IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 03.01.2017

CORAM:

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.SUNDAR

O.S.A.No.238 of 2016

M/s. Image Venture Pvt. Ltd.
No.3, First Cross Street,
Lake Area, Nungambakkam,
rep. By its Directors,

1.Mr.Mathi Seelan
2.Mr.R.Senthilkumar

2.Mr.Mathi Seelan
S/o Late K.Ramachandran
No.404, Ankur Bob Classic,
No.11, Rathinammal Street,
Rangarajapuram,
Chennai 600 024. ... Appellants

- Vs -

M/s. Vasan Publication Private Limited
rep. by its Executive Director Mr.M.V.Kumar
No.757, Anna Salai,
Chennai 600 002. ... Respondent

PRAYER: Appeal under read with Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent against the judgement & decree dated 27.6.2016 passed in A.No.6492 of 2015 in C.S.No.858 of 2014.

For Appellants : Mr.Gomathy Nayagam
Senior Counsel for
Mr.S.Thirukumaran

For Respondent : Mr.B.Logesh

JUDGMENT
(Delivered by M.Sundar,J.)

An order of the learned Master of this Court dated 16.07.2015 (in A.No.3552 of 2015) granting unconditional leave to defend, to the defendants in a summary suit has been reversed by a learned Single Judge of this Court by an order dated 27.06.2016 (in A.No.6492 of 2015) exercising powers under Order XXIV Rule 12 of the Rules of the High Court of Madras Original Side Rules, 1994 (hereinafter referred to as O.S.Rules for brevity). This intra court appeal is directed against the order dated 27.06.2016, made by the learned Single Judge of this Court.

2.The facts of the case in a nutshell (necessary for disposal of this intra Court appeal) are as follows:

3.FACTUAL MATRIX :

(i) Image Venture Private Limited, is a Private Limited Company and one R.Mathi Seelan is one of the Directors in the said company, in September 2011, approached Vasan Publication Private Limited, a Private Limited Company for financial assistance. While Vasan Publications Private Limited is a publisher, Image Venture Private Limited, is a company which runs a digital production studio and makes animation serials for television and advertising industry.

(ii) It is not in dispute that Vasan Publications Private Limited advanced a sum of Rs.20,00,000/- on 26.09.2011 to Image Venture Private Limited and R.Mathi Seelan on execution of a Demand Promissory Note dated 26.09.2011 by the payees/borrowers.

(iii) It is also noticed from the plaint averments that the request for financial assistance and advancing a sum of Rs.20,00,000/- was for the purpose of completing two projects of the defendants being animated television serials which go by the name 'Wish fish' and Bommi & Friends'.

(iv) As per the demand promissory note, the above said borrowers agreed to repay the above said sum of Rs.20,00,000/- with interest at the rate of 15% per annum.

(v) It is also noticed that there was delay/default in repayment and e-mails dated 06.03.2012, 14,03.2012, 09.11.2012 have been sent by the borrowers to Vasan Publications Private Limited, in this regard.

(vi) It is also averred in the plaint that there is an acknowledgement of liability letter dated 04.12.2013 executed by the borrowers followed by a letter dated 15.12.2014 from the borrowers to Vasan Publications Private Limited inter alia hoping and assuring repayment at the earliest.

(vii) The borrowers could not repay as hoped and assured. This resulted in Vasan Publications Private Limited filing a suit being C.S.No.858 of 2014 on the file of Original Side of this Court arraying Image Venture

Private Limited and R.Mathi Seelan as first and second defendants respectively.

(viii) From hereon, in this order, the parties are referred to by their respective ranks in the said suit. In otherwords, 'Vasan Publications Private Limited' is referred to as 'plaintiff'. 'Image Venture Private Limited' and 'R.Mathi Seelan' are referred to as 'first defendant' and 'second defendant' respectively. 'Image Venture Private Limited' and R.Mathi Seelan' are collectively referred to as 'defendants'.

(ix) Plaintiff had filed the suit, inter alia invoking the provisions of Order XXXVII of Civil Procedure Code 1908 (hereinafter referred to as 'CPC' for the sake of brevity). Plaintiff had launched the suit as a summary suit on the strength of the above said demand promissory note (hereinafter referred as 'DPN' for the sake of brevity) dated 29.09.2011 as the same is a negotiable instrument.

(x) As the suit was launched as a summary suit, defendants on entering appearance took out an application being A.No.3552 of 2015 seeking unconditional leave to defend the suit. A perusal of the affidavit filed in support of this application for unconditional leave to defend the suit reveals that the defendants did not dispute the transaction. The defendants did not dispute the payment of Rs.20,00,000/- to them by the plaintiff. Defendants did not dispute the execution of the DPN. Defendants sought leave by pleading that the money was advanced by the plaintiff towards entrustment of work of production of an advertisement film. Other than such a plea technical pleas such as lack of resolution in favour of the individual who verified the plaint on behalf of the plaintiff's company were raised. It was also pleaded that the suit is time barred.

(xi) The application seeking unconditional leave to defend was resisted by the plaintiff by filing a counter affidavit. In the counter affidavit, plaintiff took the plea that the verification of the plaint is in order in the light of Order XXIX Rule 1 of CPC. Plaintiff company further contended that even in the absence any formal letter of authority or power of attorney, by virtue of a person holding a particular office in a company, he can sign and verify the pleadings on behalf of the said company. Plaintiff company also highlighted the factual position that the defendants have not denied receipt of Rs.20,00,000/- or execution of the DPN.

(xii) On rival pleadings set out supra, learned Master, on his reading of the time tested postulates in Mechalac Engineers case (AIR 1977 SC 577) held that triable issues arise and granted unconditional leave.

(xiii) Aggrieved, plaintiff assailed the above said order of the learned Master by filing an application before the learned Single Judge on the Original Side of this Court under Order XXIV Rule 12 of O.S.Rules.

(xiv) Learned Single Judge, reversed the above said order of the learned Master, by holding that no triable issue arises in the instant case as the transaction has not been disputed. Learned Single Judge took the view that advancing of Rs.20,00,000/- by the plaintiff to the defendants, receipt of the same by the defendants and execution of the DPN are not disputed by the defendants and therefore, no further adjudication (warranting grant of unconditional leave) is required. Learned Single Judge also took the view that the verification of pleadings are in order by relying on the relevant provisions of CPC.

(xv) Learned Single Judge allowed the plaintiffs application (appeal) against the Master's order and as a consequence dismissed the defendant's application for unconditional leave.

(xvi) Aggrieved, the defendants have filed the instant intra court appeal, reiterating their plea in the leave to defend application and canvassing that triable issues do arise in the instant case.

4.DISCUSSION :

(i) A Perusal of the order of the learned Master reveals that four points were raised by the defendants in support of their plea for unconditional leave to defend the suit. They are as follows:

(a) Suit is time barred.

(b) The DPN does not bind the second defendant as it is not a personal borrowing by him.

(c) A sum of Rs.40,000/- has been deducted towards Income Tax deductions at source by the plaintiff while advancing Rs.20,00,000/- and therefore, the transaction is not browing simplicitor.

(d) Verification of plaint by one Mr.M.V.Kumar (Executive Director of Plaintiff Company) without specific authority is improper.

(ii) Points 1 and 2 on limitation and DPN not being binding on second defendant were not accepted by the learned Master. Points 3 and 4 on Income Tax Deduction at source changing the character of the transaction from one of borrowing simplicitor and verification of plaint by Mr.M.V.Kumar being improper were accepted by the Master as points raising triable issues.

(iii) A closer scrutiny of the order of the learned Master shows that the learned Master noticed that the DPN is dated 26.09.2011 and suit has been filed only on 19.12.2014. Learned Master has noticed that in between there are emails from defendants to the plaintiffs (within three years of DPN) which are acknowledgement of debts and promising early repayment. Master repelled the contention of the defendants that these are emails which does not bear their signature. Learned Master relied on the Information Technology Act and repelled this point.

(iv) On the second point of DPN not being binding on the second defendant learned Master scrutinized the recital in the DPN and found that the same has certainly been executed by the defendants wherein and whereby it is clearly enforceable against both the defendants.

(v) On deduction of Rs.40,000/- towards Income Tax deduction at source, being the third point, learned Master placed reliance on Section 194(c) of Income Tax Act and came to the conclusion that such deduction while advancing a loan is improper and therefore a triable issue arises.

(vi) With regard to verification of plaint by one Mr.M.V.Kumar, Executive Director of the plaintiff company, the learned Master held that the plaintiff had not filed Memorandum of Association and Articles of Association of the plaintiff company to establish the competence of the Executive Director to verify the pleadings and therefore, a triable issue arises.

(v) We have noticed the admitted position that the defendants have not filed any independent application under Order XIV Rule 12 of O.S.Rules, before the learned Single Judge, assailing those aspects of the order of the learned Master which went against them.

(vi) Therefore, with regard to the first and second points in support of their leave to defend application being limitation and DPN not being enforceable against the second defendant, the defendants by their own conduct have accepted the order of the learned Master and have given complete legal quiets to these pleas.

(vii) This takes us to the order of the learned Single Judge which has been called in question before us.

(viii) From all that have been stated supra it would be clear that one and two out of the four points raised by the defendant in support of their plea for seeking unconditional leave did not fall for consideration or scrutiny before the learned Single Judge. The two points that fell for consideration/scrutiny before the learned Single Judge are deduction of Rs.40,000/- towards Income Tax deduction at source, which raises doubts about the nature of the transaction and competence of the natured person who verified the pleadings for the plaintiff which is a juristic person.

(ix) Learned Single Judge scrutinizing the issue relating to deduction of Rs.40,000/- from Rs.20,00,000/- and payment of Rs.19,60,000/- by plaintiff held that there is no doubt in this regard regarding the character of the transaction and no further scrutiny is required in this regard as the entire transaction has been admitted by the defendants. Learned Single Judge has also relied on the above said three emails dated 06.03.2012, 15.03.2012 and 09.11.2012 written by the defendants to the plaintiff wherein and whereby the defendants have admitted/acknowledged the liability, sought time for repayment and assured early discharge of liability.

(x) We have also noticed supra in the discussions in this very order that the learned Master has already held that the above said emails cannot be disputed by the defendants on the ground that they are emails (electronic transmissions) which do not bear the signatures of the defendants. We have also noticed that the learned Master did so by relying on the Information Technology Act. As noticed by us supra, this aspect of the mater has been given complete quiets by the defendants as they had not filed any independent application before the learned Single Judge, assailing those aspects of the learned Master which went against them.

(xi) Therefore, we have no hesitation in holding that the learned Single Judge was right in holding that there can be no dispute about the nature of the transaction and therefore, no triable issue arises in this regard.

(xii) On the issue of competence of the person who verified the plaint on behalf of the plaintiff company, learned Single Judge relied on the ratio of the Supreme Court in Gammon (India) Limited case [1971 (1) SCC 286] and also the ratio of a Division Bench of this Court in Allanberg Cotton Company Limited case [1993 (1) L.W.148] and held that there can be no dispute that the term 'Corporation' as occurring in Order XXIX of CPC means and includes a 'legal person' as well as a 'company'. Proceeding further on this aspect of the matter, learned Single Judge also held that the attempt on the part of the defendants to press into service United Bank of India - Vs - Naresh Kumar and Others [1996 (6) SCC 660] is inappropriate as that was a case where a combined reading of Order XXIX Rule 1 and Order VI Rule 14 of CPC was dealt with. We have also carefully noticed that the learned counsel for the defendants has accepted this position of law. In other words, before the learned Single Judge the defendants have accepted that the ratios of the Supreme Court in Gammon (India) case and the Division Bench of this Court in Allanberg Cotton Company case relating to the term 'Corporation' occurring in Order XXIX of CPC alone are applicable to this case. It is also clear from a reading of the Order of the learned Single Judge that the defendants have also accepted the further position that their attempt to press into service United Bank of India vs. Naresh Kumar and Others [1996 (6) SCC 660] is incorrect.

(xiii) Therefore, it follows as an indisputable sequitur that the plaint has been verified by a person competent to verify the plaint on behalf of the plaintiff company and that this position is accepted by the defendants.

(xiv) Owing to all that have been discussed supra, we have no hesitation whatsoever in holding that the learned Single Judge was absolutely correct in coming to the conclusion that the defendants are not entitled to unconditional leave to defend.

(xv) We need to add that the above discussions are after hearing both sides on 03.01.2017, but, when the intra court appeal came up for admission on 21.11.2016, we issued notice and granted an order of interim stay of the impugned order on condition that the defendants should deposit a sum of Rs.15,00,000/- within two weeks from that date.

(xvi) However, on 03.01.2017, the defendants (appellants herein) stated that they are unable to mobilize the money and deposit. No money was deposited. Not even a part of it.

(xvii) No application was moved for extension of time either. Even a oral request for extension of time was not made.

(xviii) Therefore, it is clear that the defendants neither have means nor the mind to deposit.

(xix) For the purpose of making this discussion complete and as exhaustive as possible, though not argued we deem it relevant to refer to a Division Bench Judgement of this Court reported in 2007 (4) CTC 161 (Sreyas Sripal and another - Vs - Upasana Finance Limited) in which Justice A.P.Shah as his Lordship then was, writing for the Division Bench held that an intra Court appeal against an order made in exercise of power under Order XIV Rule 12 of Original Side Rule is maintainable. We deem it relevant to extract paragraph 8 of the said judgement which reads as follows:

> "8. Applying the same logic, this Court cannot exercise the power of Appeal or Revision against the order of the Master, which is passed by him in the capacity as a delegate of the High Court. It is well settled that ordinarily an Appeal would lie from a lower Authority to the higher Authority and an order passed by the delegate is in exercise of powers given by the delegator and such an order is not appealable or revisable. Therefore, we are inclined to accept the contention of the learned Senior Counsel Mr. Yashod Vardhan that the word 'Appeal' in Order 14, Rule 12 is a misnomer, but it is actually a power of review of this Court. Therefore, such an order passed by the Master is not appealable or revisable by the learned Judge under Rule 12. The power conferred under Rule 12 is really in the nature of power of Revision. Consequently, the bar under Section 100-A of the Code of Civil Procedure is not attracted and the Appeal are perfectly maintainable."

6. CONCLUSION :

(i) This intra court appeal being OSA No.238 of 2016 is dismissed, confirming the order of the learned Single Judge dated 27.06.2016 made in A.No.6492 of 2015 wherein and whereby the learned Single Judge has set aside the order of the learned Master dated 16.07.2015 made in A.No.3552 of 2015.

(ii) Owing to A.No.6492 of 2015 being allowed as the learned Single Judge has also by the impugned order which is a common order dismissed A.No.3552 of 2015 being application seeking unconditional leave to defend, the order of the learned Single Judge in A.No.3552 of 2015 also stands confirmed.

(iii) In other words, in short, dismissal of application of the defendants seeking unconditional leave to defend is confirmed.

(iv)With regard to (i) and (ii) supra, we have said so, for the purpose of complete clarity, though there is no independent intra court appeal before us assailing the dismissal of A.No.3552 of 2015. Moreso, as the order in A.No.3552 of 2015 is nearly consequential to the impugned order in A.No.6492 of 2015.

(v) Considering the trajectory of the appeal, particularly, the appellants/defendants getting notice issued, inviting a conditional interim order and thereafter not complying with the condition, we deem it appropriate to award costs of the respondent/plaintiff.

(vi) OSA.No.238 of 2016 is dismissed with costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Sub Assistant Registrar,
Original Side,
High Court, Madras 104.

+1cc to Mr.J.R.K.Bhavanantham, Advocate, S.R.No.328
+1cc to Mr.N.Ramesh, Advocate, S.R.No.289

O.S.A.No.238 of 2016

EV(CO)
CA(27/01/2017)