IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 05th DAY OF MARCH 2018

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

A.No. 2159 of 2017
in
A.No.1482 of 2016
in
C.S. No.980 of 2015

Mr.M.Kunchithapatham,
S/o.Mr.T.K.Manickam,
No.32/57, Nallanna Mudali Street,
"Kassal Apartment"2nd Floor,
Royapettah, Chennai 14. ...Applicant/Plaintiff

-Versus-

1. Tmt.V.Poun,
W/o.Mr.Vadivelu,

2. Mr.Vadivelu,
S/o.Manickam,

Both residing at
No.35/15, Kamarajar Salai,
Vannia Teynampettai,
Chennai 600 018. .... Respondents/Defendants

Application praying that this Hon'ble Court be pleased to set aside the order dated 06.09.2016 made in A.No.1482 of 2016 in C.S.No.980 of 2015 and dismiss the A.No. 1482 of 2016.

A.No.1482 of 2016

1. Tmt.V.Poun,
W/o.M.Vadivelu,

2. M.Vadivelu,
S/o.Manickam,

Both residing at
No.35/15, Kamarajar Salai,
Vannia Teynampettai,
Chennai 600 018

...Applicants/Defendants

Vs

Mr.M.Kunchithapatham,
S/o.Mr.T.K.Manickam,
No.32/57, Nallanna Mudali Street,
"Kassal Apartment"2nd Floor,
Royapettah,
Chennai 600 014

...Respondent/Plaintiff

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

This application has been filed, seeking to set aside the order of the Master, dated 6.9.2016 in A.No.1482 of 2016 in CS.No.980 of 2015.

2. A.No.1482 of 2016 had been filed by the Defendants in the suit, seeking leave to defend the above suit.

3. The suit had been filed under the provisions of Order 37 Rule 1 of CPC, seeking a judgement and decree for a sum of Rs.39,34,998/-, together with interest at 24% p.a. on the principle amount of Rs.25 lakhs and for costs.

4. According to the Plaintiff, the 1st Defendant and the 2nd Defendant are spouses and known to the Plaintiff. They were carrying on the business of catering services, in the name of 'Sri Annapoorna Restaurant', at No.14/43, Elango Salai, Teynampet, Chennai-18. The Plaintiff had agreed to extend financial assistance. The Defendants had borrowed a sum of Rs.15 lakhs on 1.7.2013 and another sum of Rs.10 lakhs

on 2.7.2013. They executed demand promissory note on 2.7.2013, promising to repay the said amount with interest at 24% p.a. They also furnished original sale deed dated 21.7.1984, relating to their house property.

5. According to the Plaintiff, the Defendants had promised to pay Rs.50,000/- every month towards interest. But, they did not make any payment. The 1st Defendant had also issued a crossed cheque for Rs.25 lakhs, bearing No.231088, drawn on Standard Chartered Bank, Haddows Road, Chennai, dated 18.9.2015 towards part payment of the loan amount. The cheque was returned by the Bank as dishonoured on 21.9.2015 for the reason 'funds insufficient'. The Plaintiff had issued a legal notice with respect to the same and the cover had been returned with an endorsement 'intimation delivered unclaimed'. The registered post addressed to the Defendants' business address were returned with an endorsement 'refused'. It is under these circumstances that the Plaintiff had instituted the suit under Order 37 Rule 1 of CPC.

6. On entering appearance, the Defendants filed A.No.1482 of 2016, seeking leave to defend the suit. In the affidavit filed in support of the said application, it has been stated that the Defendants are small time caterers. It was stated that originally a sum of Rs.5 lakhs was borrowed by cheque from the Plaintiff on 31.3.2011. A sum of

Rs.15,000/- was deducted and a cheque for Rs.4,85,000/- was issued to the Defendants. Similarly, another sum of Rs.2 lakhs was received, from which a sum of Rs.6,000/- was deducted and a cheque for Rs.1,94,000/- was issued. Again on 6.6.2013, a sum of Rs.4 lakhs was borrowed and after deducting a sum of Rs.20,000/-, a cheque for Rs.3,80,000/- was issued by the Plaintiff. It has been stated that the Plaintiff had advanced a total sum of Rs.11 lakhs. The Defendants stated that they had executed blank undated promissory notes. The original title deeds of the property was also given to the Plaintiff.

7. According to the 1st Defendant, the entire amount was discharged. Thereafter, the blank promissory notes had been filled up by the Plaintiff. It was stated that the Plaintiff has to put to strict proof of the allegations that a sum of Rs.15 lakhs was borrowed on 1.7.2013 and another sum of Rs.10 lakhs was borrowed on 2.7.2013. They further claimed that there was a promise to repay Rs.50,000/- every month had also been denied. It has been stated that the promissory notes had been filled up by the Plaintiff.

8. The Master, on consideration of the rival contentions, had granted leave to defend the suit without any conditions. Challenging the said order, the Plaintiff has filed the present application.

9. The Master in the order now under challenge had observed as follows:-

> "The averments stated in the application and counter are perused. Both sides arguments are considered. Considering all these aspects, this Court comes to the conclusion after letting evidence at the time of pronouncing the judgement the real fact of the case to be known. Hence, one opportunity may be given to the Applicant to get into the witness box examined on oath with regard to the payments made and received and other various issues. The Applicant has sufficient merits to allow this application. Hence, in the interest of justice, this application is allowed."

10. A perusal of the observations extracted above convinced me that the order of the Master has to be interfered with. The Defendants, in their application, have admitted to a borrowal of Rs.11 lakhs, which even according to them, had been lent by the Plaintiff in three separate instalments. However, the Defendants had claimed discharge of the said Rs.11 lakhs. The Defendants have also admitted that they had given the title deeds of the property. They have also stated that they had executed promissory notes, albeit in blank.

11. They Defendants have not initiated any proceedings either seeking return of the title deeds of their property or to protect themselves from misutilization of the, according to them, singed blank promissory notes. They have also not given any date, on which the admitted amount of Rs.11 lakhs had been repaid.

12. On the other hand, it is the case of the Plaintiff that the cheque had actually been issued for Rs.25 lakhs and which cheque had been returned for the reason 'insufficient funds'. The very fact that the original title deeds had been handed over to the Plaintiff indicates that the Defendants are indebted to the Plaintiff. It is for the Defendants to explain discharge of the admitted amount of Rs.11 lakhs. The documents filed by the Plaintiff stare in the face of the Defendants. There is a promissory note and there is a cheque. There are title deeds of the Defendants' property in the hands of the Plaintiff. For all these reasons, the Defendants cannot claim shelter on vague pleadings.

13. If the Defendants had borrowed money and claimed discharged, the burden is heavily upon them to prove discharge. Before proving discharge, they must plead discharge in specific terms. They must give the date of discharge and the manner in which the debts had been discharged and also that discharge had been acknowledged by the Plaintiff. The Defendants have not pleaded all these facts. Since the Defendants themselves have admitted to borrowal of Rs.11 lakhs, both the Plaintiff and the Defendants must be given an opportunity to establish the suit claim by the Plaintiff and to establish that the loan was only Rs.11 lakhs and the same had been discharged by the

Defendants. For this, trial is the answer.

14. But, before sending the parties to trial, it would only be appropriate that the Defendants have to deposit into the Court a sum of Rs.11,00,000/- (Rupees eleven lakhs only) being the admitted amount before they can be permitted to proceed further with defending the issues raised by the Plaintiff.

15. Both sides had stated precedents on their respective parts. But, in the present case, since the Defendants have admitted to borrowal of Rs.11 lakhs, but they pleaded discharge without giving any details. I am not afraid that the Defendants must be called upon to deposit the said sum of Rs.11 lakhs, before permission being given to defend the suit.

16. In view of the above, the order granting unconditional leave to defend the suit is set aside and modified to the effect that the Defendants shall be permitted to defend the suit on condition that they shall deposit a sum of Rs.11,00,000/- (Rupees eleven lakhs only) and on such deposit, the Registry is directed to transfer the deposited amount in any nationalised bank in interest carrying scheme. This would earn interest, which would be productive to both

the Plaintiff and the Defendants in the long run. Time for deposit of such amount by the Defendants is granted till 6.4.2018. Accordingly, this application is allowed on the above terms. No costs.

Sd./-C.V.K.J

05/03/2018

//Certified to be true copy//

Dated at Madras this the day of 2018.

jj 22/03/2018

COURT OFFICER(O.S.)

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