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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.01.2021

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THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

A.S. No.594 of 2011

S.Balachandar ...Appellant/Defendant

-vs-

N.Palanisamy ...Respondent/Plaintiff

Prayer: Appeal Suit filed under XLI Rule 1 read with Section 96 of Civil Procedure Code to set aside the decree and judgment dated 30.06.2011 in O.S. No.232 of 2004 on the file of the Principal District Judge, Namakkal.

For Appellant : Mr.S.Parthasarathy,
Senior Counsel for
S. Venkatesan

For Respondent : Mr.R.Marudhachalamurthy

JUDGMENT

JUDGMENT of this Court was made by T.RAJA,J.

This appeal has been directed against the impugned judgment and decree dated 30.06.2011 decreeing the money suit against the appellant defendant directing him to pay a sum of Rs.17,78,000/- together with interest at the rate of 9% per annum on the principal sum of Rs.14,00,000/- from the date of plaint till the date of decree.

2.Mr.S.Parthasarathy, learned senior counsel appearing for the appellant defendant, assailing the impugned judgment, pleaded that the Trial Court has committed error in coming to the conclusion that the appellant defendant has admitted the execution of the document and the borrowal. Based on such erroneous conclusion, the Trial Court has completely lost sight of the evidence of DW1, the appellant herein, who had categorically denied the execution of 14 promissory notes on 05.07.2000 and also borrowal of Rs.14,00,000/-.



2.1. Arguing further, learned senior counsel appearing for the appellant submitted that when the appellant defendant has made a specific case before the Trial Court that he has not borrowed Rs.14,00,000/- on 05.07.2000 and not even executed 14 promissory notes, the Trial Court overlooking the facts as to what happened prior to 05.07.2000, has completely gone against the appellant defendant. Moreover, the Trial Court has failed to appreciate the case of the appellant, when he having borrowed money from the respondent plaintiff on various dates, which were specifically mentioned in the written statement, repaid the amount. The Trial Court, referring to Section 34 of the Evidence Act, accepting the books of account maintained by the respondent plaintiff showing clearly that the appellant defendant had repaid the entire money back to the respondent plaintiff, refused to apply the above Section 34 of the Evidence Act in favour of the appellant defendant. When it was a specific case of the appellant defendant that he had repaid the loan substantially, which was taken from the respondent plaintiff even before the demand made by him and even in the cross examination, the respondent/plaintiff admitted about the receipt of cash by his son and daughter, the Trial Court had completely overlooked the actual facts of the case and proceeded on the presumption that the appellant defendant had borrowed Rs.14,00,000/- on 05.07.2000.

2.2. Learned senior counsel appearing for the appellant further submitted that in support of the stand taken by the appellant defendant, several documents, namely Ex.B1 to Ex.B179 were marked. Though various entries in the form of books of accounts, which were maintained in the regular course of business and vouchers were filed to substantiate the case of the appellant defendant, the Trial Court, without appreciating the same, has brushed aside those documents and failed to consider any of the documents and held that those payments were not made in respect of such liability. Therefore, the approach of the Trial Court was wholly erroneous. Hence, the findings and conclusion reached by the Trial Court are liable to be interfered with by this Court.

2.3. Concluding his argument, learned senior counsel appearing for the appellant submitted that when the matter was taken up for admission, this Court, while granting a conditional stay on 21.12.2011, directed the appellant defendant to deposit Rs.14,00,000/- and granted liberty to the respondent plaintiff to withdraw the said amount and accordingly, Rs.14,00,000/- has been deposited and the same has also been withdrawn by the



respondent/plaintiff. Even if the case of the respondent plaintiff is accepted that after lending the suit amount, the appellant defendant has not paid back the entire amount to the respondent plaintiff, the appellant defendant is liable to pay only Rs.4,55,189/-. Learned senior counsel appearing for the appellant further pleaded that in respect of the rate of interest, some concession may be given in the event of dismissing this appeal.

3.Learned counsel appearing for the respondent submitted that when the appellant defendant is a neighbour of the respondent plaintiff and carrying on his dairy business in the name and style of 'Vangal Dairy', the appellant defendant had borrowed a sum of Rs.14,00,000/- from the respondent plaintiff on 05.07.2000 for his family and business expenses and executed 14 promissory notes in favour of the respondent plaintiff, agreeing to repay the said amount with interest at the rate of 9% per annum either to the respondent plaintiff or to his order. At the request of the appellant defendant, the respondent plaintiff had granted some more time for making payment on his convenience. Though 14 promissory notes were executed, he evaded from making any payment. Finally, finding that there is no response from the appellant defendant and he has been postponing the payment on one pretext or other, the respondent plaintiff filed the above suit in O.S. No.232 of 2004 on the file of the Principal District Judge, Namakkal seeking a money decree with a direction to the appellant defendant to pay a sum of Rs.17,78,000/- along with interest at the rate of 9% from the date of suit till the date of realisation and also costs of the suit. Surprisingly, the appellant defendant filing the written statement, denied the very borrowal of Rs.14,00,000/- on 05.07.2000 from the respondent plaintiff. In paragraph 6 of the written statement, the appellant defendant has clearly admitted the fact that the respondent plaintiff has lent a sum of Rs.6,00,000/- to the appellant defendant by getting his signature in six blank unfilled promissory notes.

3.1.Again in paragraph 7 of the written statement, the appellant defendant, without knowing the crucial denial made by him in paragraph 4, has admitted the borrowal that on 07.07.1999, he has paid a sum of Rs.14,000/- towards principal and interest and another sum of Rs.8,000/- towards principal on 20.07.1999. Learned counsel appearing for the respondent plaintiff, indicating the inconsistent stand taken by the appellant defendant in the written statement, submitted that without knowing the consequences of making denial of the case of the respondent plaintiff that he had borrowed a sum of



Rs.14,00,000/- on 05.07.2000, in para 7, he has admitted that the appellant defendant had started making payment at the rate of Rs.12,000/- per month from 11.10.1998 upto 08.04.1999 and after paying a sum of Rs.22,000/- namely Rs.3,400/- towards interest + Rs.18,600/- towards principal on 17.05.1999, the appellant defendant has paid a sum of Rs.1,01,000/- towards principal on 27.05.1999 and Rs.1,00,100/- on 28.05.1999 towards principal. The same shows that the appellant defendant was unable to conceal the factum of receipt of a sum of Rs.14,00,000/- on 05.07.2000 by executing 14 promissory notes.

3.2. In this context, learned counsel appearing for the respondent pleaded that it is very crucial and relevant to refer to the admission made by the appellant defendant while he was standing in the witness box before the Trial Court, admitting the execution of the 14 pro notes promising the repayment of the suit money with interest at the rate of 9% per annum. The execution of the pro notes were corroborated by P.W.2 writer of the pro notes. Therefore, the Trial Court, having found that the appellant defendant had admitted the execution of all these 14 promissory notes by appending his signature in all these 14 promissory notes and the same was also further corroborated by P.W.2, who is the witness as well as the writer of the promissory note, has rightly accepted the case of the plaintiff respondent. When the controversy raised by the Trial Court has been brought to an end by the defendant appellant himself in his admission, the findings and conclusion reached by the Trial Court on the basis of the admission made by the appellant defendant do not call for any interference.

4. Heard both sides.

5. The claim of the respondent plaintiff before the Trial Court is that the appellant defendant, being his neighbour and doing dairy business in the name and style of Vangal Dairy, borrowed a sum of Rs.14,00,000/- on 05.07.2000 for his family and business expenses by executing 14 Promissory Notes and agreed to re-pay the said amount with interest at the rate of 9% per annum. Since he evaded the same on one pretext or other, the respondent plaintiff has filed a suit seeking a direction to the appellant defendant to pay a sum of Rs.17,78,000/- along with interest at the rate of 9% per annum from the date of suit till the date of realisation.

6. The appellant defendant filed his written statement dated 08.03.2005 admitting the borrowal of money from the respondent plaintiff. In para 6 he has admitted as follows:



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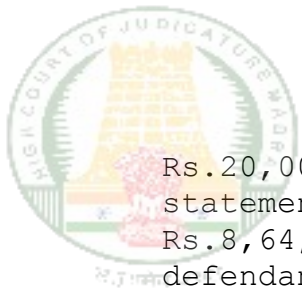
'... On the same day the plaintiff has lent a sum of Rs.6,00,000/- to this defendant by getting this defendant's signature in six blank unfilled promissory notes. The plaintiff required this defendant to repay the principal amount in monthly instalments with interest @ 9% on the diminishing principal. Therefore, this defendant started to pay Rs.1,500/- per month upto 7.9.1998, while thins are so, this defendant has dug up two bore wells in the property purchased by him. On seeing the copious water supply, the plaintiff wanted to repurchase the land sold to this defendant for which this defendant was not agreeable. Aggrieved of the same the plaintiff attempted to close the bore wells as a coercive measure. Hence there was village panchayat before N.K.Nallathambi, then Chairman of the village and in the presence of one Sengodan who mediated for the above stated sales and other villagers in which the plaintiff realising his fault and agreed not to interfere with this defendant's possession and enjoyment of the property sold and further paid a sum of Rs.50,000/- as penalty towards Karungalapalyaam Temple fund.'

7.The above admission shows that he has borrowed R.6,00,000/- by putting his signature in six blank unfilled promissory notes. Again in paragraph 8 of the written statement, he admits as follows:

'8.This defendant has further borrowed from the plaintiff Rs.1,50,000/-, Rs.3,50,000/-, Rs.1,50,000/-, Rs.5,00,000/- and Rs.8,50,000/- on 07.08.1999, 11.09.1999, 02.10.1999 and 09.10.1999 and agreed to pay interest @ 9% on the diminishing principal. At the time of such borrowals, the plaintiff has obtained signatures of this defendant in blank promissory notes. Thus, the plaintiff has obtained signature of this defendant in 14 blank promissory notes in addition to the 6 blank promissory notes signed by this defendant.'

8.A cursory reading of para 8 shows beyond anyone's doubt that the appellant defendant has borrowed Rs.1,50,000/-, Rs.3,50,000/-, Rs.1,50,000/-, Rs.5,00,000/- and Rs.8,50,000/- which totally comes to Rs.20,00,000/- and agreed to pay interest at the rate of 9% on the diminishing principal.

9.Again in para 12 of the written statement, he fairly admitted that he has paid Rs.17,40,659/- towards principal and Rs.5,13,391/- towards interest against the total borrowal of



Rs.20,00,000/- and on the date of filing of the written statement on 08.03.2005, the amount due and payable was Rs.8,64,340/-. Therefore, it is not the case of the appellant defendant that he has paid the said amount Rs.8,64,340/-. Since admitted facts need not be proved, it is relevant to extract Section 58 of the Evidence Act as under:

'58.Facts admitted need not be proved

No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleading provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.'

10.A bare reading of above Section 58 of the Evidence Act clearly shows that the facts admitted need not be proved. The consequence of one party admitting the controversy is a legal proceeding or suit inevitably invokes the application of Order XII Rule 6 of C.P.C. and also Order XV Rule 1 of C.P.C. which are extracted as under:

'Order XII Rule 6

6.Judgment on admissions - (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other questions between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

Order XV Rule 1

1.Parties not at issue - Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.'

11.A cursory reading of Order XII Rule 6 read with Order XV Rule 1 shows that the Court may, at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other questions between the parties, make such order or give such judgment as it may think fit, having regard to such admissions, where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing.



12. In the light of the above legal position, if we look at the case on hand one can easily make out the point clear that when the appellant defendant has filed his written statement admitting the case of the respondent plaintiff that he has borrowed a total amount of Rs.20,00,000/- and that Rs.8,64,340/- remains due and payable, the suit is capable of being decreed on the own admission made by the appellant defendant as per above Section 58 of the Evidence Act and Order XII Rule 6 read with Order XV Rule 1 of the C.P.C. These provisions enable the Court to give a judgment not only on the application of a party but also on its own motion to give speedy justice to avoid arrears of cases pending.

13. The Apex Court, in the case of Karam Kapahi and others v. Lal Chand Public Charitable Trust & another, (2010) 4 SCC 753, considering the principles behind Order XII, Rule 6 of the Civil Procedure Code, ruled that the object of Order XII, Rule 6 is to give the plaintiff a right to speedy judgment, for the clear reason that the controversy raised before the Court is admitted either partly or fully. The Court seeing the admission of fact made by the defendant by virtue of Order XV, Rule 1 read with Order XII, Rule 6 of the Civil Procedure Code shall at the first hearing of the suit pronounce its judgment, inasmuch as when Order XII, Rule 6 vividly makes the legal position clear that when the admission of facts is made on the pleadings or otherwise, whether oral or in writing, the Court may at any stage of the suit give its judgment having regard to such admission. A Division Bench of the Madhya Pradesh High Court also in the case of Shikharchand and others v. Bari Bai & others, AIR 1974 MP 75 has held that the plaintiff is entitled to the relief asked for by him on the basis of defendant's own admissions, as there would be no point in delaying the judgment unnecessarily in deciding the controversial points in the routine manner. The legal provision of Order XII, Rule 6 of the Code of Civil Procedure also says that where admissions of fact have been made either on the pleadings or otherwise, any party may, at any stage of the suit, apply to the Court for a judgment upon such admissions.

14. Coming to the payment of interest on the borrowed loan amount is concerned, Section 34 of C.P.C. speaks that any debtor is liable to pay interest on the amount borrowed, hence, it is relevant to extract Section 34 of the C.P.C.:

'34. Interest - (1) Where and in so far as a decree is for the payment of money, the Court, may, in the



decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit'

15. Law makers are well aware of the fact that when a person borrows money for business purpose and making profits, the debtor is liable to pay reasonable rate of interest. Hence, Section 34 has been inserted in C.P.C. Section 34 of the C.P.C. also makes the issue much easier stating that the Court, may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree. When the appellant defendant has repeatedly admitted that he has borrowed the aforesaid suit money on the contractual rate of interest at 9% per annum, it is not known why the Trial Court has over looked Section 34 while dealing with the interest portion on the admitted balance amount at the contractual rate of 9%.

16. Therefore, as per Section 34 of C.P.C., the appellant defendant is liable to pay even the said amount of Rs.8,64,340/- by a mere calculation of the contractual interest at the rate of 9% per annum, provided the appellant was able to substantiate the payment of the balance amount of the suit money. Ironically, there was no iota of evidence produced to prove the same. Hence, the suit is liable to be decreed.

17. Secondly, the Trial Court also, while dealing with the evidence made by the appellant defendant in the witness box during the Trial, has extracted the following admission:

'This Court perused, the evidence of PW1 and 2 and DW1 and document marked. It is seen that Ex.A1 to A14, 14 pro notes, dated 5.7.2000 and the same was admitted by the defendant as he executed document. D.W.1 during cross examination admitted as, நீதிமன்றத்தில் தாக்கல் செய்யப்பட்ட 14 புரோநோட்டுக்களிலும் 2 கையொப்பமும் ஒரு ரேகையும் என்னுடையது தான். கையொப்பமிட்டு 5.7.2000 என்று தேதி நான் தான் போட்டேன் 14 புரோநோட்டுக்களிலும் தொகை என்னால் 1 லட்சம் என்று இரண்டு இடத்திலும் எழுத்தால் ரூ.1 லட்சம் மட்டும் என்றும் 9% என்று நான் தான் எழுதினேன். It is seen that PW2 who is the witness as



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well as who is the writer of the document stated as, DW1 put signature on the stamp and below the stamp. D.W.1 also put thumb impression in all 14 pro notes. Apart from this evidence of PW1 and 2, D.W.1 also admitted as, he executed pro note Ex.A1 to A14 by the evidence of PW1, PW2 and DW1, it is seen that there is no dispute about the execution of pro notes and in the circumstances the plaintiff proved that the defendant borrowed sum of Rs.14,00,000/- and executed the pro notes. This Court perused the evidence of DW1 who admitted the borrowal and execution of pro notes, but pleads discharge of the debt and he paid all the amount and the balance is only Rs.8,64,340/-. D.W.1 after filing his written statement subsequently came with an amendment to amend the statement as the balance amount due is only Rs.6 lakhs. But this Court remains that the said amendment application was dismissed. Hence, D.W.1 is evidence remains that the balance is only Rs.8,64,340/-. This Court also remains that DW1, is not having consistency in pleading discharge.'

18. When the appellant defendant has admitted in the written statement and has also admitted before the Trial Court, which were also further corroborated by P.W.2, who is not only a witness, but also a writer of the Promissory note deposing that the appellant put his signature on the stamp and below the stamp and also put his thumb impression in all 14 promissory notes, the execution of promissory notes marked as Ex.A1 to A14 and supported by the evidence of P.W.1, P.W.2 have been substantiated. Therefore, the Trial Court has rightly decreed the suit, which in our considered opinion, does not call for any interference.

19. Thirdly, when the appellant defendant claimed that he has paid the suit money by marking the documents, namely, Ex.B1 to Ex.B179 in which cash books said to have maintained during his business transaction are marked as B3, B8, B15, B29, B54, B62, B72, B89, B93, B104, B115, B129, B147, B158, B161, B165, B169, B171 and B173, the Trial Court, referring to Section 34 of the Evidence Act which says that evidentiary value of the account books maintained in the regular course of business is not sufficient to charge any person with liability, in the absence of corroboration, has again rightly come to the conclusion that the cash books cannot be taken into consideration. Moreover, since all these above entries were made in the name of Palanisamy as interest paid to him, it has reached its conclusion that the plaintiff is not called as 'PPK'



and his name is P.N.Palanisamy and short name can be 'PNP', whereas all the aforesaid entries indicate the payment made to Selvaraj, Ramassamy and PPK etc. When the plaintiff name is P.N.Palanisamy and his short name can be PNP, he cannot be called as PPK, on this count also, the Trial Court has rightly discarded the unacceptable evidence showing the aforementioned payment to PPK who is no where connected to P.N.Palanisamy the plaintiff is irrelevant to the case.

20.If it is the case of the appellant defendant that he had borrowed from the respondent plaintiff and subsequently repaid, then there is no difficulty on his part to get back the promissory notes on repayment of the amount to the respondent plaintiff then and there on every repayment. The reason being that when in his written statement, he has admitted that by borrowing Rs.14,00,000/-, has executed 14 promissory notes on payment of Rs.1,00,000/-, he should have collected back each promissory note, on which, he claimed to have repaid, but the same has not been done. Further, when he claims that he has been doing Dairy Business and has made several re-payment, he should have made re-payment by crossed cheques or atleast by bearer cheques. That also has not been followed. Therefore, when the appellant defendant claims that after borrowing the amount from Palanisamy, he has re-paid the money in the name of Selvaraj, he has not given any explanation whatsoever as to why he has maintained the account in the name of Palanisami Selvaraj, Ramasamy, Sampooram, Gomathi etc.

21.Therefore, taking into consideration all the materials on record, we are of the view that the respondent plaintiff has rightly proved his case by both oral and documentary evidence that the appellant defendant, after borrowing the suit money by executing Ex.A1 to A14, miserably failed to pay back the amount. Hence, the decree passed by the Trial Court deserves to be confirmed.

22.When the appellant defendant has admitted that as on the date of filing the written statement, namely, 08.03.2005, he was liable to pay the amount on the basis of the contractual interest at the rate of 9% per annum which has also been admitted in the written statement, this Court finds no infirmity in the impugned judgment and decree and a direction given by the Trial Court to pay a sum of Rs.17,78,000/- together with interest at the rate of 9% per annum on the principal sum of Rs.14,00,000/- from the date of plaint till the date of decree and after decree, the plaintiff is entitled to interest at the rate of 6% per annum on the principal sum of Rs.14,00,000/- till



the date of realisation is confirmed, by virtue of Order XII Rule 6 read with Order XV Rule 1 and Section 58 of the Evidence Act.

23. Since the appellant defendant has not even proved the payment of any amount with acceptable oral and documentary evidence, the appeal is liable to be dismissed. Accordingly, the appeal is dismissed. Since the appellant/defendant has come to this Court with unclean hands pleading that he had repaid the loan amount against his own admission, as highlighted above, wasted the precious time of the Court, we impose a cost of Rs.50,000/- payable to the plaintiff/respondent along with balance amount.

24. Learned senior counsel appearing for the appellant brought to our notice that this Court, while granting conditional order of stay on 21.12.2011, directed the appellant to deposit Rs.14,00,000/- and granted liberty to the respondent to withdraw the said amount and accordingly, the same has been deposited and also subsequently withdrawn by the respondent plaintiff. Therefore, it is made clear that the respondent plaintiff is entitled to get back the balance amount as per the decree passed by the Trial Court. No costs.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To
1. The Principal District Judge,
Namakkal.

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The Section Officer,
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High Court, Madras.

+1 CC to Mr. R. Marudhachalamurthy, Advocate sr 684.

A.S. No.594 of 2011

PPA (CO)
SP (30/03/2022)