



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.116 of 2020

Rangarajan

... Appellant

Vs.

Chandrasekaran

... Respondent

Prayer: Appeal Suit is filed under Order 41 Rule 1 and 2 read with Section 96 of the Code of Civil Procedure, to set aside the Judgment and Decree of the Principal District Judge, Villupuram in O.S.No.86 of 2013.

For Appellant

: Mr.R.Rajasekar

For Mr.A.P.Neelamegavannan

For Respondent

: No appearance

J U D G M E N T

The Appeal Suit has been instituted against the Judgment and Decree dated 13.08.2019 passed in O.S.No.86 of 2013.



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2. The plaintiff is the appellant, who instituted a Suit for recovery of money. The plaintiff is an Auditor by profession and the defendant is the proprietor of “Sri Venkateswara Silks” Textile shop at Villupuram. The defendant had close contact with the plaintiff and it had gone to the extent of borrowing money from the plaintiff and the plaintiff advanced the money during the year 2008 and 2009 at various occasions and the defendant was repaying the amount with interest at the rate of 18%. As per the plaintiff, the amount due from the defendant to the plaintiff accrued to the sum of Rs.10,00,000/- and the plaintiff demanded the defendant to pay the amount, since he was in need of money. The defendant issued 4 post dated cheques of Axis Bank Limited, Villupuram, bearing Nos.063601, 063602, 063603 and 063604 dated 24.07.2010, 24.08.2010, 24.09.2010 and 24.10.2010 respectively. The defendant expressed his business crises and requested to accept the post dated cheques, which will enable him to pay the dues in easy installments and the defendant being a leading textile businessman, the plaintiff believed his words and agreed the same. The cheques were subsequently presented and was returned since there was insufficient funds in the bank account of the defendant. Thus, the plaintiff issued notice on 25.06.2013 demanding to pay the amount due to him. The defendant issued



a reply dated 11.07.2013 through his lawyer, denying the borrowal of the sum of Rs.10,00,000/- as stated in the plaint. Consequently, the plaintiff instituted the Suit for recovery of money of Rs.15,16,000/- from the defendant along with interest at the rate of 18% from the date of filing of the Suit.

3. The defendant filed a written statement denying all the plaint averments as false. The defendant is the owner of “Sri Venkateswara Silks” Textile shop at Villupuram. Both the plaintiff and the defendant are known to each other and the defendant had borrowed the Suit amount from the plaintiff through cheques. The defendant denied the borrowal of loan from the plaintiff. The defendant stated that he had borrowed a sum of Rs.50,000/- on each cheque, totalling Rs.2,00,000/- and for the amount of Rs.2,00,000/- which was borrowed on various dates at Rs.50,000/- each, the defendant had issued 4 blank cheques and the plaintiff subsequently filled the above cheques by putting an enormous amount of Rs.2,50,000/- per cheque, totalling Rs.10,00,000/-.



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4. For the amount of Rs.2,00,000/- which was borrowed through 4 cheques, the plaintiff had purchased clothes and textile materials from the defendant to a sum of Rs.3,00,000/- and the excess amount of Rs.1,00,000/- in purchase of clothes and textiles had been adjusted towards interest. The defendant had been repeatedly asking the plaintiff for return of cheques and the plaintiff said that the cheques had been misplaced and he will return back soon after tracing out the same. Thus, the defendant has stated that he had not borrowed a sum of Rs.10,00,000/- as stated in the plaint but he had borrowed a sum of Rs.2,00,000/- and the said amount was adjusted through purchase of clothes and textile materials by the plaintiff for the sum of Rs.3,00,000/-. Even the interest amount had been adjusted. Based on the pleadings, the Trial Court framed the following issues:-

- (i) Whether the defendant borrowed a sum of Rs.10,00,000/- from the plaintiff ?
- (ii) Whether the suit 4 cheques are all rank forgery as alleged by the defendant is true ?
- (iii) Whether the plaintiff is entitled for the suit claim ?
- (iv) To what other reliefs the plaintiff is entitled ?



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5. On the side of the plaintiff, the plaintiff has been examined as P.W.1 and Ex.A1 to Ex.A10 documents were marked. Regarding the issue nos. 1 to 4, the Trial Court had considered the documents Ex.A1 to Ex.A10. ExA1 to Ex.A4 are the cheques. Ex.A5 is the advocate notice issued to the defendant. Reply notice is marked as Ex.A6. The income tax returns of the plaintiff are marked as Ex.A7. Income tax returns of the Plaintiff's wife / Kalpana is marked as Ex.A8 and the income tax returns of the son of the plaintiff are marked as Ex.A9 and Ex.A10.

6. Though borrowal of the amount is admitted by the defendant, he denied the amount of Rs.10,00,000/- as per the plaint statement. The defendant had stated that he had borrowed only Rs.2,00,000/- for which he issued 4 unfilled cheques in favour of the plaintiff. The plaintiff had also purchased clothes and textile materials for a sum of Rs.3,00,000/- [Rs.2,00,000(Loan) + Rs.1,00,000 (Interest)]. Though the defendant demanded for return of cheques, the plaintiff had not returned the same.



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7. The Trial Court considered the deposition of P.W.1, which was elaborate and the statement in the cross-examination. Relying on the deposition of P.W.1, the Trial Court made a finding that there is no proper document to prove the loan. As per the income tax returns of the plaintiff, Ex.A7, the plaintiff had paid only Rs.11,000/- to the defendant. Cheques are filled without the name of the person to whom the amount is to be paid. Even as per the evidence of P.W.1, he had paid Rs.11,000/- to the defendant. He had also paid Rs.3,73,000/- during the period 2009-2010 but the payment of amount had not been proved. Other amounts paid by his wife and sons were not made available in the plaint. Further, the wife and sons of the plaintiff are not added as parties in the Suit. However, the defendant had admitted that he borrowed a sum of Rs.2,00,000/- from the plaintiff. But the plaintiff himself admitted that he had paid Rs.11,000/- from his account and the other amount had been paid by his wife and sons. No documents are filed by the plaintiff for Rs.3,73,000/-. The defendant also had not filed any document to prove that the plaintiff had purchased textiles to adjust the loan amount. At the outset, the plaintiff had not filed any document to prove that the defendant had borrowed a sum of Rs.10,00,000/- nor he could be able to establish through his income tax returns that he had paid the said sum of



Rs.10,00,000/-. In his own evidence, P.W.1 has stated that the loan amount was paid through his wife and sons but the wife and sons have not been impleaded as parties in the Suit nor any other document has been filed to establish the said statement in the pleadings.

8. Thus, the Trial Court drew a factual inference that the plaintiff averments and the evidence of P.W.1 are contradictory and he has not impleaded his wife and sons as parties in the Suit. Receiver name in the cheques are also not mentioned. In view of the fact that the plaintiff had not proved that the Suit amount had been paid to the defendant by way of loan and there is no pleadings regarding the payment through his wife and sons, the Trial Court dismissed the Suit on the ground that the plaintiff had not proved his case. Accordingly, the Trial Court decided issue nos.1, 3 and 4 against the plaintiff and issue no.2 in favour of the defendant. The issuance of 4 cheques was established but the amount of loan was not established.



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9. That being the factum, the appellant is not entitled for any further relief from the hands of this Court. Accordingly, the Judgment and Decree dated 13.08.2019 passed in O.S.No.86 of 2013 stands confirmed and consequently, the Appeal Suit in A.S.No.116 of 2020 stands dismissed. No costs.

21.02.2023

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Index : Yes
Speaking order
Neutral Citation : Yes

To

The Principal District Judge,
Principal District Court,
Villupuram.



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S.M.SUBRAMANIAM, J.

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