IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.05.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.Nos.18344 and 18345 of 2018
and Crl.MP.Nos. 9637 to 9640 & 17536, 17541 of 2018

1. M/s. Magic Frames,
Partnership Firm,
Reg. by its Partner R.Sarath Kumar,
Having Office at
No.14, Jayammal Street,
Teynampet, Chennai - 600 018.

2. R.Sarath Kumar
3. R.Radhikaa Sarath Kumar
4. Listin Stephen ... Petitioners in both petitions

Vs.

M/s. Radiance Media P. Ltd.,
Rep. by its authorised Signatory,
S.Ragavendran
Having registered Office at
Khivraj Complex-II, 6th Floor,
480, Anna Salai,
Nandanam,
Chennai - 600 035. ... Respondent in both petitions.

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C. praying to call for the records in C.C.Nos.3635 and 3636 of 2018, respectively, on the file of the Fast Track Court No.III (Metropolitan Level) Saidapet, Chennai and quash the same.

For Petitioners in both petitions : Mr. Ravi For M/s.Rugan and Arya

For Respondent in Crl.O.P.18344 of 2018: Mr.N.L.Rajah,Senior Counsel For Mr.S.Ashok Kumar

For Respondent in Crl.O.P.18345 of 2018: Mr.Abdu Kumar Rajarathinam For Mr.S.Ashok Kumar

C O M M O N   O R D E R

These petitions have been filed to quash the proceedings in C.C.Nos.3635 and 3636 of 2018, respectively, on the file of the Fast Track Court No.III (Metropolitan Level) Saidapet, Chennai.

2. The learned counsel appearing for the petitioners submitted that the petitioners are arraigned as A1 to A4 in the proceedings initiated by the respondent for the offences punishable under Section 138 r/w 141 and 142 of Negotiable Instruments Act. He further submitted that the respondent is engaged in the business of film financing and under the loan agreement dated 05.11.2014, the first accused firm borrowed a sum of Rs.1,50,00,000/- from the respondent. At the time of borrowal of loan the first accused company issued two cheques each for a sum of Rs.75 lakhs drawn on South Indian Bank Ltd., Valasaravakkam, for security purpose. Thereafter, the second petitioner obtained a hand loan of Rs.50,00,000/- from the respondent and issued five cheques each for a sum of Rs.10 lakhs and all the cheques, which are undated, were drawn on Tamil Nadu Mercantile Bank, Thiruvanmiyur. He further submitted that without any instructions from the petitioners, the respondent filled up all the cheques as if, those were issued on 06.03.2017 and presented the same for collection on 09.03.2017.

2.1. He further submitted that during the third week of January, 2016, the second petitioner had taken over the entire liability of the first petitioner firm and agreed to secure the same with three immovable properties. To that extent, the second petitioner also executed a deed being a "Mortgage by Conditional sale" on 21.01.2016, and registered the same as document No.207 of 2016. As per the Mortgage by conditional sale deed, the second petitioner had transfered the title of his three immovable properties in favour of the respondent for total consideration of Rs.3,39,29,960/-. In fact the value of the said immovable properties are more than Rs.4½ crores, on the date of transfer of properties. The second petitioner was granted liberty to pay the said sum together with further interest at the rate of 18% per annum on or before 18.06.2018 and have the transfer cancelled and have the property re-transferred to the second petitioner. This arrangement is as contemplated under Section 58(c) of Transfer of Property Act, as mortgaged by conditional sale.

2.2. He further submitted that the deed of mortgage by conditional sale dated 21.01.2016 claimed to be due by the petitioners were absorbed and treated as part of the sale consideration for the sale and as such no sum is due or payable by the petitioners to the respondent. Therefore, the cheques were given by the petitioners as security and the entire loan has got discharged fully. It is also evident from the suit filed by the respondent in C.S.No.393 of 2017 for recovery of money to the tune of Rs.2 crores in which interim injunction were granted as against which the petitioners preferred Original Second Appeals in O.S.A.Nos. 184 to 186 of 2017, in which, a Division Bench of this Court permitted to set aside the guarantee pursuant to the furnishing of fresh bank guarantee to the tune of Rs. 2 cores and the suit is pending. Therefore, there is no legally enforceable debt between the petitioners and the respondent. All the cheques were given as security at the time of executing the loan agreement. Further those cheques were not issued by the petitioners for any debt and the entire complaints are clear abuse of process of Court and prayed for quashment of the complaint.

2.3. The learned counsel appearing for the petitioners also relied upon the judgments as follows :-

i) (2013) 8 SCC 71 - Aparna A Shah Vs. Sheth Developer Pvt. Ltd.,

ii) (2011) 3 SCC 350 - Harshendra Kumar Vs. Rebatilata Koley

iii) (1994) 1 SCC 1 - S.P.Chengalvarayan Naidu Vs. Jagannath

iv) (2010) 4 SCC 728 - Oswal Facts and Oils Ltd., Vs. Additional Commissioners

v) (2012) 10 SCC 303 - Gian Singh Vs. State of Punjab

vi) (2018) 1 SCC 560 - Meters and instruments Pvt. Ltd., Vs. Kanchan Metha

vii) AIR 1917 Nag 57 - Anandrao Vs. Tukaram & ors.

viii) AIR 1920 Nag 183 - Bhojraj & ano. Vs. Dukala & ano.

ix) AIR 1939 All 260 (DB) - Bishan Datt Singh & ano Vs. Mathura Prasad & ano.

3. Per contra, the learned counsel appearing for the respondent/ complainant submitted that the petitioners approached the respondent/ complainant on various dates and obtained loan and also executed documents for the same. All the petitioners are actively involved in the day to day affairs of the partnership firms and have also signed in the documents for obtaining loan. As on 06.03.2017, there was a due by the petitioners along with interest for a sum of Rs.3,76,68,164/-. In discharge of the part liability, the petitioners issued two cheques each for sum of Rs.75 lakhs drawn on South Indian Bank Limited, Valasaravakkam Branch, Chennai. When the cheques were presented for collection, the same were returned as dishonoured. Thereafter the respondent issued statutory notice and initiated proceedings under the Negotiable Instruments Act as against the petitioners.

3.1. He further submitted that all the grounds raised in these quash petitions by the petitioners are also raised in the application in A.Nos.2906, 2907, 2909 and 2910 of 2017 in C.S.No.393 of 2017, on the file of this Court, in the suit filed by the respondent for recovery of money. All the applications were rejected by this Court by an order dated 17.07.2017. The main ground raised by the petitioners viz., that by the execution of mortgage by conditional sale dated 21.01.2016, their liability under the dishonoured cheques stands discharged, was rejected by this Court. In fact, the said order was challenged by the petitioners in O.S.A.Nos.184 to 186 of 2017 and the same was upheld and in respect of injunction alone modified to the effect that the petitioners shall execute bank guarantee to the tune of Rs.2 crores instead of alienating the property. Therefore the present petitions are clear abuse of process of Court and prayed for dismissal of these quash petitions.

4. Heard Mr.Ravi, learned counsel appearing for the petitioners, Mr. N.L.Rajah, learned Senior Counsel and Mr. Abdu Kumar Rajarathinam, learned counsel appearing for the respondent.

5. The petitioners are arraigned as A1 to A4 in C.C.Nos.3635 & 3636 of 2018. The crux of the complaint is that the first petitioner is a partnership firm and the petitioners 2 to 4 are partners of the first accused firm. They obtained loan from the respondent on execution of documents. As on 06.03.2017, there was a due by the petitioners to the tune of Rs.3,76,68,164/-. In order to discharge the above liability, the first accused issued two cheques each for a sum of Rs.75 lakhs drawn on South Indian Bank Limited, Valasaravakkam Branch, Chennai, signed by the second and fourth petitioners herein. The cheques were presented for collection and the same were returned for the reason that "Payment stopped by the drawer". The respondent caused statutory notice and thereafter initiated proceedings under Section 138 r/w 141 and 142 of Negotiable Instruments Act.

6. Admittedly, the petitioners borrowed loan on execution of so many documents. According to the petitioners, at the time of borrwal of the loan, they issued those un-dated cheques as security. Thereafter the second petitioner executed a deed of Mortgage by conditional sale and there was no liability for the petitioners to issue any cheques to the respondents, as such those cheques were not issued by the petitioners to discharge their liability and on the date of presentation of the cheques, there was no legally enforceable debt between the petitioners and the respondent. It is seen that the petitioners executed mortgage dated 21.01.2016 and the said deed was not acted upon and even thereafter, the respondent filed civil suit for

recovery of money in C.S.No.393 of 2017, in which the petitioners filed application and raised the same ground. It is seen from the common order passed by this Court in O.A.No.540 of 2017 and A.Nos. 2901, 2906, 2907, 2909 & 2910 of 2017 in C.S.No.393 of 2017 that:-

> "33. As regards the rejection of the plaint is concerned, the learned counsel would submit that there was no cause of action for laying the suit and the same is barred under Section 5 of the Arbitration and Conciliation Act since the case of the plaintiff was based on the cheques issued under the earlier loan agreement dated 05.11.2014, wherein, there was a provision for referring the dispute for arbitration (Clause 12.8) of the loan agreement. According to the learned counsel for the respondents/defendants, in the counter, they have clearly stated that the cheques were given in the 2014 itself, which fact was also not disputed by the applicant/plaintiff. Moreover, upon execution of the deed of mortgage, the earlier loan stood automatically discharged and as such, the cause of action based on earlier loan or cheques given for such loan, does not given any cause of action for laying the suit. In support of his contention, the learned counsel would rely upon the decision reported in "AIR 1959 SC 1362 (The Union of India Veraus Krishorilal Gupta and otrs)"
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> 43. In regard to the submission of the learned counsel for the respondents/defendants that there is no enforceable debt in view of the subsequent mortgage deed dated 21.01.2016 is concerned, it is to be noted that de hors the provisions of the deed of mortgage, the cheques which were issued by the respondents/defendants when presented in the competent bank, came to be dishonoured at the instance of the drawer of the cheques, namely, the respondents/defendants herein. Such action on the part of the respondents/ defendants gives right of monetary claim by the applicant/plaintiff and the suit is therefore, rightly laid on the basis of dishonoured instrument under

Order VII Rule 1 of O.S.Rules. In the said circumstances, it cannot be construed that the parties have to resort to arbitration clause as provided for in the original loan agreement dated 05.11.2014. Once the cheques given by a person were found to be dishonoured, a prima facie conclusion would be that there is admission, unless, the same is rebutted categorically by the person who issued the cheques. In the instant case, it is admitted fact that the loan has been obtained by the respondents/defendants and whether the same has be completely discharged by subsequently entering into mortgage agreement, is the matter of trial and this Court is presently called upon to decide whether there is any prima face material for allowing or disallowing the applications. In the said circumstances, this Court once again is of the firm view that there appears to be prima facie case set up by the applicant/plaintiff for grant of interim order of injunction and also the fact that by such order, no prejudice would likely to cause even remotely to the respondents/defendants.

44. As regards the contention that whether the partnership firm is also liable for discharge of the liability is concerned, on the perusal of the documents, memorandum of undertaking, deed of mortgage and the series of the documents etc., would prima facie disclose that these documents have been executed by the 2nd respondent/2nd defendant on his behalf and on behalf of the partnership firm vis-a-vis the partners concerned. Since it is only a prima facie finding without delving too deed into the disputed questions of fact, which is enough for grant of interim protection to the applicant/plaintiff pending disposal of the main suit. In fact, the citation relied upon by the learned senior appearing for the applicant/plaintiff on the issue of binding nature on the issue of whether the partnership is also liable along with partners, this Court finda considerable force in the contention and also would rely

upon the same for the sake of arriving at a prima facie conclusion that the partnership is also liable towards discharge of debt which is payable to the applicant/plaintiff."

7. As against the said order, the petitioners filed O.S.A.Nos. 184 to 186 of 2017, in which the Division Bench of this Court on 08.10.2017, passed the following orders :-

"3. After much argument, learned counsel for the parties are agreed that the impugned judgement and order dated 17.07.2017,passed by the learned Single Judge could be modified, as indicated hereafter:

(i)The appellants will furnish an undertaking to this Court in the form of an affidavit stating therein that the two properties referred to in the schedule of properties, i.e., Item No.I and III, appended to the mortgage deed dated 21.01.2016, shall not be transferred, alienated or encumbered during the pendency of C.S.No.393 of 2017 pending adjudication in this Court.

(ii)In so far as the properties, morefully described, in Schedule A and B appended to O.A.No.540 of 2017 in C.S.No.393 of2017, belonging to appellant No.3, i.e., Ms.Radhika Sarath Kumar are concerned, they shall not be transferred, alienatedor encumbered without the leave of the Court. Appellant No.3shall approach the Court, with prior notice to the respondent/plaintiff, if, she needs to deal with the aforementioned properties in any manner whatsoever. An undertaking to that effect in the form of an affidavit will be furnished by appellant No.3, to this Court.

(iii).The injunction granted vide order dated 17.07.2017, qua the properties of appellant No.3 referred to in clause (ii) above, shall stand modified to the aforesaid extent.

3.1. In view of the agreed directions issued herein above, we are of the view that the cost in the sum of Rs.2,00,000/- (Rupees two lakhs only), imposed on the appellants, via the impugned judgement and order dated 17.07.2017, needs to be set aside. It is ordered accordingly.

3.2. Furthermore, in view of what is stated herein above, the stay granted on the issuance of summons in C.S.No.393 of 2017 shall, accordingly, stand vacated."

Therefore, the point raised by the learned counsel for the petitioners about the deed of mortgage on conditional sale was negatived by this Court. That apart, the grounds raised by the petitioners are not at all helpful in the case on hand, since once cheques were issued by the petitioners and signature thereon are admitted, the presumption of legally enforceable debt in favour of the holder of the cheque seizes. It is for the person to rebut the said presumption, though the accused need not relay upon the material by the complainant. Further mere statement of the accused is not sufficient to rebut the said presumption.

8. Further the learned counsel for the petitioners submitted that the alleged cheques were given as security and those were not issued for any legally enforceable debt. Admittedly, the petitioners borrowed a loan from the respondent. At the time of borrowal of the loan, according to the petitioners alleged cheques were given as security. As per the loan agreement, the redemption of documents assumes importance when the repayment of the loan advance on the repayment falls due. It is also undisputed that the date of loan was prior to the date of cheque. Once the loan was disbursed, the installments falling due on the date of cheques as per the agreement, dishonor of the said cheque would fall under Section 138 of Negotiable Instruments Act. The cheque undoubtly represented the outstanding liability.

9. The crux of the question to determine is that the application of the Negotiable Instruments Act is whether the cheques represents discharged of an accepted enforceable debt or whether it represents advance payment which is a substantial debt or liability. In the case on hand, there is enforceable debt between the petitioners and the respondent towards the borrowal of loan. It is also evident from the deed of Mortgage and the findings of this Court rendered in the applications filed by the petitioners in C.S.No.393 of 2017. Therefore, the contents raised by the learned counsel appearing for the petitioners to quash the proceedings are rejected. Further the judgments relied by the learned counsel appearing for the petitioners are no way helpful to the case of the petitioners. Admittedly the second and fourth petitioners are signatory to the cheques issued on behalf of the first accused firm and third petitioner is also a partner of the first accused firm. All the

partners are actively involved in the day to day activities of the first accused firm and all are liable to be prosecuted under Section 138 r/w 141 and 142 of Negotiable Instruments Act. This Court finds no merits in the quash petitions and they are liable to be dismissed.

10. Accordingly, both the Criminal Original Petitions are dismissed and the trial Court viz., the Fast Track Court No.III (Metropolitan Level) Saidapet, Chennai is directed to complete the trial proceedings in C.C.Nos.3635 and 3636 of 2018, within a period of six months from the date of the receipt of a copy of this Order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar
//True Copy//

Sub Assistant Registrar

rts
To

1. The Metropolitan Magistrate,
Fast Track Court No.III
(Metropolitan Level) Saidapet,
Chennai.

+2cc to Mr.S.Ashok kumar, Advocate, S.R.No.43390
+2cc to Mr.Rugan & Arya, Advocate, S.R.No.43523

CRL.O.P.Nos.18344 and 18345 of 2018
and Crl.MP.Nos. 9637 to 9640
& 17536, 17541 of 2018

RSV(CO)
vum (24/05/2019)