IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.11.2021
CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

S.A.No.1011 of 2021

V.G.B.Sivaram Prasad ...Appellant/Plaintiff

Vs.

S.Ramesh Babu ...Respondent/Defendant
(also known as Singanamala Ramesh Babu/
Singanamala Ramesh)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 18.02.2020 made in A.S.No.245 of 2019 on the file of the XVIII Additional City Civil Court, Chennai, confirming the judgment and decree dated 12.12.2017 made in O.S.No.1203 of 2016 on the file of the IV Assistant City Civil Court, Chennai.

For Appellant : Mr.Mothilal
For Respondent : Mr.M.Kempraj

JUDGMENT

This Second Appeal is directed against the judgment of the learned XVIII Additional Judge, City Civil Court, Chennai, in A.S.No.245 of 2019 confirming the judgment of the learned IV Assistant Judge, City Civil Court, Chennai, in O.S.No.1203 of 2016.

2. The appellant/plaintiff filed a suit against the respondent to recover a sum of Rs.6,86,400/- and interest at 24%per annum on a sum of Rs.4,00,000/- from the date of plaint till date of realization and for the cost of the suit.

3. The case of the appellant, as seen from the plaint, in brief, is as follows:

The respondent approached the appellant through V.Radha Narasimha Rao, who is a friend of the appellant and an Auditor for huge amount for his financial business as loan. Appellant paid a sum of Rs.10,00,000/- to the respondent as loan and the respondent executed a demand promissory note on 01.04.2009, repayable on demand together with interest at the rate of 24% per annum. Appellant and his family members have also given earlier loan of Rs.90,00,000/- to the respondent. After repeated reminders and request, the respondent paid interest on 31.03.2009 and he paid a sum of Rs.10,00,000/- on 09.06.2010. On 24.03.2012, respondent paid a sum of Rs.25,000/- and confirmed that there is an outstanding of Rs.4,00,000/- and made endorsement accordingly acknowledging his liability. The respondent has not paid the amount. However, respondent threatened the appellant and forced the appellant to prefer a police complaint in Cr.No.70/2015 in CCB FIR, Chennai, against the respondent. There is an outstanding of Rs.4,00,000/- towards principal and a sum of Rs.2,86,400/- towards interest. Therefore, the suit.

4. The case of the respondent, in brief, is as follows:

The claim that the respondent is liable to pay a sum of Rs.6,86,400/- and interest at the rate of 24% per annum on Rs.4,00,000/- is denied. It is claimed that this claim is hopelessly barred by law of limitation. Respondent admits that he borrowed a sum of Rs.10,00,000/- from the appellant on 01.04.2009. It is denied that appellant and his family members gave a loan of Rs.90,00,000/- to the defendant. The claim that on 24.03.2012, respondent paid a sum of Rs.25,000/- and confirmed the outstanding of Rs.4,00,000/- is a blatant lie. Respondent paid interest at the rate of 24% per annum that is, Rs.20,000/- per month from 01.05.2009 to 31.03.2010 which comes to a total of Rs.2,20,000/-. After two months, that is on 09.06.2010, he paid principal sum of Rs.10,00,000/- with interest. But the appellant suppressed the interest paid by the respondent while settling the principal amount of Rs.10,00,000/-. An endorsement was made in the promissory note that only a sum of Rs.10,00,000/- was paid on 09.06.2010. When he paid the entire principal amount on 09.06.2010 what is the necessity for paying Rs.20,000/- towards interest and acknowledging liability of Rs.4,00,000/-. Even after the payment of principal amount on 09.06.2010, appellant has not returned the promissory note. Respondent caused legal notice on 26.03.2016, calling upon the appellant and his wife and son to return the time barred and fully discharged promissory note. The suit was filed without paying proper Court fee. Only a sum of Rs.100/- was paid at the time of filing of the suit. After several returns, deficit Court fee was paid. Therefore, the suit has no merits and liable to be dismissed.

5. On the basis of this pleadings, the learned Trial Judge framed the following issues:

i) Whether the plaintiff is entitled for the amount claimed?

ii) To what other relief?

6. During the trial, PW1 and PW2 were examined and Exhibits A1 and A2 were marked on the side of the plaintiff. On the side of the defendant, no witness was examined and Exhibit B1 was marked. On considering the oral and documentary evidence, the learned Trial Judge found that the Court fee was not paid in time and therefore, the suit was barred by limitation. That apart, it was also found by the learned Trial Judge, that when the respondent paid the amount on 31.03.2010, there is no acceptable reason given for claiming outstanding of Rs.4,00,000/-. Thus it is found that claim of the plaintiff cannot be entertained and dismissed the suit. Appellant/plaintiff preferred appeal in A.S.No.245 of 2019. The learned Appellate Judge also considered the evidence, submissions of the learned counsel appearing for the parties and judgment of the Trial Court and found no reason to interfere with the view taken by the learned Trial Judge and confirmed the judgment of the Trial Judge and dismissed the appeal. Against the said judgment, this Second Appeal is preferred.

7. The learned counsel for the appellant, submitted that though the Court fee was not paid in full at the time of filing the suit, subsequently, the Trial Court has condoned the delay in payment of Court fee. Therefore, that issue cannot be agitated now. Exhibit B1 interest calculation memo produced by the respondent shows that respondent is liable to pay the sum of Rs.4,13,367/-. However, without considering these aspects, both the Courts below have wrongly dismissed the suit.

8. In response, learned counsel for the respondent submitted that it is admitted by the appellant that interest was paid upto 31.03.2010. The principal sum of Rs.10,00,000/- was paid on 09.06.2010. Therefore, there is no justification for claiming that there is still a sum of Rs.4,00,000/- due. The claim that the respondent paid Rs.25,000/- on 24.03.2012 and acknowledged the liability if Rs.4,00,000/- is totally denied by the respondent. This endorsement was created by forgery just to make it appear that the suit was filed in time. When it is specifically contended that the signature of the respondent in the alleged endorsement is forged, appellant has not taken any steps to prove that the signature is that of the respondent in the endorsement. Thus, it is submitted that Courts below have rightly, on proper appreciation of the evidence, dismissed the suit and that requires no reconsideration.

9. Considered the rival submissions of the learned counsel appearing for the parties and perused the records.

10. As narrated above, it is submitted by the respondent/defendant that he borrowed a sum of Rs.10,00,000/- from the appellant on 01.04.2009 and executed a promissory note, Exhibit A2. It is also admitted by the appellant that respondent paid interest upto 31.03.2010 and he paid a sum of Rs.10,00,000/- on 09.06.2010. Now the suit is filed for the claim of Rs.4,00,000/- plus interest. How this Rs.4,00,000/- is arrived? There is no proper explanation in the plaint. When it is admitted that respondent paid interest upto 31.03.2010, it can only be taken that interest from 01.05.2009 to 31.03.2010 was paid. That is, what the case of the respondent in the written statement. On 09.06.2010, a sum of Rs.10,00,000/- was paid. So whatever the interest that remains to be paid is for the month of April and May 2010. It is also said in the written statement of the respondent that two months interest of Rs.40,000/- was paid but omitted to be mentioned in the endorsement. Even assuming that interest for two months that is, Rs.40,000/- was not paid, it is barred by limitation.

11. Next aspect of the matter is that the appellant heavily relied on Exhibit B1 account statement produced by the respondent to claim that respondent is liable to pay Rs.4,13,367/-. This accounts statement, according to this Court, is contradictory to the pleadings raised by the respondent in the written statement. Assuming that this accounts statement is true, the question arises is whether the appellant can claim this amount on the basis of the endorsement dated 24.03.2012. The suit was filed in 2015. Only if endorsement dated 24.03.2012 is true, the suit can be saved from limitation. If this endorsement is not proved, the suit is barred by limitation. It is specifically denied by the respondent that he has not made this endorsement. When the execution of this endorsement is denied by the respondent, it is for the appellant to prove by examining concerned witnesses or by subjecting it to hand writing experts opinion. Unfortunately, there is no attestors to this promissory note or to the endorsement. Only the course open to the appellant for proving this endorsement is subjecting this endorsement to hand writing expert's opinion to find out whether the signature found in the endorsement is that of the respondent. That was not done.

12. It is pertinent to refer to the evidence of PW1 in this regard. PW1 admitted that he has not taken any steps for

sending the promissory note for proving the signature in the endorsement is that of the respondent. It is also admitted by him that Rs.25,000/- said to have been paid by the respondent on 24.03.2012. It is not mentioned in the endorsement as to whether it relates to interest or principal. He admitted that he has not explained as to how did he arrive at the sum of Rs.4,00,000/- in the plaint. It is also his submission that he has not given any pre-suit notice before instituting the suit. He admitted that as per the written statement of the respondent, he claimed to have paid interest till 31.03.2010. He also admitted that respondent, paid interest once in an year and he paid interest upto 31.03.2010. There is a plain and clear admission that on 09.06.2010, respondent repaid Rs,10,00,000/- borrowed through promissory note.

13. It is clear from his evidence that the respondent paid interest till 31.03.2010 and repaid the principal amount of Rs.10,00,000/- on 09.06.2010. He is also not able to say how did he arrive at the sum of Rs.4,00,000/-. Therefore, this Court finds that the claim of Rs.4,00,000/- is not supported by any acceptable reasons. Not only that the respondent failed to establish that the endorsement was made by the respondent acknowledging the liability of Rs.4,00,000/-. Therefore, this Court is of the considered view that, appellant is not entitled to claim a sum of Rs.4,00,000/- with interest.

14. The issue that was canvassed by both the parties is non-payment of proper Court fee at the time of filing the suit. Honb'le Supreme Court held in the judgment reported in CDJ 2012 SC 441 that the Court must scrutinize the explanation offered for the delayed payment of the deficit Court fee carefully because exercising its discretion under Section 149 CPC and Section 149 CPC does not confer an absolute right in favour of the plaintiff to pay the Court fee as and when would it pleases the plaintiff. The Trial Court chose to condone the delay. It was not agitated any further by the respondent after he entered appearance in the suit. Therefore, this Court does not want, this stage to deal with this aspect. Suffice it is to say that the appellant has not made out a case for claiming Rs.4,00,000/- with interest from the respondent. On that score, this Court agrees with the findings arrived by both the Courts below and confirms the judgment.

15. This Court finds no reason to interfere with the judgment and decree of the Appellate Court confirming the judgment and decree of the Trial Court. There is no substantial question(s) of law involved in this Second Appeal. In this view

of the matter, the judgment and decree of the learned XVIII Additional Judge, City Civil Court, Chennai in A.S.No.245 of 2019 confirming the judgment and decree of the learned IV Assistant Judge, City Civil Court, Chennai, in O.S.No.1203 of 2016 is confirmed.

16.In fine, this Second Appeal is dismissed. No costs.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1. The XVIII Additional Judge
   City Civil Court, Chennai

2. The IV Assistant Judge
   City Civil Court, Chennai

3.The Section Officer,
VR Section,
High Court of Madras.

+1 CC to M/s. Mothilal & Goda, Advocate sr 63035
+5 Ccs to Mr.M.Kempraj, Advocate sr 62157.

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NMI(CO)

SP(20/12/2021)