THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Appeal Suit No.374 of 1999

JUDGMENT:

This first appeal suit, under Section 96 of the Code of Civil Procedure, 1908, by the unsuccessful 4th defendant is directed against the decree and judgement, dated 02.05.1998, of the learned District Judge, Chittoor, passed in OS.No.275 of 1991.

2. I have heard the submissions of Sri M. Papa Reddy, learned counsel for appearing for the appellant/defendant no.4, and of Sri M. Venkata Ramana Reddy, learned counsel appearing for the 1st respondent-plaintiff. I have perused the material record.

3. The parties in this appeal suit shall hereinafter be referred to as the plaintiff and the defendants as arraigned in the original suit for convenience and clarity.

4. As this is a first appeal suit and this Court is the last Court of fact, it is necessary to refer to the cases of the parties.

5. The plaint averments, in brief, are as follows: -

The plaintiff is a financing company mainly dealing with hire purchase of automobiles like cars, tractors, trailers, trucks and two wheelers etcetera. It has various branches in South India. One such branch is functioning at Gandhi Road, Chittoor. The said Branch covers Rayalaseema in Andhra Pradesh. The normal procedure that the plaintiff company follows for providing credit facilities on hire purchase to its parties of Rayalaseema area is as follows: - 'The party intending to avail credit facility under hire purchase should send the application to the administrative office, 16-F, Whites Road, Madras. The plaintiff company forwards the loan application to the Manager for the Rayalaseema area. The Manager concerned on receipt of such application should verify the applicant's creditworthiness and his capacity to repay the hire purchase instalments regularly. After such enquiry and on his satisfaction, a proposal form will be prepared by the Manager with his recommendations to the Secretary of the plaintiff company at Madras. After mutual discussion and only on satisfaction of both of them about the party's financial status, capacity to abide by the terms of hire purchase agreement and pay the hire purchase dues regularly, the loan under hire purchase will be sanctioned. In the case of second hand vehicles, the Manager concerned should inspect and ascertain the value and condition of the vehicle and send up the proposal for such amount as the vehicle and the party deserve. And, only when the sanctioned amount is released after the party enters into hire purchase agreement with the plaintiff company, with necessary sureties, a cheque voucher is prepared and the cheque for the amount sanctioned will be issued to the bank of the plaintiff company and a demand draft will be drawn and sent to the hirer. The necessary hire purchase endorsement in the registration certificate of the vehicle under hire purchase would be sought and obtained by the manager from the transport authority concerned.' While so, the defendants 3 & 4, who are the then Manager of Rayalaseema area and the Secretary of the plaintiff company, with ill will and in connivance with the defendants 1 & 2 joined hands with them for defrauding the plaintiff company to a tune of Rupees Two lakhs and created a hire purchase agreement in favour of the 1st defendant without going through the formalities like verifying the existence of the jeep in his name and finding out the condition of the same. There was not even an application from the 1st defendant when HP loan was given, on 22.12.1989. The number of the vehicle is also not furnished nor was there anything to show the model of the jeep. Without even seeking the signatures of the 1st and 2nd defendants, namely, the hirer and the guarantor respectively, in the agreement, the defendants 3 & 4 released a sum of Rs.1,60,000/-, on 22.12.1989, by sending a demand draft in favour of the 1st defendant on even date. Further, in order to create an impression that the transaction was a genuine transaction, an imaginary agreement number was given by the 3rd and 4th defendants and a contract sheet too was prepared in which no particulars are forthcoming; and, on the basis of the fabricated contract sheet a ledger account was opened in the name of the 1st defendant. In fact, the contract sheet reveals that six instalments @ Rs.6,325/- were received from the defendants 1 & 2 towards hire purchase agreement. The alleged hire purchase agreement is to expire by 22.12.1992 and as such the defendants 1 & 2 are liable to pay to the plaintiff a total sum of Rs.2,12,362/- as on 21.10.1991 including over due charges as specified in the agreement. The very fact that the defendants have remitted certain amounts into the so called credit account of the 1st defendant establishes an ostensible hire purchase agreement with the plaintiff. Therefore, all the defendants are bound by the terms of the hire purchase agreement and are liable to pay to the plaintiff the amounts in accordance with the hire purchase terms. The 2nd defendant, who is the father of the 1st defendant, stood as a guarantor to the 1st defendant and all the defendants fraudulently cheated the plaintiff and misappropriated the amount by manipulating the records. As such all the defendants are liable to pay the amount with interest. Hence, the suit is filed for recovery of

Rs.2,12,362/- with interest at 24% per annum from the date of suit till date of realisation and for costs.

6. The suit against the 1st defendant was dismissed for default.

7. The averments in the written statement of the 2nd defendant, in brief, are as follows: -

The material allegations in the plaint are false. The suit is liable for dismissal *in limine*. The averments in the plaint make clear that certain procedure has to be followed before sanctioning any loan under hire purchase agreement. In this case, admittedly no application was made by the 1st defendant and consequently there could not be any involvement of the 2nd defendant in the transaction. Likewise, allegations in the plaint also show that it was the duty of the staff of the plaintiff company to gather all particulars about the intending borrowers under hire purchase and that nothing of such sort was done by the staff of the plaintiff company. This defendant has not connived with the defendants 3 & 4 in the commission of fraud. Chandra Sekhar/3rd defendant, the then Branch Manager, used to visit the bar and restaurant of defendants 1 & 2 as a customer, sometimes with one Rajamani. That way, 3rd defendant developed friendship with this 2nd defendant who is the father of the 1st defendant. After some time, with a view to clearing of the debts due to the Bar (Red Lips) he came forward with the suggestion that since the company was also interested in opening of some accounts in the name of some fictitious persons for the purpose of income tax, the company would give a commission if the defendants 1 & 2 could lend their names for opening of such accounts. The 3rd defendant, having full confidence in the defendants 1 & 2 that they would not expose the plaintiff company, suggested the names of defendants 1 & 2 to the 4th defendant. All that was required was that they (defendants 1 & 2) would get certain drafts/cheques in their names and that after encashing the drafts/cheques they would return to the 3rd defendant the cash encashed after deducting from the amount of the draft/cheque their commission of 1%, which was promised. Accordingly, defendants 1 & 2 encashed the drafts/cheques and deducted the commission. And, the commission received by them was adjusted towards the dues payable by the 3rd defendant to the Red Lips Bar being run by them. Therefore, fraud, if any, committed on the company was purely by the 3rd and 4th defendants only and neither this defendant nor the 1st defendant owned vehicles in their names. Therefore, the allegations in the plaint are false. No remittances were ever made towards the so called hire purchase loan with the plaintiff company. If at all there were payments as alleged in the plaint, it must have been done by the 3rd and 4th defendants to cover up the fraud committed on the plaintiff company. Without any basis, the allegations are made in the plaint against this defendant. This defendant would have given enough evidence of the fraud committed by the 3rd defendant if only the plaintiff company had thoroughly investigated into the matter. The company is at liberty to proceed against the defendants 3 & 4 for manipulation of the records. This defendant acted in good faith on the representation of the 3rd defendant who was all in all in the plaintiff company during the relevant period. Hence, the suit against this defendant may be dismissed.

8. The defence of the 4th defendant/appellant, in brief, is as follows:

The material allegations in the plaint are false. The suit is a speculative suit and is filed to cover up the faults of the plaintiff. The suit is bad for non joinder of necessary parties. The suit is not properly framed in as much as the joint tort feasor, Subba Raman, has not been made as a party defendant. All the dealings of the plaintiff company were done right under the nose of the said Subba Raman and he was at the helm of affairs. This defendant had a brilliant academic record and reached heights and gained academic excellence purely due to his total devotion to the task before him. He graduated in Commerce faculty from Vivekananda College, Madras. He undertook the study of Chartered Accountancy and simultaneously pursued the course of Company Secretary. This defendant by sheer dint of hard work and total devotion to the task undertaken by him, performed creditably in both the assignments and became a notified Chartered Accountant and Company Secretary. His academic excellence earned him a decent job and he joined Fidelity Finance Limited as a Secretary. He was requested to discharge certain duties assigned to him in respect of the affairs of the plaintiff company. He was promptly discharging the function of company secretary and also some of the functions of the chief accountant of the plaintiff. In other words, this defendant was holding additional charge of the affairs of the plaintiff company. He was appointed, on 27.04.1987, and worked from that date as Company Secretary. He resigned his said job as he secured better employment elsewhere. The plaintiff and the other company accepted his resignation letter and relieved him without any protest or reservations. He was relieved only after the charge of the Post held by him was duly handed over and after the account was settled without any protest. The present suit is, therefore, not maintainable in law in view of acquiescence with the resignation of this defendant and cessation of master and servant relationship. The plaintiff is now trying to make this defendant a scapegoat for the faults and lapses of someone else. There is no cause of action or fraud. The plaint does not contain particulars and details of alleged fraud and is bereft of necessary particulars and is not in accordance with the procedure established by law. The plaintiff deliberately mis-described the procedure in the matter of granting loan. The said procedure is denied. The correct procedure is as under: - 'The 3rd defendant (manager) was in-charge of hire purchase department as Manager. The 3rd defendant was solely responsible for the proper functioning of the branches. The function of the Manager was to process applications for hire purchase/leasing transactions and ascertain whether they were in order. The manager was required to assess the creditworthiness of the intended applicant for hire purchase or leasing transaction. The Manager after thus ascertaining the financial position of the intended borrower makes a preliminary decision regarding the grant of the hire purchase or leasing facility. The Manager thereafter would prepare his recommendation for the grant of the loan. The Manager would also prepare the cheque for the proposed loan amount and sign the same. All the papers along with the recommendation and the signed cheque would be placed before this defendant for a counter signature in the cheque. This defendant was required to peruse the recommendation and countersign the cheque. This defendant was thus required to only verify the reports and look for any patent error by comparing the cheque with the basic documents. This defendant was not enjoined with any duty to investigate the proposals *de novo* or for that matter, this defendant is not required to microscopically analyse or even analyse and look for any latent defects. This defendant could thus rely upon the work of his subordinate who possessed the knowledge, skill and field experience.' In view of the said procedure, this defendant is under no obligation to either do the preliminary work or even cross check the basic details furnished by the

Manager. The averments in paragraph 5 of the plaint are incorrect. In other words this defendant was entitled to rely on the Manager while discharging his duties. The allegations that this defendant colluded with the manager and other defendants and fraudulently withdrew lakhs of rupees from banks by creating false records in the name of the non- existing or fictitious persons are denied. The allegation that the cheque issued by the plaintiff in disbursement of loan was encashed by the borrower and utilised by all the defendants is denied. This defendant neither had knowledge of any *mal practice* nor any doubt about the *bona fide* conduct of the Manager. This defendant has no role to play in the fraudulent scheme, if any. This defendant does not know the borrower from Adams and did not receive any consideration or utilise the funds given by the plaintiff. This defendant did not create any false contract sheet showing certain payments of hire purchase to the credit of the hirer. This defendant is not aware of the allegations regarding the Manager. This defendant created imaginary agreement is denied. Except signing the cheque, this defendant has nothing to do with the said matter. The allegation that this defendant created a contract sheet and opened ledger account in the name of the borrower is denied. This defendant had no knowledge of any such irregularities. The plaintiff company issued a charge sheet to the Manager and accused him of all the charges that have now been levelled against him and an enquiry has been conducted. The plaintiff company did not consciously level such charges against this defendant as the plaintiff company knew fully well that this defendant had no complicity in the matter of grant of such loan. The plaintiff company preferred a false case; and, the claim is vexatious and frivolous. This defendant did not remit any amount to the credit of the borrower as alleged. The inference drawn on the basis of the above erroneous presumption is evidently wrong. This defendant is not liable for the suit amount or the claim made towards interest. Hence the suit may be dismissed.

9. The 3rd defendant against whom also the suit was decreed making the defendants 2 to 4 jointly and severally liable to the plaintiff filed a written statement with averments, which are in the nature of denial of the plaint averments; however, as the 3rd defendant has not preferred any appeal against the decree and judgment of the trial Court, there is no need to refer to, in detail, the contents of the written statement of the 3rd defendant. In fact, the 3rd defendant did not even appear as a witness and failed to substantiate his defence.

10. Having regard to the above pleadings and also the pleading in the written statement of the 3rd defendant, the trial Court settled the following issues and additional issues for trial.

1. Whether the plaintiff is entitled for the decree as prayed for?
2. To what relief?

Additional issues framed on 23.12.1996.

1. Whether D3 committed any fraud on the plaintiff in sanctioning the suit loan to D1 and D2?
2. Whether D4 also committed fraud on the plaintiff in sanctioning the loan to D1 and D2 independently and/or jointly with D3?
3. Whether the plaintiff sanctioned a loan as hire purchase for a jeep to D1 and D2?
4. Whether the plaintiff is entitled to any decree for the suit amount against D3 and D4 jointly and severally with D1 and D2 or independently?
5. Whether the suit against D4 is not maintainable as the plaintiff accepted the resignation of D4 without any condition.
6. Whether the person who signed the plaint has authority to sign the plaint?
7. Whether the suit is not maintainable for failure to take permission of the court by the authorised person to file the suit and sign the plaint?

Additional issues framed on 06.02.1997.

1. Whether D1 and D2 are only a name lenders at the instance of D3 as stated in written statement of D2 and that loan amount was taken by D3 and D4 as stated in the written statement of D2?

2. Whether D3 was the Manager at the relevant time and signed the cheque for taking DD in favour of D1 and D2?

3. Whether the plaintiff is entitled to interest against D3 and D4?

11. At trial, PWs 1 & 2 were examined and exhibits A1 & A2 were marked on the side of the plaintiff. On behalf of the defendants, the 4th defendant was examined as DW1 and exhibit B1 was marked.

12. As already noted, the suit against the 1st defendant was dismissed, on 20.02.1996, as no steps were taken for service of summonses in the suit against the said defendant. On merits and by the judgment impugned in this appeal, the trial Court decreed the suit of the plaintiff for Rs.2,12,362/- with costs and fastened joint and several liability against the defendants 2 to 4 and directed them to pay the said amount along with interest at 6% per annum on Rs.1,60,000/- from the date of the suit till date of payment. Aggrieved thereof, the 4th defendant preferred this appeal.

13. The principal contentions advanced and submissions made on behalf of the 4th defendant, in brief, are as follows:

The trial Court failed to appreciate that this defendant was only a Secretary and, therefore, cannot be made liable for the suit claim. However, the trial Court erroneously decreed the suit against the 4th defendant also. The trial Court failed to notice that, even assuming that the plaint allegations are correct, the responsibility of financing of loan and its disbursement cannot be placed on this defendant. The findings that this defendant and the 3rd defendant connived with defendants 1 & 2 are wholly unsustainable; the said findings are based on surmises and conjectures. The Court below failed to see that when the suit was dismissed against the 1st defendant, the same cannot be maintained against the other defendants as the responsibility is joint and several and the claim stands dismissed against the said defendants also. The trial Court failed to see that the plaintiff failed to give particulars of fraud said to have been played and failed to appreciate the decisions cited on the said aspect by merely stating that the decisions are not applicable. The trial Court failed to see that several such suits filed by the plaintiff against these defendants were dismissed conclusively holding that this defendant is not liable for similar claims made by the plaintiff. The trial Court failed to notice that this defendant had resigned and his resignation was accepted unconditionally and that the same amounts to certifying that there were no claims of any nature subsisting against this defendant. The said aspect ought to have been viewed in favour of this defendant by the trial Court. The trial Court ought to have seen that the procedure stated in the plaint is not correct and that the procedure stated by the 4th defendant in his written statement with regard to providing credit facilities on hire purchase to the parties of the plaintiff's branch at Rayalaseema is only correct. The trial Court ought to have seen that the plaintiff wants to make this defendant a scapegoat for somebody else's fault and that if anybody is responsible, it is only the 3rd defendant who is the Manager concerned at the relevant time who is whole and sole and that this defendant has nothing to do with the loan transaction except signing the cheque. The trial Court ought to have seen that this defendant is a resident of Chennai and is placed at Chennai and it is difficult for him to personally verify the credentials of the party and the party's capacity to repay, in instalments, the loan to be advanced and also the details of the vehicle etcetera and that it is the responsibility of the Manager concerned. The trial Court ought to have seen that after the Manager processes the loan application in all respects he sends the said papers along with his recommendation and that the cheque signed by him would be placed before this defendant for a counter signature on the cheque and that this defendant was only required to peruse the recommendations and counter sign the cheque and that, therefore, this defendant was required to verify and look for any patent error by comparing the cheque with basic documents but was not enjoined with any other duty to investigate the proposals *de novo* and look for latent errors, if any. The trial Court ought to have seen that this defendant has no role to play in the fraudulent scheme, if any, and that this defendant *bona fide* believed the staff concerned as this defendant is entitled to rely on the Manager in the discharge of his duties. At best the defendant is liable for departmental disciplinary action. But, he cannot be made liable for the suit amount on the ground of alleged fraud. Therefore, the appeal may be allowed and the decree and judgment of the trial Court may be set aside insofar as they are against this defendant.

14. Per contra, learned counsel for the plaintiff while supporting the decree and judgment of the trial Court contended as follows: 'The written statement of the 2nd defendant by all means is sufficient to fasten liability on all the defendants 2 to 4. The fact that despite a decree against the 3rd defendant, he did not prefer any appeal against the decree and judgment of the trial Court would also indicate that there is truth in the case of the plaintiff. The liability is joint and several. The liability of the defendants 3 and 4, who are the employees of the plaintiff company, is not on the basis of the liability of the principal debtor and the guarantor, but is on the basis of the fraudulent discharge of duties by the defendants 3 and 4 in connivance with the defendants 1 and 2 and their collusive acts of cheating and fraud which caused loss to the plaintiff company and which the plaintiff company is entitled to recover. Therefore, the dismissal of the suit for default against the 1st defendant will not absolve the other defendants from the liabilities as rightly held by the trial Court. The suit claim insofar as the 3rd and 4th defendants is not based on mere joint and several liability to pay the loan amount but on the acts of fraud and cheating in which they indulged and for causing loss to the tune of the suit amount to the plaintiff. All the contentions which are now raised before this Court were also raised before the trial Court and the same were duly rejected by the trial Court by assigning valid and sufficient reasons after duly considering the facts and evidence. The decree and judgment of the trial Court are sustainable in all respects. The contentions now raised by the appellant before this Court are devoid of merit. The appeal is liable to be dismissed.'

15. Now the points that fall for determination in this appeal suit are: -

(1)Whether the 4th defendant along with 3rd defendant, who are the Secretary and the Manager respectively at the relevant time committed fraud on the plaintiff in the matter of sanctioning of loan on hire purchase to defendants 1 & 2 and caused loss to the plaintiff company as stated in the plaint?

(2) Whether the plaintiff is entitled to recover the suit claim from the 4th defendant along with interest?

(3) Whether on account of the dismissal of the suit for default against the 1st defendant, the other defendants would automatically stand absolved from the liability, if any? And, if so, whether the suit is liable to be dismissed against the 4th defendant as well?

(4) Whether the decree and judgment of the trial Court are unsustainable under facts and in law as being contended by the appellant-4th defendant?

(5) To what relief?

16. POINTS 1 & 2:

While examining the merits of the case of the plaintiff with regard to the liability of the 4th defendant in respect of the suit claim, it is necessary to *inter alia* deal with the following contentions of the 4th defendant. 'That the plea of fraud has not been specifically pleaded; that the allegations of fraud in the plaint are vague without any particulars as contemplated under Order VI Rule 11 of CPC; that such a vague plea of fraud shall not be considered; that if such vague plea of fraud bereft of details is to be considered, it would be difficult for the 4th defendant to meet such vague allegations; that therefore, the plaintiff cannot be allowed to lead evidence on the basis of such vague plea of fraud and rely upon the evidence in respect thereof; and, hence on this ground alone the 4th defendant cannot be fastened with any liability on the alleged ground of fraud and acts of cheating.' In view of this contention, at the cost of repetition, it is necessary to refer to the relevant pleading in the plaint, which runs as follows: - 'The plaintiff is a financing company having its branch at Chittoor. It mainly deals with hire purchase of automobiles (four wheelers and two wheelers). The 3rd defendant is its manager for Rayalaseema area and the 4th defendant is its Secretary at the relevant time. The party intending to avail credit facility under the hire purchase is required to submit an application. The function of the manager was to process the same; he was required to assess the creditworthiness of the intended applicant and his financial position to repay, in instalments, the loan amount to be advanced. On such ascertainment the Manager concerned would prepare his recommendation for grant of loan and would place the papers with his recommendation before the Secretary. After mutual discussions and only after both are satisfied about the party's financial status and his capacity to abide by the terms of Hire Purchase agreement and pay the hire purchase dues regularly, the loan under hire purchase shall be sanctioned. In case of second hand vehicles, the Manager shall inspect and ascertain the value and condition of the vehicle and particulars like the credit worthiness and repaying capacity of the party/owner of the vehicle and then, send up proposals for such amount as the vehicle and party deserve. Only after the party enters into hire purchase agreement with the plaintiff with necessary sureties, a cheque voucher shall be prepared and the cheque shall be issued for the amount sanctioned to the Bank concerned and then, a Demand draft shall be drawn and sent to the Hirer. Thereafter, the Hire Purchase endorsement shall be obtained in the Registration Certificate of the vehicle from the concerned Transport Authority by the Manager. The cheque to be issued towards loan amount is to be signed by the Manager as well as the 4th defendant.' Here itself, it is to be noted that the plaintiff contends that both the Manager as well as the Secretary (defendants 3 & 4) shall have mutual discussion and that only after both are satisfied about the party's financial status and capacity to repay loan in instalments, the loan under the hire purchase would be sanctioned. Per contra the 4th defendant contends that he is required to peruse the papers sent with the recommendation by the Manager and counter sign the cheque by verifying the report for any patent error by comparing the cheque with the basic documents but he was not enjoined with any duty to investigate the proposals *de novo* and that he could rely upon the work of his subordinate who possessed the knowledge, skill and field experience and that he need not look for latent errors and that it would be difficult for him to make a *de novo* verification as he would be sitting at Chennai and that the allegations to the contra in the plaint are false. Be that as it may.

The 4th defendant contends that he *bona fide* believed his subordinate, the 3rd defendant, who was the then Manager and counter signed the cheque as he is entitled to act on the recommendation of the Manager while discharging his duty. Even according to his own showing, he is required to peruse the papers placed before him along with the recommendation of the Manager and verify the reports for finding out any patent error by comparing the cheque with basic documents. In view of the duties & responsibilities enjoined upon the 4th defendant and his own admissions, his defence that being placed at Chennai it would be difficult for him to personally verify the credentials of the party and the party's capacity to repay in instalments loan to be advanced and also the details of the vehicle etcetera is not a valid defence as he is supposed to discharge duties & responsibilities enjoined upon him. This case on hand is not a case of mere failure to discharge the duties & responsibilities with due care and diligence to just let the defendants 3 and 4 off with disciplinary action. In the plaint, it is also stated that the defendants 3 & 4 in connivance with the defendants 1 & 2 defrauded the plaintiff to a tune of Rupees Two Lakhs and created a hire purchase agreement in favour of the 1st defendant even without following the formalities and existence of jeep in the name of the said defendant and without verifying its condition and even without furnishing the vehicular details; and that the defendants 3 & 4 further released the amount of Rs.1,60,000/- and that the defendants 3 & 4 to give a colour of genuineness to the transaction opened a contract sheet without particulars and also a ledger account in the name of the 1st defendant disclosing as if six instalments @ Rs.6,325/- were paid and received towards hire purchase loan amount. Be it noted that the 2nd defendant, who is the father of the 1st defendant, in his written statement stated that the 1st defendant owned no vehicles and that there is no hire purchase transaction entered into by the defendants 1 & 2 and that in view of the acquaintance, which they had with the 3rd defendant, who is a visitor to their Bar, they agreed for the proposal of opening accounts in their names and that the 3rd defendant with full confidence that the defendants 1 and 2 would not expose the plaintiff company suggested their names, that is, the names of the defendants 1 & 2 to the 4th defendant and that the defendants 1 & 2 agreed to encash demand drafts/cheques and return the encashed amount to the 3rd defendant after deducting their 1% commission from the amounts of drafts/cheques and that they accordingly adjusted the same towards the dues payable to the Bar and that the fraud, if any, was committed by the defendants 3 and 4 only. These admissions in the defence of the 2nd defendant disclose that the defendants 1 & 2 are name lenders and that there was no hire purchase transaction with regard to the jeep and yet based on patently defective documents, loan amount was released by defendants 3 & 4 to the name lenders to the detriment of the plaintiff company. The very admission in the defence of the 2nd defendant in his pleading, which is the best form of proof on which the plaintiff can rely, would lay bare the falsity of the claim that the transaction is a hire purchase transaction for purchase of the jeep. Further, it is borne out by record that there is not even an application form of the 1st defendant when the HP loan was given, on 22.12.1989, and that in the material documents the number of the vehicle and its model are also not furnished and it is only stated that it is a jeep. Further, it is also borne out by the record that even without seeking the signatures of the defendants 1 & 2, the hirer and the guarantor, who are father and son, the loan amount was released by means of a cheque, which was signed by the defendants 3 & 4. It is also in evidence of PW1, the Legal Officer & Assistant Secretary of the plaintiff company, that the 1st defendant never purchased any jeep with the money borrowed from the plaintiff and that on the recommendation of the Branch Manager, the 3rd defendant, the Secretary/4th defendant has to scrutinise all the documents and recommend for the loan and that in the present case the Secretary himself sanctioned the loan, signed the cheque and disbursed the loan amount. His evidence is based on record. PW2, the Vice President of the plaintiff company, at the time of his deposition and who held various positions in the plaintiff company during the previous seven years, testified that defendants 1 & 2 committed default in payment of instalments and that after 31.01.1991, the company auditors intended to verify the original records and that on such verification it was found that there was no original record for sanctioning the loan and that thereupon they sent a report to PW2 about sanctioning loan without there being original records and that thereafter the Company started investigating into the matter and that during investigation it came to light that defendants 1 to 4 colluded together and committed fraud on the plaintiff company. He further deposed that without the approval of the Head Office, no loan amount will be sanctioned and disbursed and that no application was forwarded from the Branch Office to the Head Office showing that D1 requested for purchase of a jeep and that exhibit A1, application form, did not contain the signatures of defendants 1 and 2 and also the particulars of the jeep to be purchased. Even in the defence of the 4th defendant, he did not specifically deny the *mala fide* nature of the transaction but only stated that he is being made a scapegoat for somebody else's fault; thereby he is impliedly throwing the blame exclusively on the 3rd defendant. As noted, even according to his own version, he is required to peruse the papers placed before him along with the recommendation of the Manager and verify the reports for finding out any patent error by comparing the cheque with basic documents; but, the fact of the matter is that he had signed the cheque in this case even in the absence of the details of the jeep like vehicle number, model & chasis number. The said facts and absence of original record would indicate that he failed to discharge his duties. Added to this, the 2nd defendant came forward before the Court with the following version in his written statement: 'This defendant has not connived with the defendants 3 & 4 in the commission of fraud. Chandra Sekhar/3rd defendant, the then Branch Manager, used to visit the bar and restaurant of defendants 1 & 2 as a customer, sometimes with one Rajamani. That way, the 3rd defendant developed friendship with this 2nd defendant, who is the father of the 1st defendant. After some time, with a view to clearing of the debts due to the Bar (Red Lips), he came forward with the suggestion that since the company was also interested in opening of some accounts in the name of some fictitious persons for the purpose of income tax, the company would give commission, if the defendants 1 & 2 could lend their names for opening of such accounts. The 3rd defendant, having full confidence in these defendants 1 & 2 that they would not expose the plaintiff company, suggested the names of defendants 1 & 2 to the 4th defendant. All that was required was that they (defendants 1 & 2) would get certain drafts/cheques in their names and that after encashing the drafts/cheques they would return the cash encashed to the 3rd defendant after deducting from the amount of the draft/cheque their commission of 1%, which was promised. Accordingly, defendants 1 & 2 encashed the drafts/cheques, deducted the commission. The commission received by them was adjusted towards the dues to the Red Lips Bar being run by them. Therefore, fraud, if any, committed on the company was purely by the 3rd and 4th defendants only and neither this defendant nor the

1st defendant owned vehicles in their names.' The said version including the admission in the defence that the defendants 1 and 2 owned no vehicles in their names and that they lent their names for opening the accounts and agreed to receive cheques/drafts and encash the same and that they eventually received their 1% commission and adjusted towards the amounts due to the Bar, which fortifies the case pleaded by the plaintiff, by all means is sufficient to fasten liability on the defendants 2 to 4. Indeed, the appellant/4th defendant (DW1) who simply asserted his defence in his testimony failed to rebut the overwhelming evidence brought on record to establish the case of the plaintiff and thus, failed to substantiate his defence that he was not involved in any acts of cheating or fraud. Even according to his own admission in the cross examination, next to the Full Time Director, he is running the company mostly regarding secretarial, accounting and finance matters and he has the responsibility of counter signing the cheque along with the 3rd defendant. Therefore, his said responsibility coupled with the fact that the cheque was signed and loan was released to the defendants 1 & 2 by himself even without details of the vehicle and the original records would only probablise the case of the plaintiff that fraud has been played by the defendants 3 & 4 in connivance with the defendants 1 & 2. Be it noted that from the depositions and the judgment impugned it is evident that exhibit A1 is hire purchase contract register though the appendix of evidence wrongly describes this document as registration certificate. In the evidence of PW2, he stated that exhibit A1 does not contain particulars of jeep, viz., the chasis number, the engine number and the registration number and that exhibit A1 only indicates that the vehicle to be purchased is a jeep and that it does not also show the name of the owner. PW2 also deposed that exhibit A2, the statement of account of the loan of the

1st defendant, also did not contain the particulars of the jeep intending to be purchased and that it was mentioned therein that it was a jeep. He deposed that pursuant to the said exhibits A1 and A2 money was disbursed to defendants 1 and 2 without obtaining the particulars of the jeep and that no physical verification of the jeep was done and that the auditors found that the original records are not available and that the said disclosure lead to the investigation and detection of the acts of cheating & fraud and involvement of the defendants in the subject hire purchase transaction resulting in loss to the plaintiff company. It is also in the evidence of DW1 that exhibit A1 does not show the particulars of the vehicle on which the loan amount was sanctioned though amount was lent on the vehicle shown in exhibit A1. He further admitted that the vehicle is a second hand vehicle and that exhibit A1 does not show that the loan transaction is with respect to a second hand vehicle. Thus, the evidence brought on record reflects that the 4th defendant, who is a Secretary having cheque power, is required to sign the cheque already signed by the 3rd defendant after verification of the papers placed before him with recommendation of the 3rd defendant, but, he, however, signed the cheque and sanctioned the loan by himself even though there are no required particulars of the jeep in exhibit A1, which turned out to be a second hand vehicle. This is not a case where the documents/papers placed before the 4th defendant by the 3rd defendant are in perfect order. Despite so many defects in the papers, which are patent, the 4th defendant signed the cheque, sanctioned the loan and disbursed the amount by himself. All the factors coupled with the defence of the 2nd defendant and the entire evidence brought on record are sufficient to safely hold that the defendants 3 & 4 in connivance with defendants 1 & 2, who are name lenders, indulged in acts of cheating and fraud in bringing-forth the suit loan transaction, which resulted in loss to the plaintiff company, and that therefore, on account of such acts, they rendered themselves liable to the plaintiff company for the suit amount with interest.

17. Viewed thus, this Court finds that there is adequate pleading as required under facts and in law and that the case pleaded by the plaintiff is proved by adducing the necessary and required standard of evidence and that, therefore, all the contentions of the 4th defendant are without merit and that the decision in **Kisan v. Kausalyabai** [2007(4) Mah. L.J. 43] relied upon on the adequacy of pleading on the aspect of fraud is of no avail to him. As a sequel, it must be held that the defendants 3 & 4 who indulged in acts of fraud and cheating and caused loss to the plaintiff company in the matter of releasing the loan amount to the defendants 1 &2, the name lenders, by signing and counter signing the cheque respectively are liable jointly and severally to pay the suit amount to the plaintiff with interest along with the 2nd defendant who is one of the name lenders and who is also a conniving party to the said acts of cheating and fraud. The points are accordingly answered against the appellant/4th defendant and in favour of the plaintiff/1st respondent herein.

18. **<u>POINT No.3</u>**:

Adverting to the contention that the suit against the principal party, that is, the 1st defendant, to whom the loan was sanctioned was dismissed for default and therefore, the question of fastening liability on defendants 2, 3 & 4 does not arise and the decision in **Syndicate Bank v. Pamidi Somaiah**[1] relied upon in support of the contention that when once the suit is dismissed against the principal debtor, the suit shall also be dismissed against the guarantor, what

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[1] 2001 SCC online AP 810

is to be noted is that the suit is filed against the defendants including the defendants 3 and 4, who are the employees of the plaintiff company, not on the basis of the mere liability of the principal debtor and the co-extensive liability of the guarantor, but on the basis of the *mala fide* collusive acts and acts of cheating & fraud committed by the defendants 3 and 4 in connivance with the defendants 1 and 2, who are the name lenders for the make believe hire purchase loan transaction, which resulted in loss to the plaintiff company, which the plaintiff company is entitled to recover. Therefore, this Court holds that the dismissal of the suit for default against the 1st defendant will not absolve the other defendants from their respective liabilities as rightly held by the trial Court. Point is accordingly answered against the 4th defendant/appellant.

19. Point No.4:

As a sequel to the aforestated findings of this Court on points 1 to 3 supra, it is to be held that the contention of the appellant/4th defendant that the decree and judgment of the trial court are unsustainable under facts and in law is without merit and is liable for rejection. On carefully evaluating the pleadings and the oral & documentary evidence and after going through the judgment of the trial Court, this Court, for the reasons assigned in this judgment, finds itself in agreement with the findings recorded by the trial Court on the issues settled and accordingly holds that the trial Court is justified in decreeing the suit of the plaintiff. In that view of the matter, the well considered judgment of the trial Court brooks no interference. Point is accordingly answered against the appellant/4th defendant.

20. Point No.5:

In the result, the appeal suit is dismissed without costs.

Miscellaneous petitions pending, if any, in this appeal shall also stand dismissed.

JUSTICE M. SEETHARAMA MURTI

08.03.2018
Vjl