

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-01-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.568 of 2018

1. M/s.Sara Brushware Pvt Ltd.,
by its Managing Director,
Kingston D.Kamalesan,
No.26, 13th Street,
Padi,
Pudhu Nagar,
Anna Nagar West,
Chennai-600 101.

2. Lina Angeline,
W/o.Kingston D.Kamalesan,
No.26, 13th Street,
Padi,
Pudhu Nagar,
Anna Nagar West,
Chennai-600 101.

3. M.Dasan

..Appellants/Defendants

vs.

M/s.Amaravathi Finance and Investments,
by its Proprietor Radhakrishnan,
S/o.K.K.Raman,
No.30, Kutchery Road,
Mylapore,
Chennai-600 004.

..Respondent/Plaintiff

Appeal Suit preferred under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 12.04.2017 passed in O.S.No.63 of 2017 on the file of the XVI Additional Judge, City Civil Court, Chennai.

For Appellants : Mr.A.Thiagarajan

For Respondent : Mr.B.Dineshkumar

J U D G M E N T

The appeal suit is directed against the judgment and decree dated 12.04.2017 passed by the learned XVI Additional Judge, City Civil Court, Chennai in O.S.No.63 of 2017.

2. The defendants are the appellants in the appeal suit and the respondent-Plaintiff instituted a suit for recovery of money. A suit was filed under Order XXXVII, Rule 1 of the Code of Civil Procedure, to direct the respondent to pay the plaintiff a sum of Rs.11,88,000/- along with the contracted interest of 24% per annum on the principal amount of Rs.9,00,000/- from the date of the suit till the date of realisation.

3. The plaintiff contended that the defendants approached the plaintiff for a loan amount of Rs.9,00,000/- for development of the first defendant's business and the plaintiff sanctioned the said sum on 20.07.2015. All the defendants have jointly executed a promissory note on 20.07.2015 for the abovesaid loan amount and promised to repay the said amount with interest as agreed.

4. The defendants failed and neglected to pay either the interest or the principal amount. The plaintiff issued legal notice on 14.08.2016 to the defendants and the same was duly served on the defendants. Even after the receipt of the said notice, the defendants failed to pay the amount and consequently, the plaintiff instituted a suit for recovery of money.

5. The Trial Court entertained the suit under Order XXXVII, Rule 1 of the Code of Civil Procedure and framed the following issue for consideration:-

"Whether the plaintiff is entitled to recover the sum of Rs.11,88,000/- with interest ?

6. The point considered by the Trial Court was that the defendants took a loan amount of Rs.9,00,000/- for the development of the first defendant's business and the plaintiff sanctioned the said sum on 20.07.2015. All the defendants have jointly executed a promissory note dated 20.07.2015 for the said amount and assured to repay the abovesaid amount with interest. However, the defendants have not paid even the interest amount and the principal amount also has not been paid. The documents filed along with the plaint were considered by the Trial Court. Promissory note was filed as document No.1 and according to the said document, the defendants

borrowed a sum of Rs.9,00,000/-. Thereafter, a legal notice was issued on 04.08.2016. It was received by the defendants and the acknowledgment cards were marked as document Nos.3 to 5.

7. The defendants did not give any reply to the legal notice. The defendants appeared before the Court through their counsel. The suit was filed under Order XXXVII, Rule 1 of the Code of Civil Procedure, as a summary suit and immediately, on the appearance of the defendants, notice of summon to be served to the plaintiff.

8. In this case, notice of appearance was given on 22.02.2017 and summons for judgment also filed immediately. For filing leave to defend petition, adjournment was given on 03.03.2017 and 27.03.2017 by the Trial Court. However, the defendants have not filed the leave to defend petition. Thus, the Trial Court arrived a conclusion that the defendants are not having any defence in this case and there is no triable issues and accordingly, construed that the defendants accepted the claim of the plaintiff. Thus, the suit was decreed by the Trial Court with costs.

9. The grounds raised by the appellants in the appeal suit are that the Trial Court failed to note that the promissory note was executed long back and the same was given as a security to the defendants and the same was accepted by the defendants for filing a suit.

10. It is contended that the first appellant's Director, namely, Mr.Kingston D.Kamalesan was suffering due to viral fever and therefore, they could not file the petition for leave to defend in time and accordingly, the suit was decreed.

11. This Court is of the considered opinion that such grounds raised are not only flimsy but unacceptable. The Trial Court has provided an opportunity to the defendants and the suit was adjourned on two occasions, enabling the defendants to file leave to defend petition. However, the defendants have not filed any petition and therefore, the Trial Court arrived a conclusion that the defendants have admitted the suit amount.

12. This being the factum, now in the appeal suit, the appellants cannot plead that the promissory note was signed long back and further more, the first appellant is a Private Limited Company and this being the status of the appellants, this Court is of the opinion that the grounds raised in the appeal suit are neither candid nor convincing and are unacceptable.

13. The Trial Court has followed the procedures contemplated under Order XXXVII, Rule 1 of the Code of Civil Procedure and provide an opportunity to the defendants to defend their case and the said opportunity was not availed by the defendants. Therefore, this Court is of the considered opinion that there is no perversity or infirmity in respect of the judgment and decree passed by the Trial Court.

14. Accordingly, the judgment and decree dated 12.04.2017 passed by the learned XVI Additional Judge, City Civil Court, Chennai in O.S.No.63 of 2017 is confirmed. Consequently, present appeal suit A.S.No.568 of 2018 stands dismissed. However, there shall be no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Svn
To

The XVI Additional Judge,
City Civil Court,
Chennai.

Copy to

The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.B.Dineshkumar, Advocate sr 7394.

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A.S.No.568 of 2018

SSI (CO)
SP(04/09/2020)

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