

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.07.2019

PRONOUNCED ON : 05.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.162 of 2016

Anoopchand Chordia ... Appellant

Vs.

T.V.Prakasam ... Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 01.04.2015 passed in A.S.No.226 of 2012 on the file of the V Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 14.09.2011 passed in O.S.No.1348 of 2009 on the file of the XII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.N.Nagu Sah

For Respondent : No appearance/Set exparte
Vide order dated 31.07.2019

Challenge in this second appeal is made to the Judgement and Decree dated 01.04.2015 passed in A.S.No.226 of 2012 on the file of the V Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 14.09.2011 passed in O.S.No.1348 of 2009 on the file of the XII Assistant Judge, City Civil Court, Chennai.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.Suit for recovery of money.

4.Briefly stated, according to the plaintiff, the defendant had received a sum of Rs.1,00,000/- from him by way of a cheque dated 30.09.2004 bearing cheque No.068376 drawn on Punjab National Bank and in evidence thereof, executed a promissory

note in favour of the plaintiff promising to repay the borrowed sum with interest at 15% per annum and towards the abovesaid borrowal, he had paid interest up to the period 31.03.2006 and the last payment by way of a cheque bearing No.716141 dated 21.03.2006 drawn on Dena bank for Rs.7,500/- and failed to pay the entire principal amount and subsequent interest and accordingly, the defendant is liable to pay the suit sum representing the principal sum and interest and despite the issuance of notice, as the defendant had failed to pay the amount, according to the plaintiff, he has been necessitated to institute the suit against the defendant for appropriate reliefs.

5.The defendant resisted the plaintiff's suit contending that he had not executed the promissory note in favour of the plaintiff in respect of the borrowal of Rs.1,00,000/- from the plaintiff by way of cheque as alleged in the plaint nor paid any sum towards interest on the abovesaid alleged borrowal by way of a cheque for a sum of Rs.7,500/- dated 21.03.2006 as put forth in the plaint and according to the defendant, he is not liable to pay the suit sum as claimed in the plaint and it is stated that the defendant is carrying on tyre business and the plaintiff used to have transactions with the defendant qua the abovesaid business and there are mutual payments and repayments between the plaintiff and the defendant with reference to the same and in tune with the same, the plaintiff had paid a sum of Rs.1,00,000/- by way of Cheque dated 30.09.2004 in respect of the amount due from him in connection with the abovesaid tyre business dealings and the same does not represent any loan transaction between the parties as claimed by the plaintiff and similarly, the payment of Rs.7,500/- made by the defendant through the cheque dated 21.03.2006 was also only in respect of the abovesaid business transactions and not in support of the alleged suit loan transaction and in any event, according to the defendant, the suit laid by the plaintiff is barred by limitation and the defendant had not acknowledged his liability to pay the suit amount as put forth in the plaint and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PW1 was examined and Exs.A1 to A6 were marked. On the side of the defendant, no oral and documentary evidence has been adduced.

7.On a consideration of the materials available on record, the courts below were pleased to decree the suit in favour of the plaintiff as prayed for. Impugning the same, the present second appeal has been preferred.

8.The suit has come to be laid by the plaintiff based on the promissory note dated 30.09.2004 marked as Ex.A1. According to the plaintiff, the abovesaid promissory note Ex.A1 has been

executed by the defendant in his favour, in evidence of the borrowal of a sum of Rs.1,00,000/- from him vide cheque dated 30.09.2004 bearing number 068376. On a reading of the promissory note, the same contains and refers to the passing of consideration thereunder only by way of the abovesaid cheque and also when the plaintiff has tendered evidence with reference to the same in a clear manner, accordingly, it is found that the Courts below had rightly upheld the case projected by the plaintiff based on the promissory note Ex.A1. As determined by the Courts below, it has not been pleaded by the defendant that the suit promissory note is a fabricated instrument. He would only state that he had not borrowed the amount from the plaintiff as loan and executed the suit promissory note, however, the pleas put forth in the written statement by the defendant would go to show that he had admitted the receipt of a sum of Rs.1,00,000/- from the plaintiff by way of the cheque dated 30.09.2004 bearing No.068376 and the same could also be gathered from the bank certificate marked by the plaintiff as Ex.A2. As abovenoted, the recitals are found in Ex.A1 promissory note that the amount mentioned therein had been passed by the plaintiff to the defendant only by way of the cheque in question. Similarly, the defendant has admitted the payment of Rs.7,500/- to the plaintiff vide cheque dated 31.03.2006 bearing No.716141 and the same has also been sustained by the plaintiff by marking the pass book as Ex.A6. Now, according to the plaintiff, the abovesaid sum paid by the defendant represents the interest amount due on the loan received by the defendant under Ex.A1 promissory note. Furthermore, the plaintiff has also issued the pre suit notice claiming the suit amount and the same has been marked as Ex.A3. No doubt, the defendant has sent the reply to the same marked as Ex.A4 and the rejoinder has also been issued by the plaintiff marked as Ex.A5.

9.As could be seen from the abovesaid set of facts, the defendant has not disputed the receipt of a sum of Rs.1,00,000/- from the plaintiff vide the cheque dated 30.09.2004 as well as not disputed the payment of Rs.7,500/- to the plaintiff vide the cheque dated 21.03.2006. All that, he would state that he had been engaged in tyre business and the plaintiff was having transactions with him qua the same and accordingly, there had been payments and repayments of amount between the parties in connection with the said business transactions and only towards the same, according to the defendant, he had received a sum of Rs.1,00,000/- from the plaintiff and also paid Rs.7,500/- to the plaintiff by way of the cheques. However, in the reply notice sent by the defendant marked as Ex.A4, there is no reference about the amount having been received by the defendant by way of the business transaction. In addition to that, when according to the plaintiff, the amount of Rs.1,00,000/- has been paid only

towards the loan and only with reference to the same, the defendant has executed the suit promissory note and further, according to the plaintiff, the amount of Rs.7,500/- paid by the defendant represents only the interest amount due on the loan in issue and also has tendered evidence in a convincing manner, despite the abovesaid position, the defendant has not endeavoured to enter into the witness box and depose in support of his defence version that the abovesaid payment and repayment of the amounts between the parties are only in connection with the tyre business. When the plaintiff by way of his evidence as well as the documents projected by him had without any doubt discharged his initial burden as to the passing of the amount to the defendant only as a loan and also the execution of the promissory note by the defendant in evidence thereof and in such view of the matter, the defendant should have adduced the materials to show that the abovesaid amount exchanged between the parties represents only the sums qua the business dealings as put forth by him and when with reference to the same, there is no evidence at all on the part of the defendant, particularly, rebutting the evidence adduced by the plaintiff as abovenoted, in such view of the matter, the Courts below are found to be wholly justified in upholding the plaintiff's case.

10.As regards the point of limitation, considering the acknowledgement of liability on the part of the defendant by way of the payment of Rs.7,500/- vide cheque dated 21.03.2006 and the suit having been laid by the plaintiff within three years, it is clear that the suit laid by the plaintiff is not barred by limitation as determined by the Courts below.

11.In the light of the above discussions, it is clear that the Courts below had properly assessed and analysed the materials placed on record and rightly held that the transaction involved in the matter represents only the loan transaction between the parties as put forth by the plaintiff and accordingly, the plaintiff having established the case projected by him in a clear and acceptable manner and the defendant having failed to substantiate his version as put forth in the written statement and when the suit laid by the plaintiff is also found to be within the time allowed by law, in all, it is seen that the courts below are totally justified in acceding to the plaintiff's case and the reasonings and conclusions of the courts below for upholding the plaintiff's case not suffering from any perversity or irrationality, accordingly, they do not warrant any interference.

For the reasons aforesated, no substantial question of law is involved in the second appeal. Resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The V Additional Judge,
City Civil Court, Chennai.
 - 2.The XII Assistant Judge,
City Civil Court, Chennai.
 - 3.The Section Officer,
V.R.Section, High Court, Madras.
- +1cc to Mr.N.Nagu sah, Advocate Sr.66953

S.A.No.162 of 2016

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srg 05/03/2020

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