

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.651 of 2016
and
C.M.P.No.12012 of 2016

1. M/s. Agro Chemical Industries
Rep. by its Partner N.Krishnamoorthi
S/o Natrajan chettiar,
No.2, Vania Pillayar Koil Street,
Erode - 1.

2. N.Krishnamoorthi

3. N.Karthikeyan ... Appellants/Respondents
/Defendants

vs.

Tara Golecha
Rep by her Power of
Attorney Hansraj Jain Respondent/Appellant/Plaintff

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 14.12.2015 made in A.S.No.76 of 2014, on the file of the Principal District Judge, Erode, reversing the judgment and decree dated 16.12.2013 made in O.S.No.131 of 2009 on the file of the II Additional Subordinate Judge, Erode.

For Appellants : Mr.K.Elangoo

J U D G M E N T

The appellants are the defendants in a suit for recovery of money. The respondent herein as the plaintiff filed the suit to recover a sum of Rs.1,69,467/- with future interest. The case of the plaintiff is that the 2nd defendant, for doing the business on behalf of all the defendants, borrowed a sum of Rs.1 lakh from the plaintiff on 18.04.2006; that in discharge of the said debt, he issued two post dated cheques, both bearing dated 23.05.2006 for a sum of Rs.50,000/- each and that those

two cheques, when presented before the bank, got dishonoured on the reason of insufficiency of funds. Therefore, it is contended by the plaintiff that he issued notice on 10.11.2006 and again on 24.03.2009, demanding the payment and when the defendants failed to make the payment, the suit came to be filed on 16.04.2009.

2. The appellants herein as the defendants filed an application under Order 7 Rule 11 C.P.C for rejection of the plaint on the ground that the suit is barred by limitation. It is their contention that the cheques issued are in no way connected with the first defendant's partnership and there is a contradiction in the notices issued by the plaintiff. The trial Court, while considering the said application, allowed the parties to let in evidence to establish their respective cases on the merits of the contention of the parties with regard to the validity of the cheques said to have been issued by the defendants. It appears that the Bank Managers were examined and they have deposed before the Court that the cheques issued are invalid cheques.

3. Hence, by citing those reasons, the trial court allowed the application and rejected the plaint. The plaintiff filed an appeal before the lower appellate Court. The appellate Court allowed the appeal, restored the suit and directed the trial Court to dispose of the case on merits as expeditiously as possible without being influenced by any of the findings made in the appeal. The lower appellate Court has found that the question as to whether the cheques were issued in 1906 or 2006 and consequently, whether the suit is barred by limitation on such fact, is the question that can be decided in the suit and that the trial Court has to look into only the averments made in the plaint for considering the application for rejection of the plaint and not the averment made in the written statement. Challenging the said decision of the lower appellate Court, the present Second Appeal is filed before this Court.

4. Heard Mr.K.Elango, learned counsel appearing for the appellants and considered the decisions of both the Courts below.

5. I have already stated as to what is the case of the plaintiff as set out in the plaint. It is well settled that for considering the application for rejection of the plaint on the grounds set out under Order 7 Rule 11 C.P.C., only the plaint averment has to be taken into consideration to find out as to whether the grounds raised in the application are made out on the face of reading of the plaint itself. In other words, the case as projected by the defendants either disputing or denying the liability is not relevant for considering the application under Order 7 Rule 11 C.P.C as such rival contentions of the parties are to be considered and decided only after conducting a

full-fledged trial. Needless to say that a person who approaches the Court cannot be thrown out at a threshold, unless the very pleading of such person on the face of it, makes out a case that such plaint on the face of it cannot survive any more on any of the grounds set out under Order 7 Rule 11 C.P.C.

6. In this case, it is contended by the learned counsel for the appellants that the dates available in the disputed cheques are different while comparing the dates as set out in the plaint. Needless to say that these are all the matters which are to be considered and decided only by conducting the trial. Therefore, when the plaintiff in clear and categorical terms have stated in the plaint that the date of the cheques as 23.5.2006, it is for him to establish such fact by letting in evidence. At this stage, the case of the defendants in respect of the date of cheques cannot be gone into. Therefore, I find that the trial Court has erroneously rejected the plaint while the appellate Court has rightly allowed the appeal and restored the suit. Accordingly, I find that the present second appeal does not deserve for admission as I do not find any substantial question of law favouring such admission. Accordingly, the Second Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Principal District Judge,
Erode.
2. The II Additional Subordinate Judge,
Erode.

+cc to M/S.K.Elango, Advocate Sr.46629

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rsk[co]
srg 08/09/2016