



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 07TH DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

O.A.No. 737 of 2021

and

A.No. 673 of 2022

in

C.S.(Comm.Div.)No. 94 of 2021

1. Mr.B.Vinayak Nilesh,
S/o. Mr.Baburaj,
No.21, Raja Street,
T.Nagar,
Chennai - 600017.

2. Mr.Baburaj
No.21, Raja Street,
T.Nagar,
Chennai – 600017.

... Applicants / Plaintiffs
(O.A.No.737 of 2021)

-Vs-

1. Mr. Rakesh Harlalka,
Door No.6, "Triveni House",
Govindan Street,
Ayyavoo Colony,
Aminjikarai,
Chennai - 29.

2. Mr. Rahul Tibrewala,
AF2234, 11th Main Road,
Anna Nagar,
Chennai - 40.

3. Mr. Rahul Kumar Singhi,



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No.1089, Poonamallee High Road,
Sankeshwara Apartment,
A Block, Flat No.1301,
13th Floor,
Chennai - 84.

4. Mr. Narendra Harlalka,
Door No.6A, 'Triveni House',
Govindan Street,
Ayyavoo Colony,
Aminjikarai, Chennai - 29.
5. Urmila Harlalka,
Door No.6A, 'Triveni House',
Govindan Street,
Ayyavoo Colony,
Aminjikarai, Chennai - 29.
6. Narendra Harlalka HUF,
Represented by its Karta
Mr. Narendra Harlalka residing at
Door No.6A, 'Triveni House',
Govindan Street,
Ayyavoo Colony,
Aminjikarai, Chennai - 29.
7. Ms. Rashmi Harlalka,
Door No.6A, 'Triveni House',
Govindan Street,
Ayyavoo Colony,
Aminjikarai, Chennai - 29.
8. Mrs. Sobhag Devi Singhi,
No.1089, Poonamallee High Road,
Sankeshwara Apartment,
A-Block, Flat No.1301,
13th Floor, Chennai - 84.

...Respondents / Defendants
(O.A.No. 737 of 2021)

**O.A.No. 737 of 2021 :-**

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Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the respondents/defendants or their men, agents from presenting schedule cheques belonging to the plaintiffs for encashment, given as security to the Respondents 1-3/Defendants 1-3 in pursuance of mortgage deed dated 16.04.2012 pending disposal of the above suit.

A.No. 673 of 2022 :-

1. Mr. Rakesh Harlalka,
Door No.6, "Triveni House",
Govindan Street,
Ayyavoo Colony,
Aminjikarai,
Chennai - 29.
2. Mr. Rahul Tibrewala,
AF2234, 11th Main Road,
Anna Nagar,
Chennai - 40.
3. Mr. Rahul Kumar Singhi,
No.1089, Poonamallee High Road,
Sankeshwara Apartment,
A Block, Flat No.1301,
13th Floor,
Chennai - 84.
4. Mr. Narendra Harlalka,
Door No.6A, 'Triveni House',
Govindan Street,
Ayyavoo Colony,
Aminjikarai, Chennai - 29.



5. Urmila Harlalka,
Door No.6A, 'Triveni House',
Govindan Street,
Ayyavoo Colony,
Aminjikarai, Chennai - 29.
6. Narendra Harlalka HUF,
Represented by its Karta
Mr. Narendra Harlalka residing at
Door No.6A, 'Triveni House',
Govindan Street,
Ayyavoo Colony,
Aminjikarai, Chennai - 29.
7. Ms. Rashmi Harlalka,
Door No.6A, 'Triveni House',
Govindan Street,
Ayyavoo Colony,
Aminjikarai, Chennai - 29.
8. Mrs. Sobhag Devi Singhi,
No.1089, Poonamallee High Road,
Sankeshwara Apartment,
A-Block, Flat No.1301,
13th Floor, Chennai - 84.

... Applicants

-Vs-

1. Mr.B.Vinayak Nilesh,
S/o. Mr.Baburaj,
No.21, Raja Street,
T.Nagar, Chennai - 600017.
2. Mr.Baburaj
No.21, Raja Street,
T.Nagar, Chennai – 600017.

... Respondents

Application praying that this Hon'ble Court be pleased to vacate the interim order granted on O.A.No. 737 of 2021 in C.S.No. 94 of 2021, dated 25.11.2021, subsequently extended on 20.12.2021.



These Applications coming on this day before this court for hearing in the presence of Mr.P.R.Raman, Senior Counsel, for Mr.C.Seethapathy, Advocates for the Applicants in O.A.No.737 of 2021 and for the respondents in A.No. 673 of 2022 and Mr.M.Santhanaraman, Advocate for the Respondents in O.A.No. 737 of 2021 and for the applicants in A.No. 673 of 2022, and upon reading the Counter Affidavit of B.Vinayak Nilesh filed in A.No.673 of 2022 and the order herein dated 28.02.2022 and this Court having observed that the respondents have placed the statements of account of 11 persons indicating that such persons paid a sum of Rs.415.50 lakhs to the first or second applicant and all these payments were made through bank channels, it appears that the second mortgage deed was supported by consideration and there also does not appear to be evidence of repayment of these amounts and that the respondents are not entitled to payment and

it is ordered as follows:-

That the order of interim injunction granted in pursuance of the order dated 25.11.2021 made in O.A.No.737 of 2021 restraining the the respondents / defendants or their men, agents from presenting schedule cheques belonging to the plaintiffs morefully setout in the schedule

thereunder for encashment, given as security to the Respondents 1-



3/Defendants 1-3 in pursuance of mortgage deed dated 16.04.2012 be and are hereby vacated.

2. That the O.A.No. 737 of 2021 be and is hereby dismissed.

3. That the applicants herein, shall be at liberty to file an appropriate application for the appointment of a chartered accountant to inspect the accounts.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 07TH DAY MARCH 2022.

Sd./-

ASSISTANT REGISTRAR (Comm.Cases)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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11.03.2022

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O.A.No.737 of 2021
and
A.No. 673 of 2022
in
C.S.(Comm.Div.) No.94 of 2021

ORDER

DATED : 07.03.2022

THE HON'BLE MR. JUSTICE
SENTHILKUMAR RAMAMOORTHY

FOR APPROVAL : 11.03.2022

APPROVED ON : 11.03.2022



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2022

CORAM:

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Original Application No.737 of 2021 &
A.No.673 of 2022
in
C.S.(Comm. Div.) No.94 of 2021

O.A.No.737 of 2021

1. B.Vinayak Nilesch

2. P.Baburaj

... Applicants/Plaintiffs

Vs.

1.Rakesh Harlalka

2.Rahul Tibrewala

3.Rahul Kumar Singhi

... Respondents/Defendants

A.No.673 of 2022

1.Rakesh Harlalka

2.Rahul Tibrewala

3.Rahul Kumar Singhi

4.Narendra Harlalka

5.Urmila Harlalka

6.Narendra Harlalka HUF

Represented by its Karta,
Mr.Narendra Harlalka,



Door No.6A, "Triveni House",
Govindan Street,
Ayyavoo Colony,
Aminjikarai, Chennai-600 029.

7.Rashmi Harlalka

8.Sobhag Devi Singhi

..Applicants/
Defendants

vs

1.B.Vinayak Nilesh

2.Baburaj

..Respondents/
Plaintiffs

Prayer in O.A.No.737 of 2021: This Original Application is filed under Order XIV Rule 8 of Original Side Rules r/w. Order 39 Rule 1 and 2 of CPC praying to grant an order of interim injunction restraining the respondents/defendants or their men, agents from presenting schedule cheques belonging to the plaintiffs for encashment, given as security to the Respondents 1-2/Defendants 1-3 in pursuance of mortgage deed dated 16.04.2012 pending disposal of the suit.

Prayer in A.No.673 of 2022: This application is filed under Section XIV Rule 8 of O.S.Rules read with Order XXXIX Rule 4 of CPC praying to vacate the interim order granted on O.A.No.737 of 2021 in C.S.No.94 of 2021, dated 25.11.2021, subsequently extended on 20.12.2021.

For Applicants

in O.A.No.737 of 2021 and : Mr.P.R.Raman S.C.

Respondents in A.No.673/2022 for M/s.C.Seethapathy

For Respondents in

: Mr.M.Santhanaraman

O.A. No.737 of 2021 and

Applicants in A.No.673

of 2022

**ORDER**

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The suit is filed for declaratory relief, redemption of mortgage, a money decree and for permanent injunction. The original application is filed by the plaintiffs in the suit. For the sake of convenience, in this order, the applicants in the original application are referred to as the applicants and the respondents thereto as the respondents. By the original application, the applicants seek to restrain the respondents from presenting specific cheques for payment. By an earlier order dated 25.11.2021, an order of interim injunction was granted for a limited period. Application No.673 of 2021 is filed by the respondents to vacate the order of interim injunction. The parties endeavoured to resolve the dispute through mediation, but the mediation was unsuccessful.

2. In support of the original application, learned senior counsel for the applicants submitted that the first applicant and respondents 1 to 3 entered into a mortgage deed on 16.04.2012. In terms thereof, respondents 1 to 3 advanced a sum of Rs.82 lakhs to the first applicant. In addition, a sum of about Rs.68 lakhs was received from some of the other respondents, thereby aggregating to a sum of Rs.1.5 crore. The applicants asserted that the respondents are money lenders as per the Tamil Nadu Money Lenders Act, 1957 (the Money Lenders Act). Keeping in mind the fact that it is a secured

loan, it is contended that simple interest at not more than 9% p.a. may be



charged on the transaction as per the Money Lenders Act. By relying upon three certificates issued by a Chartered Accountant, the applicants further asserted that a sum of about Rs.1.91 crore is refundable by the respondents to the first applicant if simple interest is calculated at 9% p.a.

3. As regards the second mortgage deed dated 13.03.2020, learned senior counsel for the applicants stated that no money was received under the second mortgage. By drawing reference to the date of execution of the said second mortgage deed, i.e.13.03.2020, it is pointed out that the cheques in respect of which the original application is filed were all issued between 2012 and 2018. On such basis, it is asserted that these cheques cannot be relied upon as evidence of consideration under the mortgage deed dated 13.03.2020. According to the applicants, as against a sum of Rs.1.5 crore which was received under the first mortgage, a sum of about Rs.3.87 crores was repaid. By relying upon a judgment of this Court, *A.Ganesa Nadar v. Jayalakshmi 2009 (6) CTC 181*, it is contended that a person engaged in the business of lending money is subject to the provisions of the Money Lenders Act.

4. The applicants further contended that unless the interim order is made absolute, the applicants would be put to irreparable hardship inasmuch as they would be subject to proceedings under the Negotiable Instruments



books of account for scrutiny by an independent chartered accountant so as to arrive at the true and correct amount paid and payable under the transactions with the respondents.

5. These contentions were strongly refuted by the respondents. By drawing reference to the first mortgage deed, learned counsel for the respondents pointed out that the amounts due and payable thereunder should have been paid within a period of fifteen months. However, the first applicant failed to adhere to his contractual obligations under the first mortgage deed. As regards the second mortgage deed, the respondents relied upon bank statements. With specific reference to an abstract at page 15 of the typed set filed by the respondents, it was submitted that a total sum of Rs.415.50 lakhs was disbursed to the first or second applicant through bank channels. In support of such contention, the respondents relied upon the statements of account of about 11 persons, including the eight respondents herein. Therefore, it was contended that the second mortgage is clearly supported by consideration.

6. Turning to the relief prayed for, learned counsel for the respondents contended that there are statutory presumptions both under Sections 118 and 139 of the NI Act. Such presumptions operate until the contrary is proved.

Therefore, the respondents contended that the relief prayed for cannot be granted. The same contention was also advanced from the perspective of



the Specific Relief Act, 1963 (the SRA). With specific reference to Section

41(d) of the SRA, the respondents contended that the applicants are endeavouring to prevent the institution of proceedings under Section 138 of the NI Act through this application. In support thereof, the judgment of the Delhi High Court in *Vishal Gupta v. Udai K. Lauria* 2009 SCC OnLine Del 2713 was placed. The respondents contended that transactions arising out of negotiable instruments are exempted under the Money Lenders Act by relying upon the judgment of the Division Bench of this Court in *Sri Kalpatharu Financiers v. V.Natarajan*, CDJ 2012 MHC 2307. The respondents also relied upon the WhatsApp correspondence between the parties in early August 2021, whereby the applicants agreed to clear the liability disclosed by WhatsApp of 02.08.2021. In effect, the respondents contended that this would justify a judgment on admissions under Order XII Rule 6 of CPC as per the judgment of the Hon'ble Supreme Court in *Uttam Singh Duggal v. United Bank of India* (2000) 7 SCC 120. By citing *N.M.Veerappa v. Canara Bank* (1998) 2 SCC 317, it was contended that the Court has the discretion to fix the appropriate interest rate in a mortgage suit. By drawing reference to paragraph-4 of the earlier ad-interim order, the respondents also contended that the earlier order was granted for the limited purpose of preventing further complications while parties endeavour to

resolve the dispute. By way of a brief rejoinder, the applicants contended



that the exclusion of negotiable instruments from the rigours of the Money Lenders Act would not enure to the benefit of the respondents inasmuch as the suit pertains to the two mortgage deeds executed by the parties. As regards the reliance on Section 41(d) of the SRA, learned senior counsel for the applicants pointed out that the judgment of the Delhi High Court was in an application under Section 9 of the Arbitration and Conciliation Act, 1996 and, therefore, the relief prayed for was refused on the ground that the scope of Section 9 is limited to preserving the subject matter of arbitration. With regard to the statements of account produced by the respondents, the applicants contended that such statements of account were self-serving unlike the certificates produced by the applicants in support of their case.

7. Upon consideration of the rival contentions, it should be noticed at the outset that the applicants seek to restrain the respondents from presenting the cheques specified in the schedule to the judge's summons of the original application. These cheques were issued either by the first or the second applicant as follows: the cheques at Sl. Nos.1 to 33 by the first applicant and those at Sl. Nos.34 to 39 by the second applicant. As pointed out by learned counsel for the respondents, there is a statutory presumption under the NI Act. Such statutory presumption is in respect of negotiable instruments, in general, under Section 118 and, in respect of cheques, in particular, under Section 139 thereof. Such statutory presumption is



couched in mandatory and not permissive language. While such presumption is rebuttable and not conclusive, it would operate until the contrary is proved. In the face of such statutory presumption, the applicants have a herculean task. Although the Court's power to grant interlocutory relief in exercise of equitable jurisdiction is expansive, at a minimum, the existence of a statutory presumption entails setting a high threshold for interference. For instance, there could potentially be a case for interference if there is strong *prima facie* evidence that the liability was otherwise discharged after the relevant negotiable instrument was issued. Towards such end, the documentary evidence should be examined *prima facie*. In the case at hand, both the mortgage deeds are on record. The second mortgage deed indicates that a sum of Rs.415.50 lakhs was advanced by the mortgagees to the mortgagor. As *prima facie* evidence thereof, the respondents have placed the statements of account of 11 persons indicating that such persons paid a sum of Rs.415.50 lakhs to the first or second applicant. Given the fact that all these payments were made through bank channels, *prima facie*, it appears that the second mortgage deed was supported by consideration. There also does not appear to be evidence of repayment of these amounts. Consequently, it cannot be concluded *prima facie* that the respondents are not entitled to payment.



8. As a corollary, the applicants are not entitled to the interim relief as prayed for. Although the respondents also relied on Section 41(d) of the SRA, it does not appear from the materials on record that statutory notices under the NI Act were issued. Therefore, it is not necessary to record conclusions on the said submission.

9. For reasons set out above, O.A.No.737 of 2021 is dismissed and A.No.673 of 2022 is allowed. As a consequence, the order of interim injunction granted on 25.11.2021 stands vacated. Notwithstanding the dismissal of this application, it will be open to the applicants to file an appropriate application for the appointment of a chartered accountant to inspect the accounts.

Sd./S.K.R.J
07.03.2022

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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