A.No.4204 of 2019
in
C.S.No.413 of 2018

R.SUBRAMANIAN.J.,

This application has been filed in the nature of an appeal against the order of the learned Master made in Application No.8532 of 2018 in C.S.No.413 of 2018 rejecting the application for leave to defend filed by the defendant in the said suit.

2.C.S.No.413 of 2018 was filed by the plaintiff seeking recovery of a sum of Rs.2,27,63,585/- (Rupees Two Crores Twenty Seven Lakhs Sixty Three Thousand Five Hundred and Eighty Five only) with interest at **24%** per annum from the date of plaint till the date of realization in respect of a sum of Rs.1,00,00,000/-(Rupees One Crore only), and interest at **36%** per annum from the date of plaint to till the date of realization in respect of a sum of Rs.82,00,000/-(Rupees Eighty Two Lakhs only).

3.According to the plaintiff, the defendant Trust borrowed the said sums of Rs.1,00,00,000/-(Rupees One Crore) and Rs.82,00,000/-(Rupees Eighty Two Lakhs only) agreeing to pay interest at the above rates. Transfers were effected through RTGS to the bank account of the Trust from the accounts of the plaintiff. It is also claimed that the defendant has agreed to pay interest at **24%** per annum and **36%** per annum compounded on a monthly basis.

4.The said suit was sought to be resisted by the defendant, claiming that the plaintiff's husband was the Charted Accountant of the defendant Trust and he created the documents by influencing the then Managing Trustee, Mr.A.Krishnaswamy. It is further avered that after the transfer of monies to the accounts of the defendant's Trust, the plaintiff's husband, through his assistant Mr.S.Santhana krishnan, who also figures as witness to the promissory notes, has withdrawn a sum of Rs.25,00,000/- using the self cheque issued by the Managing Trustee, on 12.08.2015 and he further withdrew a sum of Rs.9.5 lakhs each on 14.08.2018 and 27.08.2018 and 8.5 lakhs on 28.08.2015. Therefore, according to the defendant, though the plaintiff transfered the money to the accounts of the defendant, those monies were withdrawn by using the self cheque given by Managing Trustee through Mr.Santhana krishnan, who was assisting both the plaintiff as well as the defendant. The very withdrawal of these monies using self cheques by Mr.Santhana krishnan is suspicious and according to the defendant it would show that the plaintiff through her husband, had taken back huge sums of money which was transfered to the account of the Trust by the plaintiff. On these contentions, the defendant sought for leave to defend the suit.

5.The learned Master rejected the defence and dismissed the application for grant of leave on the ground that the moneys have been credited by way of RTGS to the account of the defendant from that of the plaintiff and defendant in its accounts had shown the interest payments made to the plaintiff. Aggrieved by the said order, the defendant is on appeal.

6.Heard Mr.P.B.Sampath Kumar, learned Counsel appearing for the defendant/applicant and Mr.K.V.Babu, learned Counsel appearing for the respondent/plaintiff.

7.From the facts projected, it is clear that there is something more to the transaction than what is borne out by records. The learned Master has been swayed by the records that were admittedly prepared by the husband of the plaintiff, who is the Charted Accountant of the defendant. In fact, Mr.Santhana Krishnan has signed a declaration that the money for a sum of Rs.25,00,000/- based on a self cheque on 13.08.2015 is being withdrawn to pay salaries. It is common knowledge that salaries in these days are not paid by cash in any of the institutions. Moreover, all these cheques dated 14.08.2018, 27.08.2018 and 28.08.2015.have been transacted through Mr.Santhana krishnan.

8.Mr.K.V.Babu, however, contended that the Trust had shown the plaintiff as a creditor in the balance sheet for the year ended on 31.03.2015 and it has also deducted tax at source on the interest paid and issued TDS certificates. Relying upon the balance sheet for the period from 01.04.2016 to

31.12.2016 it is contended that the suit transaction is true and the defence projected is improbable. Admittedly the withdrawals made by Mr.Santhana Krishnan are not attributed to the plaintiff in the accounts. Deduction of TDS was during the period when the plaintiffs husband was the Charted Accountant of the defendant. The claim of interest is at 24% per annum and 36% per annum compounded on a monthly basis, in my opinion it is definitely a "Meter Vatti or Kandhu Vatti or Speed Vatti". I find that the defense projected is plausible and the defendant should be granted leave to defend the suit and therefore the order of the learned Master refusing leave to defend is, set aside. None of the observations, made in this order will affect the case of the parties at trial.

9.In view of the above Application No.4204 of 2019 is allowed and the order dated 18.12.2018 passed by the learned Master in Application No.5832 of 2018 is set aside.

29.07.2019
(1/3)

jas

R.SUBRAMANIAN.J.,

jas

A.No.4204 of 2019
in
C.S.No.413 of 2018

29.07.2019