

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

A.S.No.150 of 2017

JUDGMENT:

This appeal is filed by the plaintiff against the order of rejection of plaint, dated 26.09.2016, in O.S(SR).No.2192 of 2015, on the file of the Senior Civil Judge, Amalapuram.

The plaintiff filed the suit against the defendant for recovery of an amount of Rs.10,00,000/- stating that the defendant availed hand loan of Rs.10 lakhs from her on 14.02.2013 and committed default. It is stated that as the defendant is close relative, the plaintiff arranged the said amount and the defendant agreed to repay the same within six months. On repeated requests, the defendant issued a cheque for Rs.10,00,000/- in favour of plaintiff, but it was dishonoured, for which, the plaintiff initiated proceedings under Section 138 of the Negotiable Instruments Act against the defendant in CC.No.115/2015 on the file of the Additional Judicial Magistrate of First Class, Amalapuram.

The Court below, without numbering the plaint, went into the merits of the case, and rejected the plaint under Order 7 Rule 11 CPC and on the ground that the suit is not maintainable and there is already remedy availed under Section 138A of Negotiable Instruments Act.

The appellant/plaintiff filed the suit for recovery of money claiming that she lent the amount to the defendant and the defendant issued cheque which was dishonoured. Proceedings are initiated under Section 138A of Negotiable Instruments Act, which are said to be pending.

The Registry of the learned Senior Civil Judge raised an objection even before numbering the suit as to how the suit is maintainable. The

learned Senior Civil Judge has gone into the merits of the suit and disbelieved the claim of the plaintiff for various reasons and rejected the plaint.

The procedure adopted by the learned Senior Civil Judge is erroneous. When a plaint is presented, prior to its registration, what all is required to be seen is as to whether the plaint is in order in accordance with rules. Merits of the plaint cannot be gone into at that stage. Even for rejecting the plaint under Order 7 Rule 11(d) CPC, the Court below is not competent to adjudge the merits of the case and what all is required to be seen is as to whether the averments of the plaint make out a case for proceeding with the suit.

Even without registering the suit, the learned Senior Civil Judge rejected the plaint, which cannot be sustained. The learned Senior Civil Judge also observed that the plaintiff cannot maintain parallel proceedings of civil and criminal in nature.

The Supreme Court in *Vishnu Dutt Sharma v. Daya Sapa*¹ clearly laid down as under:

“There cannot be any doubt or dispute that a creditor can maintain a civil and criminal proceeding at the same time. Both the proceedings, thus, can run parallel. The fact required to be proved for obtaining a decree in the civil suit and a judgment of conviction in the criminal proceedings may be overlapping but the standard of proof in a criminal case vis-à-vis a civil suit, indisputably is different. Whereas in a criminal case the prosecution is bound to prove the commission of the offence on the part of the accused beyond any reasonable doubt, in a civil suit “preponderance of probability” would serve the purpose for obtaining a decree.”

¹ (2009) 13 SCC 729

For the foregoing reasons, the Appeal is allowed. The impugned order, dated 26.09.2016, is set aside and the Court below is directed to register and number the plaint and proceed with, in accordance with law.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

M.S.K.JAI SWAL,J

Date: 28.04.2017
Dsr

