

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.10.2017

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.1027 of 2012

and

C.M.P.No.1072 of 2016

and

M.P.No.1 of 2015

Paul Ponmany

... Appellant/Defendant

vs.

Thathrathil Porinchu Devassy

@ Dev.T.Devasay

rep.by his Power of Attorney

G.Nirmala

...Respondent/Plaintiff

Appeal suit filed under Section 96 of C.P.C. against the judgment and decree dated 20.07.2011, made in OS.No.718/11 passed by the V Additional Judge, City Civil Court, Chennai.

For Appellant :Mr.S.V.Jayaraman,Sr.counsel
for Mr.P.Arivudainambi

For Respondent : Mr.O.Padmaprakash

(Judgment of the Court was delivered by A.SELVAM,J.)

Challenge in this Appeal Suit is to the judgment and decree dated 20.07.2011, passed in O.S.No.718 of 2011, by the V Additional City Civil Court, Chennai.

2.The respondent herein, as plaintiff, has instituted O.S.No.718 of 2011, on the file of the trial Court, praying to pass a money decree in his favour, wherein, the present appellant has been arrayed as sole defendant.

3.The material averments made in the plaint are that the defendant has borrowed a sum of 60,000/- Canadian Dollars on 23.02.1995, from the plaintiff, so as to meet his urgent commitments. The plaintiff has paid the same by way of a bank draft, bearing No.068529973, dated 23.02.1995, drawn on Canadian bank of Commerce, Parkway Forest, North York, ONT. The defendant is bound to return the same with interest at the rate of 24% per

annum, within few months. The defendant has failed to keep up his promise. On 28.4.1996, the defendant has paid interest from April 1995 to 3rd April 1996 and he has also paid an amount of Canadian Dollars of 10,800/- per month at 18% interest and not 24%. The defendant has also paid interest from April 1996 to April 1997 on 04.04.1997. Further interest is payable. Since the defendant has not discharged his liability, a legal notice has been issued to him and he has also received the same. But he has not chosen to give any reply notice. Under the said circumstances, the present suit has been instituted for the relief sought therein.

4.The material averments made in the written statement are that there is no privity of contract between the plaintiff and defendant. It is false to aver that the defendant has received a sum of 60,000/- Canadian Dollars on 23.02.1995 from the plaintiff to meet out his urgent needs. It is also equally false to say that the defendant has paid interest on various dates to the plaintiff. It is also false to aver that the defendant is bound to pay 24% interest to the plaintiff. In the plaint, it has not been specifically stated as to where the defendant has received the said sum of 60,000/- Canadian Dollars and there is no merit in the suit and the same deserves to be dismissed.

5.In the reply statement filed by the plaintiff, the averments made in the written statement are specifically denied.

6.On the basis of divergent pleadings raised on either side, the trial Court has framed necessary issues and after analysing both oral and documentary evidence, has decreed the suit as prayed for. Against the judgment and decree passed by the trial Court, the present Appeal Suit has been preferred, at the instance of the defendant, as appellant.

7.The consistent case of the plaintiff is that on 23.2.1995, so as to meet urgent needs, the defendant has borrowed a sum of 60,000/- Canadian Dollars from the plaintiff and also agreed to pay interest at the rate of 24% per annum. The defendant has agreed to discharge his liability within few months and despite of repeated request, the defendant has paid interest at the rate of 18% and not at the rate of 24% per annum. After paying interest for certain period, the defendant has stopped payment of interest and also the principal amount. Under the said circumstances, a legal notice has been issued and even after receipt of the same, the defendant has not cared to discharge his liability and therefore, the present suit has been instituted for the relief sought therein.

8.The defence put forth on the side of the defendant is that the defendant has not received anything from the plaintiff much less on 23.2.1995. The alleged subsequent payments of interest are nothing but false; the defendant has not executed any document in favour of the plaintiff and therefore, the suit claim is nothing but false and the plaintiff is not entitled to get the relief sought in the plaint and therefore, the present suit is liable to be dismissed.

9.As mentioned supra, the trial Court, after considering the available evidence on record, has decreed the suit as prayed for.

10.The learned Senior counsel appearing for the appellant/defendant has raised the following points:-

(1)The specific case of the plaintiff is that under Ex.A1, the plaintiff has advanced a sum of 60,000/- Canadian Dollars to the defendant, but absolutely there is no proof nor evidence that the defendant has received the amount mentioned in Ex.A1.

(2)On the side of the plaintiff Exs.A2 and A3 are marked, but the same are nothing but xerox copies and the trial Court, without comparing its originals, has erroneously marked the same and since Exs.A2 and A3 are nothing but xerox copies, no credence could be attached.

(3)On the side of the plaintiff, no trustworthy evidence is available so as to prove that there is a privity of contract between the plaintiff and defendant and the trial Court has erroneously decreed the suit.

11.To repudiate the contentions put forth on the side of the appellant/defendant, the learned counsel appearing for the respondent/plaintiff has contended to the effect that under Ex.A1, the plaintiff has advanced 60,000/- Canadian Dollars to the defendant so as to meet out his urgent needs; the defendant has given assurance to repay the same with interest at the rate of 24% per annum within few months. But he has failed to keep up his promise and after some time, he paid interest for certain period at the rate of 18% per annum and since the defendant has failed to discharge his liability, a legal notice has been issued and the same has also been received by the defendant and even after receipt of the same, the defendant has not discharged his liability. Under the said circumstances, the present suit has been instituted for getting the relief sought therein.

12.The defendant has been examined as D.W.1. During the

course of cross-examination, he has clearly admitted that Ex.P3 (A3) has been given by him and further, Ex.A9 letter has been written by the plaintiff to the defendant. After receipt of the same, the defendant has sent Ex.A10. The trial Court, after considering the clear admission made by the defendant, coupled with other documents filed on the side of the plaintiff, has rightly decreed the suit and therefore, the judgment and decree passed by the trial Court do not require any interference.

13.Since the alleged transaction mentioned in the plaint has been clearly denied on the side of the defendant, the entire burden lies upon the plaintiff to prove that the defendant has received a sum of 60,000/- Canadian Dollars from the plaintiff on 23.2.1995.

14.The plaintiff has been examined as P.W.1 and his specific evidence is that on 23.02.1995, he advanced a sum of 60,000 Canadian Dollars to the defendant.

15.The specific attack made on the side of the appellant/defendant is that the plaintiff has failed to prove that the defendant has received the amount mentioned in Ex.A1 and further Exs.A2 and A3 are nothing but xerox copies and therefore, no evidentiary value can be given to the same.

16.The further defence put forth on the side of the appellant/defendant is that the signatures found in the documents filed on the side of the plaintiff are not the signatures of the defendant.

17.The defendant has been examined as D.W.1. During the course of cross-examination, he has stated to the effect that Ex.P3(A3) has been given by him. Ex.A3 is nothing but a xerox copy of a draft given in the name of the plaintiff. Therefore, the clear admission made by the defendant has falsified the entire defence taken by him.

18.As pointed out earlier, on the side of the appellant/defendant, a specific denial has been made to the effect that the signatures found in all the documents filed on the side of the plaintiff are not the signatures of the defendant.

19.It is a settled principle of law that as per Section 73 of the Indian Evidence Act, 1872, the Court is having ample power to compare the disputed signature with admitted signature (s).

20.In fact, this Court has compared the signatures found in the written statement and also the signatures found in the deposition given by the defendant (D.W.1) and in that collation,

this Court has found that each signature is mutually contradictory to other signature found in the written statement and also in deposition. Further, this Court has specifically compared the signature of the defendant found in Ex.P3 (A3) with the signature found in Ex.A10 and both the signatures are one and the same. Further, in some documents, the appellant/defendant has used to put feigned signatures so as to avoid comparison. Since the appellant/defendant has used to put feigned signatures so as to avoid comparison and since he candidly admitted to the effect that Ex.P3(A3) has been given by him, the Court can unflinchingly come to a conclusion that there is a privity of contract between the plaintiff and defendant.

21.The specific case of the plaintiff is that on 23.2.1995, the defendant has received a sum of 60,000 Canadian Dollars from the plaintiff and thereby agreed to pay interest at 24% per annum. The further case of the plaintiff is that after some time, the defendant has paid interest for certain period at the rate of 18% per annum instead of 24% per annum. Further it is seen from the records that the plaintiff has issued a legal notice and even after receipt of the same, the defendant has not chosen to give any reply notice.

22.It has already been pointed out that the appellant/defendant has clinchingly admitted Ex.P3 (A3) and the same is nothing but a draft given in the name of the plaintiff. If really there is no transaction between the plaintiff and defendant, definitely the defendant would not have given Ex.P3 (A3). Further on the side of the plaintiff, various documents have been filed so as to prove the alleged transaction emanated between the plaintiff and defendant. Therefore, the first contention put forth on the side of the appellant/defendant is sans merit.

23.The second contention of the appellant/defendant is that Exs.A2 and A3 are nothing but xerox copies. Of course, it is true that without comparing the xerox copies with originals, xerox copies cannot be marked. Despite of objection, the trial Court has marked Exs.A2 and A3. As pointed out earlier, the defendant has candidly admitted Ex.P3(A3). Since the defendant has accepted Ex.P3(A3), the second contention urged on the side of the appellant/defendant also goes out without merit.

24.It has already been pointed out that on the side of the plaintiff, replete and also unimpeachable evidence is available for the purpose of proving the alleged transaction between the plaintiff and defendant. Further, the defendant has given clear admission with regard to Ex.P3(A3). Therefore, viewing from any angle, the other contentions put forth on the side of the appellant/defendant cannot be accepted.

25.The trial Court, after considering the overwhelming evidence available on the side of the plaintiff, has rightly decreed the suit. As expounded earlier, this Court has not found any infirmity or illegality in the judgment and decree passed by the trial Court and altogether, the present Appeal Suit deserves to be dismissed.

In fine, this Appeal Suit is dismissed with costs. The judgment and decree passed in O.S.No.718 of 2011, by the trial Court are confirmed. Connected miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msk

To

1.The V Additional Judge, City Civil Court, Chennai.

2.The Section Officer
VR Section,
High Court, Madras

+1 cc to Mr.P.Arivudainambi Advocate sr 72541

Appeal Suit No.1027 of 2012

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