IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.09.2019

Coram

The Honourable Mr.Justice N.SATHISH KUMAR

C.S.No.135 of 2015

1.M/s. Sidharth Credit and Investment (Chennai) Pvt. Ltd.,
Having its Registered office at
No.2, II Main Road, Vengeswarar Nagar,
Chennai – 600 026 through its Managing Director
Padam Kumar Tatia

2.Padam Kumar Tatia,

3.Praveen Kumar Tatia,

4.Nirmala P Tatia,

5.Pramila P. Tatai, ...Plaintiffs

Vs

S.Ramaswamy ...Defendant

This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules of the High Court of Judicature at Madras read with Order VII Rule 1 of the Code of Civil Procedure, prayed for (a) passing a preliminary decree declaring that the defendant is liable to pay to the plaintiffs a sum of Rs.1,15,00,000/- being the principal amount and a sum of Rs.9,10,35,000/- being the interest thus totaling a sum of Rs.10,25,35,000/- together with subsequent interest at 18% p.a from the date of the plaint to till the date of realization and direct the defendant to pay to the plaintiffs the said sum of Rs.10,25,35,000/- (Ten Crore Twenty Five lakh and Thirty Five Thousand);

(b) If the defendant fails to pay or deposit the amount mentioned in clause (a) supra, within the time stipulate by this Court, then to pass a final decree directing the sale of the property more particularly set out in the schedule herein;

(c) If the proceeds from the sale of the suit property as per the final decree are insufficient to discharge the amount mentioned in the earlier clauses, then to pass a personal decree against the defendant in respect of the amount remaining as a shortfall, after appropriating the sale proceeds towards the liability;

(d) directing the defendant to pay to the plaintiff the costs of this action.

For Plaintiffs : Mr.T.Srinivasaraghavan
for M/s. T.Srinivasaraghavan and Associates

For Defendant : Mr.M.Shanmuga Sundaram
for M/s. Aiyar & Dolia

J U D G M E N T

The suit has been filed for the following reliefs:

(a) passing a preliminary decree declaring that the defendant is liable to pay to the plaintiffs a sum of Rs.1,15,00,000/- being the principal amount and a sum of Rs.9,10,35,000/- being the interest thus totaling a sum of Rs.10,25,35,000/- together with subsequent interest at 18% p.a from the date of the plaint till the date of realization and direct the defendant to pay to the plaintiffs the said sum of Rs.10,25,35,000/- (Ten Crore Twenty Five lakh and Thirty Five Thousand);

(b) If the defendant fails to pay or deposit the amount mentioned in clause (a) supra, within the time stipulated by this Court, then to pass a final decree directing the sale of the property more particularly set out in the schedule herein;

(c) If the proceeds from the sale of the suit property as per the final decree are insufficient to discharge the amount mentioned in the earlier clauses, then to pass a personal decree against the defendant in respect of the amount remaining as a shortfall, after appropriating the sale proceeds towards the liability;

(d) directing the defendant to pay to the plaintiff the costs of this action.

2. The case of the plaintiff is that the 1st plaintiff is a non-banking financial Company. The plaintiffs 2 to 5 are the Directors of the 1st plaintiff Company. The defendant during the month of October 2002, approached the 1st plaintiff and requested for financial assistance for his business. The defendant assured that he would offer suitable mortgage security. The 1st plaintiff lent to the defendant a sum of Rs.5,00,000/- and the defendant executed a simple mortgage on 31.10.2002. The defendant sought further financial assistance from the 1st plaintiff to the tune of Rs.1,10,00,000/- and in this regard, the defendant created a mortgage by deposit of title deeds in favour of the plaintiffs. The defendant deposited his title deeds on 31.10.2002. The amount of Rs.1,10,00,000/- was paid by means of cheques issued by the plaintiff to the defendant. As the defendant failed to pay the said amount the suit has been filed.

3. The learned counsel for the defendant admits the registered simple mortgage for a sum of Rs.5,00,000/-. It is submitted by the learned counsel for the defendant that there was no equitable mortgage for a sum of Rs.1,10,00,000/-.

4. This Court, upon perusal of the pleadings, plaint and written statement framed the following issues:-

> "1. Whether the defendant availed a sum of Rs.5,00,000/- for business purposes and further loan of Rs.1,10,00,000/- from the first plaintiff?
>
> 2. Whether the plaintiffs 2 to 5, who are the Directors of the first plaintiff provided the consideration for the further loan of Rs.1,10,00,000/-
>
> 3. Whether the first plaintiff can maintain the suit, when the plaintiffs 2 to 5 are not parties to the suit transaction?

4. Whether the plaintiffs 2 to 5 can maintain the suit, in absence of there being any cause of action against the defendant?

5. Whether the plaintiffs 2 to 5 can claim mortgage on the property in the absence of there being any documents executed by the defendant?

6. Whether the plaintiffs 2 to 5 are entitled to claim interest in the absence of there being any documents executed by the defendants?

7. Whether the creation of the equitable mortgage by deposit of title deeds is duly evidenced by memorandum and affidavit of the defendant?

8. Whether the equitable mortgage created on 31.10.2002 is required to be registered and for a want of registration the equitable mortgage cannot be looked into?

9. Whether the simple mortgage and equitable mortgage both dated 31.10.2002 are

integral parts of the same loan transaction between the defendant and the 1st plaintiff?

10. Whether the suit is bad for joinder of two separate causes of action?

11.Whether the suit is bad for misjoinder of the plaintiffs 2 to 5?

12. Whether the defendant had agreed to pay interest at 20% p.a. On the further loan of Rs.1.10 crores?; and

13. To what relief is the plaintiff is entitled?"

4. Heard the learned counsel for the plaintiffs and learned counsel appearing for the defendant and perused the materials.

5. The counsel appearing for the plaintiffs mainly contented that there is no dispute on the execution of the registered documents. The plaintiffs pleading is that the defendant had subsequently borrowed a sum of Rs.1,10,00,000/- and created

mortgage by deposit of title deeds as security for the above loan. The entire pleadings in the written statement is nothing but evasive and there is no specific denial in the written statement.

6. The learned counsel further contended that the defendant created equitable mortgage by deposit of title deeds and availed loan pursuant to the same, even though the document may not be registered. It is the contention that in terms of Order VIII Rules 3, 4 and 5 C.P.C and also amendment of Order VIII as applicable to Commercial Courts Act, the evasive denial is deemed to be an admission. It is the further contention that being made an evasive statement, the defendant has not come to the witness box to deny the documents. Hence, he prayed that the suit be decreed the suit. In support of the submission, he has placed reliance on the following judgments:

(i)Deb Dutt Seal Vs Raman Lal Phumra and ors [AIR (1970) SC 659];

(ii) United Bank of India Ltd., Vs M/s. Lekharam Sonaram & Co and Ors, [AIR

(1965) SC 1591] and

(iii)R.Thirummaiyyan Vs SMT Chits and Finance Corporation [(2017) 5 CTC 633].

7. The counsel appearing for the defendant submitted that in the plaint it is stated that the first plaintiff advanced a sum of Rs.1,10,00,000/-, whereas in the evidence it is stated that the loan consideration was contributed by all the plaintiffs. Therefore, the cause of action cannot be joined together. Further, it is contented that the documents said to be mortgaged cannot be used in evidence, since it is not registered. There were no documents to show that the consideration is passed. Hence, his contention is that when the document is not registered, the mortgage cannot be filed as a document. Hence, it is the submission that the suit is liable to be dismissed. Further, it is the contention that there is huge delay in filing the suit and there was no rate of interest mentioned between the parties and interest is also evasive. In support of his submission he relied on the following judgments:

(i)Central Bank of India Vs. Ravindra and Ors [(2002) 1 SCC 367];

(ii) State of Haryana and Others Vs. Navir Singh and anr [(2014) 1 SCC 105] and

(iii) Veeramachineni Gangadhara Rao Vs. The Andhra Bank Ltd., and ors. [(1971) 1 SCC 874].

8. P.W.1, who is the Managing Director of the first plaintiff's Company was examined as P.W.1 and Exs.P1 to P21 were marked.

S.No.	*Date*	*Description of documents*	*Exhibit*
1.	20.10.2014	The Original Board Resolution – Extract & Authorisation Letter.	P-1
2.	01.02.2005	The copy of certification of Registration.	P-2
3.	27.05.1997	The copy of certificate of Incorporation of Sidharth Credit & Investments (Chennai) Ltd.,	P-3
4.	16.04.2004	The copy of fresh certificate of incorporation of consequent on change of name.	P-4
5.	12.05.1997	The copy of memorandum and articles of association.	P-5
6.	31.10.2002	The original Registered Mortgage Deed	P-6
7.	31.10.2002	The original memorandum of deposit of title	P-7

S.No.	***Date***	***Description of documents***	***Exhibit***
		deeds	
8.	31.10.2002	The original affidavit of the defendant	P-8
9.	15.04.2003	The original letter by defendant to first plaintiff	P-9
10.	16.04.2003	The original letter from Canara Bank to first plaintiff	P-10
11.	05.05.2003	The office copy of reply letter by defendant to Canara Bank	P-11
12.	27.03.1962	The original sale deed Doc. No.1615/1962	P-12
13.	22.11.1962	The original sale deed Doc. No.3614/1962	P-13
14.	22.081984	The original sale deed Doc. No.1143/1984	P-14
15.	20.10.2014	The certificate copy of encumbrance certificate	P-15
16.	-	The pro note	P-16
17.	-	The pro note	P-17
18.	-	The pro note	P-18
19.	-	The pro note	P-19
20.	-	The pro note	P-20
21.	-	The pro note	P-21

No oral and documentary evidence has been adduced on the side of the defendant. It is the specific case of the plaintiffs that the first plaintiff is a non-banking financial Company. The plaintiffs 2 to 5 are the Directors of the 1st plaintiff's Company. The defendant availed a loan of Rs.5,00,000/- on 31.10.2002 and executed simple mortgage in respect of the said loan. Subsequently, he has also availed another sum of Rs.1,10,00,000/- on the same day and with an intent to create security for the above loan amount, he has also deposited title deeds. It is the further contention of the plaintiffs that the above payments are made through cheques which is also clearly set out on para 11 of the plaint. It is the further contention that the defendant by letter dated 15.04.2003, acknowledged that the defendant is liable to pay sum to the tune of Rs.1,15,00,000/- to the 1st plaintiff Company. P.W.1 also clearly stated in the evidence that the loan has been given collectively by the plaintiffs.

9. On perusal of the written statement, except evasive denial of the specific pleadings made in the plaint, no specific denial has been made in the entire written statement. The plaintiff in para 11 of the plaint has stated that a sum of Rs.1,10,00,000/- was paid to the defendant through cheques and the same is not denied by the defendant.

10. It is the contention of the learned counsel for the The another contention of the learned counsel for the defendant is that all the plaintiff cannot be get a decree since subsequently pleaded in the plaint the manner in which evidence also lent in this regard such pleadings not disputed either in the written statement or in the evidence of P.W.1 when the directors of the Company advanced money in the name of the Company merely the directors also made a parties as the plaintiff. It cannot be said that the suit is not maintainable.

11. Since all the issues are interconnected, they can be answered together.

12. The defendant has not disputed the registered simple mortgage deed dated 31.10.2002, which has been marked as Ex.P6. Since there is no dispute with regard to the execution of Ex.P6, registered mortgage deed, it is clear that the defendant has agreed to pay interest at the rate of 20% per annum.

13. Ex.P7 is the original memorandum of deposit of title deed dated 31.10.2002, which has been filed to show that the defendant deposited title deeds of the property with the intent to create a security for the amounts due by the defendant to the plaintiff to the tune of Rs.1,15,00,000/-. Ex.P7 is just a letter to show that the defendant has deposited title deeds and it does not contain any bargain and it does not contain any terms of any ingredient of mortgage and does not even speak about the interest, etc.

14. Ex.P8 is an affidavit filed by the defendant admitting that the two mortgages are in force. Ex.P9 is the letter dated 15.04.2003, wherein the defendant admitted that he is liable to pay a sum to the tune of Rs.1,15,00,000/-. Exs.P12 to P15 are the title deeds of the property and the encumbrance certificate. The plaintiffs have also filed Exs.P16 to P21 to show that the promissory notes was executed by the defendant. The memorandum of deposit of the deeds does not have any date of repayment; nature of mortgage; subject matter of mortgage; and, therefore, the same cannot be construed as a mortgage done,

which has to be registered under Section 17 of the Registration Act (1908). Since the Memorandum of deposit of title deeds does not specify any rate of interest it only goes to show that the deposit is made in pursuant to the earlier transaction of the loan. Such being the position, this Court is of the view that Ex.P7 does not require registration. This view is fortified by the decision of the Hon'ble Supreme Court in ***Deb Dutt Seal Vs Raman Lal Phumra and others, (AIR 1970 SC 659); United Bank of India Ltd., Vs M/s. Lekharam Sonaram & Co and Others, (AIR 1965 SC 1591).*** This Court in judgment reported in ***R.Thirummaiyyan Vs SMT Chits and Finance Corporation, (2017 5 CTC 633)*** held that a document, which evidences deposit of title deed with an intention to create mortgage, does not require registration under Section 17 of the Registration Act.

15. The learned counsel appearing for the defendant has relied upon the judgment reported in ***Veeramachineni Gangadhara Rao Vs. The Andhra Bank Ltd., and Others, 1971 1 SCC 874,*** which clearly held that, if the document is

considered as a mere memorandum evidencing the deposit of title deeds in pursuance of an earlier contract, then such document is admissible. Similarly, the defendant has also relied upon the judgment reported in ***State of Haryana*** and ***Others Vs. Navir Singh and another, (2014) 1 Supreme Court Cases 105,*** wherein it is held that the memorandum prepared over the deposit of title deed does not require registration.

16. At this juncture, it is to be noted that the specific stand taken by the plaintiffs that the amount was lent through various cheques, is not denied in the written statement. It is relevant to refer to Order VIII Rule 3, 4 and 5 C.P.C and also amended Order under Commercial Act.

> *"Rule 3 Order VIII of Code of Civil Procedure 1908 "Denial to be specific" : It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.*

Rule 4 Order VIII of Code of Civil Procedure 1908 "Evasive denial" : Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

Rule 5 Order VIII of code of Civil Procedure 1908 "Specific denial" : (1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the Court may in it discretion require any fact so admitted to be proved otherwise than by such admission.

(2) Where the defendant has not filed a

pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule(2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced."

17. Similarly, the amended Order VIII Rule 3A as applicable to the Commercial Court Act also makes it clear that every allegation if not denied in the manner provided in the Rule 3A of amended Order VIII shall be considered to be an admission. A conjoint reading of the Order VIII Rules 3, 4 and 5 and amended Order VIII Rule 3A as applicable to the Commercial Courts Act makes it clear that if the facts pleaded in the plaint are not

specifically denied in the written statement, they shall be deemed to the admission.

18. In the case on hand, the defendant took an evasive stand and has not even entered into the box to withstand the cross examination. Further, the letter dated 15.04.2003, which acknowledged the liability of the defendant also remains unchallenged. All these facts clearly indicate that the defendant did not establish his case. The plaintiffs have proved their claim. Accordingly, all the issues are answered in favour of the plaintiffs as against the defendant.

19. It is to be noted that the evidence would go to show that the while depositing title deed there was an agreement to pay 20% interest. Even though 20% interest was agreed in the registered simple mortgage, the fact remains that the despite non payment on the part of the defendant, the plaintiff has not taken any steps immediately, whereas the suit has been filed in the year 2015. In view of the above, this Court is inclined to allow the rate of interest

at 20% on the principal amount for a sum of Rs.5,00,000/- from 31.01.2002 till the date of realisation. However, in respect of equitable mortgage, since there is no specific interest agreed to between the parties, this Court restricts interest at 7% for the sum of Rs.1,10,00,000/-from 30.01.2002 till the date of realisation. The defendant shall pay the above said amounts with interest as stated, within a period of three months failing which the plaintiffs can take steps to get final decree for the sale of property. Accordingly, the preliminary decree is passed with costs.

27.09.2019

Index : Yes/No

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N.SATHISH KUMAR, J.,

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