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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

SA NO.530 OF 2016

AND

CMP NO.9376 OF 2016

Sudhir Paul

... Appellant/
Respondent/Defendant

Vs.

Dr.Arjun Mathuranayagam

... Respondent/
Appellant/Plaintiff

PRAYER:

The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the XIX Additional Judge, City Civil Court at Chennai dated 25.02.2014 passed in A.S.No.390 of 2013 reversing the judgment and decree dated 18.04.2013 passed by the VIII Assistant Judge, City Civil Court at Chennai in O.S.No.8878 of 2006.

For Appellant : Mr.T.Sundar Rajan
For Respondent : Mr.K.F.Manavalan

J U D G M E N T

Aggrieved over the reversal of the finding of the First Appellate Court, the defendant has preferred the above Second Appeal.

2.The respondent / plaintiff filed a Suit for recovery of money for a sum of Rs.1,43,220/- and future interest @ 18% per annum on principle sum of Rs.93,000/- till the date of realization. The plaintiff wanted rain water harvesting arrangement made at his residence and the defendant has offered to install the same at a reasonable price. For executing this work, the plaintiff had made periodical payments at the request



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of the defendant by cash and some by cash. The plaintiff issued two cheques bearing Nos.315783 and 315784 drawn on ICICI Bank for a sum of Rs.6,228/- and Rs.4,000/-. But the defendant committed fraud and altered the cheque amounts and withdrawn Rs.14,000/- and Rs.16,228/-. The defendant had also overcharged the plaintiff by Rs.80,000/- for the simple work of providing rain water harvesting arrangement. The plaintiff came to know of the real situation after completion and asked to know about the forgery and decided to complain to the Central Crime Branch. Knowing that the defendant begged for mercy and requested the plaintiff not to give any complaint to the Crime Branch Police and worked out the difference amounts due to the plaintiff and issued two cheques bearing Nos.149972 and 149972 dated 25.10.2003 drawn on Indian Overseas Bank, Madras Christian College Campus Branch, Chennai - 600 059 for a sum of Rs.35,000/- and Rs.58,000/- respectively. When the cheques were returned, the defendant issued another cheque, towards part payment for a sum of Rs.15,000/- which was also dishonoured for insufficient funds. The plaintiff issued a legal notice on 27.01.2004 which was acknowledged by the defendant on 31.01.2004, but, no payments were made by the defendant. He filed a private complaint under Section 138 of the Negotiable Instruments Act on the file of XIV Metropolitan Magistrate Court, Egmore, in C.C.No.10553 of 2004 which was transferred to XV Metropolitan Magistrate Court, George Town, Chennai in C.C.No.5254 of 2006 and the matter is pending. The amount is still due and the defendant is liable to pay the amount together with interest @ 18% per annum from the date of dishonour of the last cheque dated 22.11.2003 as the transaction being commercial. Thus, he filed a Suit for Rs.1,43,200/- along with interest.

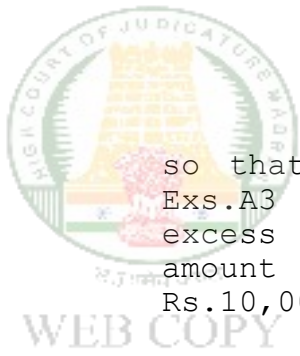
3.In the written statement, the defendant denied the averment made in the plaint. According to him, he provided the rain water harvesting arrangement to the defendant and completed the construction and there was no dispute. The allegations that he altered the cheques issued to him towards purchase of materials for the construction work were denied. There was no alteration of the cheque and the plaintiff has concated this fact with ulterior motive for the purpose of this case. The alteration was authenticated by the plaintiff himself and therefore, no forgery as alleged by the plaintiff. The allegation that defendant overcharged Rs.80,000/- for the work is false. The plaint is bereft of calculation as to how the plaintiff claims the defendant overcharging by Rs.80,000/-. The plaint is liable to be rejected for lack of pleadings. The plaintiff for the materials as per the details given by the defendant perfectly completed the work. Some cheques were given to the plaintiff as the security for completion of the work when the work was entrusted by the plaintiff. The plaintiff had



promised to return the cheques on completion of the job. The plaintiff had urged the defendant to raise the height of the compound wall between his house and his uncle Mr. Jeffrey Mathuranayagam and to remove a wicket gate connecting the house of the plaintiff and his uncle. The defendant had refused to do the same without the permission of the plaintiff's uncle as he is a relative of the plaintiff as well as his uncle. Annoyed by this, the plaintiff threatened the defendant that he would face serious consequences for not obeying his order. Thereafter, he misused the security cheques given by him. The allegation that the defendant begged for mercy and requested the plaintiff not to give a complaint and handed over a cheque for Rs.35,000/- and Rs.58,000/- to the plaintiff were all false and denied. No prudent person give cheques totalling to Rs.98,000/- for the claim of Rs.20,000/- for the amount, which was allegedly increased in the cheques the Suit was filed with bereft of accounts and for the purpose of getting money from the defendants. The complaint filed before the Crimina Court was dismissed on 26.09.2007. There is no liability in respect of cheques on which the above Suit has been laid. Therefore, he prayed for dismissal of the same.

4.The Trial Court framed appropriate issues and dismissed the Suit. On appeal by the respondent / plaintiff, the First Appellate Court reversed the finding and decreed the Suit, against which the defendant has preferred the above Second Appeal.

5.The learned counsel for the appellant would vehemently contend that the decree and judgment of the First Appellate Court reversing the well considered the judgment of the Trial Court is illegal. According to him, as per Section 118, he is entitled to rebuttal of presumption provided under Section 139 of the Act. During cross examination, the plaintiff was not in a position to quantify the exact amount of overcharging as alleged by him. He would depose that the amount for carrying out the work was not fixed and it was approximately Rs.1,30,000/- and Rs.1,40,000/-. He did not receive any cheque from the defendant as he is a close relative. He did not get any security from the defendant because of the close relationship. The rain water harvesting system work was completed and he was assigned small patch work around his house. He paid Rs.1,30,000/- for rain water harvesting system including material costs. The defendant exclusively charged approximately Rs.80,000/-. He would further depose that he consulted 4 to 5 experts in the field and found that excess charges were made by the defendant. The other experts are not given any written estimate and that he had not given any complaint to the police against the defendant regarding alteration of the cheques. When he claims to lodge complaint, the defendant approached him and given three cheques



so that no police complaint was given. The cheques marked as Exs.A3 and A4 were given by the defendant towards repayment of excess charges. The defendant issued cheques for overcharge amount of Rs.80,000/- and also borrowed an amount of Rs.10,000/-, but he has not stated in the complaint.

6.The learned counsel for the appellant would place his submissions on the ground that the cheques were received under threat of giving complaint against the defendant for alleged altering of three cheques. It is not given voluntarily and it is pleaded by him that it was given as a security for completion of work. Therefore, from the circumstances, mentioned in the plaintiff evidence, it can be culled out and there is no legally enforceable debt and that the cheques were not given voluntarily, but, it was given only for the security purposes. Therefore, the Suit filed by the plaintiff is not sustainable in law and is liable to be dismissed. He would rely on a judgment of this Court in SUBBURAM VS. RAJA GURU [2007 (5) CTC 251] wherein it is held as follows:-

"9. It is from the admitted facts of the complainant/ respondent herein, that there was no liability on the part of the petitioner herein, but the question is whether he can be made liable for the amount cheated by his brother. Even if the petitioner herein admitted the criminal liability of his brother and undertakes to pay the amount, legally the petitioner cannot be compelled to pay the amount and there is no legally enforceable debt or other liability.

10. Of Course, there is a presumption in favour of the holder under Section 139 of the Negotiable Instruments Act:

"It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, or any debt or other liability".

11. Still, when there is material in the Complaint itself rebutting the presumption and on the admitted facts the liability seems to be legally not enforceable debt or other liability, the petitioner need not undergo the ordeal of trial."



7. When the cheque was obtained under threat, coercion and intimidation and without liability, it will not amount to legally enforceable and though liability can be attached to the drawer of the cheque. Therefore, he would contend that as from the deposition of the plaintiff, it can be inferred that the cheques were obtained by force under threat to lodge a police complaint against him and that those cheques were issued only for the purpose of security and hence, there is no legally enforceable debt. He would also rely on the judgment of the Hon'ble Supreme Court in BASALINGAPPA VS. MUDIBASAPPA [CDJ 2019 SC 471] wherein the Hon'ble Supreme Court has laid the principles with regard to the ratio of Section 118A and 139. The relevant portion is extracted hereunder:-

"23. We having noticed the ratio laid down by this Court in above cases on Sections 118 (a) and 139, we now summarise the principles enumerated by this Court in following manner:-

(i) Once the execution of cheque is admitted Section 139 of the Act mandate a presumption that the cheque was for the discharge of any debt or other liability.

(ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden,

(v) It is not necessary for the accused to come in the witness box to support his



defence."

8.As per the above principles enumerated by the Court, the standard proof of rebutting presumption is that preponderance of probability. The defendant herein relied on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

9.In the instant case, there was a threat that police complaint will be laid and that security cheques were issued. It was elicited during the cross examination of the plaintiff. Therefore, the principles enumerated by the Supreme Court will squarely apply to this case and the finding of the Trial Court that the defendant failed to rebut the presumption is erroneous and therefore, he would contend that the judgment of the First Appellate Court is liable to be set aside.

10.Per contra, the learned counsel for the respondent / plaintiff would contend that the defendant nowhere in his written statement had explained any specific circumstances that he was compelled to give the cheques under threat. On the other hand, the case of the defendant was that the cheques were given to the plaintiff for security purposes for completion of work and the plaintiff was promised to return the same on completion of work. Therefore, the burden is cast on the defendant to prove his onus that the cheques were not issued towards liability but they were issued only towards security. The plaintiff has cogently deposed that the defendant had charged him in excess of Rs.80,000/- and that he was about to lodge a complaint to the Crime Branch Police for altering the cheques issued to him and drawing excess amount. The defendant after admitting his illegal conduct, promised to repay the sums. That he had forged and overdrawn as well as the sums which was overcharged from that. The defendant worked out sums due to him and issued two cheques in acknowledgment of the debt of Rs.93,000/-. It is admitted by the defendant that the cheques were drawn for a sum of Rs.93,000/-. Naturally, the presumption shall be that the cheque was issued in the discharge of the debt and other liability. Hence, the First Appellate Court discussed the issue elaborately and rightly reversed the finding of the Trial Court. He would contend that the judgment of the First Appellate Court need not be interfered.

11.Heard the submissions made on either side and perused the materials available on record.

12.The substantial point for consideration is that whether



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the defendant can rebutted the presumption and discharged the onus cast upon him. At the outset, it is noted that the said cheques admittedly were issued by the defendant to the plaintiff. According to the plaintiff, a sum of Rs.80,000/- was accessed as overcharge collected by the defendant from the plaintiff for the work entrusted to him and also the excess amount towards overdrawing by altering the cheques. For this, the evidence of the plaintiff was not discredited by the defendant while cross examining the plaintiff. He denied the circumstances that the cheques were given for security purposes. On the other hand, would also affirm that when he tried to lodge a police complaint, the defendant approached him and gave two cheques vide Exs.A3 and A4. When they were dishonoured, the defendant had issued another cheque Ex.A7 towards part payment of the returned cheques Exs.A3 and A4. Now that the conduct of the defendant in issuing Ex.A7 shows that Exs.A3 and A4 were issued only towards discharge of his liability to the tune of Rs.93,000/-. Two cheques were issued bearing a sum of Rs.35,000/- and Rs.58,000/- respectively. There is no explanation from the defendant as to why he had issued two different amounts of Rs.35,000/- and Rs.58,000/-. Further, the defendant ought to have rebutted the presumption by submitting sufficient materials that the cheques were issued only for the purpose of security for completing the work.

13.In the instant case, strangely the defendant happened to be a relative of the plaintiff to whom he had done the work. Further, he was referred by the plaintiff's uncle, who was also a relative of the defendant. It was categorically deposed by the plaintiff during cross examination that because of close relationship he has not received any security from the defendant. In that event, in the absence of any convincing evidence to prove the contrary, the contention that the cheques were issued towards security does not get established.

14.The defendant in his cross examination would produce certain bills but would admit that he did not get any acknowledgment from the plaintiff for the same. Further, he would admit receipt of money in cash as well as in cheques and denied certain payments. But would admit that he did not have any document to show that Exs.A3 and A4 were given for the purpose of security. It is also relevant to note that the plaintiff had issued a pre-suit notice. The defendant in his cross examination, admit the receipt of the pre-suit notice and the claim of Rs.80,000/- towards overcharge. But curiously, he has not given any reply to his pre-suit notice. A suggestion was also made that the defendant has taken advantage of the defective hearing of the plaintiff and cheated him and collected in excess. However, the defendant has not explained the circumstances in which the cheques in dispute vide Exs.A3 and A4



were given. In order to rebut the presumption that the cheques were not given towards discharge of liability but were issued only for the purpose of security has not adduced any evidence. Even in his chief examination, he would only deny that the averment of the plaintiff that he issued cheques for Rs.35,000/- and Rs.58,000/- to avoid police complaint. Therefore, it can be inferred that the cheques were issued for a sum of Rs.93,000/- vide Exs.A3 and A4 was not on the basis of the threat. When the cheques were returned for insufficient funds, if there is no legally enforceable debt, it is not necessary for the defendant to give another cheque dated 22.11.2003 for a sum of Rs.15,000/- which was also dishonoured. Therefore, the preponderance of probability is that there is a liability on the part of the defendant to pay the plaintiff and that is why he has issued the third cheque towards part payment of the liability of Rs.93,000/-. Further, the defendant would admit that he had completed the works on 10.09.2003. In that case, the cheques which were issued towards security should be dated prior to that. On the other hand, Exs.A3 and A4 cheques were dated 25.10.2003 after a period of 15 days. The preponderance of probability is that the cheques were not issued as security for the completed work but the case of the plaintiff is probablised.

15. Therefore, the First Appellate Court has rightly come to the conclusion that the plaintiff failed to rebut the presumption and rightly decided the case against plaintiff. I do not find any material to frame any question of law much less any substantial question of law on the point of rebuttal on the basis of the above discussions. Since no question of law arises for admitting the appeal, this Court is not inclined to do the same.

16. In fine, the Second Appeal is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TK



To

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

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

+lcc to Mr.T.Sundar Rajan, Advocate, S.R.No.67342

+lcc to Mr.K.F.Manavalan, Advocate, S.R.No.67296

SA NO.530 OF 2016
AND CMP NO.9376 OF 2016

AJS (CO)
PM/10/06/2022