IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.03.2021

Pronounced on : 16.04.2021

CORAM

THE HON`BLE MR.JUSTICE R.PONGIAPPAN

A.No.5931 of 2019
in
C.S.No.421 of 2018

M/s.Radiance Media P Ltd.,
having registered office at
Khivraj Complex-II, 6th Floor,
480, Anna Salai,
Nandanam, Chennai – 600 035. ... Applicant/defendant

Vs.

R.Sarathkumar ... Respondent/Plaintiff

Prayer: This application is filed under Order XIV Rule 8 of the Original Side Rules read with Section 151 read with order 7 Rule 11 of CPC, praying to dismiss the suit in C.S.No.421 of 2018.

For Applicant : Mr.R.Murugan

For Respondent : Mr.T.Padmanabhan

ORDER

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The defendant in CS No.421 of 2018, has filed this application under Order XIV Rule 8 of the Original Side Rules read with Section 151 read with order 7 Rule 11 of CPC, praying to reject the plaint filed in C.S.No.421 of 2018.

2. The brief facts narrated in the application filed by the applicant/defendant, are as follows:

(i) The present suit has been filed by the respondent/plaintiff, without cause of action. The present suit for redemption herein is filed by the respondent/plaintiff basically on the mortgage cum sale deed dated 21.06.2016. In it, for default of repayment, the right to redeem the subject property, on repayment of mortgaged money, has already been extinguished on 18.06.2018 and thereby, the mortgagor/respondent/plaintiff's right to redeem the mortgage was exhausted, with the right to foreclose the mortgage as Sale and by vesting of absolute right over the subject schedule property on the applicant/defendant from 18.06.2018, as per the terms and conditions of the mortgage deed.

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(ii) The Mortgage cum Sale Deed dated 21.01.2016 had terms and conditions to the effect that the execution of the Mortgage cum Sale deed, for the borrowed sum is a conditional sale and the same cannot be redeemed unless Rs.3,39,29,962/- together with interest is repaid on or before 18.06.2018 and in

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the event of mortgagor fails and neglects to pay on or before 18.06.2018, 'the transfer effected shall become absolute and the MORTGAGEE shall be entitled to foreclose the mortgage and in such event the Mortgagee shall be the absolute owner of the 'schedule property' freed and discharged from all right of equity of redemption of the MORTGAGOR'.

(iii) The said fact was again admitted and reiterated by the respondent/plaintiff by way of deed of undertaking dated 21.01.2016. The respondent/plaintiff has not paid any amount for the above said transaction on or before 18.06.2018 and as such transfer of the properties based on the mortgage deed dated 21.01.2016 becomes absolute and the same is irrevocable.

(iv) Nowhere in the plaint, the respondent/plaintiff has stated or even whispered the word that he is ready and willing to repay the mortgaged amount. Though, as per the deed, the movie 'Pambu Sattai' shall not be released until fulfilling the obligation of payment made in the Mortgage deed dated 21.01.2016, without making the payment as per the mortgage deed, the movie was released on 24.03.2017, that too without obtaining permission from the applicant/defendant, and as such willfully violated the terms of the undertaking dated 21.01.2016.

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(v) With regard to the present transaction, the respondent/plaintiff directed to present seven cheques to the applicant/defendant for a sum of Rs.2 Crores, to discharge part liability of the mortgaged amount and when presenting the said cheques to the bank, the same got dishonoured. In the result, the applicant/defendant filed a civil suit as summary suit before this Court in C.S.No.393 of 2017 and the same is pending.

(vi) The averments made in the plaint, makes it clear and admit the fact that M/s.Magic Frames, approached the applicant/defendant for sanction of loan to the tune of Rs.1.5 Crores and based on the same, a loan agreement dated 05.11.2014 was entered and further the respondent/plaintiff obtained balance amount from the applicant/defendant only for the purpose of running business on behalf of his partnership firm viz., M/s.Magic Frames, which is evident from the deed of undertaking dated 21.01.2016. For the requirement of the respondent/plaintiff's partnership firm, viz., M/s.Magic Frames, the loan amounts were sanctioned and the mortgage deed dated 21.01.2016 was executed which is the subject matter of the present suit. Accordingly, being the reason that no cause of action has arisen for the suit instituted by the respondent/plaintiff, the suit is liable to be rejected.

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3. In response to the averments found in the affidavit filed in support of the application, the respondent/plaintiff has filed a counter affidavit, wherein he states as follows:

(i) The present suit for redemption is a statutory right and therefore Order 7 Rule 11 (a) cannot be invoked to reject the plaint. Under Section 60 of the Transfer of Property Act, the mortgagor has a statutory right to redeem the mortgaged property any time after the principal money has become due. The only limitation statutorily prescribed for filing a suit for redemption under the Limitation Act is 30 years under Article 61 of the Limitation Act. The notice of redemption was given on 25.04.2018 itself, which is before 18.06.2018, tendering the mortgage money according to the accounts annexed therewith. The suit for redemption itself was also filed on 14.6.2018.

(ii) The releasing of the film, 'Pambu Sattai', is no way relevant to the present suit. In fact the said film was released by a third party. The orders passed in C.S.No.393 of 2017, are matters of record. The applicant/defendant has not even chosen to specify what amount was obtained and when. Since the question of redemption of properties has nothing to do with the firm or the other partners, thereby, they are not necessary parties to this suit.

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4. Heard the learned counsel appearing on either side and perused the documents.

5. At the outset, the learned counsel appearing for the applicant/defendant would submit that the respondent/plaintiff herein has filed the present suit without any cause of action and since the suit is filed for the relief of redemption of mortgage, it is necessary to mention in the plaint that the respondent/plaintiff is always ready and willing to deposit the entire mortgaged amount together with interest. But, herein it is a case, no where in the plaint, the respondent/plaintiff has stated that he is ready and willing to repay the mortgaged sum of Rs.3,39,29,960/-. He would further submit that while at the time of executing the Mortgage Deed dated 21.01.2016, along with the same, he has executed a Deed of Undertaking dated 21.01.2016. Clause 7 of the deed of undertaking reads as follows:

> "7. I further undertake on behalf of M/s.Magic Frames in which I am a Partner that all rights, copyright, revenues and claims in respect of the feature film, 'Pambu Sattai' (produced by and vesting with M/s.Magic Frames) arising from the theatrical exhibition, satellite, rights and audio rights shall vest with M/s.Radiance Media Private Limited for the entire duration of this undertaking, and no right shall be exercised or alienated without the express consent of M/s.Radiance Media Private

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> Limited in writing, and the said feature film shall not be theatrically exhibited until discharge of all obligations under the Mortgage Deed and Undertaking. I undertake to furnish requisite resolutions from M/s.Magic Frames Confirming the same."

Hence, in view of the said Undertaking, the movie 'Pambu Sattai', shall not be released until fulfilling the obligation of payment made in Mortgage Deed dated 21.01.2016. But, without making the payment as per the mortgage deed, respondent/plaintiff released the movie on 24.03.2017, without obtaining any permission from the applicant/defendant.

6. More than that, the cheques issued by the respondent/plaintiff towards the discharge of liability in respect to the current mortgage amount, got dishonoured. In the result, a suit has been filed in C.S.No.393 of 2017 and the same is pending.

7. The counsel appearing for the applicant/defendant would further submit that in respect to the application mentioned transaction, various proceedings are initiated and thereafter, after suppressing the same, the respondent/plaintiff has filed the present suit, and accordingly, he has made an attempt to play fraud in this Court and filing of the present suit is an abuse of process of law.

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8. In order to substantiate the above said submission, the learned counsel appearing for the applicant/defendant relied on the following judgments.

(i) S.P.Chengalvaraya Naidu Vs. Jagannath, reported in (1994) 1 SCC 1.

(ii)A.V.Papayya Sastry Vs. Govt. of A.P., reported in (2007) 4 SCC 221.

(iii) Ram Chandra Singh Vs. Savitri Devi, reported in (2003) 8 SCC 319.

(iv) Ramjas Foundation Vs. Union of India, reported in (2010) 14 SCC 38.

9. On the other hand, in response to the submissions made by the learned counsel appearing on behalf of applicant/defendant, the learned counsel appearing for the respondent/plaintiff would contend that the present suit has been filed, for the relief of redemption of mortgage. In the Deed of Mortgage By Conditional Sale, it was agreed by the respondent/plaintiff to repay the entire amount on or before 18.06.2018. Further, in this regard, on 25.04.2018 itself, the respondent/plaintiff issued the legal notice to the applicant/defendant seeking retransfer of his property and also expressed his willingness to pay the amount due to the respondent/plaintiff. After receipt of the said notice, the

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applicant/defendant sent a reply notice on 08.05.2018 with vague allegations.

10. Learned counsel for the respondent/plaintiff would further submit that since the suit has been filed within the period of limitation, it cannot be said that the present suit has been filed without any cause of action. Further, he would contend that for deciding the application filed under Order 7 Rule 11, the pleadings set out in the plaint alone has to be taken into account. In otherwise, the defence now raised by the applicant/defendant cannot be taken into account for deciding the said application.

11. Now on considering the either side submissions with the relevant records, no doubt, the law is well settled that while considering the application under Order 7 Rule 11 of CPC, the question before the Court is whether the plaint discloses any cause of action or whether the suit is barred by any law on the face of the averments contained in the plaint itself.

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12. Further, while considering the application under Order 7 Rule 11 of CPC, the Court is not to look into the strength or weakness of the cases of the plaintiff on the defence placed by the defendant. In this regard, our Hon'ble Apex Court in the case of ***Chhotanben and another Vs. Kiritbhai***

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Jalkrushnabhai Thakkar and Others, reported in **2018 (6) SCC 422**, wherein at paragraph No.15, it is held as follows:

> "What is relevant for answering the matter in issue in the context of the application under Order 7 Rule 11 (d) CPC is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order 7 Rule 11(d). Only the averments in the plaint are germane."

13. Further, in the judgment of our Hon'ble Apex Court in ***Soumitra Kumar Sen Vs. Shyamal Kumar Sen and Others***, reported in **2018 (5) SCC 644**, it was held that the defence projected in the written statement cannot be considered while considering the application under Order 7 Rule 11.

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14. More than that, in the case of Dahiben Vs. Arvindbhai Kalyanji Bhanusali, reported in (2020) 7 SCC 366, it was held that if cause of action prima facie disclosed, Court not required to further enquire into truthfulness of allegations on fact for disposing of the application filed under Order 7 Rule 11.

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15. Thus, all the decisions rendered by our Hon'ble Apex Court in

respect to the application filed under Order 7 Rule 11, is very clear that this Court has to find out whether the cause of action has arisen or whether the suit is barred by any law or not.

16. Now here it is a case that after executing the deed of Mortgage by Conditional Sale, the respondent/plaintiff did not repay the entire amount as agreed. Further, in respect to his liability, on the same date, on which the mortgage deed was executed, he has executed a Deed of Undertaking wherein he has agreed to give the rights of the film 'Pambu Sattai'. But, in respect to the undertaking given by him, no where in the plaint, he has stated about the deed of undertaking. In the said circumstances, it is the case of the applicant/defendant, that the deed executed by the respondent/plaintiff is an outright sale with right of reconveyance.

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17. On the other hand, it is the case of the respondent/plaintiff that he had executed a deed of Mortgage by Conditional Sale. Therefore, in respect to the nature of document, though the applicant / defendant and respondent/plaintiff, are taking a different view, now, it is not necessary for this Court to decide whether the stand taken by the applicant/defendant is found correct or not. In otherwise, it is not in dispute that as per the agreed terms,

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the respondent/plaintiff has to repay the entire dues on or before 18.06.2018. In this regard, on 25.04.2018 itself, through legal notice, respondent/plaintiff has expressed his willingness for repaying the due payable to the applicant/defendant. Therefore, it cannot be said that the respondent/plaintiff has violated the terms narrated in the mortgage deed, in respect to the repayment of total due. Only due to the reason that the applicant/defendant is not willing to receive the loan amount, the respondent/plaintiff filed the present suit and thereby, the present suit has been filed with clear cause of action.

18. Further, in respect to limitation, under Article 61 of the limitation Act, the suit for redemption of mortgage can be filed within a period of 30 years. Therefore, it cannot be said that the present suit has been filed without cause of action and also beyond the period of limitation.

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19. In general, a cause of action, in law, is a set of facts sufficient to justify suing to obtain money or property or enforcement of a legal right against another party. Further, the fact or combination of facts that gives a person the right to seek judicial redress or relief against another is also a cause of action.

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20. Herein also, at the time the applicant/defendant refused to give the particulars of dues, payable by the respondent/plaintiff, the cause of action has arisen and also at the same time, the right to sue the applicant/defendant has accrued for the respondent/plaintiff. So, in all, the submission made by the learned counsel appearing for the applicant/defendant is not having any much force to assail the case of the respondent/plaintiff, in respect to the filing of the suit against the applicant/defendant. Thereby, the present application is dismissed.

Sd/-R.P.A.J
16.04.2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

JJ 29/04/2021 COURT OFFICER(O.S.)

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