

CASE NO.:
Appeal (civil) 480 of 2008

PETITIONER:
S.Raju

RESPONDENT:
C.Sathammai

DATE OF JUDGMENT: 17/01/2008

BENCH:
G.P.Mathur & Aftab Alam

JUDGMENT:
JUDGMENT

O R D E R
[Arising out of SLP (C) No.128/2007]

1. Heard counsel for the appellant. No one appears for the respondent despite notice.
2. Leave granted.
3. This appeal is directed against the orders passed by the City Civil Court and the High Court denying the appellant-defendant the leave to defend the suit filed by the respondent under Order 37 of the Code of Civil Procedure (\021CPC\022 for short).
4. The respondent-defendant instituted the suit on the basis of a promissory note, dated November 11, 2004, for Rs.1,50,000/- along with interest at the rate of 25% per annum allegedly signed by the appellant in the presence of two witnesses.
5. On notice by the court, the appellant filed a petition under Rule 3, Order 37 of CPC seeking leave to defend the suit without any condition. On behalf of the appellant, it was stated that the promissory note, forming the basis of the defendant\022s claim was completely sham and fabricated. It was further stated that he was an uneducated and illiterate person, engaged in the work of civil construction, as a contractor. He lived in the same locality and had agreed to build the house of the appellant\022s son. He completed the construction of the house at a relatively much cheaper rate of Rs.430/- per square ft. The defendant-respondent/her son used to take his signatures on blank stamp papers telling him that those were for receipts of the payments made to him and were required for income tax purposes. Being a simple, uneducated person he put his signatures on blank papers without any question and in good faith. It was alleged that one of the signatures made by him was later used to forge the promissory note for filing the suit.
6. It was also stated on his behalf that the alleged signatures on the promissory note were not his signatures as would be apparent from the fact that there were two signatures on the promissory note, one in English and the other in Telugu.
7. The trial court noted that the contentions raised by the appellant for defending the suit were quite inconsistent. On the one hand, he denied the signatures on the promissory note as his signatures and, on the other hand, it was stated that his signatures were obtained on blank stamp papers on the pretext that those were to be made into receipts for payments made to him and one of those signatures was used for creating the promissory note. The trial court accordingly rejected the petition filed by the appellant under Order 37, Rule 3, CPC.
8. Against the order passed by the trial court, the appellant

moved the High Court in revision but the High Court dismissed the revision and affirmed the order passed by the trial court primarily on the ground that there was an inherent inconsistency in the case of the appellant.

9. On hearing the counsel for the appellant and on going through the materials on record, we feel that the trial court and High Court have taken a rather technical view of the matter. On a careful consideration of the matter, we are satisfied, that in the overall facts and circumstances of the case, the petitioner ought to have at least been allowed to defend the suit, subject to the condition of depositing a part of the plaintiff's claim. We accordingly allow the appeal, set aside the orders of the trial court and the High Court and direct that the petitioner may be granted leave to defend the suit subject to deposit of Rs.50,000/- in the trial court. The leave shall be granted to the appellant provided the amount, as directed above, is deposited within two months from today.

