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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

O.S.A.Nos.213 and 182 of 2021

K.Suresh Prabhu

...Appellant/Petitioner
in both appeals

Vs.

S.Ramesh

...Respondent/Respondent
in both appeals

PRAYER: Appeals filed under Order 13 of the Commercial Court Act read with Clause 15 of the Letters Patent to set aside the order dated 10.03.2021 passed in Application No.1652 of 2020 and O.A.No.302 of 2020 in C.S.(Comm.Div) No.183 of 2020 on the file of this Court.

For Appellant

: Mr.K.S.Ganesh Babu

For Respondent

: Mr.V.Balasubramani

COMMON JUDGMENT

(Delivered by the Hon'ble Chief Justice)

These appeals arise out of several interlocutory applications filed in a suit essentially seeking a money decree. The plaintiff is the appellant herein.

2. It is the plaintiff's case that from time to time money was lent and advanced to the defendant for the defendant to purchase equipment to run a fitness centre. There is a document dated February 22, 2020 that the plaintiff has relied upon. Such document was apparently issued by the defendant and it forwarded to the plaintiff four post-dated cheques of a total value of Rs.1.35 crore payable between July and October, 2020.



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According to the plaintiff, upon the first of such four cheques, for Rs.30 lakh, being deposited, the same was dishonoured on the ground that the account had been closed. The plaintiff-appellant also makes out that he immediately instituted the suit without waiting for the three other cheques to mature for payment, since the account had already been closed.

3. However, it also appears that on June 8, 2020, a legal notice was issued on behalf of the defendant to the plaintiff speaking of a business investment made by the plaintiff along with two others and the defendant having promised returns at certain rates. The letter also speaks of the defendant not being able to pay whereupon the fitness centre at Kilpauk, originally run by the defendant, was allowed to be operated by the plaintiff on the understanding that the profits therefrom would be shared between the parties on certain terms. The defendant's letter also speaks of the units run at Vepery and at Kilpauk being taken over by the plaintiff from November, 2017 and monthly statements of accounts being apparently furnished. The defendant's letter alleges that bogus amounts were shown in the statements to have been expended by the units. The defendant alleges that the plaintiff had misappropriated a sum in excess of Rs.56 lakh and in February, 2020 some form of settlement was arrived at.

4. Paragraph 17 of the letter refers to four post-dated cheques of Rs.5 lakh being issued by the plaintiff to the defendant which were to ripen on the 22nd day of the months of February, March, April and May, 2020. The letter asserts that though the cheque for Rs.5 lakh dated February 22, 2020 was cleared upon presentation, payment in respect of the next cheque was stopped by the drawer, as the defendant discovered to his chagrin upon presenting the said cheque.

5. The said notice of June 8, 2020 threatens action under Section 138 of the Negotiable Instruments Act and asserts that a sum in excess of Rs.2.55 crore remains due and owing from the plaintiff to the defendant.

6. The claim and the counter-claim appear to be convoluted and there is no clarity in the plaint. Though there appears to be a clear acknowledgment of the defendant's indebtedness to the extent of Rs.1.35 crore as evident from the document dated February 22, 2020 relied upon by the plaintiff, it is evident that before even the first of the cheques had been deposited on behalf of the plaintiff, the letter dated June 8, 2020 had already been issued on behalf of the defendant.

7. It is possible that the real transaction between the parties was something else and, to avoid tax liabilities or to



stay on the right side of the law, a different kind of claim has been made out in the plaint. Whatever may be the real story, in the light of the demand issued by the defendant prior to the suit being instituted, it does not appear that the plaintiff carried a clear-cut case which entitled the plaintiff to an order in the nature of attachment before judgment. Ordinarily, if the plaintiff had sued merely on the dishonoured cheques and even if the plausible case run by the defendant - of cheques worth Rs.20 lakh having been dishonoured - were taken into account, the plaintiff may have been able to make out a case for security to be furnished in respect of the balance amount. However, there appears to be more to the document of February 22, 2020 relied upon by the plaintiff than meets the eye and notwithstanding a yarn being spun on behalf of the defendant in the notice of June 8, 2020, the claim therein is not altogether demurrable for it to be disregarded and security to be furnished in favour of the plaintiff.

8. The matter has been appropriately discussed in the judgment and order impugned dated March 10, 2021 by which the several applications before the trial court were disposed of and the injunction and security sought by the plaintiff were declined.

9. On the basis of the material brought to court and the principal documents of the parties, it could not be said that an unimpeachable claim had been made out by the plaintiff which required the defendant to furnish security. An order for attachment before judgment or security is a tall order and if plausible defence is made out, particularly on the basis of pre-suit documents, the court would be very slow in requiring security to be furnished in such a case.

10. There does not appear to be any grave error in the trial court not being able to accept the plaintiff's version over the defendant merely on the basis of the cases made out in the rival documents.

11. It is hoped that the parties cooperate for the expeditious conduct of the trial.

12. In view of the defendant's clear admission in the defendant's letter of June 8, 2020 to the effect that the plaintiff was in possession of the fitness centres at Vepery and Kilpauk, the defendant will remain restrained from interfering with the plaintiff's possession of the two fitness centres till the disposal of the suit, without the previous leave of the trial court.



13. O.S.A.Nos.213 and 182 of 2021 are disposed of without interfering with the judgment and order under appeal. C.M.P.No.8145 of 2021 is closed.

There will be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bbr

To:

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

+4 CC to Mr.K.S.Ganesh Babu, Advocate, Sr.No. 41029,41030.

O.S.A.Nos.213 and 182 of 2021

SRA(CO)
LS(26/08/2021)