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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.02.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1243 of 2008

V.Chandrasekaran ...Appellant/Respondent/Plaintiff

Vs.

R.Nagarajan ...Respondent/Appellant/Defendants

Prayer: The second appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 19.09.2007 passed in A.S.No.726 of 2006 on the file of the III Additional Judge, City Civil Court, reversing the judgment and decree dated 05.07.2006 passed in O.S.No.377 of 2003 on the file of the II Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.A.Mohammed Ismail
for Mr.Veera Kathiravan

For Respondent : Mr.P.Balamurali

JUDGMENT

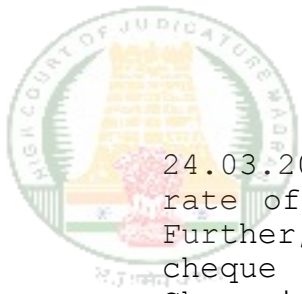
Challenge in this second appeal is made to the Judgment and decree dated 19.09.2007 passed in A.S.No.726 of 2006 on the file of the III Additional Judge, City Civil Court, reversing the judgment and decree dated 05.07.2006 passed in O.S.No.377 of 2003 on the file of the II Assistant Judge, City Civil Court, Chennai.

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

3.The plaintiff in O.S.No.377 of 2002 is the appellant in this second appeal.

4.Suit for recovery of money.

5.The case of the plaintiff, in brief, is that the defendant, who is well known to him, approached him for a hand loan of Rs.1,75,000/- to meet his family expenses and the plaintiff advanced the abovesaid sum to the defendant on



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24.03.2002 and the defendant promised to repay the amount at the rate of 24% either on demand by the plaintiff or to his order. Further, the defendant had issued a cheque on 15.04.2002 vide cheque No.128981 drawn on Syndicate Bank, Fort St.George, Chennai - 9 in favour of the plaintiff in evidence of the abovesaid borrowal. The plaintiff presented the abovesaid cheque for collection and the same was returned for the reason of insufficient funds. The plaintiff issued the legal notice under Section 138 of the Negotiable Instrument Act to the defendant and on receipt of the same, the defendant sent a reply containing false allegations. The defendant has admitted the money transactions but would state that the said transactions are earlier one. The plaintiff has levied the criminal action against the defendant in C.C.No.2309 of 2002 on the file of the VII Metropolitan Magistrate Court, George Town, Chennai. The defendant has not complied with the promise made by him at the time of borrowal and failed to repay the borrowed sum, despite the several demands made by the plaintiff. Hence, according to the plaintiff, he has been necessitated to lay the suit against the defendant for appropriate relief.

6.The defendant resisted the plaintiff's suit contending that the plaintiff has levied the suit based on the fabricated cheque alleging that the defendant had borrowed a sum of Rs.1,75,000/- as hand loan on 24.03.2002. The plaintiff had misused the cheque, which had been given as a security for the earlier transactions and the defendant has not issued the cheque in evidence of borrowal of Rs.1,75,000/- on 24.03.2002 as put forth by the plaintiff. The defendant issued a proper reply to the legal notice sent by the plaintiff. The plaintiff had written a letter dated 10.02.2002 to the defendant alleging that the defendant had received a sum of Rs.1,20,000/- and executed a promissory note and demanded repayment of the said loan with interest. In such circumstances, there is no necessity or circumstances to receive the loan, particularly, thereafter on 24.03.2002. The duty is cast upon the plaintiff to establish that the cheque had been issued by the defendant for settling the existing liability and the criminal case levied by the plaintiff is also pending. Meanwhile, the present suit has been laid by the plaintiff to harass the defendant one way or the other. Hence, the plaintiff's suit is liable to be dismissed.

7.In support of the plaintiff's case, PW1 was examined and Exs.A1 to A3 were marked. On the side of the defendant, DW1 was examined and Exs.B1 to B10 were marked.

8.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the



trial Court was pleaded to decree the suit in favour of the plaintiff as prayed for. On appeal preferred by the defendant, the first appellate Court, on an appreciation of the materials placed on record and the submissions made by the respective parties, was pleased to set aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the defendant, resultantly, dismissed the suit preferred by the plaintiff. Impugning the judgment and decree of the first appellate Court, the present second appeal has been laid by the plaintiff.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

"1. Whether the First Appellate Court is correct in allowing the appeal when the appellant /respondent has admitted his signature in the cheque?

2. Whether the First Appellate Court is correct in allowing the appeal without considering the evidentiary value of Ex.B2, Ex.B3, Ex.B4 and Ex.B5?

3. Whether the Appellate Court has allowed the appeal and reversed the judgment of the Trial Court without considering the legal requirements under Section 138 of Negotiable Instrument Act?"

10. Considering the materials placed on record, the case of the plaintiff is that the defendant had handed over the cheque in question in evidence of borrowal of a sum of Rs.1,75,000/- on 24.03.2002 as hand loan. The same is controverted by the defendant and the defendant would contend that in respect of the earlier money transactions, the abovesaid cheque had been issued as security and the plaintiff had misused the abovesaid cheque and laid the present suit by putting forth the false allegation, as if the defendant had borrowed the suit amount and promised to repay the same with interest. Considering the documentary evidence placed on record, particularly, Exs.B2 to B5, which are the promissory notes executed by the defendant in favour of the plaintiff in connection with the earlier borrowals, when it is seen that the plaintiff is usually in the habit of securing the promissory note for the loan advanced by him, resultantly, the case of the plaintiff that he had lent a huge sum of Rs.1,75,000/- on 24.03.2002, merely on the basis of the cheque said to have been issued by the defendant, as such, cannot be readily countenanced. The cheque in question is found to be



dated 15.04.2002 much later after borrowal of the suit amount on 24.03.2002. Furthermore, as could be seen from the notice issued by the plaintiff to the defendant on 10.02.2002 marked as Ex.B1, it has been clearly recited therein that the defendant had borrowed a sum of Rs.1,20,000/- from the plaintiff and demanded the said amount with interest. The abovesaid notice would only reveal the contention of the defendant that the plaintiff would lend the money only on the basis of the promissory note and not on the basis of the cheque. As rightly concluded by the first appellate Court, if really, the plaintiff had advanced the sum of Rs.1,75,000/- to the defendant on 24.03.2002, nothing prevented the plaintiff from securing the promissory note from the defendant qua the suit amount. When particularly the plaintiff, as above noted, had been obtaining the promissory note from the defendant for the money transactions on the earlier occasions to say that for the present transaction, the plaintiff has not obtained the promissory note, as such, cannot be accepted rightly and for obtaining the cheque only to the loan in question, no plausible explanation is also forthcoming on the part of the plaintiff.

11.In addition to that, the plaintiff has also not established his solvency to pay the suit sum to the defendant on 24.03.2002. The income tax returns of the plaintiff marked as Ex.B6 would go to disclose that nothing has been mentioned about the lending of Rs.1,75,000/- by the plaintiff to the defendant on 24.03.2002. The plaintiff examined as PW1 during the course of cross examination would state that he had received the suit sum from his wife and advanced the sum to the defendant on 24.03.2002. However, the Pass Book of the plaintiff exhibited in the matter do not lend support to the abovesaid version of the plaintiff. Further, the plaintiff also admitted that he does not know from which account of his wife he had withdrawn the suit sum. Therefore, the first appellate Court has considered the abovesaid factors in detail and reached the conclusion that the plaintiff has miserably failed to establish that he was having the sufficient amount in his hand on 24.03.2002 for lending a sum of Rs.1,75,000/- to the defendant as put forth by him.

12.No doubt, in the criminal case levied by the plaintiff against the defendant, the defendant has been found to be guilty under Section 138 of the Negotiable Instrument Act by the trial Court. However, the conviction and sentence imposed on the defendant by the trial Court had been set aside by the appellate Court by its judgment and decree dated 29.06.2007 and the same has not been controverted by the plaintiff's counsel during the course of arguments.



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13. In the light of the abovesaid factors, the contention of the defendant that the plaintiff has misused the cheque given a security on the earlier occasion in connection with the earlier borrowals received by him from the plaintiff cannot be easily brushed aside and in such view of the matter, when as above pointed out, the plaintiff has not established his solvency for lending the huge sum of Rs.1,75,000/- on 24.03.2002 and also the plaintiff has not given plausible explanation as to why he had not secured the promissory note for lending the alleged sum and when the plaintiff has also not established the lending of the suit sum to the defendant on 24.03.2002, as such, other than marking the cheque in question as Ex.A1, the appellate Court is found to be justified in disbelieving the plaintiff's case and thereby, rejecting the plaintiff's suit by allowing the appeal preferred by the defendant.

14. The reasonings and conclusions of the first appellate Court for non suiting the plaintiff are found to be based on the proper and correct appreciation of the materials placed on record, both oral and documentary and the submissions put forth by the respective parties and I do not find any valid reason to interfere with the same.

15. In such view of the matter, in my considered opinion, no substantial question of law is involved in this second appeal. Be that as it may, the substantial questions of law formulated in this second appeal are accordingly, answered against the plaintiff and in favour of the defendant.

16. In conclusion, the Judgment and decree dated 19.09.2007 passed in A.S.No.726 of 2006 on the file of the III Additional Judge, City Civil Court, reversing the judgment and decree dated 05.07.2006 passed in O.S.No.377 of 2003 on the file of the II Assistant Judge, City Civil Court, Chennai, is confirmed and resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar



To:

1.The III Additional Judge,
City Civil Court,
Chennai.

2.The II Assistant Judge,
City Civil Court,
Chennai.

3.The Section Officer,
V.R.Section,
High Court, Madras.

S.A.No.1243 of 2008

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srg 27/08/2021