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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12-10-2026

Pronounced on : 12-11-2026

CORAM

THE HON'BLE MR.JUSTICE R.RAJESH VIVEKANANTHAN

CRP No. 3007 of 2023
and
CMP.No. 18568 of 2023

CNR: {HCMA011198562023}

Case QR

Arun,
S/o. Late.Shanmugam, Salai Nagar,
Thamulerimuthur Village and Post,
Tirupattur Taluk, Vellore District.

..Petitioner(s)

Vs

1. Indian Bank,
   Gandhipettai Branch, Tirupattur,
   Vellore District.

2. Aruna,
   D/o. Late Shanmugam,
   Salai Nagar,
   Thamulerimuthur Village and Post,
   Tirupattur Taluk, Vellore District.

..Respondent(s)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the order passed in I.A.No.1 of 2021 in O.S.No. 15 of 2019 dated 25.11.2022 on the file of III Additional District and Sessions Judge, Vellore @ Tirupattur District.

For Petitioner(s): Mr.S.Udhaya Kumar
for M/s.Karan and Uday

For Respondent(s): Mr.T.Sundar Rajan

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ORDER

This Civil Revision Petition has been filed challenging the order passed in I.A. No. 1 of 2021 in O.S. No. 15 of 2019, dated 25.11.2022, on the file of the III Additional District and Sessions Court, Tiruppur District.

2. The petitioner herein is the second defendant in the suit, the first respondent herein is the plaintiff, and the second respondent herein is the first defendant in the suit.

3. For the sake of convenience, the parties shall be referred to as per their ranking before the Trial Court.

4. The case of the plaintiff is that, at the request of the first defendant and her parents, the plaintiff Bank sanctioned an educational loan of Rs.4,00,000/- to the first defendant and her father on 28.07.2007 and the first defendant and her father jointly executed a promissory note in favour of the plaintiff for the said sum, agreeing to repay the loan with interest at 12.5% per annum with quarterly rests, on demand by the plaintiff or its order. On the same day, they also executed an educational loan agreement, agreeing to repay the loan in 60 monthly installments of Rs.9,000/- each, after a moratorium period of 36 months.

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5. The parents of the first defendant jointly executed a guarantee agreement in favour of the plaintiff on 28.07.2007, guaranteeing repayment of the sum of Rs.4,00,000/-. The first defendant also executed acknowledgements of debt in favour of the plaintiff on 16.07.2010, 13.07.2013 and 19.05.2016. The parents of the first defendant subsequently died, leaving behind their daughter / the first defendant, and their son / the second defendant, as their legal heirs. Hence, the second defendant was impleaded as a party to the suit. According to the plaintiff, the defendants are liable to repay the outstanding loan amount. Despite repeated demands, the defendants failed to discharge the liability. Hence, the suit was filed.

6. The second defendant filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908, seeking rejection of the plaint. The principal contention of the second defendant is that the educational loan was availed of by the first defendant and her father, and that he was neither a party to the loan agreement nor a signatory to any of the loan documents. It is further contended that the loan amount was directly disbursed to the educational institution and that the allegation that the defendants benefited from the loan is false. According to the second defendant, the loan was obtained on 28.07.2007 by the first defendant and her father. Even prior to the said loan transaction, the father had executed a settlement deed dated 25.10.2006 in favour of the second defendant. The father died on 22.09.2010, and the mother died on 22.05.2016.

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7. The second defendant further contended that, although the plaintiff had impleaded him as a legal heir of his deceased parents, another daughter of the parents, namely, Shanthi, had not been impleaded as a party to the suit. It was alleged that the second defendant had been impleaded only with the intention of attaching the property settled in his favour by his father. He also contended that the first defendant had married according to her own wishes and that he had no connection with her educational loan. According to him, since he had neither availed of the loan nor executed any document in favour of the plaintiff, no cause of action arose against him and he was not a necessary party to the suit. Hence, he sought rejection of the plaint.

8. The plaintiff filed a counter affidavit opposing the application. It was contended that the educational loan had been availed of by the first defendant and her father and that the parents had executed a guarantee agreement in favour of the plaintiff. The suit had been instituted against the first defendant in the capacity of borrower and against the estate of the deceased guarantor, which is in the hands of his legal heirs. The plaintiff further contended that the second defendant, being one of the legal heirs of the deceased guarantor, was liable to the extent of the estate inherited by him from the deceased. The contention relating to the settlement deed and the property settled in favour of the second defendant could be raised in the appropriate proceedings, including the application for attachment before judgment, and did not constitute a ground for

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rejection of the plaint under Order VII Rule 11 CPC. Hence, the plaintiff prayed for dismissal of the application.

9. Heard the learned counsel appearing for the petitioner and the respondents and perused the materials available on record.

10. The learned counsel for the second defendant submitted that the educational loan was admittedly availed of by the first defendant and her father. The second defendant was neither a party to the loan agreement nor a signatory to any of the loan documents, and he had not derived any benefit from the loan. It was further submitted that the loan amount had been directly disbursed to the educational institution and that the father had executed a settlement deed dated 25.10.2006 in favour of the second defendant, prior to the loan transaction. According to the learned counsel, the father had not left any estate liable to be proceeded against after his death, and the second defendant had been impleaded only to attach the property settled in his favour. Hence, the learned counsel prayed that the order passed by the Trial Court be set aside.

11. Per contra, the learned counsel appearing for the plaintiff submitted that the first defendant and her father had availed of the educational loan and that the parents had executed a guarantee agreement securing repayment of the loan. It was further submitted that the second defendant had not been sued in his

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personal capacity but had been impleaded as a legal heir of the deceased guarantor, in order to proceed against the estate of the deceased guarantor in his hands. Therefore, according to the learned counsel, the suit was maintainable and the Trial Court had rightly dismissed the application seeking rejection of the plaint.

12. The fact that the first defendant and her father availed of the educational loan is not in dispute. The execution of the guarantee agreement by the parents of the first defendant is also not disputed. The only question to be considered is after the death of the father of the defendants, the liability exists or not and such liability fastened on the estate of the deceased.

13. The Division Bench of this Court in ***State Bank of India v. Jayashri and Others***, reported in **2011 (2) CTC 465**, considered the liability arising out of a guarantee upon the death of the guarantor and held that the death of the guarantor, the liability exceeds and such liability cannot be fastened on the estate of the deceased being inherited by the legal heirs and the creditor can recover the difference out of the estate of the deceased.

14. In the present case, the father of the defendants jointly executed the promissory note and the other loan documents and also executed a guarantee agreement in connection with the educational loan. The second defendant, being

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one of the legal heirs of the deceased, may be proceeded against only to the extent of the estate of the deceased, inherited by him. The second defendant cannot, merely by reason of his status as a legal heir, be made personally liable for the entire loan amount in the absence of an independent legal basis for such liability.

15. The learned counsel for the plaintiff has categorically submitted that the second defendant has been impleaded in his capacity as a legal heir of the deceased guarantor and that the claim against him is confined to the estate of the deceased guarantor in his hands. In view of the said submission, the contention that the second defendant is not a signatory to the loan documents does not, by itself, warrant rejection of the plaint, particularly when the plaintiff seeks to proceed against the estate of the deceased guarantor.

16. The further contentions of the second defendant that another legal heir, namely, Shanthi, has not been impleaded and that the property sought to be proceeded against had been settled in his favour by his father under a settlement deed dated 25.10.2006, prior to the loan transaction, involve matters that require consideration on the basis of the pleadings and evidence.

17. The second defendant is at liberty to raise all legally available defences before the Trial Court. The dismissal of the application for rejection of

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the plaint shall not be construed as a determination of the plaintiff's entitlement to attach or recover the amount from any specific property, except the ground as stated above.

18. In view of the foregoing discussion, this Court finds no ground to interfere with the order passed by the Trial Court dismissing the application filed by the second defendant under Order VII Rule 11 CPC. The Civil Revision Petition is accordingly dismissed, and the order passed in I.A. No. 1 of 2021 in O.S. No. 15 of 2019 on the file of the III Additional District and Sessions Court, Tiruppur District, is confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

12 -11-2026

Index: Yes
Speaking
Neutral Citation: No

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To

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R.RAJESH VIVEKANANTHAN, J.

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