IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.04.2017

PRONOUNCED ON :13.04.2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.1087 of 2007

1. M.Sethupathy
2. P.Mylsamy Gounder .. Appellants/Defendants

Vs.

R.Velusamy .. Respondent/Plaintiff

Appeal filed under Section 96 Code of Civil Procedure to set aside the judgment and decree dated 28.09.2006 passed in O.S.No.709 of 2004 on the file of the Additional District Judge, Fast Tract Court III, Coimbatore.

For Appellants : Mr.S.Mukunth for M/s.Sarvabhauman Associates
For Respondent : No appearance

J U D G M E N T

Aggrieved over the decree and judgment of the learned trial Court, decreeing the suit on the promissory note, the present appeal came to be filed.

2. The parties are arrayed as per their ranking before the trial Court for the sake of convenience.

3. The brief facts of the plaintiffs case is as follows :
The defendants are father and son and for the purpose of their business, they have borrowed a sum of Rs.4,00,000/- from the plaintiff on 20.10.2000. They have also executed a promissory note agreeing to repay the amount with interest at the rate of 30% per annum. The defendants failed to repay the amount. Therefore, the plaintiff issued a legal notice on 01.09.2012. Hence, the suit.

4. Brief contentions of the defendants are as follows :

Admitting the borrowal and the execution of the promissory note, it is the contention of the defendants that they had already paid the amount covered under the promissory note. It is the further contention of the defendants that the first defendant has paid a sum of Rs.1,00,000/- on 20.04.2000 and obtained a receipt for the same. And again on 12.07.2000, a further sum of Rs.4,00,000/- has been paid towards principal and obtained a receipt. The plaintiff postponed returning of the promissory note and also demanded excess amount from the defendants. When the defendant insisted for return of the promissory note, with a view for giving trouble to the defendants, the present suit has been filed. Hence, prayed for dismissal of the suit.

5. Brief facts of reply statement filed by the plaintiff :

In the reply statement, the plaintiff has denied the discharge and submitted that the above receipts were in respective of the earlier promissory note dated 10.07.1998 and 15.12.1998 respectively. It is also stated by the plaintiff that there were other prior transactions between the plaintiff and the defendants. The defendants taking advantage of the earlier transaction have pleaded discharge and hence, prayed to decree the suit.

6. On the basis of the above pleadings, the following issues were framed:

1. Whether the plaintiff is entitled for the suit claim as prayed for?
2. Whether the suit is barred by limitation?
3. Whether the suit is maintainable?
4. To what relief?

Additional Issue :
1. Whether the calculation memo annexed to reply statement represent true, correct and genuine transaction?

7. On the side of the plaintiff, P.W.1 was examined and Ex.A.1 to A.9 were marked. On the side of the defendants, D.W.1 was examined and Ex.B.1 and Ex.B.2 were marked on their side.

8. On the basis of the evidence and materials available on record, the learned trial Court decreed the suit in favour of the plaintiff as against which the present appeal came to be filed.

9. The learned counsel for the appellants submitted that

admittedly Ex.B.1 and B2 were the receipts issued by the plaintiff and the same has been proved before the trial Court. Hence, the discharge is proved and nothing survives in this suit. Hence, it is the contention of the learned counsel for the appellants that trial Court has not taken into consideration of the above aspect and simply placing reliance on the pleadings of the plaintiff has passed the decree. It is their further contention that the interest claimed is usurious in nature and the learned trial Court has not taken into consideration the same and decreed the suit as prayed for.

10. There is no representation on the side of the respondent.

11. Now, the the points that arise for consideration are

1. Whether the discharge as pleaded by the defendants is true and valid?
2. Whether there is no cause of action for filing the suit for recovery of money under Ex.A.1 promissory note?

12. Point Nos.1 & 2:

This case is based on Ex.A.1 promissory note dated 20.10.1999 that has been executed by the defendants for a sum of Rs.4,00,000/-. The execution of the promissory note and the borrowal of the amount has not been disputed in the written statement. The only contention of the defendants before the lower Court is that the first defendant has paid the promissory note amount to the plaintiff on 20.04.2000 and 12.07.2000, Rs.1,00,000/- and Rs.4,00,000/- respectively and receipts have also been obtained by him. Therefore, there is no cause of action for the suit.

13. Whereas, it is the contention of the plaintiff in their reply statement, that there were earlier transactions between the parties and the defendants used to borrow amounts on various occasions and executed promissory notes on 10.07.1998, 15.12.1998 and 11.11.1999. It is the specific contention of the plaintiffs that the receipts dated 12.07.2000 and 20.04.2000 for a sum of Rs.4,00,000/- and Rs.1,00,000/- respectively were issued by the plaintiff towards earlier promissory notes dated 10.07.1998 and 15.12.1998.

14. In the above background, it has to be analysed whether the discharge pleaded by the defendants are true and established. Onus is always on the person who asserts discharge and the burden is on the defendants to prove the payment of amount pleaded in the written statement. Admittedly, there is

no dispute with regard to the borrowal of the amount and execution of the suit promissory note.

15. The defendants have relied on the receipts Ex.B.1 and Ex.B.2 issued by the plaintiff. Ex.B.1 and Ex.B.2 receipts filed by the learned counsel for the appellants, when carefully seen, the plaintiff has given receipts for Rs.1,00,000/- on 20.04.2000 and Rs.4,00,000/- on 12.07.2000 respectively. Whereas, D.W.1 in his cross examination has admitted that apart from the suit promissory note, they have also borrowed several amounts on various dates and also repaid some amount and obtained receipts. Further, in his cross examination, he has categorically admitted that they paid a sum of Rs.5,00,000/- in the fourth promissory note executed by them. He has also admitted that he is not aware towards which promissory note, he has paid the amount and got the receipt. These facts clearly establish the fact that there were several money transactions, apart from the suit promissory note between the parties and the parties being relatives, they were in the habit of receiving money and executing promissory notes. When the party pleads discharge and if he is not unable to convince the Court, towards which loan, he has paid the sum of Rs.5,00,000/- and obtained receipts, it cannot be presumed that the alleged receipts given by the plaintiff is only towards the suit promissory note. The party pleads discharge must establish the fact that the alleged amounts were paid only towards suit promissory note. Whereas, his cross examination itself clearly indicate that he is not aware towards which loan he has repaid the amount.

16. These facts coupled with the specific admission made by D.W.1 that a sum of Rs.4,00,000/- and Rs.1,00,000/- paid towards another promissory note, clearly establish the fact that the discharge pleaded by the defendants is not proved and established before the Court. The entire evidence clearly indicate that taking advantage of some of the receipts given by the plaintiff on the basis of some repayment made by the defendants in respect of some other loan, the defendants have made an attempt to use those receipts in the suit to show as if the suit amount has been discharged by them. Therefore, the admission by D.W.1 itself clearly falsify the contention of the defendants. Hence, the discharge pleaded by the defendants has not been established. As the execution of the suit promissory note and the borrowal has not been denied, there is no difficulty in coming to the conclusion that the plaintiff is entitled to the suit amount. Though it is agreed between the parties to pay interest at the rate of 30% per annum, this Court of the view that 30% interest is exorbitant and the parties have borrowed the amount as a personal loan and no where it has been mentioned as a commercial transaction. Therefore, this Court is of the view that the interest at the rate of 30% cannot be

allowed from the date of suit till the date of realization. Hence, this Court, by invoking the provisions under section 34 of the Code of Civil Procedure, is inclined to reduce the rate of interest at the rate of 6% per annum from the date of the suit till the date of realisation. Accordingly, the points are answered.

In the result, the appeal is modified and the judgment and decree dated 28.09.2006 passed in O.S.No.709 of 2004 by the Additional District Judge, Fast Track Court No.III, Coimbatore decreeing the suit is confirmed. However, the interest shall be at the rate of 6% on the suit amount from the date of suit till the date of realisation. No cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Additional District Judge, Fast Track
Court No.III, Coimbatore

+1cc to Mr.Sarvabhuman Associates, Advocate, S.R.No.22658

rj(CO)
md(26/04/2017)

A.S.No.1087 of 2007