IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.04.2017

CORAM

THE HONOURABLE Mr.JUSTICE P.KALAIYARASAN

C.S.No.812 of 2003

E.Jeevanandam ... Plaintiff

Vs

M.Selvaganapathy ... Defendant

Plaint filed under Order VII Rule 1 of CPC and Order IV Rule 1 of the Original Side Rules, 1956 praying to pass a judgment and decree:

(a) directing the defendant to pay the sum of Rs.41,08,000/- with further interest on Rs.26,00,000/- at 24% p.a. from the date of the plaint till the date of decree and thereafter at 6% p.a. till realisation and

(b) directing the defendant to pay the cost of the suit.

For Plaintiff : Mr.M.Chidambaram
For Defendant : Mr.R.Thiagarajan

JUDGMENT

The suit is for recovery of a sum of Rs.41,08,000/- with further interest at the rate of 24% p.a. on Rs.26,00,000/- from the date of plaint till the date of decree and thereafter at the rate of 6% p.a. till realisation.

2. The plaint averments are as follows :

The plaintiff is engaged in various businesses including running of jewellery mart and money lending. The defendant was introduced to the plaintiff by one Rahim. The defendant has been running a petrol bunk at Royapuram. The defendant approached the plaintiff requesting to lend him Rs.26,00,000/- to clear his debts due to Dulichand Bothra, Ajay Chander and Balachandran. The plaintiff lent him a sum of Rs.26,00,000/- on 01.06.2001 and the defendant executed a pro-note promising to repay the said amount with interest at the rate of 24% p.a. On 11.06.2001, the defendant also gave an undertaking in writing to the plaintiff assuring that in the event of the amount covered by the promissory note being not repayable, he would sell his immovable property to the plaintiff for market rate. The defendant also issued a cheque dated 20.12.2002 for a sum of Rs.27,10,000/- towards part payment of the debt. The cheque was presented by the plaintiff for realisation on 06.05.2003. The bank returned the same with an endorsement of insufficient funds. In spite of repeated demands, the defendant has not paid the amount. Therefore, the plaintiff has come forward with the suit.

3. The contentions of the defendant in his written statement are as follows :

The suit is not maintainable in law or on facts. In view of the prohibitions contained in the Tamil Nadu Prohibition of Charging Exorbitant Interest

Ordinance, 2003 [2 of 2003] and the Tamil Nadu Money Lenders Act, 1957, the suit is barred in law. The plaintiff has manipulated the promissory notes, letter of undertaking and cheque leaves which were handed over by the defendant in good faith and trust. The defendant never borrowed a sum of Rs.26,00,000/- from the plaintiff as alleged. Alleged issuance of cheque for a sum of Rs.27,10,000/- is also false and the defendant never issued a cheque in the name of Jeevanandam. There was no pre communication or pre suit notice before the initiation of proceedings. The plaintiff having acquired undated, unfilled promissory notes and unfilled cheques from the defendant and has manipulated one cheque leaf as if it had been drawn in favour of E.Jeevanandam. In November' 2003, when the plaintiff attempted to get his signature in the pro-note and Memorandum of Understanding, the defendant successfully evaded. The plaintiff is put to strict proof of the execution of the promissory note and passing off of the consideration as alleged in the plaint. Therefore, the suit is to be dismissed.

4. After analysing the pleadings of both sides, the following issues are framed :

1. Whether the suit promissory note, letter of undertaking are obtained by coerce ?

2. Whether there exists of relationship of creditor and debtor between the parties ?

5. The above framed issues are recasted by this Court, after hearing both sides.

1. Whether the defendant has borrowed a sum of Rs.26,00,000/- from the plaintiff ?

2. Whether the defendant has executed the Letter of Undertaking dated 11.06.2002 in favour of the plaintiff ?

3. Whether the plaintiff is entitled for recovery of Rs.26,00,000/- with interest thereon from 01.06.2011 to 31.10.2003 at the rate of 24% p.a. from the defendant ?

4. Whether the interest charged by the plaintiff on the alleged borrowal of Rs.26,00,000/- is hit by the provisions of the Tamil Nadu Money Lenders Act, 1957 and the Tamil Nadu Prohibition of Charging Exorbitant Interest Ordinance, 2003 [2 of 2003] ?

5. To what other reliefs, the parties are entitled to ?

Both the parties represented that no further evidence is required after recasting the issues.

6. On the side of the plaintiff, two witnesses have been examined and six exhibits were marked. On the side of the defendant, the defendant was examined as D.W.1 and no documents has been marked.

7. *Issue Nos.1 and 2* : The case of the plaintiff is that the defendant borrowed a sum of Rs.26,00,000/- and executed a promissory note. Since the defendant has not repaid the amount, the plaintiff has filed the present suit. In support of the payment, Letter of Undertaking and the cheque given by the defendant have also been pressed into service by the plaintiff.

8. The contention of the defendant is that he never borrowed any amount from the plaintiff and the plaintiff has manipulated the pro-note, the alleged Undertaking in the blank forms and cheque leaves entrusted to him by the defendant. The plaintiff has been examined as P.W.1. He has categorically deposed that the defendant has borrowed a sum of Rs.26,00,000/- on 01.06.2001 and executed the pro-note - Ex.P2. He further stated that he has also given an Undertaking in writing for the sale of his land to the plaintiff, in case of failure of repayment and the same has been marked as Ex.P3.

9. It is his further evidence that the defendant also issued the cheque towards repayment of part of the amount under Ex.P4. The defendant was examined as D.W.1. He admits during cross-examination that the signature found in Ex.P2 - Pro-note and Ex.P3 - Undertaking and Ex.P4 - Cheque are that of him. In his cross-examination, the defendant says that the plaintiff threatened him and obtained signature in the blank pro-note and cheque. But, there is no

whisper about the same in the pleadings. Therefore, the above evidence as to the threat in the absence of pleadings is inadmissible.

10. It is well settled that when the defendant admits his signature in the promissory note, the burden is on the defendant to prove that the promissory note is not, what it appears to be. Therefore, the circumstances under which, he has put his signature in the pro-note has to be established only by the defendant. If the defendant strikes and adverts the incohate stamped instruments, the holder is entitled to fill up the blanks, but negotiate the instrument as per Section 20 of the Negotiable Instruments Act. In this case, execution of pro-note has been established by the plaintiff. Obtaining loan from the plaintiff by the defendant has further been established through the Undertaking Letter given by him and the cheque issued by him under Ex.P3 and Ex.P4.

11. From the aforesaid discussions, it is clear that the defendant borrowed a sum of Rs.26,00,000/- and executed a promissory note on 01.06.2001. Subsequently, he also executed a letter of undertaking on 11.06.2001. Issues No.1 and 2 are answered in favour of the plaintiff.

12. *Issue No.3* : The plaintiff claims interest at the rate of 24% p.a. In the pro-note, the rate of interest has been mentioned as 24% p.a. As the

defendant agreed to repay the debt with interest at the rate of 24% p.a., the plaintiff is entitled for recovery of a sum of Rs.26,00,000/- with interest at the rate of 24% p.a. from the date of pro-note till the date of filing of the suit i.e., from 01.06.2001 to 31.10.2003. Issue No.3 is answered accordingly.

13. *Issue No.4* : It is contended on the side of the defendant that the alleged borrowal is hit by the provisions of Tamil Nadu Money Lenders Act, 1957 and the Tamil Nadu Prohibition of Charging Exorbitant Interest Ordinance, 2003 [2 of 2003]. It has not been elicited, how the borrowal is hit by the above said provisions of the said Acts. Thus, issue No.4 is answered against the defendant.

14. In the result, the plaintiff is entitled to the recovery of a sum of Rs.41,08,000/- with further interest at the rate of 12% p.a. from 01.06.2001 to 31.10.2003 and thereafter, at the rate of 6% p.a. till the date of realisation with cost from the defendant.

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Index : Yes/No
Speaking/Non-speaking order

P.KALAIYARASAN, J.

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