

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, (FTC)

ARANI, TIRUVANNAMALAI DISTRICT.

PRESENT: Tmt. K.VIJAYA, B.Sc., B.L.,

ADDITIONAL DISTRICT JUDGE, ARANI.

FRIDAY, THE 16th DAY OF FEBRUARY, 2024.

I.A.No.02/2023 in O.S.No.59/2023

T.Chelizhan

... Petitioner/Defendant

/Vs./

A.Murugesan

...Respondent/Plaintiff

This petition was coming before me for final hearing on 14.02.2024 in the presence of Thiru. K.Thenrajan, Advocate for the Petitioner / Defendant and of Thiru. P.Silambarasan, Advocate for the Respondent / Plaintiff and perusing the relevant records of this case, and having stood over for consideration, till this day, this court delivers the following...

ORDER

Petition filed by the petitioner under Order 37 Rule 3(5) of C.P.C. to grant leave to the petitioner to defend the suit in Summary Suit No.59/2023 on the file of this court and for other orders.

2) The facts stated in the petition in brief is as follows:-

The petitioner is the defendant in the suit. He had denied the entire averments and allegations in the plaint except those which are specifically admitted. The true fact was that the Petitioner is the native of Thusi Madura Village, Vembakkam Taluk, Tiruvannamalai District, he is a government servant working as a Pharmacist presently working at Government Primary Health Center, Sholur, Nilgiris District. The Respondent is running a Textile shop in the name and style of M/S Murugasean Silk House, Kancheepuram, the Respondent used to provide sarees and other textile materials for retail sale to the petitioner's wife Vasanthi on credit basis, she used to sell sarees and pay the credit to the

Respondent, apart from that there was no any transaction between him and the Respondent. In the first week of September 2018 the Respondent hesitated to provide textile materials in bulk for retail sale to his wife Vasanthi and for security purpose he demanded him to sign in his ledger accounts and in a empty stamp paper, due to his demands, he put his initial in his ledger accounts and in a empty stamp paper, later there was a dispute arises between the Respondent and the petitioner's wife in the month of December 2018 and thereafter there was no transaction between the Respondent and the petitioner's wife Vasanthi, in the month of November 2018 itself the petitioner demanded the Respondent to return the empty stamp paper, the Respondent dodged to return the same by telling various reasons and he convinced the petitioner that he misplaced it. In the month of December, 2022, the petitioner was transferred to Nilgiri towards his employment, the Respondent used by the absence of the petitioner and created the forged documents and made false claim and further the Respondent having knowledge that the petitioner was not in the above address mentioned in the legal notice and he had conveniently filed the above false, frivolous and vexatious suit. The Petitioner has not executed any promissory note dated 31.08.2018, the contents of the forged promissory note dated 31.08.2018 was filled as an act of afterthought by the Respondent to extract illegal money from the petitioner. The petitioner put one initial in the blank stamp paper as stated above and later the empty stamp paper was fabricated and forged by the Respondent and the second initial in the front side of the stamp paper and the initials relied on by the Respondent in the backside of the stamp paper dated 10.08.2019 and 20.08.2020 as acknowledgment were all forged by the Respondent, further the petitioner's initials in the other promissory notes dated 17.05.2019 were also forged by the Respondent, since the petitioner's initials were forged by the Respondent in the above said promissory notes and it was an invalid document and it was non-est in the eye of law and further the claim of the Respondent was also bared under law. The allegation of receiving loan and passing of consideration was totally false,

since the promissory notes dated 31.08.2018 and 17.05.2019 were forged and fabricated as stated above by the Respondent, therefore the claim of the Respondent was invalid and barred under law, further, there is no cause of action for the suit and there is no jurisdiction for the suit because nothing flow from the fraud. Since the petitioner has a valid grounds to defend the suit, it is just necessary to grant leave to the petitioner in the suit by permitting the petitioner to file a written statement in the above suit, as the petitioner has a good case on merit and the petitioner will be greatly prejudiced if the court is not grant leave to the petitioner to defend in the suit.

3) Brief narration of counter filed by the Respondent as follows :-

The Respondent / Plaintiff denies the petition averments each and every para wise facts and took a stand on the ground that the petitioner got loan from many persons at his locality and not repay the same by cheating so many persons. When this being so, the petitioner without informing others, the petitioner got transfer to Udagamandalam. As per the plaint averment, the petitioner got loan without repaying the same as per the agreed pronotes, dated 31.08.2018, 17.05.2019. For the 31.08.2018 pronote, the petitioner made endorsement for Rs.10,000/-, on 10.08.2019 Rs.40,000/-, on 20.08.2020 Rs.30,000/- in total Rs.70,000/- and remaining balance of Rs.3,55,066/- besides Rs.4,00,000/- for 17.05.2018 pronote and its interest. For 17.05.2019 Rs.4,00,000/- pronote, the petitioner had executed 4 pronotes for Rs.1,00,000/-. For which, Rs.10,000/- were endorsed on each pronotes in total Rs.40,000/- paid. After deducting Rs.40,000/-, Rs.7,41,866/- is to be paid by the petitioner. The sum of 2 pronote is Rs.10,96,932/- and subsequent interest. As on 09.05.2023 Rs.12,06,932/- is outstanding. In this aspect, on that date legal notice was issued to the petitioner and the same was received by the petitioner. But in the petition, the petitioner has admitted his signature in the suit pronotes. But, telling story relating to saree business of the petitioner's wife to the defendant and for the security purpose, the petitioner put his signature on the blank promissory notes are all denied. For which, no documents was produced by the

petitioner to prove his defence. Hence, the petition is liable to be dismissed with costs. In the Counter, the learned Respondent / Plaintiff counsel relies following reported Judgments,

1. Sunil Enterprises and Anr. - Vs - SBI Commercial and International Bank Limited.
2. 1976 SCC (4) 687
Mechelec Engineers and Manufacturers - Vs - M/S. Basic Equipment Corporation
3. 2006 (5) CTC 186
Defiance Knitting Industries Pvt. Ltd. - Vs- Jay Arts
4. AIR 1990 SC 2218
Mrs. Raj Duggal - Vs - Ramesh Kumar Bansal

4) On both sides neither exhibits were marked nor witnesses were examined.

5) The point for determination:-

Whether the petition is to be allowed?

6) Point:-

Heard both sides. Records perused. On a perusal of records, the Respondent / plaintiff has filed the main suit for recovery of Rs.11,06,532/- on two pronotes dated:31.08.2018 and 17.05.2019 for a sum of Rs.2,00,000/- and Rs.4,00,000/- respectively. For Rs.4,00,000/-, the defendant executed 4 pronotes each having a sum of Rs.1,00,000/-. In his counter, the Respondent / plaintiff has categorically stated the fact that there is a transactions between the petitioner and the respondent.

Whereas, the petitioner / defendant has taken a plea that the respondent having sarees business with his wife Tmt. Vasanthi, who purchased sarees from the plaintiff on retail basis, as the Respondent / Plaintiff running a Textile Shop in the name and style of M/s. Murugesan Silk House at Kancheepuram. The petitioner's

wife used to purchase sarees for credit basis and repay the same. During Septemeber 2018, the Respondent / Plaintiff procured signature from the defendant on a empty stamp paper and Ledger Accounts for the bulk purchase of the petitioner's wife. For which, during December 2018 dispute arises between the Respondent and the petitioner's wife and as such, there is no transaction between them and thereby, the petitioner demanded to return his signed empty stamp papers. The respondent dodged to return the same by telling various reasons and he convinced the petitioner that the same were misplaced. Since the petitioner got transferred to Nilgiris during December 2022, the petitioner forged the suit document. Hence, the claim of the Respondent in the suit is based on forged document for the purchase of sarees from the respondent's shop by the petitioner's wife. Since the petitioner's wife and the respondent were having business for the forged suit transactions, this court infers that the plea of forgery and yet another reason for transaction not as stated in the plaint transactions. Hence, the suit is having triable issues.

It is pertinent to note that no documents produced on either side. Without document, the court cannot decide the points for consideration at the premature stage. Moreover, the suit is involved some triable issue and the same can be decided only at the end of the full fledged trial. Hence, the petition is to be allowed. The relied reported Judgments cited by the learned respondent's counsel in his counter are taken into considered by this court for deciding this petition.

7. In the result, this petition is allowed. No Costs.

Dictated by me to the Steno typist and typed by her directly, corrected and pronounced by me in open court, this the 16th day of February, 2024.

**Sd/- K.Vijaya,
Additional District Judge,
Arani.**

Both Side Witnesses and Exhibits:- Nil.

**Sd/- K.Vijaya,
Additional District Judge,
Arani.**