

Muthuraman Vs. Muthukumaran

Muthuraman Vs. Muthukumaran

SooperKanoon Citation : sooperkanoon.com/840076

Court : Chennai

Decided On : Sep-13-2007

Reported in : 2007(5)CTC722; (2008)1MLJ309

Judge : S. Manikumar, J.

Acts : Negotiable Instruments Act - Sections 4; Tamil Nadu Debt Relief Act; Code of Civil Procedure (CPC) - Order 8, Rule 9

Appeal No. : C.R.P. No. 1616 of 2005 and C.M.P. No. 18555 of 2005

Appellant : Muthuraman

Respondent : Muthukumaran

Advocate for Def. : No appearance

Advocate for Pet/Ap. : R. Meenal, Adv.

Disposition : Petition allowed

Judgement :

ORDER

S. Manikumar, J.

1. Challenging the order of the Principal District Munsif, Cuddalore, in I.A. No. 1614 of 2005 in O.S. No. 913 of 2004 dated 19.08.2005, the petitioner has come

forward with this Civil Revision Petition.

2. Brief facts leading to the Civil Revision Petition are as follows:

i) The respondent/plaintiff filed a suit in O.S. No. 913 of 2004 on the file of the District Court, Cuddalore, for judgment and decree against the defendant/petitioner to pay a sum of Rs. 17,411.50 together with Principal and interest of Rs. 15,000/- and costs, on the basis of a promissory note which said to have been executed on 05.01.2003 by the revision Petitioner/defendant in favour of the plaintiff/respondent, in which, the revision petitioner/defendant agreed to pay a sum of Rs. 15,000/- together with interest at the rate of Rs. 100/- per Re. 1/- either to the plaintiff/respondent or to the person, nominated by him on demand. In spite of repeated demands through the associates of the respondent/plaintiff to repay the amount as mentioned in the promissory note, the revision petitioner/defendant failed to do so, thereby causing unnecessary delay. The respondent/plaintiff contended that as per the provisions of Section 4 of the Negotiable Instruments Act, the revision petitioner/defendant is bound to pay the amount, as his signature is found in the promissory note. Since the revision petitioner was an agriculturist as on 04.09.1938, the provisions of the Tamil Nadu Debt Relief Act do not apply to him at all.

ii) On the other hand, the revision petitioner/defendant denied execution of such promissory note in favour of the respondent/plaintiff and submitted that he did not borrow any amount, as mentioned in the promissory note. According to the revision petitioner/defendant, the suit promissory note was a forged document prepared by the respondent/plaintiff in his name by some other third party, viz., one Balachandran, with whom the revision petitioner/defendant had money transaction. He further submitted that the revision petitioner/defendant, borrowed a sum of Rs. 15,000/- from the said Balachandran in 1996 by executing two promissory notes for Rs. 10,000/- and Rs. 5,000/- respectively. Except a balance of Rs. 1,800/-, the revision petitioner/defendant had repaid Rs. 5,000/- towards the promissory notes and also a portion of interest to the said Balachandran. After the period of limitation, another turn of Rs. 5,000/- had also been paid by the revision petitioner/defendant, but the said Balachandran did not return the promissory note

executed for Rs. 5,000/-. With the connivance of his relatives, who had money transactions with the said Balanchandran, the plaintiff/respondent has created forged promissory notes and cheated the revision petitioner/defendant.

iii) Pending suit, the petitioner filed I.A. No. 1614 of 2005 and submitted that on the date of execution of the suit promissory note dated 05.01.2003, he was in Bondali, Karnataka State, which is far away from Cuddalore. He was working as a lorry driver in a lorry bearing Registration No.TN-45-Z-2007. To establish his presence in Bondali on 05.01.2003, he produced the trip sheet maintained by him and examined another driver by name, C. Thangaraj. Therefore, he filed the above Interlocutory application to receive the additional Written Statement, bringing the above facts for effective adjudication.

iv) The respondent/plaintiff filed counter affidavit and denied the averments made by the petitioner that he was far away from Cuddalore and further submitted that since the trip sheet is not a registered document, it was invented only for the purpose to drag on the proceedings. He further submitted that the signature affixed on the stamp paper by the borrower itself is sufficient to prove that the petitioner had accepted the offer to repay the amount borrowed under the promissory note and when the trial is almost over, filing of the Interlocutory Application at that stage, is only to protract the proceedings.

v) After hearing the rival submissions, the learned trial Judge, observed that the application, after the completion of the arguments of the plaintiff and when the suit was posted for arguments of the defendant, was filed belatedly with an intention to drag on the proceedings and therefore, dismissed the application. Aggrieved by the same, the petitioner/defendant has filed the present Civil Revision Petition.

3. Referring to the decision of this Court in Radhbai Ammal v. N. Loganathan reported in 2005 (5) CTC 38, learned Counsel for the petitioner submitted that the principles enunciated with regard to the powers of the Court in granting leave for filing additional written statement is that the Court should be very lenient and a liberal approach should be made and the Court should not go by technicalities.

4. Learned Counsel for the petitioner further submitted that the suit is for recovery of money, on the basis of the promissory note said to have been executed on 05.01.2003 and on the said date, the petitioner was away from Cuddalore and unless, he is given an opportunity to prove his defence by filing an additional written statement, the real controversy between the parties would not be effectively adjudicated.

5. In *Thiyagarajan v. Manivannan* reported in 2007 (1) LW 429, this Court in paragraph 19, held that the finding of the trial Court that the application is belated one and the same cannot be entertained after framing the issues and when the suit is in trial stage, are erroneous and not sustainable. Again in Paragraph 20, the Court held as follows:

The trial Court is also wrong in holding that a new case has been set up by the petitioner/defendant in the additional written statement. I have already referred to the averments contained in both the original and additional written statements. A reading of these two statements would make it clear that the averment in the additional written statement is also in line with the original written statement, of course with some inconsistencies. But that does not mean that a totally new case has been put forward by the petitioner/defendant. Courts should be very liberal in granting relief under Order 8 Rule 9 C.P.C. as wide discretion has been given to the Courts to adjudicate the matter including subsequent pleadings completely and finally. Of course the discretion is to be exercised on terms considering the facts and circumstances of the individual cases. The trial Court, in this case, has unfortunately rigid in being unreasonable in throwing out the application on technicalities.

6. In yet another decision in *A. Perumal Raj v. B. Rajendran* reported in 2007 (2) LW 938, a similar issue came up for consideration before this Court, where it was alleged that the intention behind the petition was only to drag on the proceedings and that the averments made in the additional written statement were of no relevance to the issue involved in the suit. In the above reported judgment, the suit is for recovery of money on the basis of the promissory note and the petition to receive the additional written statement was filed after examination of the defence

witness (DW.1). On the objection made by the plaintiff that the petition for receiving the additional written statement had been filed belatedly, the lower Court dismissed the above said petition. This Court, after considering the following decisions in *Kallathal v. Murugathan and Ors.* reported in 2006 (5) CTC 580, *Chandru and Ors. v. Ranganathan* reported in : (2005)6SCC243 , *Baldev Singh v. Manohar Singh* reported in : AIR 2006 SC2832 and *Ma Shive Mya v. Maung MO Hnaung* reported in AIR 1922 PC 249 : (1923) 17 LW 213, held that no new plea was taken in the additional written statement and the filing of the additional statement was to supplement the earlier statement by furnishing more details. This Court further held that the respondent/plaintiff would not be put to any prejudice, if the petition is allowed and while considering the petition, liberal approach should be adopted.

7. The object of filing of additional written statement is to supply what might have been omitted in the written statement filed earlier and the additional written statement can be allowed, if it is not likely to cause prejudice to the plaintiff. The Court should grant permission to the defendant for filing subsequent pleadings if they are so relevant to prove the facts placed before the Court by the defendant, which cause no prejudice to the plaintiff even in the absence of any claim or set off or counter claim. In the instant case, the plea of the petitioner was denial of execution of the promissory note and the averments made in the additional written statement that he was away on the date, when the the said promissory note was alleged to have been executed is only supplementary and does not introduce a new case other than what was pleaded earlier. By filing an additional written statement to supplement the pleadings, no prejudice would be caused to the plaintiff and therefore, the lower Court ought not to have dismissed the petition on the ground of delay.

8. Applying the above judgments to the facts of the present case, I am of the view that the trial Court has erred in dismissing the application for filling the additional written statement. The order of the Principal District Munsif, Cuddalore made in I.A. No. 1614 of 2005 in O.S. No. 913 of 2004 dated 19.08.2005 is set aside and the learned Judge is directed to receive the additional written statement and proceed further in accordance with law.

9. In the result, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com