BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 29.03.2019
PRONOUNCED ON: 30.07.2019
CORAM
THE HONOURABLE MRS. JUSTICE J.NISHA BANU
SECOND APPEAL (MD) No.72 of 2019
and
C.M.P.(MD).No.2158 of 2019

M.Sasikumar ... Appellant/Appellant/Defendant

Vs.

N.Chandrabose ... Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 13.12.2017, passed in A.S.No.6 of 2017 by the Principal District Court, Ramanathapuram, confirming the judgment and decree, dated 20.11.2015 passed in O.S.No.60 of 2011 by the Subordinate Court, Ramanathapuram.

For appellant : Mr.V.Sitharanjandas
For respondent : Mr.T.R.Jeyapalam

JUDGMENT

This second appeal has been filed by the unsuccessful defendant against the concurrent judgments passed by the Court below.

2. The respondent / plaintiff had filed the suit in O.S.No.60 of 2011 for recovery of Rs.3 lakhs based on two cheques, along with interest at the rate of 12% per annum from the date of plaint till the date of realization. According to the respondent / plaintiff, the defendant borrowed a sum of Rs.4 lakhs from him in February, 2007, for which he issued three post-dated cheques, dated 13.06.2008, for Rs.2 lakhs, Rs.1 lakh and Rs.1 lakh respectively, as security for the loan. On 02.09.2008, the plaintiff presented the said cheques for collection into three different banks and they were returned as “Funds Insufficient”, “Account Closed” and “Stop Payment Instruction” respectively. Thereafter, the plaintiff initiated proceedings in STC.Nos.1101 to 1103 of 2008 under Section 138 of the Negotiable Instruments Act. The defendant paid Rs.1 lakh relating to the case in STC.No.1103 of 2008 and hence, he withdrew the said case alone. Thereafter, the plaintiff instituted the present suit for recovery of the balance amount of Rs.3 lakhs with interest.

3. According to the defendant, he has not borrowed any sum from the plaintiff on February, 2007. He had issued cheques in question only in favour of Mugavai Finance for the loan obtained and even after discharge of loan, they failed to return the cheques. That cheques were fraudulently used by the plaintiff for initiation of

the criminal proceedings and the present suit. The defendant has not paid Rs.1 lakh towards one cheque as alleged by the plaintiff. As the suit has been filed on 10.06.2011, ie., after three years from the date of loan ie. February, 2007, the suit is barred by limitation.

4. On the side of the plaintiff, the plaintiff himself was examined as PW1 and Exs.P1 to P6 were marked. On the side of the defendant, the defendant himself was examined as DW1, but no documentary evidence was marked.

5. The trial Court, after full-fledged trial, had held that as per Section 6 of the Negotiable Instruments Act, the cheque is only Bill of Exchange and therefore, as per Article 31 of the Limitation Act, the limitation commences from the date of cheque and hence, the suit is not barred by limitation, thereby decreed the suit as prayed. The first appellate Court has also reaffirmed the judgment and decree passed by the trial Court. As against the concurrent judgment of the Courts below, the defendant has come up with this second appeal.

6. The learned counsel for the appellant/defendant submitted that the defendant was stated to be borrowed on February, 2007 and issued post-dated cheques Ex.A1 and A2, dated 13.06.2008. The suit has been filed on 10.06.2011 for the money lent on February, 2007, ie. after three years and hence, the suit is barred by limitation as per Article 19 of the Limitation Act. The cheque in question cannot be treated as an acknowledgment of debt. Similarly, any amount paid towards money lent cannot also be an acknowledgment, unless there is a specific undertaking to that effect. In support of his contention, he relied upon a decision of a learned Single Judge of this Court in **V.Gopalan (deceased) and others Vs. R.Narayanan**, reported in **2018 (1) L.W. 927**. But, the Courts below, without considering the above aspects, have erroneously passed the judgment and decree. Thus, he prayed to allow this appeal and set aside the concurrent judgment and decree passed by the Courts below.

7. The learned counsel appearing for the respondent/plaintiff submitted that Article 19 of the Limitation Act is not applicable in this case. Section 6 of the Negotiable Instruments Act defines a cheque as a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. Article 31 of the Limitation Act is on a bill of exchange or promissory note payable at a fixed time after date, when the bill or note falls due and therefore, Article 31 of the Limitation Act alone is applicable in this case. As per Article 31 of the Limitation Act, the starting point of limitation is when the cheques falls due for payment. The Courts below, considering the above aspects, has categorically held that the suit is not barred by limitation and accordingly, decreed the suit. Thus, he prayed to dismiss this appeal.

8. Heard the learned counsel for both sides and perused the records carefully.

9. Admittedly, it is not in dispute that the cheques in question belonged to the defendant. It is also equally not in dispute that the signatures found in the cheques in question are the signatures of the defendant. Though the defendant has stated that he gave the two cheques in question along with one another cheque to the Mugavai Finance for the loan obtained from it and that even after discharge of debt, the said finance company did not return the cheques, the same are not proved by the defendant through oral and documentary evidence. The defendant had also not lodged any complaint against the said Finance Company for their failure to return the cheques in question, immediately after discharge of the loan. Since the defendant admitted his signature in the cheques in question and failed to prove that it was issued to some other person, the plaintiff is entitled to the benefit of presumption arising under Section 118 of the Negotiable Instruments Act that it is issued in discharge of a legally enforceable debt or liability.

10. So far as the limitation period is concerned, in this case, the post-dated cheques in question and one another cheque were issued for the entire amount on the date of borrowal itself, promising to repay the amount on a fixed date ie. on 13.06.2008. Now, the plaintiff filed suit based on two cheques. Section 6 of the Negotiable Instruments Act defines a cheque as a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. Article 31 of the Limitation Act says that on a bill of exchange or promissory note payable at a fixed time after date, the limitation is three years when the bill or note falls due. Thereafter, Article 31 of the Limitation Act is squarely applicable in this case. Though it is contended by the defendant that Article 19 applies in this case, this Court is of the view that the same is not applicable, because it relates to the money payable for money lent. More over, Article 35 of the Limitation Act contemplates that a suit on a bill of exchange not accompanied by any writing restraining or postponing the right to sue, has to be filed within three years from the date of the bill. In this case, the cheques are not accompanied by any writing. Therefore, the period of limitation commences from the date on which the cheques fall due for payment ie from 13.06.2008. In this case, the suit has been filed on 10.06.2011 which is well within the period of limitation. Therefore, the contention of the defendant cannot be sustained.

11. The learned counsel for the defendant placed his submission mainly relying upon the decision of a learned Single Judge of this Court in **V.Gopalan and others Vs. R.Narayanan** reported in **2018 (1) L.W. 927.** In that case, the plaintiff therein filed the suit on the basis of invoice dated 07.03.1981 which has been issued for the value of Rs.52,205/- and the defendant made repayments of Rs.30,000/- on 12.11.1981 and Rs.5,000/- on various dates and

Rs.2,000/- through cheque on 06.09.1984. Claiming balance amount of Rs.15,205/-, the plaintiff therein filed the suit belatedly after three years from the date of payment. The question arose in that case was as to whether the payment of Rs.2,000/- made by the defendant therein accepting his liability would save the suit from the point of limitation. In the said circumstances, this Court has held that as per Section 19 of the Limitation Act, mere issuance of a cheque by the defendant for a sum of Rs.2000/- could not be treated as an acknowledgment of liability and therefore, the suit is barred by limitation. Here, in this case, the facts and circumstances totally differs and hence, the above decision is not applicable.

12. The Courts below have rightly held that the suit is not barred by limitation and decreed the suit as prayed for. This Court does not find any reason to interfere with the concurrent judgments passed by the Courts below. There is no question of law especially substantial question of law arising for consideration. In view of the above, this Court is inclined to dismiss this appeal at the stage of admission itself.

13. In the result, this second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

To

1.The Principal District Judge, Ramanathapuram.

2.The Subordinate Judge, Ramanathapuram.

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+1 CC to MR.T.R.JEYAPALAM, Advocate (SR-78642[F] dated 30/07/2019)
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judgment made in
S.A.(MD) No.72 of 2019
30.07.2019

GCG
MK (26.08.2019) 4P 7C