

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE,  
DINDIGUL.

PRESENT : **THIRU. A.K. MEHBUB ALI KHAN, B.LM., LL.M.,**

**PG.D.PM/IR.,**

ADDITIONAL DISTRICT JUDGE, DINDIGUL.

Tuesday, the 4<sup>th</sup> Day of April 2024

**I.A. No.2/2023**

**-in-**

**O.S. No.295/2022**

1. Sarojini

2. Mythili Rajalakshmi

... Petitioners / Defendants 1 and 2

**-Vs-**

T. Kannan

...

Respondent/Plaintiff

This petition came on 18.03.2024 before this Court for final hearing in the presence of Thiru. R. Saravanan, Advocate for the Petitioners / Defendants 1 and 2. Tvl. S. Nagaraj and T. Sivachandran, Advocates for the Respondent/Plaintiff and after having heard the argument of both sides and on perusal of records, this Court delivers the following :

**ORDER**

Petition filed by the petitioners / defendants 1 and 2 Under Order 7, Rule 11 (a) of C.P.C.

2. **Contention of the Petitioners / Defendants:**

Petitioners are the defendants in the main suit. The respondent / petitioner has filed the suit for recovery of money based on a pronote. Petitioners have claimed that they had borrowed money from Mr. K. Raja on two occasions by executing registered mortgage deeds in 2013 and in 2018. The earlier loan was repaid in 2015 and the mortgage deed dated 06.08.2013 was cancelled. At the time of getting loan, the petitioners / defendants have also executed 2 unfilled pronotes. Later, on 04.11.2019 again another sum of Rs.20,00,000/- was borrowed by the petitioners from Mr. K. Raja on execution of registered mortgage deed dated 04.11.2019. At that time also, they have executed 2 unfilled pronotes at the request of K. Raja. It is the contention of the petitioners that the plaintiff has filed the suit using one such pronote as if the petitioners have borrowed a sum of Rs.9,00,000/-. While, these petitioners never borrowed any amount from him. These petitioners are not aware of this plaintiff or his house and they never went to his house. The present suit is a collusive one filed by plaintiff at the instigation of the said Mr.K. Raja. The entire plaint averments and documents filed therewith do not constitute any cause of action and shows only an illusory and fictitious cause of action. The plaintiff has simply stated that the loan was paid in cash which

cannot be accepted and no other circumstances are explained by the plaintiff. Hence, the court cannot proceed with the suit with these facts in the perspective of an ordinary loan transaction. Hence, the suit plaintiff does not reveal the cause of action and has to reject the plaintiff. They have prayed accordingly.

3. **Contention of the Respondent / Plaintiff:**

The averments raised by the defendants / petitioners have to be proved by them only during trial. The respondent / plaintiff is not aware of the transaction between defendants and Mr.K. Raja. The defendants were family friends of this plaintiff and 2<sup>nd</sup> defendant, daughter was doing online trading business and Real Estate business. They borrowed the loan amount for their business development. The defendants did not mention anything about previous loan transactions in their reply notice and later they introduced those facts in their written statement only. Now, they have stated new facts in the petition filed with an intention to delay and protract the proceedings. The suit is posted for cross examination of PW1, and the petition is not maintainable. Whether the suit pronote is true and whether the defendants borrowed loan amount can be decided only in trial. These defendants have admitted their

signature in pronote and whether it was made in 2020 or earlier can be decided only in trial. Hence, the plaint cannot be rejected. Thus, He prays to dismiss the petition.

4. Point for consideration in this petition is, **Whether the petition be allowed and the plaint be rejected?**

5. Heard both sides.

6. **POINT:**

The learned counsel for the petitioners argued that, a petition to reject the plaint can be filed at any stage and he relied upon the decision of the Hon'ble Supreme Court in, “ *R.K. Roja Vs. Rayudu and another*” <sup>1</sup>. He further argued that the plaint does not reveal proper cause of action and so the plaint has to be rejected as held by the Hon'ble Supreme Court in “*Rani Setty Venkataramana Vs. Nasyam Jamal Saheb*” <sup>2</sup>.

7. Per contra, the learned counsel for the respondent argued that the petition is not maintainable and the allegations made can only be considered during trial.

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1 (2016) 14 SCC 275

2 2023 INSC 458 (Neutral Citation)

8. The stage at which an application to reject the plaint can be filed is no longer ‘*res-integra*’ in view of the catena of decisions of the Hon’ble Supreme Court in “*ITC v. Debts Recovery Appellate Tribunal and others*”<sup>3</sup>, “*Saleem Bhai Vs. State of Maharashtra*”<sup>4</sup> and “*R.K. Roja Vs. Rayudu and another*”<sup>5</sup>. Therefore, it is now well settled that the petition to reject the plaint under Order 7 Rule 11 C.P.C. can be filed at any stage before passing of judgment. Thus, this petition filed after examination of PW1 is maintainable.

9. Considering the grounds on which this petition is filed, it is found that the petitioner have claimed that the plaint does not reveal true cause of action and the one pleaded is fictitious and illusory. Whereas, the respondent has contended that the plaint reveals correct cause of action and whether it is true or not can be decided only during trial and not in these proceedings.

10. In this regard, this court is aware that the plaint has to be read in its entirety and the plaint averments alone have to be considered. It is also trite law that the allegations made in the written statement or even in the petition filed to reject the plaint shall not be considered. This proposition has been

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3 1997 (3) CTC 746 (SC) : (1998) 2 SCC 70

4 (2003) 1 SCC 557

5 (2016) 14 SCC 275

repeatedly held by the Hon'ble Supreme Court in various decisions including one in, "***R.K. Roja Vs. Rayudu and another***"<sup>6</sup> relied upon by the petitioners.

In the said decision, it has been held as under

***“ The consideration of the application for rejection should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for rejection of the plaint. The court has to consider only the plaint as a whole, and in case, the entire plaint comes under the situations covered by Order VII Rule 11 (a) to (f) of the CPC, the same has to be rejected”.***

Similarly, it is also trite that the cause of action is a bundle of facts and the courts while considering if the cause of action is available, has to take into account all those facts as detailed in the plaint.

11. In this case, the plaint reveals that the defendant borrowed a sum of Rs.9,00,000/- from plaintiff on 01.10.2020 at his house for their family necessities and business purposes. It is also revealed that, a notice was sent demanding repayment on 13.04.2022 and that a reply denying the loan was sent by defendants on 09.07.2020. Thus, the cumulative reading of the plaint clearly make out the cause of action for the suit for recovery of money.

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6 (2016) 14 SCC 275

12. The contention of the petitioners that such amount is claimed to have been paid by cash which cannot be accepted is impermissible, because, the truth or otherwise of such averments can be decided only in the trial and not while dealing with the petitions to reject the plaint. It is again well settled, that for the purpose of finding out whether the plaint discloses a cause of action or not, the averments made in the plaint in their entirety must be held to be correct. ***“The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed”*** as held by the Hon’ble Supreme Court in, ***“Rani Setty Venkataramana Vs. Nasyam Jamal Saheb”***<sup>7</sup>. Thus, the averments made in the plaint of this case, when taken in their entirety as true, the court is of the considered opinion that a decree for recovery of money would certainly be passed. Therefore, it is held that the plaint reveals sufficient amount of cause of actions so as to decree the suit and it cannot be held that there is no cause of action for this suit.

13. Hence, in view of the discussion made above, it is held that, the plaint cannot be rejected under the premise that there is no cause of action and the petition filed under Order 7 Rule 11 (a) C.P.C. is liable to be rejected. This point is decided accordingly.

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**In the result**, this petition is dismissed with cost.

Written by me and typed by the stenographer in computer, corrected and pronounced by me in the Open Court on this the 4<sup>th</sup> day of April 2024.

Additional District Judge,  
Dindigul.