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C.R.P.No.1490 of 2020
and C.M.P.No.8803 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.10.2022

DELIVERED ON : 28.10.2022

CORAM :

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.1490 of 2020

and

C.M.P.No.8803 of 2020

Ravi C.Krishnan

... Petitioner

Vs.

Vijaya R.Vakharia

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 04.03.2020 in I.A.No.1 of 2019 in O.S.No.5095 of 2019 on the file of the XVI Additional City Civil (Fast Track) Court, Chennai.

For Petitioner : Mr.B.Ravi

For respondent : Mr.E.Prabu



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ORDER

The present petition has been filed against the fair and decreetal orders dated 04.03.2020 in I.A.No.1 of 2019 in O.S.No.5095 of 2019 on the file of the XVI Additional City Civil (Fast Track) Court, Chennai.

2.The revision petitioner is the plaintiff in O.S.No.5095 of 2019 on the file of the XVI Additional City Civil (Fast Track) Court, Chennai. The suit was filed for recovery of money from the respondent/defendant.

3.The defendant filed his written statement and both the parties went for trial. Before commencement of trial the plaintiff filed an application in I.A.No.1 of 2019 under Order VI Rule 17 CPC praying to amend the plaint. The said application, after full contest, was dismissed by the trial Court judge, aggrieved over which, the present Civil Revision Petition is filed by the plaintiff.

4. For the sake of convenience, the parties are referred to as per



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their ranking in the trial Court and in appropriate places, their rank in the present petition would also be indicated.

5.The facts of the case of the plaintiff:-

- i. One A.Balu (since deceased) was related to the plaintiff through his wife Lakshmi Balu (also deceased).
- ii. The said Balu and with his wife were the owners of a flat situate in Chamiers Road, R.A.Puram, Chennai.
- iii. The present respondent/defendant was late Balu's neighbour owning another flat on the opposite side in the second floor.
- iv. Late Balu and his wife did not have any children and were interested to dispose of their flat to the defendant.
- v. The defendant had approached late. Balu through latter's driver one Gunasekaran. The sale consideration was fixed at Rs.2 crores through an oral agreement and it was agreed by the defendant to pay a sum of Rs.1,27,44,000/- at the time of registration of property and the balance Rs.72,56,000/- at a later date once the fund was arranged. The defendant had also agreed to pay a sum of



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Rs.10,00,000/- as commission to the said Gunasekaran, driver of Balu. Accordingly, the sale deed was executed on 12.12.2011 and the balance sale consideration was paid on 09.03.2012. Immediately after, the entire sale proceeds was settled by the defendant.

vi. The defendant sought a loan of Rs.85,00,000/- from the deceased Balu which was effected through two cheques one for Rs.25,00,000/- on 12.03.2012 and another for Rs.60,00,000/- on 10.12.2012. The commission of Rs.10,00,000/- to the said Gunasekaran was also borne by the deceased Balu. It was also agreed upon that the possession of the flat would be given to the defendant only after the life time of Balu.

vii. Mrs. Lakshmi Balu expired on 05.01.2013 followed by Balu on 10.09.2015. There were repeated efforts by the said Balu to recover money from the defendant and the defendant issued three cheques out of which two cheques were for Rs.25,00,000/- each and one cheque for Rs.10,00,000/- all dated 01.08.2015. All the three cheques were dishonored by the bank for insufficient funds.



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viii. In the meanwhile, on 17.07.2015 itself the said Balu, who was ill at that time gave a gift deed in favour of the plaintiff for all the cash and fixed deposits in his (Balu) name as well as the debts owed to him by the defendant to the tune of Rs.85,00,000/-.

ix. After the demise of Balu, the plaintiff on 03.11.2015 issued a legal notice to the defendant demanding the sum he owed to late Balu. It is also alleged that the defendant had prevented the entry of the plaintiff into the flat owned by late Balu and sold to the defendant. The defendant, had in turn sold the flat bought from late Balu to one V.Raman and Kamalraman.

6. The plaintiff had filed a suit in O.S.No.2166 of 2016 before XII Assistant Judge, City Civil Court, Chennai, seeking the relief of mandatory injunction to remove the iron grill installed by the defendant and in this suit, the subsequent purchaser V.Raman and Kamala Raman filed a petition to implead themselves as a party to the suit.

7. In the present suit in O.S.No.5095 of 2019 the plaintiff had prayed for recovery of Rs.60,00,000/- (out of Rs.85,00,000/-) along with



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interest at 12% from 27.08.2015 to 20.03.2015 and further interest till realisation. In the I.A.No.1 of 2019 the plaintiff had pleaded for amendment of the prayer as detailed hereunder :

In para 13 of the plaint

13. It is submitted that though the defendant owes Rs.85,00,000/- to the plaintiff, the present suit has been filed only for the recovery of a sum of Rs.60,00,000/-, being the amount borrowed by the defendant on 10.12.2012, with interest @ 18% from 10.12.2012 to 26.08.2015 and further interest at 12% p.a for the period 27.08.2015 to 20.03.2018 and further interest till its realization.

Instead of

It is submitted that though the defendant owes Rs.85,00,000/- to the plaintiff, the present suit has been filed only for the recovery of a sum of Rs.60,00,000/-, being the amount borrowed by the defendant on 10.12.2012, along with interest at 12% per annum for the period 27.08.2015 to 20.03.2018 and further interest till its realisation.



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14. The plaintiff values the suit at Rs.1,07,69,779/- for the purpose of jurisdiction and pays a sum of Rs.1,11,222/- only towards Court Fees under Appendix 1A of O.S. Rules read with Section 22 of T.N.C.F.S.V. Act.

Instead of

14. The plaintiff values the suit at Rs.78,46,357/- for the purpose of jurisdiction and pays a sum of Rs.82,000/- only towards Court Fees under Appendix 1A of O.S. Rules Read with Section 22 of T.N.C.F.S.V. Act.

In para 15 of the plaint:

It is therefore prayed that this Hon'ble Court be pleased to grant judgment and decree in favour of the plaintiff as follows:

a. Directing the defendant to pay a sum of Rs.1,07,69,779/- with interest at 12% per annum from the date of plaint till its realisation;

Instead of

15. It is therefore prayed that this Hon'ble Court be pleased to grant judgment and decree in favour of the



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*a. Directing the defendant to pay a sum of Rs.78,46,357/-
with interest at 12% per annum from the date of plaint till
its realisation;*

8. After full contest, the trial Court dismissed I.A.No.1 of 2020 citing the reasons that the money suit itself was on the basis of dishonored cheques which in turn were based on an oral agreement and therefore, as there was no written agreement or instrument between the parties, the petition cannot be allowed. Another ground was that there was no mention in the plaint regarding the commercial nature of transaction and therefore an interest of 18% for an earlier period from the date of the oral loan is ruled out. The trial Court also relied on certain rulings of various High Courts and Supreme Court to disallow the I.A.

9. Heard Mr.B.Ravi, learned counsel appearing for the revision petitioner and Mr.E.Prabu learned counsel appearing for the respondent.

10. On a careful scrutiny of the facts presented before this



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Court, I am of the opinion that the plaintiff has sought for an amendment in his prayer demanding interest from the date of the oral loan i.e.10.12.2012 and not from the date of return of cheques i.e. 27.08.2015. Moreover, the rate of interest demanded by him for the period 10.12.2012 to 26.08.2015 is 18% due to the commercial nature of transaction of the loan. The merits of the case cannot be gone into here at this stage. The learned counsel for the plaintiff would contend that the original loan was obtained by the defendant on 10.12.2012 and the suit itself was restricted to Rs.60,00,000/- out of the total amount of Rs.85,00,000/- and the date of issue of cheques and the return thereon has to be treated as acknowledgment of liability and the date from which the interest has to run is from the date of the original loan.

11. Prima facie, the contention of the learned counsel for the petitioner has force in it. It is true that any interest to be recovered along with principal has to run from the date of the loan and therefore the order of the trial Court in I.A.No.1 of 2020 is set aside.

12. In the result,

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- i. The Civil revision petition is allowed. No costs. Consequently connected miscellaneous petition is closed.
- ii. the fair and decreetal orders dated 04.03.2020 passed in I.A.No.1 of 2019 in O.S.No.5095 of 2019 on the file of the XVI Additional Judge, City Civil (Fast Track) Court, Chennai, is set aside.

28.10.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

R. HEMALATHA, J.



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bga

To

- 1.The XVI Additional City Civil (Fast Track) Court, Chennai.
- 2.The Section Officer, VR Section, High Court, Madras.

Pre-delivery Order in
C.R.P.No.1490 of 2020
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28.10.2022