BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.06.2017
Delivered on : 07.07.2017

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

A.S(MD)No.210 of 2015
and
MP(MD)No.1 of 2015 & CMP(MD)No.635 of 2017

KR.C.T.Subramanian .. Appellant/Defendant

Vs.

M/s.Abirami Hire Purchase Finance (P) Ltd.,
through its Managing Director,
VR.Ramasamy .. Respondent/Plaintiff

Appeal Suit filed under section 96 of the Code of Civil Procedure, 1908 against the Judgment and decree dated 30.06.2015 passed in Original Suit No.4 of 2011 by the Principal District Court, Sivagangai.

For Appellant : Mr.M.Vijayarathinam

For Respondent : Mr.S.Anand Chandrasekar
for M/s.Sarvabhauman Associates

J U D G M E N T

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

Challenge in this Appeal Suit is to the Judgment and decree dated 30.06.2015 passed in Original Suit No.4 of 2011 by the Principal District Court, Sivagangai.

2.The respondent herein as plaintiff has instituted Original Suit No.4 of 2011 on the file of the trial Court praying to pass a money decree, wherein the present appellant has been shown as defendant.

3.The material averments made in the plaint are that the plaintiff is a company doing financial business under the name and style of M/s.Abirami Hire Purchase Finance (P) Limited at Madurai Town. The defendant is permanently residing and carrying on business at Karaikudi. The defendnat is known to the Director of the plaintiff for long time. The defendant has received the following loans from the plaintiff:

	Date	Amount	Rate of Interest	Cheque Particulars			
				Date	No.	Drawyee Bank	Amount
1	15.12.2003	Rs. 2,00,000/-	24%	12.06.2004	691754	KVB	2,00,000
2.	14.06.2004	Rs. 2,00,000/-	24%	12.06.2004 14.06.2004 14.06.2004	694736 694737 559606	KVB KVB CB	2,00,000
3.	28.11.2005	Rs. 5,00,000/-	18%		519302 559621	KVB CB	2,50,000 2,50,000

But the defendant has not repaid the loan amount as admitted and also acknowledged by him. The defendant has executed an acknowledgment of liability on 25.02.2005. On 29.01.2008, a notice has been issued by the plaintiff and thereby called upon the defendant to settle the amount and on receipt of the same, the defendant has agreed to certain terms and conditions and consequently a consolidated statement as noted below has been prepared.

Sl.	Loan Particulars	Principal Due	Interest Due	Total Due
1.	First Loan	Rs.2,00,000/-	Rs.36,000/-	Rs.2,36,000/-
2.	Second Loan	Rs.2,00,000/-	Rs.36,000/-	Rs.2,36,000/-
3.	Third Loan	Rs.5,00,000/-	Rs.64,500/-	Rs.5,64,500/-
		Total		Rs.10,36,500/-

Thus, the defendant is bound to pay a sum of Rs.10,36,500/- and he agreed to pay a sum of Rs.36,500/- on 12.02.2008 and he has also agreed to pay balance amount of Rs.10 lakhs with interest at the rate of 24% per annum within a short period. The defendant has issued 20 cheques as noted down below.

Sl.	Cheque No.	Cheque date	Amount Rs.
1	340761	13.03.2008	70,000/-
2	340762	13.04.2008	69,000/-
3	340763	13.05.2008	68,000/-
4	340764	13.06.2008	67,000/-
5	340765	13.07.2008	66,000/-
6	340766	13.08.2008	65,000/-
7	340767	13.09.2008	64,000/-
8	340768	13.10.2008	63,000/-
9	340769	13.11.2008	62,000/-
10	340770	13.12.2008	61,000/-
11	340751	13.01.2009	60,000/-
12	340752	13.02.2009	59,000/-
13	340753	13.03.2009	58,000/-
14	340754	13.04.2009	57,000/-
15	340755	13.05.2009	56,000/-
16	340756	13.06.2009	55,000/-
17	340757	13.07.2009	54,000/-
18	340758	13.08.2009	53,000/-
19	340759	13.09.2009	52,000/-
20	340760	13.10.2009	51,000/-

and some of the cheques are not honoured and some of the cheques are not presented at the request of the defendant. On 29.04.2009, the plaintiff has issued a legal notice. After receipt of the same, the defendant has given a reply. The defendant has admitted the transaction and also executed a pronote dated 12.02.2008. Since the defendant has not paid the amount, the present suit has been instituted for getting the relief sought therein.

4.In the written statement filed on the side of the defendant it is averred that most of the averments made in the plaint are false. It is false to say that the plaintiff has instituted a proceeding under Negotiable Instruments Act. It is also false to aver that the defendant has admitted all transactions and also exectuion of pronote as well as acknowledgment. The suit claim is barred by limitation, since there is no valid acknowledgment. It is a practice that at the time of receiving loan, as security, creditor has used to obtain blank cheques. The defendant is not bound to pay any amount to the plaintiff and there is no merit in the suit and the same deserves to be dismissed.

5.On the side of the plaintiff, a reply statement has been filed, wherein the averments made in the written statement are denied.

6.On the basis of the divergent pleadings raised on either side, the trial Court has framed necessary issues and after analysing both the 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.

7.The sum and substance of the case of the plaintiff is that on various occasions, the defendant has received the amounts mentioned in the plaint and subsequently, he acknowledged his liability and also executed a pronote dated 12.02.2008. Since the defendant has not settled his liability, legal notice has been issued and even after receipt of the same, the defendant has not settled the amount. Under the said circumstances, 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. The defendant has not executed any acknowledgment as well as pronote and further the suit claim is barred by limitation and therefore, the present suit deserves to be dismissed.

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

10.The learned counsel appearing for the appellant/defendant has contended to the effect that the defendant has received some amounts from the plaintiff and for the purpose of discharging the same, on various occasions, the defendant has repaid loans and further the plaintiff has not filed proper accounts and further the suit claim is barred by limitation and the trial Court without considering the available evidence on record has erroneously decreed the suit as prayed for and therefore, the Judgment and decree passed by the trial Court are liable to be set aside.

11.To controvert the contentions put forth on the side of the appellant/defendant, the learned counsel appearing for the respondent/plaintiff has laconically contended to the effect that in the instant case, voluminous documents have been filed for the purpose of proving the existing liability and further on 12.02.2008, the defendant has executed a pronote and the present suit has been filed within the period of limitation and no document has been filed on the side of the defendant and the trial Court after considering the overwhelming evidence available on record has rightly decreed the suit and therefore, the Judgment and decree passed by the trial Court do not require any interference.

12.In fact on the side of the plaintiff, as many as 59 documents have been exhibited and this Court has closely perused the same and ultimately found that the defendant has received the amounts mentioned in the plaint on various occassions and after some time, he has acknowledged his liability. Further, on 12.02.2008 the defendant has executed a pronote in favour of the plaintiff and the same has been marked as Ex.A4. The present suit has been instituted on 09.02.2011. Therefore, it is quite clear that the present suit is not barred by limitation.

13.The defence put forth on the side of the appellant/defendant is that he has not borrowed the amount mentioned in the plaint and whatever the loans received from the plaintiff, has already been discharged.

14.As adverted to earlier, on the side of the plaintiff enormous documents have been filed for the purpose of proving the alleged money transaction between the plaintiff and defendant. Since on the side of the plaintiff plenty of evidence is available for the purpose of establishing the money transaction mentioned in the plaint and since the defendant has executed Ex.A4, there is no incertitude in coming to a conclusion that the defence put forth on the side of the defendant is totally baseless and further, the defendant has not specifically denied the signatures found in various documents including Ex.A4. Therefore, viewing from any angle, the argument put forth on the side of the appellant/defendant is of no use.

15.The trial Court after analysing the available evidence on record has rightly decreed the suit. In view of the discussion made earlier, this Court has not found any error in the Judgment and decree passed by the trial Court and altogether, the present Appeal Suit deserves to be dismissed.

16.In fine, this Appeal Suit is dismissed with cost. The Judgment and decree passed in Original Suit No.4 of 2011 by the Principal District Court, Sivagangai are confirmed. Consequently, MP(MD)No.1 of 2015 and CMP(MD)No.635 of 2017 are closed.

Sd/-
Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

The Principal District Judge, Sivagangai.

Copy to:
The Section Officer,
VR Section,
Madurai Bench of Madras High court,
Madurai.

+1 cc to Mr.B.Vijayrathinam , Advocate in SR.No. 64330
+1 cc to M/s.Sarvabhuman Associates , Advocate in SR.No. 64173

mj
AE/MR KKR/SAR1/31.07.2017/6P/5C

Judgment made in
A.S(MD)No.210 of 2015
07.07.2017