

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.10.2016

PRONOUNCED ON: 17.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.530 of 2010

Suresh Bafna
Proprietor, Mahaveer Investments
Chennai-79 Plaintiff

Vs

V.P.Zacharia Defendant

Prayer:- This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC.

For Plaintiff : Mr.V.Boopathi

For Defendant : Set Exparte

JUDGEMENT

This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC, to pass a Judgement and Decree against the Defendant (i) directing the Defendant to pay a sum of Rs.50,00,000/- as damages for instituting false complaints and falsely prosecuting against the Plaintiff and (b) for costs of the suit.

2. The case of the Plaintiff, in a nutshell, is that the Defendant borrowed a sum of Rs.2,00,000/- from the Plaintiff under two promissory notes, both dated

17.12.1993, agreeing to repay the same with interest 36% p.a. on demand. In discharge of the said debt, the Defendant issued a cheque for a sum of Rs.2,50,000/- dated 13.2.1996, which was dishonoured. In spite of repeated demand, since the Defendant did not discharge the said debt, the Plaintiff filed a suit in OS.No.4783 of 1997 before the District and Sessions Court (FTC II) Chennai, which was decreed on 28.10.2003. In CMP.No.12983 of 2005 in AS.No.497 of 2005 filed as against the same by the Defendant, the Defendant was directed to deposit a sum of Rs.2,00,000/- as a condition for grant of stay and the Petitioner was directed to withdraw the same. In order to prevent the Plaintiff from withdrawing the amount, the Defendant made a private complaint against the Plaintiff in CC.No.653 of 2001 on the file of the Judicial First Class Magistrate, Tirur and the said private complaint was dismissed, holding the Plaintiff not guilty. Thereafter, this civil suit has been filed, claiming damages for the malicious prosecution of the criminal proceedings against him, thereby causing mental agony and damaging his reputation.

3. Though the service has been completed as against the Defendant as early as on 28.10.2013, no written statement has been filed by the Defendant and hence, the

matter was ordered to be listed under the caption of "Undefended Board" on 20.10.2014. Since there was no representation for the Defendant on the said date and for non filing of the Written Statement, the Defendant was set exparte by the order of this court dated 20.10.2014. The Plaintiff has filed the proof affidavit for his chief examination and receipt of 7 documents as documentary evidence to prove the suit claim. In the evidence, the Plaintiff examined himself as PW.1 and marked Exs.P1 to P7 as documentary evidence.

4. In this civil suit, the Plaintiff claims a sum of Rs.50,00,000/- as damages and towards mental agony and damage caused to his reputation by initiation of criminal proceedings against him by the Defendant. A court fee of Rs.53,525/- was paid. Further, the disputed cheque amount has also been ordered to be realized in favour of the Plaintiff. However, not satisfied with the same, the Plaintiff claims huge amount towards damages. The grounds, on which the Plaintiff bases his claim for damages, are that in view of the frequent travel from Chennai to Tirur to attend to the criminal case filed against him in Tirur, he incurred huge expenses and the criminal proceedings foisted by the Defendant against him caused mental agony, loss and hardship to the Plaintiff.

5. Though the Defendant has been set exparte, considering the plaint averments and oral and documentary evidence, viz. Ex.P1 to Ex.P28 adduced by PW.1, this court finds no evidence both oral and documentary, much less a valid evidence, adduced by the Plaintiff to prove that he incurred such a huge amount towards travelling expenses. For such a claim, the documentary evidence let in by the Plaintiff are only the judgement and decree of the courts below, which were made only in respect of the disputed cheque amount that too in favour of the Plaintiff and a few letter correspondences between him and the police authorities. From such evidence, no inference could be drawn that the Plaintiff incurred such a huge amount towards expenses and the Plaintiff is entitled for such an amount towards mental agony and hardship caused to the Plaintiff by initiation of such criminal proceedings that too when the same had ended in his favour. Mere attending the criminal court proceedings and travelling for the same even for such a long distance cannot lead to a conclusion that the Plaintiff suffered mental agony and loss of reputation, that too when the criminal proceedings ended in his favour. Hence, this court has no hesitation in holding that the Plaintiff is not entitled for such a huge claim. However, considering the fact that a sum of

Rs.53,525 was paid as court fee, the said sum can be ordered in favour of the Plaintiff. Apart from that, only a further sum of Rs.50,000/- towards travel expenses can be ordered to be paid to him. In all, a sum of Rs.1,03,525/- is awarded as decretal amount.

6. In the result, this civil suit is decreed in part, in favour of the Plaintiff only to the tune of Rs.1,03,525/- (Rupees one lakh three thousand five hundred and twenty five only). No costs. Time for payment is three months.

1. List of Witnesses Examined on the side of the Plaintiff:-

1. P.W.1 - Plaintiff

2. List of Exhibits Marked on the side of the Plaintiff:-

1.Ex.P1 is the certified copy of the plaint in OS.No.4783 of 1997 dated 14.7.1997.

2.Ex.P2 is the certified copy of the written statement in OS.No.4783 of 1997 dated 31.3.1998.

3.Ex.P3 is the certified copy of the judgement and decree in OS.No.4783 of 1998, dated 28.10.2003.

4.Ex.P4 is the xerox copy of the memo of grounds in AS.No.497 of 2005 dated nil.

5.Ex.P5 is the office copy of the letter by the Plaintiff's advocate to the Superintendent of Police dated 7.3.2001.

6.Ex.P6 is the xerox copy of the letter by Superintendent of Police, Mallapuram to the counsel for the Plaintiff dated 11.8.2001.

7.Ex.P7 is the certified copy of the order passed in CC.No.653 of 2001 on the file of the Judicial First Class Magistrate, Tirur, dated 16.7.2009.

3. List of Witnesses Examined on the side of the defendants:-

Nil

4. List of Exhibits Marked on the side of the defendants:-

Nil

Sd/C.V.K.J

17.10.2016

//Certified to be a true copy//

Dated this the day of 2017

R.s/28.01.2017

COURT OFFICER

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

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