

**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 Wednesday, the 28th day of August 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 01.08.2024 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/Defendant, under Order 37 Rule 3 of C.P.C. prayed to this court to grant leave to defend the above suit as the Petitioner have 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 have paid interest at the rate of 5% per month during 2015 to 2022. On 21.3.2021 the Plaintiff 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 the 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 written statement in the above suit, Hence if 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 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 XXXVI 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 P.1 was marked, and on behalf of the Respondent's side, Exhibits Ex R1 to Ex R.4 (series) were marked.

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

6. Complaint, 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 Defendants 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

1	27.02.2015	3,00,000
2	18.05.2017	2,00,000
3	08.02.2018	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.11,00,000/- 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

1	15.02.2022	50,000
2	09.03.2022	50,000
3	11.04.2022	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 not paid the amount as demanded by the Plaintiff. Hence the Plaintiff filed the summary suit under Order 37 Rule 1 CPC.

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. Consequently the Defendant filed a petition under Order 37 Rule 3 CPC 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 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.

12. Thus, in the interest of justice and to arrive a fair decision in compliance with the provisions of Order 37, this court does not pass orders on this leave to defend petition

at this instance. As such this court has ordered the issuance of judge's summons to the Defendant as prescribed under Order 37 Rule 3(4) CPC. 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, and this petition was posted for further proceedings on 24.06.2024.

13. Thereafter on 25.06.2024 Judges Summons under Order 37 Rule 3(4) CPC was served to the Defendant in the prescribed Format of Form 4A of Appendix B. Subsequently, on 02.07.2024, the counsel for the Petitioner filed a memo treating this petition as an earlier filed leave to defend the case, which was filed before the judge's summons, and the other side endorsed no objection . After hearing of both side, this Court passed the following final orders .

14. The Petitioner herein is the Defendant in the main suit. 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 suit is filed under Order 37 as Summary Suit.The present petition filed under Order 37 Rule 3 CPC seeking leave to defend the case after serving of Judges summons.The Plaintiff filed this suit on the basis of Promissory note executed by the Petitioner herein for the sum of Rs 11,00,000/- on 17.02.2021.The Defendant take two defence in this petition

1)The defendnat denied the signature in the Suit Promissory note by making signature of the Defendant as false.

2)The Plaintiff also borrowed a sum of Rs 1,50,000/ from the Defendant on 21.03.2021 for the interest of 2% and the same was not repaid by him.

During the enquiry the Petitioner marked Ex.P.1 the Promissory Note dated 21.03.2021.The Respondent marked ExR.1 Promissory Note dated 17.02.2021, ExR.2 Copy of the Legal notice issued by the Petitioner/Defendant to the Plaintiff dated 26.06.2022, ExR.3 Copy of the Reply cum demand notice sent by the Plaintiff to the Defendant and the counsel for the Petitioner/Defendant, Ex.R.4 Acknowledgment cards (2Nos).

15. The Order 37 Rule 3(5) CPC which deals with leave to defend in a Summary Suit reads as follows :

(5) The Defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just:

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.

This section stipulates that leave to defend the suit is available to the Defendant only in the following situations: 1) the facts disclosed by the Defendant do not indicate that

he has a substantial defense to raise, or 2) the defense intended to be presented by the Defendant is not frivolous or vexatious.

16. When this Court applies these stipulations to the present petition, the Petitioner/Defendant has raised the defense of set-off and denied his signatures on the Ex.R.1 Promissory Note. Upon considering these defenses, the court finds that both defences are valid and substantial and are not frivolous or vexatious. The denial of the signature by the Petitioner/Defendant cannot be resolved without a full trial. The Ex.P,1 document produced by the Petitioner/Defendant shows that a Promissory Note exists in the name of the Plaintiff, which also requires thorough scrutiny. Therefore, this Court concludes that the Petitioner/Defendant has a valid defense to contest the suit.

17. The Petitioner/Defendant admitted that he borrowed a sum of Rs.3,00,000/- from the Plaintiff during the year of 2015 and Rs1,50,000/ was repaid by him during 2022, and relied the Ex.P.1 that this amount should be setoff the claim of the Plaintiff. Hence he is not liable to pay any sum to the Petitioner/Defendant is the case of the Petitioner/Defendant. Hence as per the second proviso of Order 37 Rule (3) (5) CPC there is no conditional order to allow this leave to defend petition.

In the result, this petition is allowed with No cost.

Dictated to steno-typist, typed by the steno-typist, corrected and pronounced by me in the Open Court on this the 28th day of August 2024.

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

Exhibits and Witnesses on both sides :-

Petitioner side:-

ExP1- Promissory note dated 21.03.2021

Respondent's side:-

ExR1 : Promissory note dated 17.02.2021

ExR2 : Copy of the Legal notice issued by the Petitioner/Defendant to the Plaintiff dated 26.06.2022

Ex.R3 : Copy of the Reply cum demand notice sent by the Plaintiff to the Defendant and the counsel for the Petitioner/Defendant

Ex.R.4 : Acknowledgment cards (2Nos).

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

Draft / Fair Order

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

Date : 28.08.2024

II A.D.S.C., Poonamallee.