IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 11TH DAY OF MARCH 2021

THE HON'BLE MS. JUSTICE P.T.ASHA

A.No.3128 of 2018
in

C.S. No.1022 of 2005

Mr.Shyam Krishna Agrawal,
S/o.Balkrishna Das,
No.25 (Old No.13),
5th Main Road,
Raja Annamalaipuram,
Chennai-600 028. ... Plaintiff

-Versus-

Mr.G.Karthick,
S/o.(Late) Ganapathy,
No.40, Third Street,
East Abiramapuram,
Chennai-600 004. ... Defendant

A.No.3128 of 2018:

G.Karthick,
S/o.Late V.Ganapathy,
Old No.40, 3rd Street,
East Abiramapuram,
Mylapore, Chennai-600 004. ... Applicant

-Versus-

Shyam Krishna Agrawal,
S/o.Balkrishna Das,
No.25 (Old No.13),
5th Main Road,

Raja Annamalaipuram,
Chennai-600 028. ... Respondent

Application praying that this Hon'ble Court be pleased to grant the Petitioner/Defendant unconditional leave to defend the above suit in C.S.No.1022 of 2005.

Application coming on this day before this Court for hearing, the Court made the following order:

The unsuccessful defendant whose leave to defend application has been dismissed by the learned Master is on appeal before this Court. The facts in brief for disposing of this application are as follows. The parties are referred to in the same array as in the suit.

2. The plaintiff had filed the suit C.S.No.1022 of 2005 as a summary suit for recovery of a sum of Rs.42,70,000/- together with interest at 18% per annum on a sum of Rs.28,00,000/-. The plaintiff had contended that the defendant had sought financial assistance from the plaintiff for his business needs and a sum of Rs.20,00,000/- was given as loan to the defendant which he had promised to repay by the end of December 2001 together with interest at 18% per annum. This amount was paid by cheque to the defendant.

3. After initially making some payments towards interest the defendant failed to repay the sum even after December 2001. The interest had accumulated on the sum and as on December 2002 the amount

outstanding was Rs.28,00,000/-. By letter dated 02.12.2002, the plaintiff had called upon the defendant to repay the entire amount. In response to this letter, the defendant had issued a cheque dated 20.12.2020, which when deposited for clearance was returned unpaid with the endorsement "*funds insufficient*".

4. On 03.01.2003, the plaintiff had issued a legal notice under Section 138 of the Negotiable Instruments Act, calling upon the defendant to repay the said sum and the complaint was thereafter filed under Section 200 of the Cr.P.C for the offence under Sections 138 to 142 of the Negotiable Instruments Act and the same is pending before the VII Metropolitan Magistrate Court, George Town (which has since been disposed of).

5. The plaintiff, therefore has instituted the above suit as a summary suit. Upon receiving the summons in the above matter, the defendant had come forward with the application in A.No.4056 of 2017 seeking unconditional leave to defend suit. In the affidavit filed in support of the said application the defendant had denied the borrowal and had contended that no documents whatsoever has been filed to show the proof of such loan. The defendant would further submit that the plaintiff had advanced money

to him which he had repaid by issuing cheques in favour of the plaintiff and his family members.

6.The defendant would further submit that when the criminal case was pending on the file of the VII Metropolitan Magistrate Court, George Town a sum of Rs.16,00,000/- was received by the plaintiff much before the filing of the suit. Thereafter, in the appeal proceedings in Criminal Revision Petition, the defendant had deposited a further sum of Rs.15,00,000/- and the same has also been withdrawn by the plaintiff. The defendant would contend that this amount was withdrawn by the plaintiff with the clear understanding that no further due was payable by the defendant.

7. The defendant further submitted that if all the amounts paid by him are given credit to then no amounts are payable to the plaintiff. The defendant would further contend that along with the suit, an application for attaching the immovable properties of the defendant had been filed in A.No.5333 of 2005 in which attachment has been ordered. The defendant's categoric case was that the entire amount due to the plaintiff had been cleared by them and therefore he be given unconditional leave to defend the suit.

8. The plaintiff had refuted the allegations contained in the leave to

defend application in their counter affidavit. The plaintiff would contend that the statement of account for the period from 01.04.2000 to 31.03.2001 (Ex.P.1) has been acknowledged and duly signed by the defendant. The plaintiff would submit that the amount that have been paid by the defendant was only towards an earlier transaction of the year 1999 when the plaintiff had given a loan of Rs.20,00,000/- to the defendant, which was paid promptly. It was only on account of this prompt payment that the plaintiff was misled into giving another loan to the defendant. The defendant was attempting to confuse the Court by making such statements.

9. The learned Master after hearing the parties proceeded to dismiss the said application on the ground that the defendant has not proved his contention that he has repaid the amounts due towards the loan, which is the subject matter of the suit and that the defense which had put forward was mere moon shine. The learned Master therefore held that since no reasonable or plausible defense had been put forward, the defendant was not entitled to the grant of an unconditional leave to contest the suit. It is challenging this application that the defendant is on appeal before this Court.

10. The defendant has in his ground contended that the Master has

failed to consider the fact that the plaintiff had received a sum of Rs.16,00,000/- from the defendant and thereafter a sum of Rs.15,00,000/- pursuant to orders of this Court in the Criminal Revision Petition. He would submit that the Master has also not considered the deposit of a sum of Rs.5,00,000/- as per orders of the Hon'ble Division Bench in O.S.A.No.33 of 2017. The defendant would contend that on taking into account all these amounts it is clear that no amount whatsoever to be repaid to the plaintiff.

11. Mr.B.R.Shankaralingam, learned counsel appearing on behalf of the defendant would contend that the Bank statement produced by the applicant from the year 1998 would clearly show that the entire loan has been repaid. He would further refer to the cross-examination of the plaintiff where the plaintiff admits that except for a sum of Rs.20,00,000/- shown in the cheque no other amounts were payable by the defendant.

12. The learned counsel would therefore submit that the plaintiff has himself admitted that it is only a sum of Rs.20,00,000/- that was borrowed and taking into account the subsequent admissions of the witness regarding the amounts received by him the only conclusion that can be drawn is that

the entire amount has been repaid. This is a substantial defense that has been put forward by the defendant and therefore he must be given an unconditional leave to contest the suit.

13. Per contra, Mr.Namasivayam, learned counsel appearing on behalf of the plaintiff would contend that vital entries in the Bank statement between the period 30.04.1999 to 18.05.1999 has been deliberately not filed since these entries would clearly prove the earlier loan borrowed by the defendant. The learned counsel would submit that the defendant have themselves acknowledged the fact that he has received a loan of Rs.20,00,000/- and two cheques shown in the statement of account marked as Ex.P.1. The defendant has himself acknowledged the outstanding of a sum of Rs.22,45,000/-. Thereafter, on 20.12.2002, the defendant has issued a cheque for Rs.28,00,000/-. This would clearly show that the payments that were made by the defendant was only towards the earlier loan and not the loan taken in the year 2000.

14. The learned counsel would also refer to the Judgement in C.C.No.1255 of 2003, where the learned Judge has taken note of the evidence of P.W.2, the Accountant at Karnataka Bank, Raja Annamalai Puram Branch that the plaintiff's bank statement for the period from April to

May 1991 would show that a sum of Rs.20,00,000/- had been paid to the defendant in the year 1999.

15. Therefore, a perusal of Ex.P.1 would show that the cheques totalling Rs.20,00,000/- has been paid on 12.04.2000 and 30.05.2000 is a different loan and not the loan which is of the year 1999. He would therefore submit that the learned Master has rightly held that there is no substantial defense to the suit.

16. Heard the learned counsels and perused the records.

17. The leave to defend application has been filed only on the ground that the entire dues of the plaintiff under the suit towards the instant suit has been cleared. However, the documents and the oral evidence produced for the scrutiny of the Court would reveal otherwise. It is clear that the defendant had borrowed in the year 1999 and towards this borrowing, amounts have been remitted by him. Thereafter, a second loan has been given to him in the year 2000. It is the amount due towards this loan that is now due and owing from the defendant.

18. The defendant has not been able to show any documents

whatsoever to show that this loan has been cleared. On the contrary, it is the case of the defendant that there has been only one borrowal. However, the records would reveal that there has been borrowal in the year 1999 as well as the year 2000 and the amounts due towards the loan of the year 1999 has been repaid and not the loan which is the subject matter of the suit.

19. In these circumstances, I do not find any reason for interfering with the order of the learned Master. Therefore, the application stands dismissed.

Sd/-P.T.A.J
11.03.2021

// Certified to be true copy//

Dated at Madras this day of 2021.
JJ 24/03/2021

Court Officer(O.S.)

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