



C.S.No.97 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.10.2023

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.97 of 2019 & O.A.No.94 of 2019 & A.No.1846 of 2020

Mrs.Cauvery Sriram

.. Plaintiff

vs.

1.R.Sumathi

2.R.Elizarasan

3.R.ARchana Rathnam

.. Defendants

Civil Suit filed under Order IV Rule 1 of Original Side Rules 1956 read with Order VII Rule 1 CPC praying for the following judgment and decree against the defendant:-

a) to pay to the plaintiff a sum of Rs.1,45,50,962/- (Rupees one crore forty five lakhs fifty thousand and nine hundred and sixty two only) being the loan amount due by their husband and father together with interest at the rate of 18% p.a. Till

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10.01.2019 till the date of realization;

b) to pay further interest at the rate of 18% on the principal sum of Rs.99,00,000/- (Rupees Ninety Nine Lakhs only) from the date of plaint, till the date of realization;

c) to pay the cost of the suit

For Plaintiff : Mr.G.Suryanarayanan

For defendants : Mr.K.Sukumaran

J U D G M E N T

The Suit has been filed for recovery of a sum of Rs.1,45,50,962/- with interest at the rate of 18% per annum.

2. The plaint in brief:-

It is the case of the plaintiff that her husband viz., Mr.Sriram and one Late Rathnam are close friends and were engaged in film industry. In view of the relationship, whenever one Late Rathnam is in need of funds, the plaintiff used to lent loans as per the instructions of her husband. A sum of



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Rs.60,00,000/- on 24.03.2015, a sum of Rs.20,00,000/- on 25.05.2015 and a sum of Rs. 14,00,000/- on 14.07.2015, totalling to a sum of Rs.94,00,000/- was lent to one Rathnam. According to the plaintiff, this amount was actually owned by the Pro Media. At the instructions of her husband, the Pro Media had transferred that amount to the Bank Account of Late Rathnam. The Late Rathnam had agreed to pay the amount along with interest within a period of one year. When the said amount had not been realized and the same was demanded, the Late Rathnam had executed a Promissory Note dated 29.06.2016 for a sum of Rs.94,00,000/- agreeing to pay interest at the rate of 18%. Thereafter, even in the month of October 2006, the said Late Rathnam had approached the husband of the plaintiff for an additional sum of Rs.5,00,000/- and also executed a letter intended to create equitable mortgage by depositing title deeds. The defendants are also aware of the transaction. Thereafter, Late Rathnam had died on 11.10.2017 and hence, the defendants, who are the legal representatives are liable to pay that amount. The property was purchased by Late Rathnam out of the amount received from the husband of the plaintiff. Hence, the



Suit.

3. Written Statement in brief:-

It is the case of the defendants that a sum of Rs.94,00,000/- has been transferred to the account of Late Rathnam from Pro Media. The defendants are unaware of the reasons of the transfer of the amount to the Bank Account of Late Rathnam. However, they are confident that Late Rathnam, during his lifetime, had business transactions with Pro Media and he is also connected with the film industry and as such, the amount would have been transferred only towards the settlement of certain business outstandings. The Pro Media, till date had neither sent any legal notice nor initiated any Suit against Late Rathnam during his lifetime or against the defendants after his death to recover the deemed debt. It is further contended that Late Rathnam was a man of substantial means. The letter dated 20.03.2015 relied upon by the plaintiff is the self-serving document and cannot be relied upon and those documents have been created and hence, the payment made by the Pro Media to Late Rathnam is only out of



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business transaction. However, it is contended that the alleged Promissory Note dated 29.06.2018 is neither a promissory note nor an acknowledgment of antecedent date. The alleged promissory note dated 29.06.2016 and the letter dated 22.12.2016 have no legal sanctity and the Suit has been filed based on the fraudulent and dishonestly created documents.

4. Based on pleadings, the following issues are framed:-

1. Whether the defendant father Rathnam had taken the loan from the plaintiff and the same was disbursed as per the instructions of the plaintiff by the common known friend account to Rathnam as per the plaint and the documents annexed thereon?

2. Whether the letter of authorisation by plaintiff dated 20.03.2015 addressed to “Pro Media”, having its office at No.28, Parsn Manere, New No.442, Old No.602, Anna Salai, Chennai to pay Rs.94 lakhs to Rathnam is a self-created one as claimed in the written statement of the defendant?

3. Whether an acknowledgment of an antecedent debts dated



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29.06.2016 in proforma, calling it to be a “Promissory Note” and executed by Rathnam is, within the scope of 'Negotiable Instruments Act', 'Limitation Act', and 'Contract Act'?

4. Whether the alleged “Promissory Note” dated 22.10.2016 alleged to have executed by Rathnam in favour of the plaintiff, admitting to pay Rs.5 lakhs is forged?

5. Whether the defendants after demise of Rathnam had entrusted the 'Sale deed' of Bangalore property to the plaintiff's husband Sriram, requesting him to sell the same?

6. To what other relief the plaintiffs are entitled to?

5. Evidence & Documents:-

On the side of the plaintiff, P.W-1 and P.W-2 are examined. Ex.P1 to Ex.P.8 marked. On the side of the defendants D.W-1 is examined and no documents marked.

6. Submissions of either side counsels:-

The learned counsel appearing for the plaintiff would submit that



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execution of the Promissory Note has been clearly established and P.W-1 is one of the attesting witness in the document, besides he is also acquaintance with the transaction made between the deceased Rathnam and wife of the P.W-1. Further, the execution of the Promissory Note has not been disputed seriously. Except evasive denial in the written statement, there is no specific denial as to the execution of the Promissory Note has been made in the statement. Further, the receipt of the consideration of 90,00,000/- from P.W-2 is also not disputed. Statements of the P.W-2 has also been filed to prove the consideration. When the consideration is also been established and the Promissory Note is also been proved in the manner known to law, it is for the defendants to dislodge the legal presumption attached to the Promissory Note. However, from the pleadings and evidences of the D.W-1, nothing has been established to dislodge the legal presumption attached to the Suit Promissory Note and Ex.P5. Hence, it is submitted that the plaintiff is certainly entitled to decree and judgment.

7. It is the contention of the learned counsel for the respondent that



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merely because the amount has been transferred from the P.W-2, there cannot be any presumption for passing of consideration for the Promissory Note. Even in Ex.P8 -legal notice, there is no whisper about transfer of fund by the Pro Media. Hence, it is contended that the entire Promissory Note is not supported by consideration. The attesting witness has not been examined.

8. The evidence of the D.W-1 further clearly indicates that the Promissory Note has not been established and the passing of consideration also not been established. Hence, merely based on the fact that some amount was received by Late Rathnam, the husband of the first defendant and father of the other defendants, the consideration cannot be presumed. Hence, submitted that the Suit is liable to be dismissed. In the light of the above, this Court answered the issues.

9. Issues 1 to 6:-

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The Suit has been filed mainly on the basis of the Ex.P5-Promissory Note. P.W-1, husband of the plaintiff is also one of the attesting witness in the Promissory Note is also examined. In the chief examination he has stated about the transaction between Late Rathnam and plaintiff and Late Rathnam used to borrow loans from the plaintiff for his business purposes. The chief examination has also stated that a sum of Rs.94,00,000/-, which is actually payable by Pro Media to the plaintiff has been given as a loan to the said Late Rathnam through P.W-2 at the instruction of the plaintiff. The evidence of P.W-1 that there was transactions between Late Rathnam and the plaintiff, has not been disputed in the cross-examination, except evasive suggestions. The fact that there was dealing between the plaintiff and the Late Rathnam was not seriously disputed. P.W-1, in his evidence has stated that a sum of Rs.94,00,000/- was paid to the Rathnam at the instruction of the plaintiff through P.W-2. In this regard, P.W-2 also examined before this Court. The three transactions for Rs.94,00,000/- on 24.03.2015, 25.05.2015 and 14.07.2015 through bank transfer has not been disputed by the defendant. It is specific case of the plaintiff that such transaction was



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quite normal taking note of their relationship in the business. Only when the repayment was asked, the Promissory Note came to be executed for the said amount. P.W-1 is his evidence also stated about the execution of Promissory Note, who is also one of the attesting witnesses. Though in an evasive pleading, it is denied in the written statement that Ex.P5-Promissory Note has not been executed and those documents have been created by forgery, it is for the defendants to establish place of forgery. On the other hand, the plaintiff himself is one of the attesting witnesses. Except evasively denying, no efforts were made by the defendants to establish the so called forgery. Whereas, the consideration of Rs.94,00,000/- received by the Late Rathnam in the Bank Account from the P.W-2, which has been established on record not only by evidence of P.W-2 but also by the pleadings of the defendants in the written statement. It is not the case of the defendants that there was a transaction between the Pro Media and Late Rathnam and that amount has been given by the Pro Media to Late Rathnam. Infact, the entire written statement, more particularly in para 2, the defendants themselves are not sure as to why that has amount come



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into the account of the Late Rathnam and only on perception, the defence has been set up.

10. In such way of the matter, this Court is of the view that when there is no specific defence as to receipt of such amount from P.W-2, it is for the defendants to establish that transaction is separate transaction, other than one which is pleaded by the plaintiff. Further, no materials are placed before this Court by the defendants to establish the separate transaction between Late Rathnam and Pro Media.

11. The evidence of P.W-2 in this regard is carefully seen. In the evidence P.W-2, stated that at a proprietor of the Pro Media he had sent the amount to the Late Rathnam only at the instruction of the plaintiff. The receipt of the amount from the Pro Media has not been disputed by the defendants. Further, the evidence of P.W-2 clearly stated that only at the instruction of the plaintiff, he transferred a sum of Rs.94,00,000/- to the Late Rathnam. This has been clearly established on record. The receipt of



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that amount has been admitted by the defendants. Ex.P2 / letter addressed to the Pro Media by the plaintiff requesting a sum of Rs.94,00,000/- to the Late Rathnam is also filed and the same is also not denied by the P.W-2. Ex.P3 statement has been filed to show that amount has been transferred to the account of the Late Rathnam. In fact, it is not disputed by the defendants. A certified copy of the Sale Deed dated 27.06.2016, the property owned by one Late Rathnam is also filed by the plaintiff. Ex.P5 Promissory Note dated 29.06.2019 has been filed to show that the for a sum of Rs.94,00,000/- pronote has been executed by Late Rathnam agreeing to pay interest at the rate of 18%.

12. It is relevant to note that though the amount has been paid in the year 2015, the pro note came to be execute in 2016 for the amount that had already been received. Therefore, only for the consideration received in the year 2015, the Promissory Note came to be executed. Admittedly, the debt is not within the period of limitation, the Promissory Note came to be executed within one year bank transaction of Rs.94,00,000/-. Therefore, the



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debt is a valid consideration for the Promissory Note. The same would be saved under Section 25(3) read with Section 9 of the Indian Contract Act, 1872.

13. Considering the above circumstances and that the Promissory Note has not been seriously disputed, P.W-1 had spoken about the Ex.P5, who was one of the attesting witness and even the entire written statement, the denial is only evasive and no specific denial has been made, as required under the Order VIII Rule V of the CPC. Further, Ex.P6 is also filed to show that the Late Rathnam had handed over the copy of the document, the legal notice was also issued for recovery of the said amount on the basis of the Promissory Note, transfer of amount to the Late Rathnam, which is also not been disputes. Considering the nature of evidence, this Court is of the view that the plaintiffs made out the case for recovery of money.

14. As execution of pronote is also spoken and proved by the



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plaintiff, which is not disputed, statutory presumption attached to the negotiable instruments would apply to said pronote. Though such presumption is rebuttable it is for the defendants to bring out the probabilities by way of various circumstances to rebut such presumption. However, on perusal of entire evidence and documents, except evasive denial and setting up a plea of forgery, no other materials whatsoever brought on record to dislodge the legal presumption attached to Negotiable Instrument. Further, as already discussed, once a person sets up a plea of forgery, it is for him to establish such plea. However, no materials whatsoever is placed on record.

15. Accordingly, this Court answered all the issues in favour of the plaintiff and the plaintiff is entitled to decree and judgment for a sum of Rs.1,45,50,962/- which subsequent interest at the rate of 6% from the date of decree till the date of realization and the defendants are liable to pay that amount from the estate left by the deceased Rathnam. Accordingly, the suit stands decreed. Consequently, the connected Applications are closed.

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List of witnesses examined on the side of the Plaintiffs :

- | | |
|--------|--------------|
| 1. PW1 | Mr.S.Sriram |
| 2. PW2 | Noorul Ameen |

List of witnesses examined on the side of the Defendants:

- | | |
|--------|---------------|
| 1. DW1 | R.Ezhilarasan |
|--------|---------------|

List of Exhibits marked on the side of the Plaintiff:

<i>S.No</i>	<i>Exhibits</i>	<i>Description of Documents</i>
1	P1	Ex.P1 is the Certified copy of the Sale Deed dated 25.10.1982.
2	P2	Ex.P2 is the letter of authorization to Pro Media from the Plaintiff dated 20.03.2015 (subject objection marked)
3	P3	Ex.P3 is the copy of the statement of accounts
4	P4	Ex.P4 is the certified copy of the sale deed dated 27.06.2016
5	P5	Ex.P5 is the promissory note dated 29.06.2016 (subject objection marked)
6	P6	Ex.P6 is the letter given by the defendant's father dated



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<i>S.No</i>	<i>Exhibits</i>	<i>Description of Documents</i>
		22.10.2016 (subject objection marked)
7	P7	Ex.P7 is the Death Certificate of the defendant's father Mr.Rathinam
8	P8	Ex.P8 is the office copy of the legal notice issued by the plaintiff's counsel dated 12.01.2019

List of Exhibits marked on the side of the Defendants:

<i>S.No</i>	<i>Exhibits</i>	<i>Description of Documents</i>
1	-	-

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Internet : Yes
Index : Yes / No
Speaking order / Non Speaking order
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N.SATHISH KUMAR, J.
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To

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

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