IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.04.2015
Pronounced on 07.05.2015

CORAM

THE HONOURABLE MRS. JUSTICE **S.VIMALA**

C.S.No.547 of 2012

A.Praveen ... Plaintiff

Vs.

1.C.K.Hariprasad
2.Sridevi Ammal ... Defendants

PRAYER: Plaint under Order IV Rule 1 of O.S.Rules r/w. Order VII Rule 1 of C.P.C., praying for passing of a decree and Judgement against the defendant:

(a) To pay a sum of Rs.22,13,480/- together with interest at 18% p.a. on the principal amount of Rs.13,50,000/- from the date of the plaint till the date of realization;

(b) To pay a sum of Rs.5,00,000/- towards damages

(c) For a permanent consequential injunction restraining the defendants not to alienate, transfer or create any encumbrance in respect of the property, i.e. Door No.10, Arunachala Eashwarar Koil Street, New Washermenpet, Chennai - 600 081 more particularly described in the schedule;

(d) for the costs of the suit.

For Plaintiff	:	Mr.Y.Bhuvanesh Kumar
For Defendants	:	Mr.T.R.Daveson for M/s.T.V.B.Karthikeyan

JUDGMENT

The Plaintiff has filed the suit (a) seeking recovery of a sum of Rs.22,13,480/- together with interest at 18% per annum on the Principal amount of Rs.13,50,000/- from the date of plaint till the date of realization; (b) to pay a sum of Rs.5,00,000/- towards damages; (c) for a permanent consequential injunction restraining the defendants not to alienate, transfer or encumber the suit property.

2. The defendants are known neighbours to the plaintiff while the plaintiff was residing at Washermenpet. As a neighbour, the Plaintiff used to render all assistance to the defendants including financial assistance.

3. At the request of the defendants, the plaintiff had paid totally a sum of Rs.13,50,000/- on various dates and on various occasions. The amount was paid through cheque/cash. The defendants in acknowledgement of liability had executed a separate promissory note also. The defendants have also deposited

the title deeds pertaining to the suit property.

3.a. The defendants did not repay the amount to the Plaintiff. Despite demand made and the legal notice being issued, the defendant has not repaid the amount. Hence the suit.

4. The claim of the plaintiff is partly admitted and partly disputed by the defendants on the following grounds:

The defendants have received totally Rs.12,50,000/- from the Plaintiff on various dates on the condition that the plaintiff should not charge any interest for the said amount and that it would be returned on or before December 2014. The plaintiff has taken the signature of the defendants in various blank papers affixing revenue stamp and in various blank cheques. The title deeds were deposited only as per the request made by the Plaintiff. The claim for damages is unsustainable.

5. This court has framed the following issues:

1.Whether the Plaintiff is entitled to receive a sum of Rs.22,13,480/- together with interest at 18% per annum on the principal amount of Rs.13,50,000/- from the date of plaint till the date of realization from the defendants?

2. Whether the defendants have authorized the plaintiff to fill the dates and the name in the blank cheques issued by the 1st defendant as mentioned by the plaintiff in para-10 of the plaint?

3. Whether it is legal that the plaintiff can demand Rs.5,00,000/- (Rupees Five Lakhs only) as damages from the defendants as well as 18% interest on the principle amount as claimed by the plaintiff?

4.Whether the plaintiff is entitled for a permanent consequential injunction restraining the defendants not to alienate, transfer or create any encumbrance in respect of the suit property i.e., Door No.10, Arunachala Eashwarar Koil Street, New Washermenpet, Chennai-600 0181 more particularly, described in the plaint schedule?

5.Whether it is proper on the part of the plaintiff to charge interest when the defendants have received the loan amount of Rs.12,50,000/- (Rupees Twelve Lakhs and fifty thousand only) including the cheque for Rs.1,00,000/- (Rupees one lakh only) paid by the plaintiff on 18.07.2008 on the condition that the plaintiff would not charge any interest for the loan amount as both of them are known very well each other?

6. The suit has been filed for recovery of money. The liability to pay money by the defendants to the plaintiff is not under dispute, but the quantum alone is under dispute. The plaintiff has claimed total sum of Rs.22,13,480/-, out of which Rs.13,50,000/- towards principal (with interest at 18% per annum from the date of plaint till the date of realization), a sum of Rs.5,00,000/- towards damages and the balance towards interest.

7. The case of the defendants is that they are liable to pay only a sum of Rs.12,50,000/- in full quit of interest and costs and that neither they are liable to pay damages for Rs.5,00,000/- nor they are liable to pay interest at 18% per annum.

8. The documents filed before this Court prove that the principal amount lent under the document was Rs.13,50,000/- which is repayable with interest at 18% per annum and not Rs.12,50,000/-. The defendants would justify their contentions by pleading that the defendants signed only blank cheques and the plaintiff has filled the cheques without any authority or basis and therefore, the defendants are not liable to pay anything beyond

Rs.12,50,000/-.

8.1. Whether this contention is justified is the issue to be considered?

8.2. Exs.P1, P2 and P3 are the basic documents, based on which the plaintiff claims that a sum of Rs.1,00,000/-, Rs.7,50,000/-, Rs.5,00,000/- has been given to the defendants.

9. Perusal of these three documents would go to show that there is every possibility that the defendants should have signed in a blank paper which should have been filled up by the plaintiff. The opening space left (which is too below the starting margin), the space left in between the first paragraph and the second paragraph and the two pencil marks(meant for the signature of the defendant) in each of the documents probabilize the contention that these documents should have been signed in a blank paper and later on filled up. But, Section 20 of the Negotiable Instruments Act gives prima facie authority to the holder of the document to make the document or complete the document. Section 20 of the said Act reads as under:

> "20. Inchoate stamped instruments.—Where one person signs and delivers to another a

> paper stamped in accordance with the law relating to negotiable instruments then in force in 1 [India], and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder."

10. It will not be out of place to mention the evidence of D.W.1, wherein he has admitted that he gave six cheques for different amounts in favour of the plaintiff without mentioning the date and name in the cheques for a total amount of Rs.13,50,000/-. Therefore, it is clear that the defendants are liable to pay a sum of Rs.13,50,000/- with interest 18% per annum as noted in the Exs.P1 to P3.

11. The next contention of the learned counsel

for the defendants is that the defendants are not liable to pay interest. When the parties to the suit are stated to be neighbours and not even close relatives, there is no occasion to the plaintiff to have agreed to lend money without interest. Moreover, when Exs.P1 to P3 specifically speaks about the re-payment of the amount with interest at 18% per annum, the contention of the defendants that they are not liable to pay interest cannot be accepted.

12. Yet another contention of the learned counsel for the defendants is that the plaintiff is not entitled to claim damages.

13. The learned counsel for the Plaintiff submitted that due to failure to repay the amount in time, the defendants caused loss to the plaintiff which has to be compensated by awarding damages._

13.1. This contention is baseless in the absence of any evidence to show that because of the non-payment, the plaintiff has suffered loss. When the plaintiff has claimed interest, he is not entitled to claim any damage, in the absence of the proof for the nature and the extent of damages.

14. The plaintiff has claimed subsequent interest

also at the rate of 18% p.a. The learned counsel for the defendants submitted that subsequent interest can only be 6% and not 18%. Section 34 of C.P.C. is relevant and same reads as under:

> "34. (I) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, (with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum), from the date of the decree to the date of payment, or tosuch earlier date as the Court thinks fit;
>
> (2) Where such a decree is silent with respect to the payment of further interest (on such principal sum) from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie."

15. Under Section 34 of the Civil Procedure Code, the Court has very wide discretion in ordering interest

on the Principal sum adjudged. Interest *pendente lite* would be awarded at the rate of which the Court considers reasonable. Prior to the amendment act of 1976, the maximum interest which the Court could award was 6%. Now the Courts are empowered to increase post decretal interest in relation to a liability arising out of a commercial transaction, on the principal sum adjudged, but it shall not exceed the contractual rate or where there is no contractual rate of interest then the rate at which the money is lent or advanced by Nationalized Bank in relation to commercial transaction.

16. Having regard to the facts and circumstances of the case, especially the fairness of the defendants in conceding the borrowal to the extent of Rs.12,50,000/-, this Court feels it appropriate to award interest at 12% per annum on the Principal sum of Rs.13,50,000/- from the date of suit till the date of decree and thereafter, at the rate of 6% per annum till the realization.

17. In the result, the suit is decreed directing the defendants to pay a sum of Rs.22,13,480/- together with interest at 12% per annum on the Principal amount of Rs.13,50,000/- from the date of plaint till the date of decree and thereafter at 6% per annum from the date of

decree till the date of repayment. The claim for damages is dismissed. There shall be permanent injunction restraining the defendants from alienating/encumbering the suit property till the entire amount is repaid. No costs.

sd/.S.V.J

07.05.2015

//Certified to be a true copy//
Dated this the day of 2015.

R.s/04.09.2015 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.