



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.11.2021

PRONOUNCED ON : 07.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.1034 of 2010

M/s.Trinity Services,
Having its Registered office at
1, Christian Apartments,
Baman Wada, Vile Parle (East),
Bombay - 400 099.

Rep. By B.Pandey-Partner

... Appellant/Plaintiff

Vs.

M/s.Madras Mercantile Agency,
rep. By its Proprietor,
Suresh Bafna

... Respondent/Defendant

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Code of Civil Procedure, against the Judgment and decree dated 26.04.1999 made in A.S.No.23 of 1999 on the file of the learned VI Additional Judge, City Civil Court at Madras, reversing the judgment and decree dated 28/08/1998 made in O.S.No.14603 of 2004 on the file of the learned 1st Assistant Judge, City Civil Court at Madras.

For Appellant : Mr.R.J.Antony Jesus

For Respondent : Mr.P.M.Duraisamy

J U D G M E N T

The present second appeal is directed against the judgment and decree dated 26.04.1999, passed in A.S.No.23 of 1999 on the file of the learned VI Additional Judge, City Civil Court, Chennai, reversing the judgment and decree dated 28.08.1998 passed in O.S.No.14603 of 1996 on the file of the 1st Assistant Judge, City Civil Court, Chennai.



2. The appellant/plaintiff has filed a suit before the City Civil Court, Chennai in O.S.No.14603 of 1996 seeking the relief of direction, directing the defendant to pay a sum of Rs.1,67,000/- being the principal sum of Rs.1 Lakh together with interest at 24% per annum and for costs. The learned 1st Assistant Judge, City Civil Court, Chennai, by judgment and decree dated 28.08.1998 allowed the suit and directed the defendant to pay the suit sum.

3. Aggrieved over the said findings, the defendant preferred an appeal in A.S.No.23 of 1999 on the file of the learned VI Additional Judge, City Civil Court, Chennai, praying to set aside the judgment and decree dated 28.08.1998.

4. By judgment and decree dated 26.04.1999, the learned VI Additional Judge, City Civil Court, Chennai, allowed the appeal and dismissed the suit filed by the plaintiff.

5. Feeling aggrieved over the same, the plaintiff is before this Court with the present second appeal.

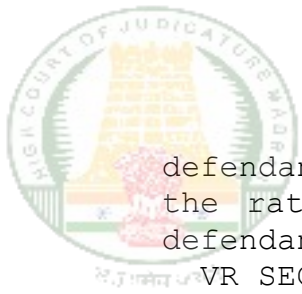
6. For the sake of convenience the parties are hereinafter referred to as prescribed before the trial Court.

7. The averments made in the plaint, in brief, are as follows:

(i) The defendant is Madras Mercantile Agency, having their office and place of business at No.3, Strotten Muthia Mudali Street, Madras-79. The plaintiff is engaged in export business with various Overseas Buyers by procuring orders from them and directing the same to Indian Manufacturers and one such manufacturer is the defendant. The defendant has approached the plaintiff for a hand loan of Rs. 1 Lakh on 08.10.1993 and agreed to repay the same on or before 10.11.1993 without interest for their business purpose.

(ii) In spite of repeated reminders, the defendant has deliberately failed and neglected to repay the same, but he paid a sum of Rs.5,000/- on 23.11.1993 directly to the plaintiff. The defendant is bound to pay the interest at the rate of 24%. The defendant filed O.P.No.212 of 1995 against M/s.Lufthansa Airlines and the plaintiff, in which they have specifically admitted the receipt of the sum of Rs.1 Lakh.

(iii) Now, the defendant is taking hectic steps to close down their business and is trying to evade payment. The plaintiff sent legal notice dated 26.08.1996, calling upon the



defendant to pay a sum of Rs.1 Lakh together with interest at the rate of 24% per annum. After the receipt of notice, the defendant did not comply with the demand. THE SECTION OFFICER,

VR SECTION, HIGH COURT,

MADRAS-600 104.d, hence the suit.

WEB COPY

8. The case of the defendant, as averred in the written statement, is as follows:

(i) The defendant is a Proprietary concern and the suit has to be sued only against the proprietor and not against the concern. Hence the suit filed by the plaintiff is not maintainable. The defendant never borrowed a sum of Rs.1 lakh on 08.10.1993. In fact, this defendant has no need to borrow from the plaintiff or anyone else. The defendant has filed O.P. No.212 of 1995 before the State Consumer Dispute Redressal Commission, against the Lufthanasa German Airlines and the plaintiff, for deficiency of service.

(ii) The suit is nothing but a counter blast to O.P.No.212 of 1995. The defendant never admitted the receipt of Rs.1 Lakh in that O.P.No.212 of 1995. It is not correct to say that the defendant is trying to close down his business. The defendant has sent a detailed reply dated 25.10.1996 to the plaintiff's notice dated 26.08.1996. The present suit has been filed by the plaintiff to gain unjust enrichment and hence, the same is liable to be dismissed.

9. From the above averments, the trial Court framed the necessary issues and tried the suit. On the side of the plaintiff, one Pandey was examined as PW1 and three documents were exhibited as Ex.A1 to Ex.A3. Similarly, on the side of the defendant, one Narasimhan, was examined as DW1 and three documents were exhibited as Ex.B1 to Ex.B3.

10. Having considered the materials placed before him, the learned trial Court came to the conclusion that the defendant is liable to pay the suit sum to the plaintiff and passed the judgment and decree in favour of the plaintiff. In the appeal filed by the defendant, the findings arrived at by the trial Court was reversed and held that the plaintiff has not proved his case and ultimately, the suit was dismissed.

11. Aggrieved over the said findings of the first appellate Court, the plaintiff is before this Court with the present second appeal. When the second appeal is taken up for admission, this Court formulated the following substantial questions of law.



WEB COPY

"1. Whether the findings of the lower appellate Court are vitiated by its failure to consider the materials on record?

2. Whether the lower appellate Court is right in holding that the payment of Rs.5,000/- made by the respondent on 23.11.1993 would not amount to acknowledgment of debt under Section 19 of the Limitation Act?"

12. Heard Mr.J.Antony Jesus, learned counsel appearing on behalf of the appellant and Mr.P.M.Durisamy, learned counsel appearing on behalf of the respondent and perused the materials available on record.

13. It is the case of the plaintiff that on 08.10.1993, the defendant approached the plaintiff for hand loan of Rs.1 Lakh and agreed to repay the same on or before 10.11.1993 without interest. It is the further case of the plaintiff that acceding to the request made by the defendant, the plaintiff paid Rs.1 Lakh to the defendant by way of demand draft dated 08.10.1993. In order to prove the same, the plaintiff filed a letter dated 08.10.1993 addressed to the defendant [Ex.A1]. Further, the debit advice in respect to the payment of Rs.1 lakh issued by the bank was marked as Ex.A2.

14. In this occasion, it is the case of the defendant that defendant has not received any loan from the plaintiff as alleged. For the pre-suit notice sent to the defendant, the defendant sent a reply notice on 25.10.1996 vide Ex.B3, wherein it was stated that the defendant has not received any loan from the plaintiff. Hence, in order to prove the debt, it is the duty cast upon the plaintiff to show that Rs.1 Lakh was paid to the defendant. In this regard, in order to prove the same, as already stated only two documents were marked on the side of the plaintiff.

15. In fact, though the letter [Ex.A1] was addressed to the defendant company, in the said letter, it was mentioned that the same has been sent to one Sridhar. Therefore, it is necessary to find out the relationship between the Sridhar and the defendant company. In this regard, PW1, who is the person employed in plaintiff company does not say anything about the relationship between Sridhar and the defendant company. On the other hand, the person who was examined on the side of the defendant as DW1 admitted in his evidence as his company is having financial relationship with one Sridhar.



16. Therefore, it is quite clear that the plaintiff has not proved the status of the said Sridhar in the defendant company. Because of the reason that the said Sridhar is having financial relationship with the defendant company that alone cannot be taken into account to accept the case of the plaintiff that a sum of Rs.1 lakh was paid to the defendant company. At most, it is for the plaintiff to examine the bank officials pertaining to the defendant bank and prove the fact that the demand draft was drawn in favour of the defendant's account. Therefore, in the absence of any material to show that the defendant received the loan amount, this Court cannot come to the conclusion that the plaintiff paid Rs.1 Lakh as a debt to the defendant. The first appellate Court has also considered the case of the plaintiff in the same manner as the alleged debt has not been proved by the plaintiff.

17. Without any specific evidence, mere mentioning the transaction having by the defendant in Ex.A1, is not suffice to hold that the plaintiff has proved the debt. Furthermore, in respect to Ex.A1 and Ex.A2, the original has not been exhibited. More than that, without any comparison with the original, the same has been marked as exhibits, which is also against the principles set out already in various judgment and accordingly, the plaintiff has not shown the primary evidence for the payment of debt.

18. Secondly, in respect to the limitation, it is admitted on either side that after availing the alleged loan on 08.10.1993, the suit has been presented before the trial Court on 05.11.1996 beyond the period of three years and accordingly, the suit is barred under limitation.

19. Though the plea of limitation is not averred in the written statement filed by the defendant, under Section 3 of the Limitation Act, it is for the Court to decide the limitation in all cases.

20. In this occasion, it is the case of the plaintiff that on 23.11.1993, a sum of Rs.5,000/- was paid by the defendant towards the loan availed by him. Though, it was stated as above, by the plaintiff, in order to prove the same, he has not produced any substantial evidence in the form of written document. In order to prove the acknowledgment, it is necessary for the creditor to pay the part of the loan amount after admitting the loan transaction. Here it is a case, as



already stated, no written document has been produced to show that on 23.11.1993, the defendant has paid Rs.5,000/- towards part payment.

21. More than that, in the absence of any evidence in respect to the relationship between the Sridhar and the defendant company, payment made by Sridhar cannot be taken into account for extending the period of limitation. Even assuming that the defendant paid Rs.5,000/- to the plaintiff on 23.11.1993, without any material evidence to show that the said amount has been paid after acknowledging the debt, in view of Section 19 of the Indian Contract Act, this Court cannot hold that the defendant paid Rs.5,000/- after acknowledging the debt. In this regard, the first appellate Court after referring to the case of Arjunlal Dhanji Rathod vs Dayaram Premji Padhiar, reported in AIR 1971 Patna 278 and by relying on the judgments of our Hon'ble Apex Court in O.N.A. Nagamani Chettiar (Died) vs Shanmugham Finance Company, reported in 1994 MLJ 603 and in Sant Lal Mahton vs Kamala Prasad, reported in AIR 1951 SCC 477, held that the suit is barred by limitation. The said finding is a reasonable one and for assailing the said judgments, the plaintiff has not shown any materials as the debt was acknowledged within the period of three years.

22. Therefore, I am of the considered view that the findings arrived at by the first Appellate Court is well within the law. Therefore, the substantial questions of law arisen in this case are all answered in favour of the respondent/defendant and accordingly, the second appeal is dismissed, by confirming the judgment and decree dated 26.04.1999 made in A.S.No.23 of 1999 on the file of the learned VI Additional Judge, City Civil Court, Chennai. No Costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

ars
To

1.The VI Additional Judge,
City Civil Court at Madras.



2.The 1st Assistant Judge,
City Civil Court at Madras.

3.The Section Officer,
VR Section, High Court,
Madras-600 104.

+lcc to Mr.K.Srinivasan, Advocate Sr.64222
+lcc to M/s.P.M.Duraiswamy, Advocate Sr.64696

S.A.No.1034 of 2010

sj[col
srg 28/12/2021