



A.S.(MD).No.23 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 19.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

A.S(MD) No.23 of 2020

Dhanushkodi

.. Appellant/Plaintiff

Vs.

Sai Vijay Kumaravel

.. Respondent/Defendant

Prayer : This Appeal Suit has been filed under Order 41 Rule 4 r/w Section 96 of C.P.C., against the judgment and decree dated 23.09.2019 made in O.S.No.26 of 2018 on the file of the learned Additional District Judge (Fast Track Court), Theni.

For Appellants : Mr.V.Meenakshisundaram

For Respondent : No appearance

JUDGMENT



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This appeal has been preferred as against the decree and Judgment passed by the learned Additional District Judge (Fast Track Court), Theni, in O.S.No.26 of 2018 dated 23.09.2019 wherein, the appellant herein has filed a suit for the recovery of money based on the cheques alleged to have been issued by the defendant. The trial Court dismissed the suit. Aggrieved by the said judgment and decree, the present appeal has been preferred by the plaintiff.

2. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking before the trial Court.

3. The brief averments made in the plaint before the trial Court are as follows:

The defendant, on various dates borrowed a sum of Rs. 18,00,000/- from the plaintiff and issued 8 cheques as collateral security and the details of the cheques are as follows:

Sl.No.	Cheque No.	Amount Rs.	Name of the Bank
1.	121460	3,00,000/-	Union Bank of India, Veerapandi, Madurai



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Sl.No.	Cheque No.	Amount Rs.	Name of the Bank
2.	076867	1,00,000/-	ICICI Bank, Theni Branch.
3.	077690	3,00,000/-	ICICI Bank, Theni Branch.
4.	000045	1,00,000/-	ICICI Bank, Theni Branch.
5.	000031	2,00,000/-	ICICI Bank, Theni Branch.
6.	098630	2,00,000/-	ICICI Bank, Theni Branch.
7.	083560	3,00,000/-	ICICI Bank, Theni Branch.
8.	083559	3,00,000/-	ICICI Bank, Theni Branch.
	Total amount	18,00,000/-	

There was difference of opinion arose between the parties due to non-payment of interest by the defendant. The plaintiff handed over the retirement benefits to the defendant and the defendant has issued a letter to the plaintiff on 12.06.2015 by acknowledging the debt of Rs. 18,00,000/- and also the defendant undertaken to pay the interest amount of Rs.60,000/- to the plaintiff upto 12.06.2015. Thereafter, the defendant failed to pay the above said amount. The defendant issued the Demand Draft to the plaintiff for a sum of Rs.2,00,000/- in the middle of February 2017 towards interest amount. The plaintiff sent a notice to the defedant on 06.02.2018 and the defendant received the same on 13.03.2018. After receipt of the said notice, the defendant neither sent reply nor repaid the



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amount to the plaintiff. Therefore, the defendant has to pay the suit amount and interest at the rate of 24% per annum.

4. The averments made in the written statement filed by the defendant are as follows:

The claim made in the plaint as pleaded is false and the plaintiff is put to strict proof of the averments in the plaint except those that are specifically admitted herein. The plaintiff and the defendant belongs to the same community and the plaintiff was working as Sub Inspector of Police. In the year 2015-2016, the granddaughter of the plaintiff got admission in the School of the defendant namely, Sri Chandra Gupta Maurya International School at Kumuli Main Road, Upparpatti Village, Theni Taluk and District. At that time, there was a special scheme announced by the School, ie., if the parents deposit Rs.5,00,000/- as fixed deposit in the name of the School, their child shall continue the studies without paying any fees. For that purpose, the plaintiff deposited a sum of Rs.2,00,000/-. The defendant borrowed money from the plaintiff from the year 2013 onwards and used to repay the same. For each and every time of borrowal, the defendant used to give undated



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cheques and promissory notes. Though the amounts were paid by the defendant, the plaintiff failed to return the said pro-note and the cheques. Further, the defendant deposited original sale deed dated 04.02.2009 in SRO.No.688/09. While so in the month of December, 2016, the defendant settled the entire amount borrowed by him to the plaintiff and also he repaid the deposited amount of Rs.2,00,000/- [in the name of School] through Demand Draft in the month of February, 2017. Thereby the defendant settled the entire amount to the plaintiff. When the defendant asked about the promissory note and the cheques he replied that he kept those cheques and promissory in the bank locker and also assured to return the same. Thereafter, he has not returned the documents and now by using those cheque leafs, he filed the suit with a view to get unlawful gain. Hence, the suit is liable to be dismissed.

5. Based on the above said pleadings, the trial Court has framed the following issues to decide the suit claim:

1. Whether the plaintiff is entitled to recover the plaint amount of Rs.28,99,600/- with subsequent interest from the defendant as prayed for?



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2. Whether the plaintiff is entitled to a decree as prayed for?

3. What are the reliefs the plaintiff is entitled for?

6. Before the trial Court on the side of the plaintiff, he examined himself as PW1 and marked Exs.A1 to A12. On the side of the defendant DW1 was examined and no exhibits were marked.

7. After analysing the evidence adduced on both sides, the trial Court has dismissed the suit on the ground that the suit is barred by limitation and also the plaintiff failed to prove the date of issuance of cheques. Aggrieved over the said decree and judgment, the present appeal has been preferred by the unsuccessful plaintiff on the following grounds.

a) The judgment and Decree passed by the trial Court is against law, weight of evidence and circumstances of the case.

b) The trial court ought not to have dismissed the suit for recovery money when the Respondent/Defendant himself admitted the borrowal of 18 lakhs from the



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Appellant/Plaintiff.

c) The Trial Court completely overlooked Ex A9 dated 12.06.2015 which is a letter of acknowledgement, issued by the Respondent/Defendant and dismissed the suit as barred by limitation.

d) The Judgement and decree of trial court dismissed the suit for recovery of money is completely against the material evidence more particularly Ex.A9 dated 12.06.2015.

e) The Trial Court ought not to have decided the suit on merits when it is preliminary decided to dismiss the suit on the point of limitation.

f) The Trial Court completely overlooked the oral evidence of DW.1, not only acknowledgement of the borrowal of 18 Lakhs from the Appellant/Plaintiff but also the execution of Ex.A9 dated 12.06.2015.

g) It is to be noted that the main suit was filed on 16.04.2018 within 3 years from the date of acknowledgement of liability by the



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Respondent/Defendant by execution of letter dated 12.06.2015 in Ex.A9. Hence, the suit is well maintainable within limitation.

h) The Trial Court ought to have considered Sec.25 (3) of the Contracts Act and any acknowledgement of debt will form a fresh cause of action and as such the Appellant/Plaintiff's suit is well maintainable within a period and limitation.

i) In any point of view the Judgement Decree dated 23.09.2019 passed in O.S.No.26 of 2018 on the file of the Additional District Judge (Fast Track court), Theni, is liable to be set aside.

8. The learned counsel appearing for the appellant would contend that the appellant/plaintiff filed the suit for recovery of money as against the defendant. The defendant borrowed money from the plaintiff on various dates and issued cheques. The said cheques are marked before the trial Court and PW.1 also examined and he deposed about the borrowal of amount and the defendant also not denied issuance of



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cheques. But the defendant pleaded that he had already settled the amount and the plaintiff failed to return those documents/cheques. While so, the defendant has to prove the said contention. But the trial Court wrongly came to a conclusion that the plaintiff failed to prove his case and also, the suit is barred by limitation. The trial Court failed to consider the Ex.A9 acknowledgement letter issued by the defendant dated 12.09.2015 wherein the defendant has categorically admitted his liability. But the same has not been considered by the trial Court. The respondent/defendant is not denied the execution of Ex.A9. When the plaintiff filed the suit based on the said acknowledgement, in the absence of the specific denial, it shall be presumed that a genuine claim has been made by the plaintiff. Moreover, the defendant himself admitted in his cross-examination in respect of the acknowledgement of letter-Ex.A9. The trial Court failed to consider the above said aspect and dismissed the suit. Hence, the judgment and decree of the trial Court is liable to be set aside.

9. The learned counsel for the appellant relied upon the following



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judgments:

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1. AIR 1967SC 935 [Tilak Ram v. Nathu and others]

2.AIR 1975 Madras 333 [N.Ethirajulu Naidu v. K.R.Chinnikrishnan Chettiyar]

3.M/s.Saravana Global holdings Ltd v. N.Jayamurugan [High Court of Madras order dated 21.06.2023]

4.Micael Hart v. M/s.Ninestars Information [High Court of Madras order dated 30.04.2023]

10. On behalf of the respondent, none appeared despite the summons served to him and the name of the respondent also printed in the cause list.

11. This Court has heard the appellant side arguments and perused the records placed before this Court.

12. Upon hearing and perusing the records including the judgment of the trial Court, the points for determination in this appeal are as follows:



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1. Whether the appellant/plaintiff paid the suit cheque amounts to the respondent/defendant, through those cheques?
2. Whether the Ex.A9, letter issued by the defendant and the same can be treated as acknowledgement for that?
3. Whether the plaintiff is entitled to the suit amount as prayed for?
4. Whether the decree and judgment passed by the trial Court is sustainable in law and on facts?
5. Whether the appeal has to be allowed or not?

13. In this case, the plaintiff has filed the suit for recovery of money based on 8 cheques issued by the defendant. The claim of the plaintiff through the cheques are tabulated as under:

Sl.No.	Cheque No.	Amount Rs.	Name of the Bank
1.	121460	3,00,000/-	Union Bank of India, Veerapandi, Madurai
2.	076867	1,00,000/-	ICICI Bank, Theni Branch.
3.	077690	3,00,000/-	ICICI Bank, Theni Branch.
4.	000045	1,00,000/-	ICICI Bank, Theni Branch.



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Sl.No.	Cheque No.	Amount Rs.	Name of the Bank
5.	000031	2,00,000/-	ICICI Bank, Theni Branch.
6.	098630	2,00,000/-	ICICI Bank, Theni Branch.
7.	083560	3,00,000/-	ICICI Bank, Theni Branch.
8.	083559	3,00,000/-	ICICI Bank, Theni Branch.
	Total amount	18,00,000/-	

14. The defendant also admitted the borrowal of amount and issuance of cheques, but according to the defendant, he used to borrow money based on the deposit of undated cheques in the year 2013. He borrowed the amount from the plaintiff and thereafter he settled the amount in the month of December, 2016. Thereafter, he also repaid the deposited amount paid by the plaintiff for his granddaughter's educational purpose. But the plaintiff nowhere in the plaint stated about the date of the borrowal and place where he paid the amount to the defendant. The plaintiff had produced 8 number of cheques. While so, it is the duty of the plaintiff to establish that on which date he lent money and which cheque was issued on which date.



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15. In this context, the plaintiff in his cross-examination admitted that he paid the cheque amount on 8 instalments as peace meal. Each and every time, the defendant issued undated cheque and he is unable to mention the date of issuance of each cheques and he is not even in a position to say about the payment of interest and also he admitted that there was transaction between the plaintiff and the defendant at that time he used to get cheques and pro-note from the year 2013 and also he admitted that for the educational purpose of his granddaughter in the year 2014-2015, he deposited a sum of Rs.2,00,000/- to the School under the special scheme. Therefore, PW1 himself admitted that the defendant issued undated cheque at the time of borrowal of the amount. But the plaintiff denied the repayment of the amount.

16. PW1 in his cross-examination specifically stated that "

நான் பிரதிவாதிக்கு கொடுத்த 8 -வணைப் பணங்களையும் எந்தெந்த தேதிகளில் கொடுத்தேன் என்று சொன்னால் அது எனக்கு சரியாக ரூபகம் இல்லை பேங்கில் பணம் வரவர கொடுத்தேன். நான் கொடுத்த பணத்திற்கு பிரதிவாதி அப்ப அப்ப வட்டி செலுத்தி வந்தார் என்று சொன்னால் அது எனக்கு சரியாக



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ஞாபகம் இல்லை. பிரதிவாதி என்னிடம்
கொடுக்கல் வாங்கல் செய்த போது தேதியிடாத
காசோலைகளையும், புரோநோட்டையும் என்னிடம்
வழக்கமாக கொடுத்தார் என்றால் 2013 லிருந்து
தான் காசோலைகள் கொடுத்து பணம் வாங்கினார்.

17. Therefore, in view of the above evidence of PW1, it reveals that the defendant used to borrow amount by depositing undated cheques from the year 2013. The plaintiff nowhere stated about the date of issuance of above mentioned 8 cheque leafs. In this context, DW1 in his evidence stated that he already settled the amount in December, 2016 and thereafter settled the deposited amount of Rs.2,00,000/-. The PW1 in his cross examination stated that he does not remember as to whether the defendant paid the interest, further the cheques do not contain the dates while so, how the cause of action arose has to be explained by the plaintiff. Therefore, the plaintiff failed to prove that the cheques were handed over by the defendant for the borrowal of amount. Per contra, the DW1 in his evidence stated that he used to borrow loan from the plaintiff on deposit of cheques and already paid entire amount but the plaintiff failed to return the cheque leaves. On conjoint reading of the evidence of



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PW1 and DW1, the evidence of DW1 is cogent and acceptable, thereby the case of the defendant is probablized through sufficient evidence.

Thus the point is answered.

Point No.2:

18. According to the plaintiff, the defendant issued the letter of acknowledgement towards the loan amount of Rs.18,00,000/- and thereby the suit is within the limitation period. Since the defendant admitted the Ex.A9 and acknowledged the debt, he has to repay the said amount with interest. According to the plaintiff, the cheque amount was Rs.18,00,000/- and the same was paid through 8 cheques and there is no mention about the interest but in the acknowledgement, it is mentioned as Rs.60,000/- as interest. While so, it is the duty of the plaintiff to prove that from which date there is due for the interest. In the plaint, the plaintiff mentioned the rate of interest at 24%. While so, how the plaintiff calculated the interest of a sum of Rs.60,000/-, has to be explained by the plaintiff. But there is no explanation on the side of the plaintiff. There is no averments in the plaint as to from which date there is a due of interest. Therefore, Ex.A9 cannot be treated as acknowledgement for the debt



borrowed by the defendant. Though the defendant during his cross-examination admitted that he has written a letter to the plaintiff, ie., Ex.A9, it cannot be treated as an acknowledgement of the debt and the plaintiff has failed to prove Ex.A9 issued for the suit amount borrowed by the defendant. Accordingly the plaintiff failed to prove Ex.A9.

19.The learned counsel for the appellant relied upon the following judgments:

1. AIR 1967SC 935 [Tilak Ram v. Nathu and others]

2.AIR 1975 Madras 333 [N.Ethirajulu Naidu v. K.R.Chinnikrishnan Chettiyar]

3.M/s.Saravana Global holdings Ltd v. N.Jayamurugan [High Court of Madras order dated 21.06.2023]

4.Micael Hart v. M/s.Ninestars Information [High Court of Madras order dated 30.04.2023]

On careful perusal of the above judgments, this Court finds that the said principle will not be applicable for the case on hand. In this case, the plaintiff not even stated about the date of payment and borrowal and thereby question of limitation ie., starting of limitation and ending point



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of limitation cannot be arrived and thus, the facts of the case on hand are distinguishable. Since the plaintiff is not in a position to state about the date of borrowal of the amount, no question of issuance of acknowledgement arise. Without mentioning the date of borrowal, how the plaintiff expected the letter acknowledgement from the defendant, has to be explained. Further according to the plaintiff Ex.A9 was issued within the limitation period on 12.06.2015, while so, it is the duty of the plaintiff to say the starting date of limitation and which date the limitation accrues. In order to compute the period of limitation, the starting period of limitation has to be answered by the plaintiff, but there is no mention about the date of borrowal of cheque amounts by the defendant. Therefore, Ex.A9 cannot be treated as acknowledgement for the debt. Thus the point No.2 is answered.

Point No.3:

20. The plaintiff has filed the suit for recovery of money based on the suit cheques. This Court on the previous points decided that the plaintiff has failed to prove the date of cheques and the date of payment of amount paid to the defendant and also he failed to prove Ex.A9-



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acknowledgement and without proving the date of payment, there is no question of limitation and acknowledgement of debt would arise, thereby the plaintiff/appellant is not entitled to the relief of recovery of money as prayed in the plaint.

Point No.4:

21. The plaintiff has filed the suit before the trial Court for the recovery of money based on the above said cheques and the trial Court has elaborately discussed about the evidence adduced by both sides and framed proper issues and discussed about the issues and after analysing the oral and documentary evidences, the trial Court held that in a suit for recovery of money, the plaintiff must say the date of borrowal and the place of borrowal. But in the pleadings in the plaint not stated the date and place of payment of money and Ex.A9 also has not been proved by the plaintiff. The above said reasons stated by the trial Court are proper and acceptable. Therefore, there is no perversity or infirmity found in the judgment and decree passed by the trial Court. Therefore, the present appeal filed by the appellant/plaintiff has no merits and fails.

22. In the result, the Appeal Suit is dismissed and the judgment



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and decree dated 23.09.2019 in O.S.No.26 of 2018 passed by the learned Additional District Judge (Fast Track Court), Theni are confirmed. There shall be no orders as to costs.

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NCC : Yes/No
Index : Yes/No
Internet: Yes/No

PJL

To

1. The Additional District Judge (Fast Track Court),
Theni.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

PJL

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