

**In the Court of II Additional District and Sessions Judge,
Thiruvallur @ Poonamallee.**

Present: Thiru. C.Vijayakumar, B.A., B.L.,
II Additional District and Sessions Judge, Poonamallee.

On this Monday, the 24th day of June 2024

I.A. No.1/2023 in O.S. No.522/2022

P. Ravi, S/o. Palani, Hindu, aged 41 years,
residing at No.707, Thandayuthapani Street, Babu Nagar,
Police Camp, Veerapuram, Avadi, Chennai- 600 055.

... Petitioner/Defendant

Vs

N. Manimaran S/o. Late P. Natarajan, Hindu, aged 32 years,
residing at No.56/1, O.C.F. Quarters, Type II, Giri Nagar,
Avadi, Chennai - 600 054.

... Respondent /Plaintiff

This petition was coming up before me for final hearing on 7.6.2024 in the presence of Mr. B.A. Gnanaprakasam, A. Muthukumaran, learned counsel for the Petitioner/Defendant, M/s. G. Prakash and G.S. Nirmala Devi, learned counsel for the Respondent/Plaintiff, on perusal of entire materials records, upon hearing the arguments on both sides and having stood over for consideration till this date this court pass the following:

ORDER

The petition is filed by the Petitioner / Defendnat, under Order 37 Rule 3 of C.P.C. praying to this court for leave to defend the above suit, asserting that the petitioner have a valid defence.

2. Averments of affidavit filed by the Petitioner/ Defendant are as follows:

The petitioner herein is the defendant in the above suit. The averments and allegations in the plaint para 3 to 11 are totally false and vague. The defendant have valid defence in the suit. The signature contained in the agreement dated 17.02.2021 is not defendant's signature and hence the defendant have fair chance in succeeding the case. The defendant borrowed only Rs.3,00,000/- in the year 2015 and he repaid Rs.1,50,000/- during 2022. The defendant had paid interest at the rate of 5% per month during 2015 to 2022. On 21.3.2021 the plaintiff separately borrowed Rs.1,50,000/- from the defendant at the rate of 2% per month and till now the plaintiff never paid any interest or principal for the said borrowing. The agreement dated 17.2.2021 is created for the purpose of the filing of this suit and creating limitation which the plaintiff has to prove the same. The signature in the alleged agreement is false. Therefore, the defendant denied his signature and borrowing enclosed in the agreement. The defendant has valid defence in the suit and also never admit any part of the amount as stated in the promissory note. The defendant is liable to pay only Rs.1,50,000/- alone to the plaintiff. In the event, that on 21.3.2021 the borrowing of the plaintiff is to be set off against the borrowing. Hence, the defendant is not liable to pay any amount to the plaintiff. The defendant also reserve his right to file set off the claim in the written statement. Hence if this court not given a chance to defend the suit great prejudice and irreparable loss will be caused to the defendant.

Therefore, the petitioner prays to grant leave to defend the above suit and have valid defence.

3.The Counter filed by the plaintiff/ Respondent are in brief are as follows :

The Respondent herein is the Plaintiff in the above suit. The above petition is not maintainable either in law or on facts and it is liable to be dismissed. The Respondent have filed the above suit against the petitioner herein for recovery a sum of Rs.13,24,000/- together with further interest for the principal sum of Rs.11,00,000/- from the date of plaint till the date of realization. The Respondent crave leave of this court to treat the plaint averments as part and parcel of this Counter Affidavit. The suit filed by respondent is arising out of lending money by the way of loan and on demand Promissory Note executed by the Petitioner herein in favour of the respondent on 17.02.2021 for Rs.11,00,000/- and the cause of action for the suit arising from the date of execution of Promissory Note followed by pre suit notices. The Petitioner and Respondent are known to each other and it is an admitted fact that the petitioner/defendant borrowed money from respondent and executed a Promissory Note on 17.02.2021. When the Promissory Note executed by the Petitioner herein having been admitted the Petitioner herein cannot feign ignorance in respect to the said Document. The part payments were made by the Petitioner herein through Bank transaction that is on 15.02.2022 the Petitioner paid Rs.50,000/-, on 09.03.2022, paid Rs.50,000/-, on 11.04.2022 paid another Rs.50,000/- thus a sum of Rs.1,50,000/- having been paid by the Petitioner .The Petitioner herein is liable to pay

Rs.13,24,000/- from the date of filing of Suit and the Reply Notice dated 13.07.2022 received by the Petitioner herein but he did not choose to issue and reply for the same. The petitioner does not have any valid defence to contest the above suit. The petitioner failed to comply the provisions available under order XXXVII Rule 3(1) of CPC and the leave to defend petition is filed by the petitioner only after form 4A in Appendix B filed by respondent. Therefore, the Respondent prays to dismiss the above petition with cost consequently decreed the suit as prayed for with cost.

4. During the enquiry on behalf of the petitioner's side, Exhibits Ex P1 was marked, and on behalf of the respondent's side, Exhibits Ex R.1 to Ex R.4 were marked.

5 . The point for consideration is whether this petition is allowed or not ?

6. Plaint, petition, affidavit, oral and written submission filed by the plaintiff and the defendant sides are perused.

7. For the sake of convenience , the Defendant/Petitioner shall hereinafter be referred as Defendant, and the Plaintiff /Respondent shall hereinafter be referred to the Plaintiff.

8.The plaint averments discloses that the Plaintiff and the Defendant are colleagues working together at O.C.F Avadi. Due to this relationship, the defendant borrowed the following sums for his own urgent personal needs on different dates from the plaintiff :

S.No	Date	Amount
1	27.02.2015	Rs.3,00,000
2	18.05.2017	Rs.2,00,000
3	08.02.2018	Rs.2,00,000

The defendant agreed to repay the same together with interest at the rate of 18% per annum. Since the defendant unable to repay the same, the principal and the interest accumulated to the tune of Rs 11,00,000/ and accordingly the defendant had executed an on demand promissory note in favour of the plaintiff on 17.02.2021 agreeing to repay the said principal sum of Rs.1,00,000/ together with the interest at 24% per annum and when demanded by the plaintiff. After execution the defendant had paid interest in the following dates :

S.No	Date	Amount
1	15.02.2022	Rs.50,000
2	09.03.2022	Rs.50,000
3	11.04.2022	Rs.50,000

And on the date of plaint Rs 3,74,000/ towards interest and less Rs 1,50,000/ already paid now the interest payable is Rs 2,24,000/ and in total the defendant is liable to pay of Rs 13,24,000/ as on the notice date 13.07.2022. In these circumstances, the defendant sent a legal notice to the plaintiff claiming Rs 1,50,000/ on some kind of fictitious promissory note. The plaintiff then sent Reply cum demand notice to the

defendant to repay the entire outstanding loan of Rs 13,24,000/ .The defendant did not pay the amount as demanded by the plaintiff. Hence the Plaintiff filed the summary suit under order 37 C.P.C.

9. After the institution of this suit, the summons was issued in Form No. 4 in Appendix B as prescribed under Order 37 Rule 2(2) CPC, and it was served to the defendant herein on 9th November 2022. Thereafter, the counsel for the defendant appeared and filed an undertaking memo to file vakalatnama and written statement. Subsequently, the suit was posted for hearing on 1st February 2023.

10. In the meantime, on 10.01.2023 the learned counsel for the plaintiff filed a separate affidavit under Order 37 Rule 3 CPC along with Form 4A Appendix E for issuance of Judges summon for Judgment cause service to the defendant . This affidavit and the annexed summons were kept in the case bundle without service to the defendant as envisaged under Order 37 Rule 3(4) CPC. Consequently the defendant without service of the summons under Order 37 Rule 3(4) CPC filed a petition under Order 37 Rule 3 C.P.C. seeking leave to defend the suit on 01.02.2023.

11. During the course of the proceedings, the petition filed by the defendant seeking leave to defend progressed and was posted for orders today. Despite the plaintiff's request for the issuance of Judge's summons under Order 37 Rule 3(4) CPC in the prescribed "form 4A Appendix B" remains pending in the case bundle. Despite the leave for defend petition being posted for orders, the deadline for rectifying the

issuance of the judge's summons for judgment has not elapsed. There is no time prescribed to the court for issuance of summons under Order 37 Rule 3(4) CPC in the prescribed "form 4A Appendix B". The issuance of notice under Order 37 Rule 3(4) CPC in the prescribed form 4A Appendix B is mandatory in a summary suit.

12. Thus, in the interest of justice and to arrive a fair decision in compliance with the provisions of Order 37, and to avoid multiplicity of proceedings, this court does not pass orders on this leave to defend petition I.A. 1/2023 at this instance. And some interim order is necessary to proceed in this petition.

13. As such in the interim measure, this court has ordered the issuance of Judge's summons to the defendant as prescribed under Order 37 Rule 3(4) CPC in form 4A Appendix B. After the Judge's summons has been duly served, the defendant may proceed with the current petition for leave to defend within ten days from the date of service of such summons, for further proceedings.

In the result, this court ordered that it is not appropriate at this stage to pass any orders on this leave to defend petition. Therefore, as an interim measure, the court ordered that issue Judge's summons to the defendant under Order 37, Rule 3(4) CPC in the prescribed Form 4A of Appendix B." After the Judge's summons has been served, the defendant may proceed with the current petition for leave to defend within ten days from the date of service of such summons. Call this petition on 05.07.2024.

Dictated to steno-typist, typed by the steno-typist, corrected and pronounced by me in the Open Court on this the 24th day of June 2024.

sd/- C. Vijayakumar

**II Additional District and Sessions Judge,
Thiruvallur @ Poonamallee.**

Exhibits on the side of the Petitioner :-

Ex.P.1 / 21.03.2021 : Original Demand Promissory Note executed by Plaintiff in favour of Defendant for Rs.1,50,000/-.

Exhibits on the side of Respondent :-

Ex.R.1 / 17.02.2021 : Original Demand Promissory Note executed by Defendant in favour of Plaintiff for Rs.11,00,000/-.

Ex.R.2 / 26.06.2022 : Copy of Legal notice issued by the defendant to the plaintiff.

Ex.R.3 / 13.07.2022 : Reply notice sent by the plaintiff to the defendant and his counsel.

Ex.R.4 / series : Postal Acknowledgement card of the defendant. - 2 Nos.

Witnesses on both sides :- Nil.

sd/- C. Vijayakumar

**II Additional District and Sessions Judge,
Thiruvallur @ Poonamallee.**

Draft / Fair Order

I.A.No.1 of 2023 in

O.S. No.522 of 2022

Date : 24.06.2024

II A.D.S.J., Poonamallee.

APPENDIX B
FORM No.4A

SUMMONS FOR JUDGMENT IN A SUMMARY SUIT
(Or. 37 R.3)

In the Court of II Additional District and Sessions Judge,

Thiruvallur @ Poonamallee.

Original Suit No. 522 of 2022

N. Manimaran S/o. Late P. Natarajan, Hindu, aged 32 years,
residing at No.56/1, O.C.F. Quarters, Type II, Giri Nagar,
Avadi, Chennai - 600 054.

... Plaintiff.

Vs.

P. Ravi, S/o. Palani, Hindu, aged 41 years,
residing at No.707, Thandayuthapani Street, Babu Nagar,
Police Camp, Veerapuram, Avadi, Chennai- 600 055.

... Defendant.

Upon reading the affidavit of the plaintiff the Court makes the following order,
namely : --

Let all parties concerned attend the Court of II Additional District and Sessions Judge, Poonamallee , **on the 5th day of July 2024, at 10.00 O' Clock** in the forenoon on the hearing of the application of the plaintiff that he be at liberty to obtain judgment in this suit against the defendant (or if against one or some or serveral, insert names) for **Rs.12,27,742/-** and for interest and costs.

Dated the 24th day of June 2024.

sd/- C. Vijayakumar

II Additional District and Sessions Judge, costs.

Thiruvallur @ Poonamallee.

To 1) P. Ravi, S/o. Palani, Hindu,

No.707, Thandayuthapani Street, Babu Nagar,

Police Camp, Veerapuram, Avadi, Chennai- 600 055.

2) Mr. B.A. Gnanaprakasam

Advocate, Bar Association, Poonamallee.