

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.659 of 2016

S.S.Chokalingam(deceased)

1.Jothikili

2.Chandrasekaran

3.C.Dhanasekaran

4.C.Ambalavanan

5.Dhanalakshmi (Insane)

6.C.Ponnarasi. ..Appellants/Defendant 2-7

Vs.

S.Amirtlal Dhariwal ..Respondents/Plaintiff

Prayer : First Appeal against the judgment and decree dated 27.07.2015 in O.S.No.14292/2010, on the file of II Additional City Civil Judge, Chennai.

For Petitioner : Mr.S.Gopi

For Respondents : Mr.N.GyanChand Jain

O R D E R

The appeal suit is filed against the judgment and decree dated 27.12.2015 passed in O.S.No.14292 of 2010 on the file of II Additional City Civil Court, Chennai.

2. The defendant is the appellant before this Court and the plaintiff is the respondent in the present appeal suit. The suit was filed for recovery of money, directing the defendant to pay a sum of Rs.12,48,000/- together with further interest at the rate of 36% of Rs.6,00,000/-, from the date of institution of the suit till the date of realization.

3. The Trial Court adjudicated the issues with reference to the pleadings made by the plaintiffs as well as the defendant.

4. The contention of the plaintiff is that the defendant borrowed a sum of Rs.6,00,000/- and executed a promissory note. Subsequently, the defendant issued a cheque of Rs.6,00,000/- and the said cheque was returned with an endorsement "insufficient funds". In view of the fact that the cheque issued by the defendant was dishonored, the plaintiff issued a notice to the defendant under Section 138 of the

Negotiable Instruments Act on 10.08.1998. The said notice was not received and it was returned with an endorsement "refused". Under those circumstances, the plaintiff was constrained to institute the civil suit for recovery of Rs.6,00,000/- with interest and it is brought to the notice of this Court that a criminal case was registered under Negotiable Instruments Act and it came to be disposed of as the accused, who is the original defendant, in the suit, died.

5. The learned counsel for the defendant denied the averments and allegations in the plaint by stating that the original defendant borrowed a sum of Rs.6,00,000/- in the year 1995, and agreed to repay the amount with interest at the rate of 18% per annum. The promissory note was executed in this regard and the learned counsel for the defendant states that the said signature was obtained in the blank paper. It is further contended that 36% was not agreed by the defendant and the statement made by the plaintiff in this regard is incorrect and false. Further, issuance of cheque dated 09.07.1998 was also denied by the defendant. The said cheque was forgedly prepared by the plaintiff and the criminal case was registered under Negotiable Instruments Act. In fact, during the year 1995, when the defendant borrowed a sum of Rs.6,00,000/- from the plaintiff, the plaintiff has secured the RC Book of the Ambassador Car which belongs to the defendant. The defendant paid the monthly interest properly and he has already paid the principal amount of Rs.2,00,000/-. During the compromise conducted in the presence of Panchayathar, the said Panchayathar insisted the defendant to pay a sum of Rs.4,00,000/-, and further, the documents of the properties belonging to the defendant was also directed to be handed over to the plaintiff. The marked property was released by the plaintiff by paying Rs.2,00,000/- and the plaintiff has taken the original documents. This apart, the plaintiff insisted the defendant to execute a power of attorney. Under these circumstances, the defendant in his written statement contended that the promissory note was obtained in a blank paper. This apart, he had already paid a sum of Rs.2,00,000/-, and all these facts were suppressed by the plaintiff and therefore, the suit is liable to be dismissed.

6. The Trial Court framed the issues that whether the defendant borrowed a loan of Rs.6,00,000/- on 04.09.1995 by executing the promissory note or not? and whether the defendant has repaid part amount of Rs.3,00,000/- to the plaintiff or not? and whether the defendant has paid monthly interest regularly or not?.

7. With reference to the issues, the Trial Court arrived at a conclusion that the defendant himself admitted that he had borrowed a sum of Rs.6,00,000/-, during the year 1995. Further, it is admitted by the defendant that he was paying the monthly interest regularly. The issuance of cheque was denied by the defendant before the Trial Court. However, the

criminal case registered regarding the dishonour of the cheque, was also disposed of, as the original defendant died, during the pendency of the criminal case. However, the admitted facts are that the loan borrowed by the defendant was admitted and payment of interest was also admitted. With reference to re-payment, the Trial Court made a finding that the original defendant Mr.S.S.Chokalingam died on 11.07.2002, and subsequently, the legal heirs were impleaded as parties in the suit. The finding of the Trial Court reveals that the defendant cross-examined the plaintiff in part and subsequently, they have not produced any documents or evidences to establish the case of the defendant. In view of the fact that the defendants have not marked any documents nor examined any witnesses, the Trial Court considered the contentions raised in the written statement and proceeded with the Trial by stating that even before the death of the original defendant, in the written statement, the defendant has admitted that he has borrowed a sum of Rs.6,00,000/- from the plaintiff and further agreed to repay the said principle amount with interest at the rate of 18% per annum. Further, it is averred that the RC of Ambassador Car, which belongs to the defendant, was also kept by the plaintiff. Under these circumstances, the Trial Court verified the correctness of the documents as well as evidences made available before them. Considering the pleadings as well as the evidences, the Trial Court made a finding that both the plaintiff as well as the original defendant were friends and based on the friendship, the defendant borrowed a loan amount of Rs.6,00,000/- from the plaintiff. They were friends for about 5 to 12 years and the defendant has not repaid the loan amount which resulted in institution of civil suit against the defendant. The cheque issued by the defendant was also returned by the Bank as dishonored and with an endorsement "insufficient funds". During the pendency of the suit, the original defendant passed away. Further, considering the fact that the original defendant admittedly borrowed a sum of Rs.6,00,000/- and executed a promissory note, the said pleadings were not disproved by way of any acceptable witnesses or evidences, the Trial Court arrived at a conclusion that the suit is to be decreed in favour of the plaintiff. The Trial Court did not agree to order for interest at the rate of 36% per annum. Contrarily, the rate of 36% was reduced from 36% to 12% interest from the date of institution of suit till the date of passing of the judgment and decree and thereafter, 6% per annum till the date of repayment.

8. The learned counsel for the respondent in the appeal suit made a submission that the Trial Court has committed an error in noting the date of the institution of the original suit before the Trial Court and the suit was instituted on 03.09.1998 and it was erroneously recorded as 05.08.2018. Thus, interest is to be calculated from the date of institution of the original suit on 03.09.1998.

9. On perusal of the entire findings of the Trial Court, this Court is of the opinion that the evidences as well as the documents produced by the plaintiff as well as the defendant were considered properly, more specifically, the defendants have not produced any witnesses or marked documents to establish the case of the defendant. Under those circumstances, the Trial Court passed a judgment and decree directing the defendants to pay a sum of Rs.12,48,000/- along with interest. This Court do not find any perversity or infirmity in respect of findings arrived by the Trial Court and accordingly, the judgment and decree dated 27.12.2015 passed in O.S.No.14249 of 2010 is confirmed and consequently, A.S.No.659 of 2016 stands dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The II Additional City Civil Judge,
Chennai.

2.The Section Officer,
V.R.Section, High Court,
Madras.

+1 cc to Mr.S.Gopi, Advocate,sr.103022

+2 cc's to M/s.N.Gyanchand Jain,advocate,sr.102328.

sai(co)
krd 28/9

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