IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 06TH DAY OF JUNE 2018

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A. No.1602 of 2018
in
A. No.2815 of 2017
in
C.S. No.75 of 2016

1. G.Dharani,
S/o.Govindarajan,

2. G.Sakthivel,
S/o.Govindarajan,
1 & 2 are at No.5/4,
Kamarajar Street,
Pragadheeswarar Nagar,
Arumbakkam, Chennai-600 106. ... Plaintiffs

-Versus-

Mrs.B.K.Rajeswari,
W/o.D.Krishnamurthy,
Door No.42, Palayakara Street,
Ayanavaram, Chennai-600 023. ... Defendant

<u>A. Nos.2815 of 2017 and 1602 of 2018</u>:-

Mrs.B.K.Rajeswari,
W/o.D.Krishnamurthy,
Door No.42, Palayakara Street,
Ayanavaram, Chennai-600 023. ... Applicant/Defendant

-Versus-

1. G.Dharani,
S/o.Govindarajan,

2. G.Sakthivel,
S/o.Govindarajan,
1 & 2 are at No.5/4,
Kamarajar Street,
Pragadheeswarar Nagar,
Arumbakkam, Chennai-600 106. ... Respondents/Plaintiffs

Application praying that this Hon'ble Court be pleased to allow this application and set aside order dated 13.02.2018 passed by the Learned Master in A. No.2815 of 2017 in C.S. No.75 of 2016.

This application coming on this day before this court for hearing the court made the following order:-

This application has been filed by the Defendant in the suit, challenging the order of the Master dated 13.2.2018, in A.No.2815 of 2017, wherein the Master had dismissed the said application, which had been filed seeking leave to defend the suit in CS.No.75 of 2016.

2. CS.No.75 of 2016 had been filed under the provisions of Order 37 Rule 1 of CPC, by the Respondents herein, G.Dharani and G.Shakthivel, sons of Govindarajan, against the Applicant herein, for recovery of a sum of Rs.33,75,000/- and further interest and costs.

3. In the plaint, it has been stated that the Plaintiffs had entered into an agreement of sale with the Defendant on 25.11.2012 for purchase of the property, bearing Flat No.K, 3rd Floor, Door No.42, Palayakkara Street, Ayanavaram, Chennai-23, measuring plinth area of 900 sq.ft. together with 450 sq.ft. undivided share of land , for a total consideration of Rs.60 lakhs. It has been further stated that the 1st Plaintiff, G.Dharani, had paid an advance amount of Rs.25 lakhs at the time of entering into the said

agreement. The Plaintiffs found that the Defendant had encumbered the suit property with third parties. Consequently, the Plaintiffs were not inclined to proceed with further performance of the agreement. The Plaintiffs sought return of the advance amount. The Defendant issued to the first Plaintiff three cheques for Rs.5 lakhs each, all drawn on ICICI Bank, Anna Nagar Branch, all dated 18.3.2015. The Defendant also issued two cheques in favour of the 2nd Plaintiff for Rs.5 lakhs each, both drawn on ICICI Bank, Anna Nagar Branch, and both dated 5.11.2013.

4. It has been further stated that the 2nd Plaintiff deposited the two cheques issued in his name with his banker, namely, ICICI Bank, Anna Nagar Branch and the two cheques were returned for the reason 'insufficient funds' on 6.11.2013. The 1st Plaintiff deposited the three cheques issued in his name for collection on 18.3.2015 through his banker, IOB, MMDA Nagar Branch and the same were returned for the reason 'stop payment' on 20.3.2015. The Plaintiffs issued a legal notice, dated 4.4.215. The Defendant replied on 18.4.2015, raising untenable allegations. It is under these circumstances that the suit had been filed, seeking a judgement and decree for payment of Rs.25 lakhs and interest of Rs.8.7 lakhs, totalling Rs.33.75 lakhs and also for future interest and for costs.

5. In the suit, the Defendant entered appearance and

filed A.No.2815 of 2017, before the Master, seeking leave to defend the suit. In the affidavit filed in support of the said application, the Defendant denied execution of the agreement of sale and denied that she had received an advance of Rs.25 lakhs under the said agreement. She stated that she wanted to develop the property at Door No.42, Palayakkara Street, Ayanavaram, Chennai-23. She was in need of funds. The 1st Plaintiff offered to finance the construction of the property. She stated that the Plaintiffs are distant relatives. She contacted them through Advocate, G.Umeshwaran and he acted as her representative and verified the title for the purpose of the loan. The Plaintiffs agreed to lend a sum of Rs.20 lakhs and demanded that a sum of Rs.5 lakhs must be paid as interest for the total period of two years. She issued five undated signed blank cheques drawn on ICICI Bank, Anna Nagar Branch. She also signed in blank stamp papers as well as in blank papers.

6. It has been further stated that in the mean while, the Advocate, G.Umeshwaran, rendered assistance by giving opinion with respect to the suit property for the purpose of borrowing money from the bank. It has been further stated that the entire amount had been paid to the Plaintiffs by November 2013. She demanded the blank signed cheques and blank signed stamp papers to be returned. They stated that they would not misuse the said documents and that they would

return the same. At this juncture, the Plaintiff deliberately filled up the two cheques in the name of the 2nd Plaintiff for a sum of Rs.10 lakhs and presented the same, which were returned with an endorsement 'insufficient funds'. Consequently, the Defendant had issued instructions for stop payment with respect to other cheques if deposited.

7. The 1st Plaintiff deposited the three other cheques for clearance and they were returned with the instructions 'stop payment'. It has been further stated that the cheque leaves had been issued on 25.4.2012 by her bankers and the second cheque leaf had been issued on 18.3.2013. It has been further stated that the cheque numbers 012382 and 012383 said to have been issued on 5.11.2013 is not correct, since the said cheques had been exhausted by 18.3.2013 itself. Similarly, the other three cheques bearing numbers 12384, 012385 and 012386 could not have been issued since the cheque book had already been exhausted. It has been further stated that the agreement relied on by the Plaintiffs is a fabricated agreement. It has been further stated that leave should be granted to defend the suit.

8. The Master by order dated 13.2.2018 had rejected the contentions of the Defendant and had relied on **2017 1 SCC 568 (IDBI Trusteeship Services Limited Vs. Hubtown Limited)** and held that leave cannot be granted unless the amount admitted is deposited by the Defendant in Court. The Master

also found that there was no reasonable defence and consequently, dismissed the application. The Defendant had filed the present application in A.No.1602 of 2017, challenging the said order.

9. This Court heard the arguments of the learned counsel on either side. For the sake of convenience, the parties hereinafter referred to as the Plaintiffs and the Defendant.

10. The Plaintiffs and the Defendant had transactions with each other. According to the Plaintiffs, they had lent a sum of Rs.25 lakhs, pursuant to an agreement of sale dated 25.11.2012 for purchase of the property at Flat No.K, 3rd Floor, Door No.42, Palayakkara Street, Ayanavaram, Chennai-23. In the said agreement of sale, the total consideration was fixed at Rs.60 lakhs and at that time of the agreement, an advance of Rs.25 lakhs was paid. Subsequently, the Plaintiffs came to know that the property was under encumbrance with third parties. They wanted to rescind from the contract. They demanded repayment of the advance amount. The Plaintiff issued three cheques, bearing nos.012384, 012385 and 012386, all dated 18.3.2015 and all for a sum of Rs.5 lakhs each and drawn on ICICI Bank, Anna Nagar Branch.

11. The Defendant also issued two cheques bearing nos.012382 and 012383, both dated 5.11.2013 and both drawn on

ICICI Bank, Anna Nagar Branch, for a sum of Rs.5 lakhs each. The first three cheques were issued in the name of the 1st Plaintiff and the last two cheques were issued in the name of the 2nd Plaintiff. The cheques issued in the name of the 2nd Plaintiff when deposited were returned for the reason 'insufficient funds'. The cheques issued in the name of the 1st Plaintiff when deposited were returned for the reason 'stop payment'.

12. According to the Defendant, she and her husband are the owner of the property at Flat No.K, 3rd Floor, Door No.42, Palayakkara Street, Ayanavaram, Chennai-23 and she wanted to develop the property for construction of flats. For such purpose, she looked for financiers. The Plaintiffs are her distant relatives. She got introduced through Advocate, Umeshwaran. He gave an opinion regarding the title. She denied that there was any agreement of sale between her and the Plaintiffs. The Plaintiffs had agreed to lend a sum of Rs.20 lakhs and demanded a sum of Rs.5 lakhs to be paid towards interest. She issued five undated cheques and also put her signatures in several blank promissory notes and stamp papers. The said Advocate, Umeshwaran, who introduced the Plaintiffs to the Defendant, also gave opinion on the title of the land. She was able to obtain loan from the Bank and she also repaid the Plaintiffs. She thereafter demanded return of the signed blank cheques and other documents. It

was at this juncture that the Plaintiffs had deposited the cheques, resulting in return of the cheques for the reasons 'funds insufficient' and 'stop payment'.

13. The Defendant claimed that there are triable issues in the suit and she must be afforded an opportunity. If the Defendant had actually returned the sum of Rs.20 lakhs, details should have been given in the affidavit with respect to the manner in which the amount was returned to the Plaintiffs. The Defendant had merely given a small statement that the amount had been repaid.

14. With respect to borrowal of Rs.20 lakhs from the Plaintiffs, she had very consciously stated in her affidavit as, 'after finalising the total amount." She has never denied that she has not received that amount. She has admitted issuing five cheques to the Plaintiffs. She further claimed that they were presented without instructions. The Master had refused to accept the version afforded by the Defendant.

15. According to the Defendant, she had issued three cheques in the name of the 2nd Plaintiff and two cheques in the name of the 1st Plaintiff. In the application, seeking to leave to defend, if the Defendant admits to the signatures in the cheques, the onus is on the Defendant to prove discharge or the circumstances surrounding by which the signatures had been affixed. The Defendant merely claims

that the Plaintiff agreed to finance for construction of the flats and therefore, advanced a sum of Rs.20 lakhs. She did not give details as to the method in which she wanted to construct the flat. A very vague statement had been given in the affidavit of the Defendant. She had not stated as to the dates on which, she had repaid the loans to the Plaintiffs. She had not stated as to whether a plan had been obtained for demolition or reconstruction of the house. She had not stated as to why she had not demanded return of the blank signed documents available with the Plaintiffs. She had not issued any notice in the first instance complaining about retaining blank signed documents by the Plaintiff. The Defendant had merely stated that she had returned the monies and therefore, she is not liable to the Plaintiffs. I am unable to agree with the contentions of the learned counsel for the Defendant.

16. In the affidavit filed in support of this application, the Defendant has stated that the cheques are not supported with consideration. She had also stated that the cheque book had been exhausted and she had obtained another cheque book on 25.4.2012 and on 18.3.2013 the cheques mentioned in the plaint had already been exhausted by August 2012 itself. She further specifically stated that there was no encumbrance with respect to Flat No.K, as alleged by the Plaintiffs.

17. In view of facts, raised which require evidence to be adduced, instead of shutting the door for the Defendant, I would rather impose conditions and invite the parties to let in evidence to substantiate their rival claims. Accordingly, the order of the Master, dated 13.02.2018 is set aside. However, the Defendant is granted leave to defend the suit on condition that she shall deposit a sum of Rs.15,00,000/- (Rupees fifteen lakhs only) to the credit of the suit on or before 5.7.2018and if such deposit is not made within the said period, this application shall stand dismissed. Call on 6.7.2018 for reporting compliance.

Sd/.C.V.K.J

06.06.2018

//Certified to be a true copy//

Dated this the day of 2018

jj 21/06/18 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.