IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.01.2017

Pronounced on : 01.02.2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.262 of 2011

1. U.Ram Babu

2. U.Trinadhakumari .. plaintiffs

vs.

1. G.Devakumar

2. D.E.Selvakumari .. Defendants

Civil Suit filed under Order IV Rule 1 of Original Side Rules 1956 read with Order VII Rule 1 CPC praying for the following judgment and decree against the defendant.

a) Directing the defendants 1 and 2 to pay jointly and severally to the plaintiffs a total sum of Rs.1,31,51,670/- (Rs.one crore thirty one lakh and fifty thousand and six hundred and seventy only) together with interest at therate of 12% per annum from 18.03.2011 for the said Principal amount of Rs.1,30,00,000/- (Rupees One Crore Thirty Lakh Only) till realization and

b) costs of the suit.

For plaintiffs : Mr.M.Velmurugan

For Defendants : No appearance

J U D G M E N T

The suit is filed for recovery of a sum of Rs.1,31,51,670/- along with interest at the rate of 12% per annum on the sum of Rs.1,30,00,000/- from the date of plaint till the date of realization and for costs.

2. The brief facts of the case of the plaintiffs are as follows:

The defendants are engaged in real estate business by arranging purchase of lands in large extent in the villages in and around Old Mahabalipuram Road for selling them to various companies. The plaintiffs are friends of the defendants. Hence, the first defendant sought financial assistance from the first plaintiff for his business purpose and plaintiffs have paid a total sum of Rs.1,30,00,000/- to the first defendant on various occasions. The defendants have jointly executed a demand promissory note for the said sum agreeing to repay the amount together with interest at the rate of 12% per annum. Inspite of the repeated requested made by the plaintiffs, the defendants failed to repay the amount. Thereafter, the first defendant issued a cheque dated 15.12.2010 for Rs.1,30,00,000/- drawn on Andhra Bank to the first plaintiff. But, when the cheque was presented for collection, the same was dishonoured on the ground of insufficient funds and the said fact was intimated to the defendants by a letter dated 11.02.2011. Even though the defendants are liable to repay the amount along with interest from the date of borrowal, i.e., from 07.12.2009, the plaintiffs are restricting their claim from 11.02.2011, the date on which the above cheque was issued by the defendants and therefore, the suit is not barred by limitation and is within time. Hence, the suit.

3. The brief averments of the written statement filed by the first defendant and adopted by the second defendant :

Denying the entire averments of the plaint, it is the allegation of the defendants that the first defendant and the first plaintiff were jointly doing real estate business from the year 2007. In the course of the said business transaction, the first defendant borrowed a sum of Rs.10,00,000/- from the first plaintiff on 06.11.2009 to invest the same in their business, when they purchased a large extent of property. At that time, as the first plaintiff insisted the first defendant to give security to the said amount, having no other alternative, the defendants executed a mortgage deeds for Rs.10,00,000/- by mortgaging their properties. The first plaintiff, having not satisfied with the above mortgage deeds obtained several blank cheques and stamp papers from the defendants with their signatures. Subsequently, the first plaintiff had defrauded the first defendant by not giving his lawful share in the business. When the first defendant continuously demanded his share, the first plaintiff deposited two cheques obtained from the defendants and issued legal notice, after their return, claiming that they had lent Rs.2,16,00,000/- as hand loan to start a wind mill power project and the cheques were issued towards repaying the amount. The contradictions found in the legal notice issued by the first plaintiff and the plaint would show that the plaintiffs had never paid any money to the defendants and filed this suit only to force the defendants to accept their unlawful and unjust terms. The properties of the second defendant's family were sold to the second plaintiff and deposited a sum of Rs.67,20,000/- towards the sale consideration in the account of the first defendant and the first plaintiff also deposited the share of the first defendant in his account. Now the first plaintiff is making attempts to show that the payments deposited by him in the accounts of the first defendant and his company towards sale consideration as the amount borrowed by the first defendant. Even if the plaintiffs' allegation that the first defendant had borrowed some amount is taken true, the second defendant is not legally liable to repay the said amount. Hence, prayed for dismissal of the suit.

4. On the basis of the above pleadings, this Court framed the following issues on 26.10.2015.

1. Whether the first plaintiff and the second defendant were doing real

estate business as partners?

2. Whether the second defendant borrowed Rs.10,00,000/- (Rupees Ten Lakhs only) from the second plaintiff by creating three mortgage deeds in his favour?

3. Whether the plaintiffs had paid Rs.1,30,00,000/- (Rupees one crore and thirty lakhs to the first defendant towards financial assistance for his real estate business?

4. Whether the second plaintiff had paid the amounts on various dates in the account of the first defendant towards the sale consideration and profit due to the first defendant?

5. Whether the defendants had executed the promissory note dated 07.12.2009 for consideration?

6. Are the defendants liable to pay the amount claimed by the plaintiffs?

7. What other reliefs are the plaintiffs entitled for?

5. On side of the plaintiff, the first plaintiff examined him as P.W.1 and marked Ex.P.1 to Ex.P.8. No oral evidence was adduced on the side of the defendants. However, Ex.D.1 to Ex.D.3 were marked.

<u>Exhibits produced on the side of the plaintiffs:</u>

S.No.	Exhibits	Date	Description
1.	P-1	07.12.2009	Promissory note executed by the defendants
2.	P-2	15.12.2010	The dishonoured cheque issued by the first defendant in favour of the plaintiff
3.	P-3	11.02.2011	Refusal memo issued by Andhra Bank
4.	P-4	11.02.2011	The intimation letter issued by the Axis Bank
5.	P-5	--	The statement of accounts of the first plaintiff for the period from 01.04.2007 to 31.03.2009 of Axis Bank
6.	P-6	--	The statement of accounts of the second plaintiff for the period from 01.04.2007 to 31.03.2009 of Axis Bank
7.	P-7	--	The statement of accounts of the first plaintiff for the period from 01.04.2009 to 31.12.2009
8.	P-8	--	The statement of accounts of the second plaintiff for the period from 01.04.2009 to 31.12.2009

Exhibits produced on the side of the defendant:

S.No.	*Exhibits*	*Date*	*Description of documents*
1.	D-1	04.12.2009	Copy of the sale deed executed in favour of the second plaintiff
2.	D-2	10.03.211	Legal notice issued by the first plaintiff to the first defendant

S.No.	Exhibits	Date	Description of documents
3.	D-3	--	Legal notice issued by the first plaintiff to the first defendant

<u>Witnesses examined on the side of the plaintiffss:</u>

P.W.1. - U.Ram Babu

6. Issue Nos.1 to 7 :-

The suit is filed for recovery of a sum of Rs.1,30,00,000/- with interest at the rate of 12% per annum. The first plaintiff examined himself as P.W.1. In his evidence, he has clearly stated that the defendants have borrowed a sum of Rs.1,30,00,000/- for their business. Accordingly, they have executed promissory note on 07.12.2009 for the said sum of Rs.1,30,00,000/-. It is the evidence of P.W.1 that the above amount has been borrowed on various dates from 14.11.2009 to 15.12.2009 through cheques. Besides, promissory notes, the defendant also issued a cheque dated 15.2.2009 for the said sum of Rs.1,30,00,000/-. However, when the cheque was presented for encashment, the same was dishonoured on the ground of insufficient funds. The same was informed to the defendants by a letter dated 11.02.2011. P.W.1 in his evidence has spoken about the execution of the promissory note and issuance of cheque by the first defendant. The defendant though cross examined P.W.1 on two occasions, i.e., on 23.02.2016 and 15.03.2016, they have not completed the cross examination. They have also not adduced any oral evidence on their side. The entire cross examination done on two occasions, borrowal of loan amount, execution of the promissory note as well as the issuance of the cheque have not been denied. Not even a suggestion has been put to P.W.1 in that regard. Once, the facts spoken in chief examination is not specifically denied, is nothing but deemed admission on the part of the defendants about the borrowal of the amount as well as the execution of the promissory notes and issuance of cheque.

7. Ex.P.1 promissory note dated 07.12.2009 when carefully perused, it is seen that the defendants have executed the promissory note for a sum of Rs.1,30,00,000/-. Ex.P.2 is the cheque dated 15.12.2009 drawn on Andhra Bank for a sum of Rs.1,30,00,000/- issued in favour of the first plaintiff. Ex.P.3 and Ex.P.4 are dishonoured memos issued by the bank to show that the above cheque. Ex.P.5 and Ex.P.6, Axis bank statements of P.W.1 from 01.04.2007 to 31.03.2009, when carefully perused, same clearly indicate the fact that the plaintiff had capacity to pay such huge amount. Ex.P.6 bank statement clearly prove that the first defendant received the amounts by way of cheque on various dates on 03.04.2009, 21.07.2009, 25.11.2009, 15.12.2009, 16.12.2009. The suit amount has been paid through cheques and encashment of the same has

been reflected in Ex.P.7. Legal notice also has been issued by the plaintiff to the defendants which was marked as Ex.D2, wherein the plaintiff claimed a sum of R.2,16,00,000/- as hand loan. The above documents clearly establish the fact that the plaintiff paid the suit amount to the first defendant and in fact, the defendants have jointly executed Ex.P.1 promissory note for the said amount, besides they have also issued cheque Ex.P.2.

8. Once the execution of the promissory note is not denied, the presumption under section 118 of the Negotiable Instruments Act comes into operation in favour of the plaintiff. However, in this case, from the documentary evidence, the plaintiff has established not only the execution of the promissory not but also passing of consideration. Though the defendants have raised various contentions in the written statement and have cross examined P.W.1 in part, they never adduced any oral evidence except marked some documents, Ex.D.1 to Ex.D.3. The above documents also no way help the defendants in rebutting the legal presumption available to Ex.P.1 promissory note. In view of the same, the plaintiff is entitled to recover the suit amount and the issues are answered in favour of the plaintiff.

9. In the result, the suit is decreed as prayed for with costs with

subsequent interest at the rate of 6% per annum from the date of decree till the date of realization.

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Index : Yes
Internet: Yes

N.SATHISH KUMAR, J

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