
Ex.R8	18.07.2022	Legal Notice sent by the 1st respondent (Office Copy)
Ex.R9	19.01.2023	Certificate issued by Union Bank (Original)

N SACHIDHANANTHAM Digitally signed by N SACHIDHANANTHAM

XII Assistant Judge
City Civil Court, Chennai

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Dated: 27.11.2024
XII Assistant Court