

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2017

CORAM

THE HONOURABLE MR.JUSTICE R. SUBRAMANIAN

A.S.No.435/2011 & M.P.No.1/2011

L.C.Saptarishi
Proprietor,
Sriguruvayurappan Services,
Alagiri Nagar, East Street,
Vadapalani, Chennai-600028.

..Appellant

..Vs..

J.Devanathan

...Respondent

Prayer: Appeal filed under Section 96 R/w Order 41 Rule 1 Civil Procedure Code against the Judgment and Decree dated 28.02.2011 made in O.S.No.11901/2010 on the file of the Additional District Judge, Fast Track Court No.1, Chennai.

For Appellant : Mr.V.Rangarajan

For Respondent : Mr.Balaji
for M/s.Thanjai P.N.Chezhiyan

JUDGMENT

The defendant who suffered a decree for a sum of Rs.1,75,000/- (Rupees One lakh Seventy five thousand only) with interest at the rate of 24% per annum from 07.01.1998 till 05.12.2002 and there after at 18% till date of realisation is the appellant.

2.The suit was filed for recovery of a sum of Rs.12,32,347.37 (Rupees Twelve lakhs thirty two thousand three hundred and forty seven and paise thirty seven only) with subsequent interest at 24% per annum. The claim of the plaintiff is as follows:

3.The defendant had borrowed a sum of Rs.1,00,000/- (Rupees One lakh only) under Ex.A-1, and executed a demand Promissory Note under Ex.A-2 on 17.09.1994. On 31.08.1995, the defendant had borrowed further for a sum of Rs.50,000/- (Rupees Fifty

thousand only) under a demand Promissory Note under Ex.A-3. According to the plaintiff, the defendant had also borrowed various amounts from other individuals namely; T.V.S.Ramamurthy, T.V.K.Kiran, C.S.Saraswathy & Janardhanan.

4.It is also contended by the plaintiff that the defendant had agreed to pay 20% of the profits from the business in Gas Agency in the name of Sri Guruvayurappan Services carried on by him. The plaintiff upon a calculation had claimed a sum of Rs.8,16,317.33 (Rupees Eight lakhs sixteen thousand three hundred and seventeen and paise thirty three only) payable on the borrowings and a sum of Rs.3,04,000/- (Rupees Three lakhs four thousand only) being differential amount on the profits. Thus the plaintiff had arrived at a sum of Rs.11,20,317.33 (Rupees Eleven lakhs twenty thousand three hundred and seventeen and paise thirty three only) as principal amount due. Adding interest at the rate of 24% per annum from the period from 31.05.2001 to 31.10.2001 the plaintiff has arrived at the suit claim.

5.The suit was resisted by the defendant on various grounds. The sum and substance of the defence is that the borrowing of Rs.1,50,000/- (Rupees One lakh fifty thousand only) was admitted. As regards the other borrowings, the defendant would contend that the plaintiff is not entitled to sue on behalf of those lenders. The agreement dated 07.01.1998 marked as Ex.A-16 was denied by the defendant. The defendant also denied the existence of any agreement to pay the certain percentage of profits to the plaintiff. On the above rival claims, the learned trial Judge namely, the Additional District Judge (Fast Track Court No.1) Chennai framed the following issues:

- 1.Whether the suit is barred by limitation?
- 2.Whether this Court has no jurisdiction to try the suit?
- 3.Whether the defendant executed promissory notes, cheques and letters as stated in the plaint?
- 4.Whether the defendant made any part payment?
- 5.Whether the plaintiff is entitled the suit claim as prayed for?

6.The plaintiff had examined himself as P.W-1 and Ex.A-1 to Ex.A-22 were marked. The defendant had examined himself as D.W-1 and no documentary evidence was produced by the defendant. The learned trial Judge upon a consideration of the oral and documentary evidence rejected the claim of the plaintiff based

on Ex.A-1 to Ex.A-15. The learned trial Judge held that the plaintiff is not entitled to sue on behalf of the other lenders. He also came to the conclusion that the suit based on those documents namely; Promissory Note and Dishonoured Cheques was barred by limitation. Further, the learned trial Judge upheld the agreement Ex.A-16 in and by which the defendant had agreed to pay a sum of Rs.3,00,000/- (Rupees Three lakhs only) to the plaintiff with interest at the rate of 24% per annum. On the basis of Ex.A-16 and on the basis of Ex.A-18 namely the statement of accounts filed by the plaintiff, the learned trial Judge after giving credit to the sum of Rs.1,25,000/- (Rupees One lakh twenty five thousand only) decreed the suit for balance amount with interest at 24% per annum from 07.01.1998 to 15.12.2002 and at 18% per annum thereafter till the date of realisation. Aggrieved by the said decree, the defendant has filed the above appeal.

7.I have heard Mr.V.Rangarajan, learned counsel appearing for the appellant and Mr.Balaji, learned counsel appearing for M/s.Thanjai P.N.Chezhiyan learned counsel for the respondent.

8.The learned counsel appearing for the appellant would contend that Ex.A-16 having been denied cannot be the basis for decreeing the suit. It also further contention of the learned counsel that Ex.A-16 is dated 07.01.1998, and the suit should have been filed within three years from the date namely; on or before 07.01.2001, the suit having been filed much later that is on 08.11.2001 is barred by limitation. Mr.V.Rangarajan, learned counsel appearing for appellant would also invite my attention to the notice dated 28.06.2001 marked as Ex.A-17 wherein the plaintiff had claimed that the amounts were due under the various Promissory Notes which have been held to be barred by limitation, and contend that the learned trial Judge erred in granting a decree for a sum of Rs.3,00,000/- (Rupees Three lakhs only) less the sum of Rs.1,25,000/- (Rupees One lakh twenty five thousand only).

9.Per contra, Mr.Balaji, learned counsel appearing for M/s.Thanjai P.N.Chezhiyan learned counsel for the respondent would contend that Ex.A-16 should be treated an acknowledgment liability and it is an undertaking to pay within a period of three years. Therefore, according to the learned counsel, the limitation for a suit based on Ex.A-16 would commence only after a period of three years that is on 07.01.2001. Therefore, according to the learned counsel the suit based on Ex.A-16 is in time. As regards the contention of the learned counsel, for the appellant based on the legal notice Ex.A-18 dated 28.06.2001, the learned counsel for the respondent would contend that para 3 of the said legal notice relied upon by the learned counsel for the appellant, only sets out the borrowings and it is contended that Ex.A-16 is independent of the said

borrowings. Therefore, the findings of the trial Court, that the suit based on the Promissory Notes and returned cheques marked as Ex.A-1 to Ex.A-15 is barred by limitation will not bar a decree, on the basis of Ex.A-16 which according to the learned counsel is an acknowledgment of liability in writing.

10.Mr.V.Rangarajan would rely upon the judgment of Bombay High Court reported in AIR 1991 BOMBAY 35 and contend that there cannot be estoppel or Waiver of limitation. The learned counsel would also rely upon AIR 1989 HIMACHAL PRADESH 11 and the judgment of the full Bench Of this Court in P.Gopirathnam and 4 Others .vs. Ferrodous Estate (pvt.) Ltd., reported in 1999 (II) CTC 181 to contend that even if the agreement is valid, if it is violation of the any provision of a statute the same cannot be enforced through Court. As regards the judgment in AIR 1991 Bombay 35 it turned on facts, wherein, the parties had agreed for extension of limitation for filing a suit. Thus the Bombay High Court construed it as waiver of the plea of limitation. In the other two judgments Himachal Pradesh High Court as well as the Full Bench of this Court considered the agreements which were found to be in violation of Section 10 of the Transfer Of Property Act and Section 6 of the Tamil Nadu Urban Land [Ceiling and Regulation] Act 1978 respectively. In both the cases, the Court found that the agreements which were relied upon were opposed to the provisions of a particular statute which declared the said agreements as void.

11.In the case on hand, there is an agreement in and by which the defendant had agreed to pay a particular sum of money to the plaintiff within a period of three years. The relevant recital in Ex.A-16 is as follows:-

"[C. The party of the Second Part agrees to grant the party of the first part the period of three years for repayment of accrued amount of Rs.3,00,000/- (Rupees Three lakhs only) stated in Clause (a) above on the condition that the party of the first part shall pay the future interest at Rs.6,000/- (Rupees Six thousand only) per month commencing from the 6th day of the succeeding month.

d. The party of the Second Part has agreed to grant the time frame of the three years taking into account the financial constraints and the loss suffered by the First Part and the party of the First Part accepts, the said concession and promise to repay and settle the claim of the party of the Second Part within the period of 3 years namely; on or before 05.01.2001]".

12.The above terms of Ex.A-16 are clear and categoric. Ex.A-16 can be considered only to be a single bond where a day is specified for payment. Article 28 of the Limitation Act which deals with a period of limitation for such single bonds

where a date is specified for payment stipulates a period of three years and the said three year period would commence from the day so specified. As already seen in Ex.A-16 is dated 07.01.1998 and period of three years expires on 07.01.2001. Therefore, the cause of action for the suit would actually commence only on 07.01.2001. In the light of the above, I am unable to agree with the contention of the learned counsel that the suit itself is barred by limitation.

13.On the contention that Ex.A-16 is not a true and valid document, the learned counsel would take me through the document itself and contend that the manner in which the signatures are affixed creates a suspicion as to whether Ex.A-16 is a genuine document. While it is true that in the last page of Ex.A-16, there is a uneven gap between the contents and the signature of the defendant. That by itself cannot invalidate the document. D.W-1 in his evidence has admitted the signature in Ex.A-16. In his cross examination he would stated as follows:-

“வா.சா.ஆ-16 ஒப்பந்தத்தில் உள்ள கையெழுத்து என்னுடையது தான். 1994-ல் கடன் வாங்கிய பொழுது வாதி அவ்வாறு வெற்று தாள்களில் கையெழுத்து வாங்கியுள்ளார் அதை கொண்டு தயாரித்து இருக்கலாம்.”

14.Ex.A-16 is written on a stamp paper. It is seen that the stamp papers were purchased on 06.01.1998 and the seal of the issuing Treasury is also of the year is 1998. Therefore, the contention of the defendant that Ex.A-16 was written on unsigned blank papers which were obtained in the year 1994 is falsified. The defendant has infact admitted a borrowing of a sum of Rs.1,50,000/- (Rupees One lakh fifty thousand only) from the plaintiff and the documents namely; Ex.A-2 & Ex.A-3 which evidence the said borrowings clearly set out that interest is payable at the rate of 24% per annum on the said borrowings. Therefore, it is also not the case of the defendant that he has paid the interest due on said sum of Rs.1,50,000/- (Rupees One lakh fifty thousand only) prior to Ex.A-16. The statement of accounts filed would show that subsequent to Ex.A-16, the defendant has paid nearly a sum of Rs.1,25,000/- (Rupees One lakh twenty five thousand only) and the same has been duly given credit to by the trial Court while passing the decree. Therefore, the contention of the defendant that Ex.A-16 has been created by the plaintiff utilising the blank stamp papers signed by him in the year 1994 cannot be accepted.

15.As regards the claim made in the legal notice dated 28.06.2001, that the defendant has borrowed monies from the plaintiff on various dates and borrowings amounted to a sum of Rs.3,45,000/- (Rupees Three lakh forty five thousand only).

Contending that the said details given in the notice dated 28.06.2001 include the borrowings made from other persons and therefore, Ex.A-16 should not be made basis for grant of a decree for Rs.3,00,000/- (Rupees Three lakhs only). I am unable to agree. Admittedly the said contention was not raised in reply to the said legal notice. Apart from that as already pointed out a borrowing of Rs.1,50,000/- (Rupees One lakh fifty thousand only) in the year 1994-1995 was admitted. The defendant also does not plead discharge of the said debt. Therefore even assuming that a notice Ex.A-18 contains certain details of borrowings from other people also, that cannot be a ground for rejecting the claim of the plaintiff based on Ex.A-16. Once Ex.A-16 is upheld, the liability of the defendant is crystalised at Rs.3,00,000/- (Rupees Three lakhs only). The trial Court has also given credit to the amounts paid by the defendant subsequent to Ex.A-16. Therefore, I am unable to accept the submission of learned counsel for the appellant on the strength of the statement made in Ex.A-18.

16.The trial Court has decreed the suit with interest at 24% per annum from the date of Ex.A-16 namely 07.01.1998 till the date of filing the suit and at 18% per annum. I find that the interest granted is on the higher side. It is also seen from Ex.A-18 namely, the statement of accounts that the defendant has made several payments. Therefore, I am inclined to reduce the interest to 12% per annum from the date of Ex.A-16 namely 07.01.1998 till the date of realisation.

17.In other aspects, the judgment and decree of the trial Court is confirmed and in fine, the appeal is partly allowed and the interest payable on the sum of Rs.1,75,000/- (Rupees One lakh seventy five thousand only) which remains unpaid will be at 12% per annum from the date of Ex.A-16 that is on 07.01.1998 till date of realisation. In the circumstances of the case there shall be no order as to costs in the appeal. Consequently the connected miscellaneous petition is closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Addl.District Judge,
Fast Track Court No.1,
Chennai

Copy to

The Section officer
VR section,
High court, Madras,

+1cc to Mr.Thanjai Chezian Advocate SR.No.4732
+1cc to Mr.Ramarajan, Advocate SR.No.4485

A.S.No.435 of 2011

MG (CO)
GN (16/02/2017)



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