

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2022

CORAM

THE HON'BLE MR.JUSTICE PARESH UPADHYAY
AND
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

O.S.A.NO.251 OF 2021
AND
C.M.P.NO.20765 OF 2021

N.Abdul Salam

... Appellant/Respondent/
Plaintiff

.Vs.

1. The Vice President,
Head, CBB, Corporate Banking,
Axis Bank Limited,
192, Anna Salai,
Karumuthu Nilayam,
1st Floor,
Chennai - 600 002.
2. The Axis Bank SME Center,
Axis Bank Limited,
192, Anna Salai,
Karumuthu Nilayam,
1st Floor,
Chennai - 600 002.
3. Ramesh,
Vice President.
4. Naveen,
Manager (Recovery),
2 to 5 at Axis Bank SME Center,
Axis Bank Limited,
192, Anna Salai,
Karumuthu Nilayam,
1st Floor,
Chennai - 600 002.

... Respondents 1 to 4/
Applicants/Defendants 1 to 4

5. Vidyasankar,
Assistant Manager,
2 to 5 at Axis Bank SME Center,
Axis Bank Limited,
192, Anna Salai,
Karumuthu Nilayam,
1st Floor,
Chennai - 600 002.

6. Dr.Ramamurthy, Director,
RR Infra Zenith Pvt Ltd.,
131, Paper Mills Road,
Peravallur,
Chennai - 82.

7. A.Venkat Ramana Reddy

... Respondents 5 to 7/
2nd to 4th Respondents/
Defendants 5 to 7

PRAYER:-

Appeal preferred under Order XXXVI Rule 11 of O.S. Rules r/w
Clause 15 of Letters Patent against the fair and decreetal order
dated 25.03.2021 made in A.No.7239 of 2019 in C.S.No.821 of
2017.

PRAYER IN A.NO.7239 OF 2019:-

This Application is filed under Order XIV Rule 8 of the
Original Side rules read with the Order VII Rule 11(d) of Code
of Civil Procedure, praying to reject the plaint against the
defendants 1 to 4 in C.S.No.821 of 2017.

PRAYER IN C.S.NO.821 OF 2017:-

a) Directing the Defendants jointly and severally to pay to
the plaintiff sum of Rs.3,50,00,000/- with future interest at
18% per annum on Rs.3,50,00,000/- from the date of filing of
this suit till realisation;

b) Cost to the suit; and

c) Grant such further or other reliefs as this Hon'ble Court
may deem fit and proper in the circumstances of the case and
thus render justice.

For Appellant : Mr.A.Sirajudeen
Senior Counsel
For Mr.R.Rajamani

For Respondents : Mr.V.V.Sivakumar
For R1 to R4

No Appearance
For R5 to R7

JUDGMENT

(Delivered by PARESH UPADHYAY, J.)

Challenge in this appeal is made to the order passed by learned single Judge dated 25 March 2021 recorded on A.No.7239 of 2019 in C.S.No.821 of 2017. This appeal is by the original plaintiff.

2. In the suit seven defendants are joined. An application was filed by original defendants 1, 2, 3 and 4 under Order VII Rule 11 (d) of the Civil Procedure Code to reject the plaint qua them. The said application is allowed. It is this order which is under challenge.

3. Learned senior advocate for the appellant has submitted that the rejection of plaint by learned single Judge qua four defendants is illegal inasmuch as the appellant/original plaintiff is left without any remedy qua those defendants, since according to the appellant/original plaintiff, he cannot approach any forum other than civil Court in view of the provisions of the Recovery of Debts and Bankruptcy Act, 1993 and The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. It is noted that learned senior advocate for the appellant has taken this Court through the contents of the order to contend that the rejection of plaint qua those defendants is illegal and the same may be interfered with in this appeal.

4. On the other hand, learned advocate for the contesting respondents - who were applicants in the application on which the impugned order is passed/ original defendants 1,2, 3 and 4 has submitted that the impugned order can not be termed to be erroneous in any manner and therefore no interference be made by this Court. It is submitted that the plaintiff is the borrower and the bank seeks to recover that amount from the plaintiff. All defences, as may be available to him can be taken by him but this arm-twisting by the plaintiff (of joining the bank and its senior officers as defendants) should not be permitted and therefore the same is rightly set right by learned single Judge. It is submitted that this appeal be dismissed.

5. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under:

5.1 In the plaint there are seven defendants viz.,

- "1. The Vice President,
Head, CBB, Corporate Banking,
Axis Bank Limited,
192, Anna Salai,
Karumuthu Nilayam,
1st Floor,
Chennai - 600 002.
2. Axis Bank SME Center,
Axis Bank Limited,
192, Anna Salai,
Karumuthu Nilayam,
1st Floor,
Chennai - 600 002.
3. Ramesh,
Vice President
4. Naveen,
Manager (Recovery),
2 to 5 at Axis Bank SME Center,
Axis Bank Limited,
192, Anna Salai,
Karumuthu Nilayam,
1st Floor,
Chennai - 600 002.
5. Vidyasankar,
Assistant Manager,
2 to 5 at Axis Bank SME Center,
Axis Bank Limited,
192, Anna Salai,
Karumuthu Nilayam,
1st Floor,
Chennai - 600 002.
6. Dr. Ramamurthy, Director,
RR Infra Zenith Pvt Ltd.,
131, Paper Mills Road,
Peravallur,
Chennai - 82.
7. A. Venkat Ramana Reddy"

5.2 The grievance is principally against the sixth defendant. Averments in that regard are made in the plaint, relevant of which reads as under:

"8. But, contrary to the terms of the loan and operation of the account, the 6th defendant had, in collusion with the officials of the 1st defendant bank, had withdrawn the funds from the said account with his sole signature in the cheque and misappropriated it. Cheque signed by a single director is not at all valid and the 1st defendant could not pass that cheque. Most of the funds were transferred by the 6th defendant to his private account opened in the name "RR Enterprises" in the 1st defendant bank. After a large amount was withdrawn, the said factum came to the plaintiff's knowledge. On 13.10.2014, the plaintiff brought the matter of violation to the knowledge of the 1st defendant in writing. In spite of this letter, the 1st defendant had deliberately permitted the withdrawal and misappropriation of the loan amount. Since the signatures of the plaintiff are not available in those cheques, the plaintiff is not at all liable for the withdrawal of the funds which exceeded Rs.3,00,00,000/-.

.....

10. Further, the terms of the loan specifically stated that the loan amount should not be used for any other purpose nor diverted. Without the knowledge of the plaintiff and in clear violation of the terms of loan, the 6th defendant had opened another account in the same bank in the name of the company itself. The account number was 914020015055598. Instead of depositing all the receipts in the account in which cash credit was sanctioned, the receipts to the company were deposited in the above second account and it was misused by the 6th defendant at his sole discretion. Major part of the credit sanctioned was also diverted to his personal account opened in the name "RR Enterprises". The officials of the 1st defendant were fully aware of the opening and operation of these accounts and in the diversion of funds, they were also hand in glove with the 6th defendant. Thus, by their deliberate collusion with the 6th defendant, the officials of the 1st defendant had caused a monetary loss of more than Rs.3,00,00,000/-.

.....

13. Further, an account can be opened in the name of the company only if the forms are signed by all the directors and only based upon the resolution of the board. But in collusion with the officials of the defendant who are the defendants 3 to 5 herein, the 6th defendant had opened the second account bearing No.914020015055598 in it only with his sole signature, diverted the loan amount to this account and misappropriated it. Further, he had opened one more account in the name of RR Enterprises. Both were solely operated by the 6th defendant. The credit sanctioned to the account bearing No.914030016465850 was illegally and fraudulently, in collusion and connivance with the officials of the 1st defendant who are the defendants 3 to 5 in this suit were diverted to these two accounts and used at the sole discretion of the 6th defendant."

5.3 The prayer clause in the suit reads as under:

"a. directing the defendants jointly and severally to pay to the plaintiff a sum of Rs.3,50,00,000/- (Rupees thirty six lakhs three thousand and twenty five) with future interest @ 18% per annum from the date of filing of this suit till realisation:

b. cost of the suit; and

c. grant such further or other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

5.4 Defendants 1 to 4 filed the application, principally contending that the suit was not maintainable against those defendants. With the impugned order, the suit still continues including against the sixth defendant, who according to the plaintiff has played fraud.

6. We do not find any illegality in the impugned order. The bank or its officers should not unnecessarily be asked to face the ordeal of civil litigation, if they are in a position to satisfy the Court that, unnecessarily they are being dragged into the litigation. Even otherwise, on the original defendants 1 to 4 being relieved, the suit could not be termed to be barred for non-joinder of necessary parties. No such plea is either taken by the sixth defendant before learned single Judge nor in this appeal though notice was already issued on 03 August 2021.

7. In totality, we find that no prejudice can be said to have been caused to the plaintiff/ present appellant by the impugned order. Even otherwise, the impugned order can not be said to be erroneous in any manner. This appeal therefore needs to be dismissed.

8. For the above reason this appeal is dismissed. No costs. Consequently, connected C.M.P. would not survive.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mmi/33

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to Mr.R.Rajamani, Advocate, S.R.No.594
+1cc to Mr.Chethan Sagar, Advocate, S.R.No.150

O.S.A.NO.251 OF 2021

CP(CO)
PBS/09/02/2022