

Madras High Court

K.Muthuram vs P.Jagannathan on 25 June, 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.6.2010

CORAM:

The Honourable Mr.Justice G.RAJASURIA

C.R.P.(NPD) 1402 OF 2010

and

M.P.No.1 of 2010

K.Muthuram

... Petitioner

vs.

P.Jagannathan

... Respondent

Revision is filed against the order dated 19.6.2008 passed in I.A.No.48 of 2008 in

For Petitioner : Mr.A.Arokiadoss

For Respondent:Mr.Poovanalingam

ORDER

Animadverting upon the order dated 19.6.2008 passed in I.A.No.48 of 2008 in O.S.No.6031 of 2006 by the VII Asst.City Civil Judge, Chennai, this civil revision petition is focussed.

2. The epitome and the long and short of the relevant facts absolutely necessary and germane for the disposal of this revision would run thus:

(a) The respondent herein, as plaintiff, filed the suit invoking Order 37 of C.P.C; whereupon it appears, ex-parte decree was passed by the trial Court, as against which, application was filed for getting the ex-parte decree set aside, but that was dismissed. As against the said order C.R.P. was filed and it was allowed with a direction that procedure should be followed strictly in accordance with Order 37 of C.P.C.

(b) Whereupon the plaintiff gave summons for judgement as per Order 37 and on receipt of the same, within the stipulated time, the revision petitioner/defendant filed the necessary I.A. seeking leave of the Court.

(iii) After hearing both sides, the lower Court dismissed it.

3. Being aggrieved by and dissatisfied with the said order of the lower Court, this revision is focussed on various grounds, which could tersely and briefly be set out thus:

(i) The revision petitioner/defendant is having a good case of his own and his defence is that he already discharged the debt, but the lower Court unjustifiably failed to give him an opportunity of defending the matter.

(ii) The suit document even though styled as a pro-note, it is not in stricto sensu a negotiable instrument, much less a pre-note.

Accordingly, the learned counsel for the revision petitioner/defendant reiterating the grounds of revision would pray for setting aside the order of the lower Court and to give an opportunity to the revision petitioner/defendant to defend the case by filing written statement.

4. Whereas the learned counsel for the respondent/plaintiff, by way of refuting and challenging, impugning and disputing the contentions on the side of the revision petitioner/defendant would submit that the suit document is a promissory note even though nomenclatured as a letter. Absolutely there is no prima facie defence on the part of the defendant to contest the matter and he has not chosen to even show any receipt evidencing the discharge and in such a case the order of the lower Court need not be interfered with. Accordingly, the learned counsel prays for the dismissal of the revision.

5. The point for consideration is as to whether the order of the lower Court suffers from any illegality or non-exercise of proper jurisdiction by the lower Court?

6. A bare poring over and perusal of the order of the lower Court leaves much to be decided. By referring to certain decisions the lower Court simply held as though the defendant was liable to pay the suit amount itself, which in my opinion is not correct. At the stage of granting leave the Court concerned was expected to consider the point as to whether there is any prima facie case put forth on the side of the defendant. But in this case, the lower Court went to the extent of observing as though the defendant was liable to pay the suit amount and simply rejected the request of the defendant.

7. The contention on the side of the revision petitioner/defendant is that there was money transactions between the plaintiff and the defendant and ultimately he discharged the debt and even the original documents were obtained earlier by him from the plaintiff, however, he could not produce any receipt evidencing the discharge. It is a matter of evidence. When such is the legal position, I am of the considered view and that too, in the interest of audi alteram partem that an opportunity should be given to the defendant, however subject to certain conditions to be imposed hereunder and more particularly in view of the fact that in the suit document, i.e. in the nomenclatured letter dated 4.12.2005 prima facie the signature of the defendant is found existing.

8. Accordingly, the order of the lower Court is set aside and permission is granted to the revision petitioner/defendant to defend the suit subject to complying with any one of the following conditions:

(i) The petitioner/defendant shall deposit a sum of Rs.50,000/- (Rupees fifty thousand) in the lower Court within a period of six weeks from this date; or

(ii) Shall furnish bank guarantee for Rs.50,000/- (rupees fifty thousand) within a period of same six weeks from this date; or

(iii) Shall furnish immovable property security to the tune of half of the suit amount to the satisfaction of the lower Court within six weeks from this date.

The civil revision petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Msk To The VII Asst.City Civil Judge, Chennai