IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.03.2021

PRONOUNCED ON : 15.04.2021

CORAM

THE HONOURABLE MR. JUSTICE P. RAJAMANICKAM

C.S.No.193 of 2013

M/s.Loyal Credit and Investments Limited,
Represented by its Authorized Signatory,
having Office at "Kothari Buildings",
IV Floor, 114, M.G.Road,
Nungambakkam, Chennai – 600 034. ... Plaintiff

Vs.

M/s.Cosmopolis Properties Private Limited,
Represented by its Directors,
having office at No.5/37-A, Salem Automech Buildings",
Jagir Ammapalayam, Salem Bangalore NH Road,
Salem 636 302. ...Defendant

PRAYER: Civil Suit is filed under Order VII Rule 1 and XXXIV Rule 1 of CPC r/w. Order IV Rule 1 of Original Side Rules for a direction

i) directing the defendant to pay the plaintiff a sum of Rs.3,23,86,040.92/- along with *pendilite* interest at the rate of 24% per annum from the date of plaint till the date of realisation in full on or before a time to be specified by this court by passing a preliminary decree in favour of the plaintiff, and against the defendant;

ii) On failure, permitting the plaintiff to approach this Court for a final decree, ordering the sale of the Schedule mentioned properties and to appropriate the sale proceeds towards the claim of the suit amount;

iii) In case of deficiency after appropriation of the sale proceeds as above, permitting the plaintiff to proceed against the defendant to pay the balance amount to the plaintiff;

iv) Directing the defendant to pay the plaintiff the entire costs of the suit.

For Plaintiff ... Mr. Om Prakash, Senior Counsel
for M/s.Ramalingam and Associates.

For Defendant ... Mr.M.S.Krishnan, Senior Counsel
for M/s.N.Murali

JUDGMENT

This Suit has been filed on a mortgage for recovery of Rs.3,23,86,040.92/- with interest at 24% per annum from the date of plaint till the date of realisation and for costs.

2. The averments made in the plaint are in brief as follows:-

The plaintiff is a non-banking Financial Institution registered under the Companies Act, 1956. The defendant is also a Company registered under the Companies Act, 1956. The defendant sought for a loan of Rs.1.60 Crores for its business, which was also agreed by the plaintiff. Accordingly, on 27.06.2009, the defendant availed a loan of Rs.1.60 Crores from the plaintiff. The said amount was paid through a cheque dated 27.06.2009 drawn on Development Credit Bank, Chennai. The defendant, after receipt of the said amount, had executed a Promisory Note in favour of the plaintiff on 27.06.2009, agreeing to repay the same on demand with interest at 24% per annum. Subsequently, on 28.06.2009, the defendant had deposited the original title deeds of the suit properties with an intention to create an equitable mortgage over the suit properties. On 29.06.2009, the defendant had executed a memorandum of deposit of title deeds, confirming the mortgage created by it. Inspite of repeated oral demands made by the plaintiff, the defendant did not repay the loan amount and hence, the plaintiff had issued a lawyer's notice to the defendant on 03.02.2012 calling upon the defendant to repay the loan amount. The defendant, after receipt of the said notice, had sent a letter dated 10.03.2012 with false allegations.

Hence the plaintiff had sent a re-joinder on 30.03.2012 denying the allegations made in the reply notice. After receipt of the said re-joinder, the defendant did not come forward to repay the loan amount. Hence, the suit.

3. The averments made in the written statement are in brief as follows:-

The suit is liable to be dismissed in *limini* on the ground of maintainability as well as on the ground of previous settlement between the parties. Allegedly, the plaintiff had advanced a loan of Rs.1.60 Crores and got promissory note and memorandum of deposit of title deed in their favour. However, the plaintiff had assigned their rights under the above promissory note and memorandum of deposit of title deeds to Mr.S.Sidesh Kumar under the deed of assignment dated 28.01.2013. Therefore, the plaintiff has no legal right to maintain the suit. The said payments were duly intimated to the Registrar of Companies and the same has been reflected in the books of accounts maintained by the Registrar of Companies. In view of the said settlement, the loan amount was fully discharged by the defendant and hence the plaintiff cannot seek any relief based on the said mortgage. As per the memorandum of understanding dated 28.01.2013, the parties made other terms and conditions with respect to the claim, court cases, complaints, etc., Since all the claims from the defendant Company was fully settled, the plaintiff issued "No due Certificate" and memorandum of satisfaction of the mortgage claim was made in records of Registrar of Companies. The above factum of settlement was explained in the reply notice issued by the defendant Company. The plaintiff Company having received the said reply notice and knowing very well that there is no due from the defendant Company, intentionally initiated this suit without any right under the loan document. Hence, the defendant prayed to dismiss the suit.

4. Based on the aforesaid pleadings, on 14.03.2016, this court has framed the following issues for trial.

"*(1) Whether the suit is barred by limitation?*

(2) Whether the Memorandum of Understanding dated 28.01.2013, entered into between the plaintiff and the defendant, is true, valid and binding on both?

(3) Whether the plaintiff has right to violate the deed of assignment dated 28.01.2013, and make the suit claim?

(4) Whether the plaintiff has right to file the suit even after they assigned their rights under the above promissory note and memorandum of deposit of title deeds?

(5) Whether the suit claim is already settled between the parties to the suit?

(6) Whether the plaintiff has right to claim the loan amount and interest thereon?

(7) To what other reliefs, the parties are entitled to ?"

5. During trial, on the side of the plaintiff, one witness was examined as PW1 and 18 documents were marked as Exs.P1 to P18. On the side of the defendant, one witness was examined as DW1 and Exs.D1 to D8 were marked as exhibits.

6. Heard Mr.Om Prakash, learned Senior Counsel for M/s.Ramalingam and Associates, learned counsel for the plaintiff and Mr.M.S.Krishnan, learned Senior Counsel for M/s.N.Murali, learned counsel for the defendant.

7. Issue No.1:-

According to the plaintiff, the defendant availed a loan of Rs.1.60 Crores on 27.06.2009 from the plaintiff and executed a promissory note on the same date and agreed to repay the same on demand with interest at 24% per annum. Their further case is that subsequently on 28.06.2009, the defendant had deposited the original title deeds of the suit properties with an intention to create an equitable mortgage. It is also their case that on 29.06.2009, the defendant had executed a memorandum of title deeds confirming the creation of mortgage over the suit properties. The defendants in their written statement, have not denied the borrowing of the loan amount, execution of the promissory note and creation of equitable mortgage. The case of the defendant is that after the aforesaid loan transaction, there was a settlement between the parties and as per the said settlement, the plaintiff had executed a deed of assignment dated 28.01.2013 in favour of one Mr.S.Sidesh Kumar and hence, the plaintiff had no right to file the suit. The limitation prescribed under the Limitation Act for filing a suit on mortgage for foreclosure or sale is 12 years. In this case, the loan transaction took place on 27.06.2009 and subsequently, equitable mortgage was created on 28.06.2009. The suit was filed on 24.09.2012 i.e., within 12 years. Therefore, the suit is not barred by limitation. Accordingly, this issue is answered in favour of the plaintiff.

8. Issue Nos.2 to 7:-

The case of the plaintiff is that on 27.06.2009, the defendant availed a loan of Rs.1.60 Crores from the plaintiff and the said amount was paid by the plaintiff to the defendant through a cheque dated 27.06.2009 drawn on Development Credit Bank, Chennai. Their further case is that on 27.06.2009 itself, the defendant had executed a promissory note in favour of the plaintiff agreeing to repay the loan amount on demand with interest at 24% p.a., It is their further case that on 28.06.2009, the defendant had deposited the original title deeds relating to the suit properties with an intention to create an equitable mortgage. It is their further case that on 29.06.2009, the defendant had executed a memorandum of deposit of title deeds confirming the creation of mortgage over the suit properties. The defendants in their written statement have not disputed the aforesaid facts. On the contrary, they took a plea that in view of a settlement arrived at between them, the plaintiff had executed a deed of assignment in favour of one Mr.S.Sidesh Kumar on 28.01.2013. They also took a plea that they fully discharged the loan amount due to the plaintiff and hence the plaintiff had issued a “No due Certificate”.

9. Mr.M.S.Krishnan, the learned Senior Counsel for the defendant has submitted that during cross-examination of PW1, a certified copy of "No due Certificate" issued by the plaintiff Company in favour of the defendant was shown to him and he has admitted the issuance of the said document and hence, the said document was marked through him as Ex.D1. He also admitted that in Ex.D1 itself, execution of deed of assignment also mentioned. He further submitted that the PW1 has not denied the execution of deed of assignment and also issuance of "No due Certificate", but the said facts were suppresed in the plaint and therefore, the suit has to be dismissed on the ground of suppression of material facts.

10. Per contra, Mr.Om Prakash, the learned Senior Counsel for the plaintiff has submitted that the suit was filed on 24.09.2012, whereas the

alleged deed of assignment and No due Certificate were obtained by coercion on 28.01.2013 and hence the said facts were not pleaded in the plaint.

11. A perusal of the records shows that the plaintiff has presented the plaint before this court on 24.09.2012 and the same was returned on 04.10.2012. Thereafter, the plaintiff has re-presented the plaint on 29.10.2012 and again, the said plaint was returned on 19.11.2012. Thereafter, the plaintiff has re-presented the said plaint on 05.02.2013 and only thereafter, the case was numbered on 22.03.2013. So, on the alleged date of deed of assignment and also issuance of "No due Certificate" i.e., on 28.01.2013, the plaint was in the possession of the plaintiff only. In such a case, they would have amended the plaint incorporating the averments under what circumstances the said documents were executed, but the plaintiff did not do so.

12. Further, in the written statement, the defendant has categorically averred that after the said loan transaction, the parties entered into a

settlement and in pursuance of the said settlement, the plaintiff had executed a deed of assignment on 28.01.2013 in favour of one Mr.S.Sidesh Kumar and also issued a "No due Certificate" on 28.01.2013. If really, the plaintiff had executed the deed of assignment and also issued "No due Certificate" only by coercion, they would have atleast filed a reply statement by denying the allegations made in the written statement but they have not filed any such reply statement also.

13. It is also to be pointed out that in the proof affidavit filed by PW1, he has stated that the defendant is relying on the alleged documents namely assignment deed and memorandum of understanding both dated 28.01.2013 to plead discharge of the liability and that the said documents do not in any manner repudiate the claim made in the above suit or establish discharge of the debt. So it appears that in the evidence also, the PW1 has not denied the execution of the said documents. It appears that the only contention of PW1 is that the said documents will not repudiate the claim of the plaintiff or establish discharge of the debt.

14. The DW1, in his proof affidavit has categorically stated that on 28.01.2013, the plaintiff has issued "No due Certificate" and also executed the deed of assignment and memorandum of understanding on 28.01.2013. The deed of assignment and the memorandum of understanding were marked as Exs.D7 and D8 respectively. The "No due Certificate" was marked through PW1 as Ex.D1 during his cross-examination. During cross-examination of DW1, on 25.04.2018, the following question was asked:-

"I put it to you that you had induced the plaintiff to part with title deeds and also release of charge but failed to discharge the liability". For the said question, DW1 answered as *"I deny"*

15. On 06.07.2018, during cross-examination of DW1, the following question was asked:-

"*I put it to you that you along with few other people had taken away the original title deeds from the plaintiff Company under threat and coercion"*. For the said question also, DW1 answered as *" I deny"*. So, it is clear that at one stage i.e., on 25.04.2018, the plaintiff has taken a stand that the DW1 had induced the plaintiff to part with the title deeds and also release of charge but subsequently failed to discharge the liability. But on 06.07.2018, the plaintiff took a totally different stand that the DW1 and his men had taken away the original title deeds by under threat and coercion.

16. As already pointed out that though the plaint was presented before the court on 24.09.2012, the same was subsequently returned and only on 05.02.2013, it was finally re-presented, the plaintiff has not stated anything in the plaint that under what circumstances, the original documents came into the possession of the defendant. Further, they have not given any explanation as to under what circumstances the deed of assignment, memorandum of settlement were executed and "No due Certificate" was issued. Even the PW1 has not stated in his evidence as to under what circumstances the title deeds were returned to the defendant and the deed of assignment and memorandum of settlement were executed and "No due Certificate" was issued. Only for the first time on 25.04.2018, during cross examination of DW1, a defence was taken by the plainitff that the original documents were given to the defendant because the DW1 had

induced the plaintiff to part with the title deeds and also release of charge, but on 06.07.2018, totally a different defence has been taken by the plaintiff as the DW1 along with few other people had taken away the original title deeds from the plaintiff Company under threat and coercion.

17. It is also to be pointed that Ex.P18 shows that an FIR was registered on 29.01.2016 in Thousand Light Police Station against the DW1 and others under Sections 147, 294 (b), 327, 384, 506(i) IPC r/w 34 of IPC. In the said FIR, it is stated that on 28.01.2013 at about 10.40 a.m., DW1 and his men came to the office of the plaintiff Company and abused the PW1 and also assaulted him and criminally intimidated him and his employees were forced to sign in certain documents and MOU which was brought readily prepared by them. In the said document, it is also stated that the said FIR was registered based on the order passed by this court in Crl.OP.No.10206 of 2013 dated 26.08.2014. It is not known whether any complaint was immediately lodged by the PW1 after the alleged occurence. Further, the said document was not marked through PW1. On the contrary,

the said document was marked through DW1. Though DW1 has admitted that an FIR was registered against him, he denied the allegations made in the said FIR. It is also to be pointed out that PW1 not at all whispered anything in his evidence as to the occurence said to have taken place on 28.01.2013 as alleged in Ex.P18.

18. As already pointed out that for the first time during cross-examination of DW1 on 25.04.2018, a defence was taken as that the DW1 induced the plaintiff to part with the title deeds and also release of charge but contrary to the said defence, on 06.07.2018, another defence was taken as that the DW1 and few other people had taken away the original title deeds from the plaintiff Company under threat and coercion. Even during the cross examination of DW1, nothing was suggested that the signatures of PW1 were obtained by threat and coercion in the MOU, deed of assignment and "No due Certificate". Therefore, it is clear that the plaintiff has not come to the court with clean hands.

19. Ex.D1 would clearly show that the plaintiff had issued "No due Certificate" and the same was produced before the Registrar of Companies and the Registrar of Companies had also recorded the same in the records maintained by him. Further Ex.D7 shows that on 28.01.2013, the plaintiff had executed a deed of assignment in favour of DW1 (Mr.S.Sidesh kumar) and Ex.D8 shows that MOU was executed between the plaintiff and the defendant stating that the suit claim was discharged.

20. It is also relevant to refer to Order 6 Rule 4 of CPC which reads thus:

> **"4. Particulars to be given where necessary:-**
>
> "*In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading."*

21. From the reading of the aforesaid provision of law, it is clear that where a party pleading relies on any misrepresentation, fraud, breach of trust, willful default or undue influence, he should give the particulars which may be necessary to prove his case. In this case, the plaintiff has not pleaded in the plaint about any inducement or threat or coercion. Even in the evidence also, PW1 has not stated anything about the said facts. Only during cross examination of DW1, the plaintiff has developed its case and put some inconsistent suggestions.

22. When the plaintiff has not denied the execution of the assignment, MOU and issuance of "No due Certificate", it is for the plaintiff to give satisfactory explanation as to under what circumstances the said documents came into existence. In this case, as already pointed out that the plaintiff has not stated anything about the said documents in the plaint. Further, even after filing of the written statement, the plaintiff has not chosen to file any reply statement. Above all, the PW1 has not at all stated anything about the aforesaid documents in his evidence. Therefore, based on the mere suggestions which were put during cross-examination of DW1 alone, this court cannot come to the conclusion that the plaintiff has

discharged the burden that the said documents were obtained by inducement or threat or coercion. Therefore, this court is of the view that the suit claim was already settled between the parties to the suit and as such, the plaintiff is not entitled to recover the suit amount. Accordingly, these issues are answered agianst the plaintiff.

23. In the result, the suit is dismissed. No costs.

15.04.2021

Index : Yes/No
Speaking /Non-speaking order
gv

To

The Sub-Assistant Registrar,
Original Side-I
High Court, Madras.

P. RAJAMANICKAM.,J.

gv

Pre-delivery Judgment made in C.S.No.193 of 2013

15.04.2021