IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 08.06.2022

CORAM

THE HON`BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.S.No.299 of 2017

S.Karthikeyan .. Plaintiff

vs.

S.N.Rajarajan .. Defendant

Civil Suit filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 C.P.C., praying for the following Judgment and Decree against the defendant.

a) To direct the defendant to pay the plaintiff a sum of Rs.1,48,00,000/- (Rupees One Crore and Forty Eight Lakhs only) with further interest at the rate of 18% per annum on Rs.1,11,10,000/- from the date of plaint till the date of realisation.

b) Directing the defendant to pay the cost of the suit;

c) to grant such other relief or reliefs;

For Plaintiff : Mr.P.Raja

For Defendant : Mr.Karthik Ganesh

JUDGMENT

The present suit is filed by plaintiff for recovery of money from the defendant.

2. The brief facts of the case, as averred by the plaintiff in the plaint are as follows:

(i) The plaintiff is an advocate and the defendant is in the field of motion picture production. They are known to each other for a long time and their acquaintance developed into a good bond between each other. Upon the close contact with the defendant, having confidence of defendant's ability to do business in the field of motion picture production, the plaintiff from and out of his sources, helped the defendant with hand loan. Out of the said loan extended to him, the defendant ventured to release the movie ' Savale Samalee' and the said movie went into a total flop. The plaintiff knowing well that the defendant might not be able to repay the loan had kept quiet.

(ii) During the beginning of the year 2016, the defendant was in talk with the production house of the movie 'Bahubali 2'. Since the defendant was negotiating for a big budget movie and he was investing the proceeds from the other movie ventures for the said movie, the plaintiff was not in a hurry to pressurize the defendant. The plaintiff had great faith in the defendant and extended further financial support for him securing the rights of the said movie. The plaintiff had great faith in the defendant and extended further financial support for securing the rights of the said movie. The plaintiff had paid the defendant in the following manner as per defendant's request:-

(i) 29.04.2014 Rs.42,00,000/- through Cheque No.98169

(ii) 10.06.2014 Rs.9,10,000/- through Cheque No.101858

(iii) 12.06.2014 Rs.8,00,000/- through Cheque No.101859

(iv) 06.08.2015 Rs.35,00,000/- through cash

(v) 07.07.2016 Rs.5,00,000/- through Cash

(vi) 05.08.2016 Rs.7,00,000/- through Cash

(vii) 10.08.2016 Rs.5,00,000/- through ash

and in total, a sum of Rs.1,11,10,000.00

(iii) The defendant promised the plaintiff that he would be realising the investments upon selling the distribution rights after audio release function and accordingly, he promised to clear the plaintiff's dues with interest at the rate of 24% per annum. The plaintiff was entitled to much higher interest, as promised by the defendant, due to the status of the defendant at present and due to his success in business, the plaintiff and the defendant settled the accounts after a prolonged negotiations over phone and in person. The interest calculation at the rate of 18% per annum and after adjusting the amount of Rs.5,00,000/- paid by the defendant towards interest it was struck at Rs.1,48,44,500/- and rounded off to the value of Rs.1,48,00,000/- payable by the defendant to the plaintiff. Accordingly, the defendant issued a cheque on 31.03.2017 at his office bearing no.084211 drawn on ICICI Bank, T.Nagar in favour of the plaintiff and when the same was presented on the instructions of the defendant, it was returned with an endorsement 'Account Closed'.

(iv) Hence the plaintiff issued a legal notice dated 13.04.2017 through his counsel for the offences committed by the defendant under Section 138 of Negotiable Instruments Act and Section 420 of IPC., In the said legal notice, the plaintiff further called upon the defendant to pay him a sum of Rs.1,48,00,000/- forthwith. Further, the plaintiff apprehends that the defendant who is releasing number of films, will not honour his commitment, hence the present suit.

3. The learned counsel for the plaintiff submitted that the defendant is a film producer and the defendant is known to the plaintiff and the plaintiff paid him a total sum of Rs.1,11,10,000/- between 29.04.2014 and 10.08.2016 and thereafter, upon adding the interest and deducting the amount already given by the plaintiff a sum of Rs.1,48,00,000/- was arrived at to be paid by the defendant. In the meantime, the defendant has issued a cheque for Rs.1,48,00,000/- to the plaintiff, which upon presentation was dishonoured as 'account closed'. Hence the plaintiff pleaded to grant the relief prayed in the suit.

4. On the other side, though sufficient opportunity was granted to the defendant for representing the written statement, which was returned on 10.09.2018, the same was not represented. Hence the case was listed under the caption 'undefended board', however, the defendant failed to file the written statement, therefore, the defendant was set exparte on 25.03.2021 and the matter was posted before the learned Master for recording exparte evidence. The plaintiff, namely, S.Karthikeyan has filed the proof affidavit during his chief examination and marked 8 documents as documentary evidence to prove his claim. In the Ex-parte Evidence, the

plaintiff examined himself as P.W.1 and marked the following documents as Exs.P1 to P8 as documentary evidence, in order to prove the suit claim:-

Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Date	Description
1.	P-1		Certified copy of Bank statement of the plaintiff for the period from 01.04.2014 to 01.07.2014
2.	P-2		Certified copy of Bank statement of the plaintiff for the period from 01.07.2014 to 30.09.2014
3.	P-3		Certified copy of Bank statement of the plaintiff for the period from 01.07.2015 to 30.09.2015
4.	P-4		Certified copy of Bank statement of the plaintiff for the period from 01.07.2016 to 30.09.2016
5.	P-5	31.03.2017	Photocopy of the cheque issued by the defendant to the plaintiff
6.	P-6	11.04.2017	Photocopy of the cheque return memo issued by the ICICI bank
7.	P-7	13.04.2017	Photocopy of the notice issued by the plaintiff through his counsel to the defendant
8.	P-8	17.04.2017	Photocopy of the postal tracking information

Witnesses examined on the side of the plaintiff:

P.W.1. - Mr.S.Karthikeyan (P.W.1)

5. Heard the learned counsel for the plaintiff and perused the documents placed on record.

6. On the perusal of the documents placed on record, it is seen that the suit is laid for recovery of money from the defendant. Further, A.Nos.2577 & 2383 of 2017 were filed by the applicant / plaintiff to grant an order of temporary injunction restraining the defendant from in any way alienating either by sale, any encumbrance over the movie Bahubali, conclusion, morefully described in the schedule annexed to the Judges summons therein ; and to furnish security for a sum of Rs.1,48,00,000/- within a time frame and in the event of the failure, to furnish security of the schedule mentioned property therein respectively and the said applications were withdrawn at the instance of the plaintiff only on 07.08.2018. Yet another application, viz., A.No.1884 of 2022 was also filed to re-open the plaintiff side evidence in the suit in C.S.No.299 of 2017 in view of the fact that though the plaintiff was in possession of the required amounts and the said amount was withdrawn by the wife of the plaintiff / close relatives and paid to the defendant, the same has not been explained through his wife / close relatives as a witness. However, the said application was also withdrawn at the instance of the plaintiff on 27.04.2022.

7. The learned counsel for the plaintiff during his arguments has averred that he has lodged a complaint under Section 138 of Negotiable Instruments Act with regard to the dishonour of cheque and the defendant was convicted. As against the same, the defendant has moved an appeal before the learned XX Additional Judge, City Civil Court, Chennai in C.A.No.113 of 2020 and the learned Sessions Judge has directed to deposit 20% of the cheque amount, the said direction was not complied with. However, the said narration of the criminal incidents were not stated in the plaint.

8. It is pertinent to point out that another application, viz., A.No.6075 of 2018 is filed by the plaintiff seeking a direction to furnish security for a sum of Rs.1,48,00,000/- within a time frame and in the event of failure to direct the attachment of the property described in the schedule attached to the Judges summons. The defendant resisted the said application by way of a counter alleging that there was no written agreement between the plaintiff and K.Productions, the entire film production was done only in the name of K.Productions. The defendant has issued many blank cheques to the plaintiff to meet the various expenses of film production and the transaction between the plaintiff and K.Productions was completely a

business transaction and agreed to share the profits / Loss, if any, on equal proportion. After due deliberations and mediation by elders, the defendant agreed to pay certain amount and accordingly, paid some amount. Thereafter, the plaintiff returned some cheques and fraudulently held back some of the blank cheques and used the same for the purpose of creating this fraudulent and untenable claim in the present suit. Also, the film 'Pyaar Prema Kaadal' is the production venture of M/s YSR Films Pvt., Ltd., alone and to evident the same, a Certificate with Ref.No.749 dated 01.11.2017 from Central Board of Film Certification was produced, thereby sought to dismiss the said petition.

9. Be that as it may, on a careful perusal of the entire documents it is seen that the cheque given by the defendant was dishonored as 'account closed', to evident the same, Exhibits P.5 and P.6, viz., Photocopy of the cheque issued by the defendant and the return memo of the said cheque dated 11.04.2017 were enclosed. Though the defendant has filed a detailed counter to the applications filed by the plaintiff, but failed to disprove the averments of the plaintiff by way of written statement or by advancing arguments before this Court.

10. P.W.1, in his evidence has spoken about the manner in which he has produced money to the defendant. Ex.P.1 to P.4 are the certified copies of bank statements of the plaintiff for the period from 01.04.2014 to 01.07.2014; 01.07.2014 to 30.09.2014; 01.07.2015 to 30.09.2015 and 01.07.2016 to 30.09.2016 respectively, to evident the fact that the plaintiff is capable of lending money to the defendant. The plaintiff has also produced Ex.P.5, which is the photo copy of the cheque issued by the defendant and the cheque return memo dated 11.04.2017, Ex.P.6, to prove that the amount given by the defendant was returned as 'account closed'.

11. From the evidence of P.W.1 and the documents filed, it is proved that the defendant in order to discharge his debts has given a cheque and the same was returned as 'account closed', Ex.P.5 and P.6 substantiates the same. The evidence of P.W.1 and documents filed on behalf of the plaintiff remain unchallenged and there is no rebutable evidence against the case of the plaintiff. Hence, the plaintiff has proved the case and entitled to the relief as prayed for.

In the result, the suit is decreed with costs in respect of prayer (a), by directing the defendant to pay the plaintiff a sum of Rs.1,48,00,000/-

(Rupees one crore and forty eight lakhs only) with further interest at the rate of 18% per anum on Rs.1,11,10,000/- from the date of plaint till the date of realisation. Consequently, connected Application No.6075 of 2018 is closed.

08.06.2022

Index:Yes/No
Internet:Yes/No

Speaking Judgment / Non Speaking Judgment

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P.W.1. - Mr.S.Karthikeyan (P.W.1)

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V.BHAVANI SUBBAROYAN, J

ssd

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