



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2015

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

O.S.A.No.85 of 2015 &
M.P.No.1 of 2015

1.J.Bhakthavathsala Rao
2.J.Lalitha
3.J.V.S.Prakash
4.J.Srinivas

... Appellants

Vs.

M/s.Abhai Financiers,
Rep., by its Partner Mrs.C.Jamuna,
No.133, Linghi Chetty Street,
Chennai - 600 001.

... Respondent

Prayer:-Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules r/w clause 15 of Letter Patent Act, against the order dated 17.12.2014 in Application No.4709 of 2014 in C.S.No.216 of 2012.

For Appellants : J.Bhakthavathsala Rao
(Party-in-Person)

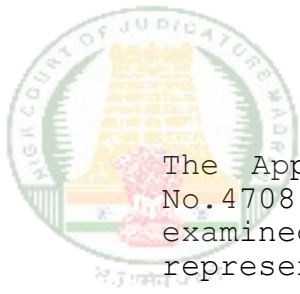
For Respondent : Mr.V.Kuberan for
M/s.Rank Associates

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM)

This appeal is directed against the order dated 17.12.2014 in Application No.4709 of 2014 in C.S.No.216 of 2012 filed by the Appellants/Defendants.

2. The appellants are the defendants in the Civil Suit filed by the respondent/plaintiff for recovery of money and for other reliefs.



The Appellants filed two applications in the Suit in Application No.4708 of 2009 to reject the evidence of C.Ravindranath, who has examined as PW-1 on the ground that he has no locus-standi to represent the plaintiff. Application No.4709 of 2014 was filed to summon the partner of the plaintiff firm, C.Jamuna to appear in person to authenticate the insertions including signatures in the plaint.

3. The respondent/plaintiff is a partnership firm represented by its partner C.Jamuna and they laid the Suit for recovery of money secured by way of mortgage of immovable property. One C.Ravindranath was authorised by the plaintiff to appear before Court and represent the plaintiff firm. The letter of authorisation is Exhibit P.1. Proof affidavit was filed through the said authorised person C.Ravindranath. The appellants/defendants contend that the principal, C.Jamuna alone will have personal knowledge about the suit transaction as she is the person who verified the plaint. Further, it was contended that the person who verified the plaint has to examine herself as PW-1 and in this regard reference was made to Order VI Rule 15(4) CPC. On the above ground, the appellants/defendants sought for rejection of the evidence of C.Ravindranath, recorded in chief and to summon C.Jamuna to depose with regard to the suit transaction and subject herself to cross examination. The Appellants/defendants represented by the first appellant appeared in person before the learned Single Judge and contended that the partner of the plaintiff firm alone will have personal knowledge about the suit transaction and reiterated the contention that Order VI Rule 15(4) CPC mandates the person verifying the pleadings to depose before Court.

4. The respondent/plaintiff resisted the applications inter alia contending that the attempt of the appellants is to drag on the proceedings and there is no bonafide in the claim and they have filed several applications ever since inception of the Suit and the application filed to reject the plaint was also dismissed. It was further contended that the appellants/defendants have admitted the borrowal and are filing petitions after petitions with the sole intention of delaying the proceedings.

5. The learned Single Judge after considering the submissions made on either side, rejected the applications by the impugned order holding that in a Civil Suit the burden is on the plaintiff to establish the pleadings put forth before the Court and the plaintiff has to fail or succeed only on the merits of his own case and he cannot rely upon the lacuna in the case of the Defendants. Referring to Order 10, Rule 2(b) CPC, it was pointed out that in terms of



the said Rule any person authorised on behalf of the plaintiff can be examined on his behalf. Though both the applications filed by the appellants/defendants namely, Application Nos.4708 of 2014 and No.4709 of 2014 were dismissed by a common order dated 17.12.2014, the appellants have chosen to file this appeal only against the order in Application No.4709 of 2014, which was filed to direct C.Jamuna to appear before the Court and depose on behalf of the plaintiff.

6. We have heard Mr.J.Bhakthavathsala Rao, first appellant appearing in person on his behalf and on behalf of other appellants and Mr.V.Kuberan, learned counsel for the respondent, plaintiff/Caveator.

7. Order 10, Rule 2 CPC deals with oral examination of party or companion of party. For the purpose of the present appeal, clause (b) in Sub-Rule (1) of Rule 2 in Order 10 of CPC, would be relevant. The said provision states that the Court may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in Court or his pleader is accompanied. Therefore, the plaintiff was entitled to authorise a person to depose on her behalf, infact the letter of authorisation has been marked as Exhibit P1 and the appellants/defendants have not raised any objection to the said authorisation at any earlier point of time or while other documents were marked in the Suit.

8. Therefore as rightly pointed out by the learned Single Judge, the appellants/defendants cannot raise an objection at such belated stage and it is nothing but an attempt to drag on the proceedings. Furthermore, it is for the plaintiff to succeed or fail on the basis of the evidence placed before Court and the attempt of the Appellants/defendants to compel C.Jamuna to appear before the Court on the allegations made, is wholly unjustified and not maintainable.

9. From the record of the proceedings, we find that issues were framed in the Suit on 27.01.2014 and it is stated that the matter was listed before the II Additional Master on 12.03.2014 for commencement of trial and the Appellants/Defendants were not present and the respondent/plaintiff was permitted to file proof affidavit and the matter was adjourned to 24.03.2014 for marking of the documents. It is stated that on the said date i.e., 24.03.2014, the Appellants/defendants were not present and the documents were marked and the case has been adjourned for cross examination of PW-1. The Appellants/defendants have not cross examined PW-1 and filed the present application. The facts noted above clearly reveal that the appellants' attempt is to drag on the proceedings and adopt all



dilatory tactics, so as to prevent the trial of the Suit from proceeding further.

10. For all the above reasons, we do not find any merits in this Appeal and accordingly, dismiss the same with cost of Rs.25,000/- (Rupees Twenty Five Thousand only) payable to the respondent. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

pbn

To

1.M/s.Abhai Financiers,
Rep., by its Partner Mrs.C.Jamuna,
No.133, Linghi Chetty Street,
Chennai - 600 001.

2.The Sub Assistant Registrar,
Original Side, High Court,
Madras - 600 104.

O.S.A.No.85 of 2015

CNR(CO)
CA(17/06/2015)