

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.11.2016

PRONOUNCED ON 02.12. 2016

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.395 of 2007

M/s. Rama Home Need (P) Ltd.,
represented by its Managing
Director; Mr.K.R.Balachandran

.. Plaintiff

vs.

Mr. Sarath Chandran
Proprietor
M/s. Spoch Enterrports

.. Defendant

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 defendants.

i) directing the defendants to pay the plaintiff a sum of
Rs.61,62,325/- (Rupees Sixty One Lakhs Sixty Two Thousand

Three Hundred and Twenty Five only) together with interest at the rate of 24% per annum on Rs.20,00,000/- from the date of plaint till the date of realisation in full;

ii) directing the defendants to pay the cost of the suit.

For Plaintiff : Mr.M.Balasubramanian

For defendants : Ms.R.T.Sayamala

J U D G M E N T

The suit is filed for recovery of sum of Rs.61,62,325/- together with interest at the rate of 24% p.a for Rs.20,00,000/- from the date of plaint till the date of realisation.

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

The plaintiff is a company registered under the Companies Act, 1956. The defendant borrowed a sum of Rs.20,00,000/- from the plaintiff as a short loan promising to repay the said amount with interest at the rate of 24% per annum, on

16.4.2001 by way of cheque, bearing No.670980, drawn on Tamil Nadu Mercantile Bank Limited. The defendant paid interest for three months and thereafter, he had committed default in payment of interest. The plaintiff made repeated requests to pay the principal amount together with interest thereon.

2.1. While so, the defendant issued a cheque for Rs.20,00,000/- bearing No.791583 dated 22.05.2002. When the said cheque was presented for encashment, it was returned with the endorsement "insufficient funds". However, the defendant made a request to the plaintiff not to proceed further and promised the plaintiff to pay the amount. As the defendant has not chosen to make any steps to settle the amount, the plaintiff sent a Registered letter dated 23.7.2003, followed up by a reminder dated 27.08.2003, for which the defendant sent a reply stating that they entered into a Memorandum Of Understanding with M/s.KLX Inc., of Canada to sell 40% of their share; that they were planning for an outright purchase of their factory to

the Chettinad Group of Chennai; that they were trying some other sources to make part payment; that the entire transaction would be completed very shortly; and further assured to close the loan at the earliest. Even though the defendant admitted the liability and promised to settle the dues, they failed to make payment.

2.2. Therefore, the plaintiff issued a legal notice to the defendant on 07.11.2004. Thereafter, the defendant sent a letter dated 06.01.2005 to the plaintiff stating that they signed a Joint Venture Agreement with a Canadian company, wherein they mutually agreed to disburse the amount on or before 31.3.2005. In the said letter, the defendant has also given assurance to settle the amounts. But the defendant has not come forward to settle the dues as promised. Hence, the plaintiff has no other option but to file a suit for recovery of amount.

3. The case of the defendant, in nutshell, is as follows:

According to the defendant, the suit is time barred and the

defendant has never acknowledged the debt. The defendant never accepted to repay the debt with interest at the rate of 24% and he never paid interest to the plaintiff company as stated in the plaint. It is stated that the plaintiff and the defendant are close relatives. The plaintiff has not disclosed the purpose of loan said to have been obtained by the defendant and, in whose favour the alleged cheque was issued. It is also stated that the amount claimed by the plaintiff company is exorbitant in nature and the same is not maintainable in law. Further, when there is no contract for interest, then the claim for interest in the suit is not maintainable in law. Hence, the defendant prayed for dismissal of the suit.

4. On the above pleadings, originally, this Court, on 29.04.2011, has framed the following issues:

1. Whether it is true tht the defendant has not received any amount from the plaintiff?
2. Whether there is a contract for payment of interest?
3. Whether the plaintiff is entitled for interest @ 24%?

4. Whether the suit is time barred?

5. To what other relief is the plaintiff entitled to?

5. On the side of the plaintiff, P.W.1 was examined and Exs.P1 to P8 were marked. On the side of the defendants, D.W.1 was examined and Exs.D1 to D3 were marked. The details of the same are hereunder:

Exhibits produced on the side of the plaintiff:

<i>S.No.</i>	<i>Exhibits</i>	<i>Date</i>	<i>Description of documents</i>
1.	P-1	23.07.2003	Office copy of letter sent by the plaintiff to the defendant and cheque dated 22.5.2002
2.	P-2	27.08.2003	Office copy of the plaintiff's letter to the defendant
3.	P-3	09.10.2003	Defendant's reply letter to the plaintiff
4.	P-4	24.12.2003	Office copy of reminder letter sent by plaintiff to defendant
5.	P-5	07.01.2004	Office copy of second reminder letter sent by plaintiff to the defendant.
6.	P-6	06.01.2005	Defendant's letter to the plaintiff
7.	P-7	07.11.2004	Legal notice to the defendant with returned cover.
8.	P-8	09.04.2005	Office copy of legal notice to the defendant with acknowledgment.

Exhibits produced on the side of the defendant:

<i>S.No.</i>	<i>Exhibits</i>	<i>Date</i>	<i>Description of documents</i>
1.	D-1	04.07.2012	Authorisation letter issued by the Proprietor of the defendant company
2.	D-2	18.07.2011	Office copy of the notice sent by the defendant counsel to the plaintiff counsel
3.	D-3	11.08.2011	Reply sent by the plaintiff counsel to the defendant counsel.

Witnesses examined on the side of the plaintiff:

P.W.1. - K.Sridharan

Witnesses examined on the side of the defendant

D.W.1 – Thiyagarajan

6. Heard, Mr.M.Balasubramanian, learned counsel appearing for the plaintiff and Ms.R.T.Sayamala, learned counsel appearing for the defendant and perused the records.

7. Learned counsel for the plaintiff would submit that the defendant is the close relative of the plaintiff and he borrowed a

short term loan of Rs.20,00,000/- on 16.4.2001 by way of cheque, Ex.P1. Learned counsel for the plaintiff would further submit that the defendant promised to repay the amount with interest at 24% p.a. It is the submission of the learned counsel for the plaintiff that having paid interest for two months, the defendant, subsequently, had committed default in payment of interest and also the principal amount. When the plaintiff insisted for payment, the defendant has given a cheque drawn on Oriental Bank of Commerce for a sum of Rs.20,00,000/- on 22.5.2002. When the said cheque was presented for encashment, the same was dishonoured for insufficient funds. However, keeping into consideration of the relationship, the plaintiff did not take any criminal action under Section 138 of the Negotiable Instrument Act.

8. It is submitted that the reminder sent by the plaintiff has become vain. When the matter stood thus, the defendant, has acknowledged the debt liability on 06.01.2005. Therefore,

the learned counsel submitted that the suit is well within the period of limitation. Further, except evasive denial in the written statement with regard to the borrowal of money and acknowledgment of the liability, there is no specific denial by the defendant. Hence, the learned counsel submitted that the plaintiff is entitled for a decree of recovery of amount. However, the learned counsel for the plaintiff has fairly conceded that he is giving up the relief in respect of the compound interest claimed in the plaint.

9. On the contrary, the learned counsel for the defendant submitted that there is no agreement, whatsoever, for payment of interest. Though it is pleaded by the plaintiff that the amount advanced is a short term loan, the same has not been proved by the plaintiff. It is the submission of the defendant's counsel that the plaintiff is a company and without obtaining resolution from the Board of Directors or Board of Governors, the amount could not have been advanced.

10. It is the submission of the learned counsel for the defendant that though the plaintiff pleaded that the loan amount was originally given on 16.4.2001, the suit has been filed in the year 2016, i.e. beyond the period of limitation. It is the contention of the learned counsel that there is no evidence, whatsoever, to show that interest was paid or agreed to be paid. The acknowledgment of liability shown by the plaintiff is also beyond the period of limitation. Hence, it is submitted that the plaintiff cannot claim any amount from the defendant. It is also the submission of the learned counsel that only the Manager of the plaintiff company was examined. Therefore, it is the submission of the learned counsel for the defendant that the suit is not maintainable.

11. To substantiate the above contention, the learned counsel for the defendant has relied upon the judgment of the Hon`ble Apex Court reported in AIR 1999 SC 1441 (1)

[**VIDHYADHAR v. MANKIKRAO AND ANOTHER**] and the judgment of this Court reported in 2004 (2) CTC 624 [V.S.MANICKASUNDARAM v. V.S.RAMALINGA GOUNDER AND CO.,]. Thus, the learned counsel prayed for dismissal of the suit.

Issue No:4

12. It is not in dispute that the plaintiff and the defendant are close relatives. It is the contention of the defendant's counsel that the acknowledgment of liability is made only after the period of limitation. On a careful perusal of the pleadings in the plaint, as well as in the written statement, there is no dispute with regard to the borrowal of Rs.20,00,000/- as a loan by the defendant on 16.4.2001. In the entire written statement, except evasive denial, there is no specific denial made by the defendant with regard to the borrowal of amount of Rs.20,00,000/- by way of cheque. Further, it is also the specific contention of the

plaintiff that for repayment of Rs.20,00,000/- the defendant has issued a cheque dated 22.5.2002. For the above pleading, there is no denial by the defendant as contemplated in Order VIII Rule 5 of the CPC.

13. Further, a perusal of Ex.P1, cheque, dated 22.5.2002 and the letter dated 23.07.2003 addressed by the plaintiff to the proprietor of the defendant, namely, EPOCH Enterrepots, it is clear that the plaintiff has informed the defendant about the dishonour of cheque given by the proprietor concerned, which was signed by the defendant. The above fact clearly established the plaintiff's claim that on 22.5.2002, the defendant issued a cheque for sum of Rs. 20,00,000/- drawn on Oriental Bank of Commerce. This fact is not denied by the defendant in the written statement.

14. Further, one Thiagarajan, who was examined on the side of the defendant as D.W.1, categorically stated that the

defendant had issued a cheque, Ex.P.1 dated 22.5.2002 for the loan amount borrowed by the defendant. D.W.1 also admitted that the defendant is the Proprietor of the defendant company. He has also stated that under Ex.P6, letter dated 06.01.2005, the defendant's proprietor had agreed to pay the amount on or before 31.3.2005. The acknowledgment of liability in writing, under Ex.P6 was made on 06.01.2005, well within the period of date of three year from the date of issuance of cheque, i.e., Ex.P1. It is well settled that any acknowledgment of liability must be made during the subsistence of the original limitation period. In the light of the above mentioned fact, it is clear that the defendant has issued a cheque Ex.P1 on 25.02.2002. The period of limitation, i.e. three years, would expire only on 24.2.2005, whereas Ex.P6 was signed on 06.01.2005, which is well within the period of limitation. Therefore, once the acknowledgment of liability has been made within the period of limitation, it is reviving the period of limitation. Therefore, the suit filed by the plaintiff in the year 2006 is well within the period

of limitation. Hence, the contention of the defendant's counsel has no legs to stand. In view of the above discussion, the judgments relied on by the defendant is not applicable to the case on hand. Since the above judgment itself held that acknowledgment must be made before expiry of limitation prescribed for suit. In the case on hand, acknowledgment of liability was made in writing within the period of limitation.

Issue No:1

15. As already discussed in issue No.3, the written statement of the defendant is only evasive in nature. Further the defendant has only chosen to examine his Manager alone on his side. When the facts pleaded in the plaint is not specifically denied in the written statement then such facts are deemed to be admitted by the other side. That apart, EX.P1, letter dated 23.07.2003 also sent to the defendant. Similarly, Ex.P2 another reminder dated 27.08.2003 also sent to the defendant. Ex.P-3 letter dated 09.10.2003 from the defendant to the plaintiff,

clearly show that the defendant borrowed the amount and in view of some difficulty in his business, he could not make the payment. In Ex.P3 letter, in fact, the defendant, while extending thanks to the plaintiff for timely help, agreed to settle the dues at the shortest time. This document has not been denied at all. D.W.1, in his cross examination also admitted Ex.P3, letter. Ex.P5 is another reminder sent in the month of January 2004 to the defendant. This letter is also not disputed by the defendant.

16. As already discussed above, on 06.01.2005, the defendant agreed to settle the loan amount before 31.3.2005. Ex.P7, legal notice dated 09.4.2005 sent by the plaintiff is also received by the defendant. From the above discussion, it can be easily concluded that the plaintiff has advanced a sum of Rs.20,00,000/- as loan to the defendant and that the defendant has also agreed to pay the same. Accordingly, this issue is answered in favour of the plaintiff and against the defendant.

Issue Nos.2 and 3:

17. Though it is the contention of the plaintiff that the defendant has agreed to pay 24% interest, admittedly, there is no contract whatsoever, for paying such huge interest. Even though the defendant has not specifically denied the other aspects in the written statement, he has denied the interest rate. Therefore, it is for the plaintiff to establish that the defendant agreed to pay 24% interest. Though the reminders sent by the plaintiff is not denied by the defendant, the same itself cannot be a ground to conclude that 24% interest has been agreed between the parties. In the acknowledgment letter dated 06.01.2005, namely, EX.P6, there is no whisper about the payment of interest at the rate of 24% by the defendant. Therefore, merely on the basis of the oral evidence as well as the pleadings, in the absence of any other documents, interest as pleaded by the plaintiff cannot be accepted.

18. Admittedly, there is no dispute that the loan amount was paid by way of cheque on 16.4.2001 by the plaintiff.

Similarly for repayment of the above amount, the defendant had issued a cheque for Rs.20,00,000/- on 22.5.2002. If really, interest at 24% was paid only for three months as stated in the plaint, the cheque ought to have been issued not only to the principal amount but also for the interest for remaining months, whereas the cheque Ex.P1 dated 22.5.2002, was issued by the defendant only for the principal amount. Therefore, the contention of the plaintiff that the agreed rate of interest is 24% cannot be legally sustained.

19. It is to be noted that Ex.P1 cheque was drawn in the name of the plaintiff for the legally enforceable debt. Admittedly, no document, whatsoever, was forthcoming to prove the agreed rate of interest between the parties. When no rate of interest has been specified in the Negotiable Instrument, Section 80 of the Negotiable Instrument Act would apply. Section 80 reads as under:

"80. Interest when no rate specified:
When no rate of interest is specified in the instrument, interest on the amount due thereon

shall, [notwithstanding any agreement relating to interest between any parties to the instrument], be calculated at the rate of (eighteen per centum) per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the court directs. "

20. On a careful perusal of the above section, it is very clear that when there is no specific rate mentioned in the instrument, interest at the rate 18% has to be calculated. Therefore, this Court is of the view that if 18% interest is calculated, the same will meet the ends of justice. Accordingly, the plaintiff is entitled to interest at the rate of 18% p.a. on the amount of Rs.20,00,000/- from the date of issuance of cheque i.e. 22.5.2002 till the filing of suit and, thereafter at 6% from the date of the suit till the date of realisation.

The suit is decreed in the above terms with costs.

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Index : Yes/No
Internet : Yes/No

N.SATHISH KUMAR, J

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