

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.571 of 2013 and

M.P.No.1 of 2013

D.Balaraman ... Appellant/Defendant

Vs.

D.Gunanidhi ... Respondent/Plaintiff

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree of the learned II Additional Judge, City Civil Court, Chennai passed in A.S.No.374/2011 dated 22.08.2012 confirming the judgement and decree dated 28.06.2010 passed by the learned VI Assistant Judge, City Civil Court, Chennai in O.S.No.6575 of 2008.

For Appellant : Mr.K.Kannan
For Respondent : M/s.P.Premkumar
B.Manivannan

JUDGEMENT

The sole defendant in O.S.No.6575 of 2008 on the file of the learned VI Assistant Judge, City Civil Court, Chennai is the appellant herein. The respondent is the plaintiff in the suit. The said suit was filed by the plaintiff for recovery of a sum of Rs.2,25,000/- based on a loan transaction. The trial Court by decree and judgement dated 28.06.2010 decreed the suit as prayed for. As against the same, the appellant filed an appeal in A.S.No.374 of 2011 before the learned II Additional Judge, City Civil Court, Chennai. The First Appellate Court by decree and judgement dated 22.08.2012 dismissed the appeal thereby confirming the decree and judgement of the trial Court. Challenging the same, the appellant is before this Court with this second appeal.

2.This second appeal has come up today for admission. The defendant in the suit has made appearance through learned counsel by way of caveat. I have heard the learned counsel for the appellant and the learned counsel for the respondent and I have also perused the records carefully.

3.According to the plaintiff, in the month of December 2004, the defendant borrowed a sum of Rs.2,25,000/- from the plaintiff and in discharge of the same, he handed over four cheques issued by one M/S.J.V.N Graphics. By making over the said four cheques, the same were presented before the Bank for collection and the same were dishonoured "for want of sufficient funds". The plaintiff issued

notice under Section 138 of the Negotiable Instruments Act. Thereafter, the defendant got back four cheques of M/s.J.V.N Graphics and issued fresh four cheques drawn as against his account. All the four cheques presented were returned by the Bank with the endorsement "payment stopped" by drawer. Thus, according to the plaintiff, the defendant is liable to pay Rs.2,25,000/- with interest. That is how he laid the present suit.

4.In the written statement, it was contended that it is true that the defendant was in the habit of borrowing money from the plaintiff. But, according to the defendant, it was the practice of the plaintiff to receive cheques of other persons by making over the same in discharge of the liability of the defendant. Accordingly, the cheques issued by M/s.J.V.N Graphics were handed over as a security to the plaintiff. Subsequently, there was misunderstanding between the parties over the interest and hence, the matter went up to the police station by way of complaint lodged by the defendant.

5.In the mean while, the plaintiff filed a private complaint against one Mr.J.Gopal based on the dishonour of the cheques issued by him which according to the defendant was handed over by him to the plaintiff. In the prosecution launched against Mr.J.Gopal before the learned XV Metropolitan Magistrate, George Town, Chennai, in C.C.No.9366 of 2005, the plaintiff herein admitted during cross examination that the cheques were issued only as security and not against any legally enforceable debt. By judgement dated 31.10.2007, according to the defendant, Mr.JGopal was acquitted by the learned Magistrate and the same has become final. He would further submit that the cheques in question were were issued by the defendant in respect of a different transaction and thus, according to him, there was no amount due so far as the present transaction, upon which, the present suit has been laid.

6.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, he was examined as P.W.1 and as many as 10 documents were exhibited. On the side of the defendant, two witnesses were examined and 5 documents were exhibited. D.W.2 is the Bank Manager who has spoken to about the dishonour of the cheques issued by M/s.J.V.N Graphics. Having considered all the above materials, the trial Court decreed the suit which was confirmed by the First Appellate Court. That is how the appellant is before this Court with this second appeal.

7.In this second appeal, the learned counsel for the appellant would submit that absolutely, there is no proof that the suit amount was actually due from the defendant. Thus, according to the learned counsel, the Courts below have erred in coming to the conclusion that the plaintiff is entitled for the decree as prayed for. The learned counsel would further submit that in the prosecution launched against Mr.Gopal, the plaintiff is admitted that the cheques involved in that case were issued only as a security and not towards the discharge of any legally enforceable debt. Requesting the Court to draw inference out of the same, the learned counsel submitted that in the present case also, the cheques would have been issued only as security and there was no amount due.

8. But, the learned counsel for the respondent/plaintiff would vehemently oppose this second appeal. According to him, there is no substantial question of law involved in this appeal at all. He would further submit that on appreciating oral as well as documentary evidences, on facts, the Courts below have held that the plaintiff is entitled for decree as prayed for as the issue has been duly proved. The learned counsel would further submit that it is not permissible for this Court to re-appreciate the entire evidence when there is no substantial question of law involved.

9. I have considered the above submissions.

10. As rightly submitted by the learned counsel for the respondent, I find no substantial question of law at all involved in this second appeal. The question as to whether there was any legally enforceable debt on the part of the defendant to the plaintiff to the tune of Rs.2,25,000/-, has been held by two Courts below on appreciating evidence available on record. It is a question essential only of facts. The said conclusion arrived at cannot be treated as perverse for the simple reason that, even in the reply notice issued, the defendant has admitted that a sum of Rs.1,05,000/- was due from him to the plaintiff. This notice was issued under Ex.A.5 on 05.09.2005. Thus, it is crystal clear that admittedly, as on 05.09.2005, a sum of Rs.1,05,000/- was due from the defendant to the plaintiff. But, before this Court, it is contended that D.W.2, the Manager of the Bank has stated that under Exs.B.2 and B.3, a sum of Rs.2,15,000/- and Rs.1,00,000/- were encashed by the plaintiff on 22.02.2005 and 20.04.2005 respectively.

11. It is the contention of the learned counsel that thus, under these two cheques, the plaintiff has received a sum of Rs.2,25,000/- and thus, no more amount is due from the defendant. The Courts below have considered this submission and have come to the conclusion that had it been true that the entire amount was settled as early as on 20.02.2005 and 20.04.2005 by means of Exs.B.2 and B.3, in reply notice issued on 05.09.2005, under Ex.A.5, the defendant would not have admitted that still a sum of Rs.1,05,000/- is due on his part to the plaintiff. On considering this fact only, the Courts below have held that Exs.B.2 and B.3 have got nothing to do with the suit transaction.

12. The learned counsel for the appellant would however submit that a sum of Rs.1,05,000/- as admitted in Ex.A.5 was issued in respect of a different transaction. If that is so, that should have been mentioned in the reply notice or at least in the written statement by the defendant. But, nothing has been mentioned. This would clearly go to show that the Courts below have appreciated the evidence properly and have come to the conclusion that the plaintiff is entitled for the decree as prayed for, in which, I do not find any infirmity.

13.As rightly contended by the learned counsel for the respondent, I do not find any substantial question of law at all warranting admission of this second appeal. The second appeal has to necessarily fail.

14.In the result, the second appeal fails and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar
Dated:24.2.15

True Copy

Sub Assistant Registrar

To

1.The II Additional Judge,
City Civil Court, Chennai.

2.The VI Assistant Judge,
City Civil Court, Chennai.

Copy to:
The section Officer,
V.R.Section, High Court,Madras.

+1 cc to Mr.P.Premkumar, Advocate,SR.7697

+1 cc toMr.K.Kannan, Advocate,SR.7606.

ug(co)
krd 18/3

सत्यमेव जयते

Second Appeal No.571 of 2013

WEB COPY