



O.S.A.No.197 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.02.2023

DELIVERED ON : 24.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

O.S.A.No.197 of 2012

&

M.P.No.1 of 2012

G.V.Films Limited
represented by its
Authorised representative
Mr.P.Raghuraman
“Whispering Heights”
F-0, No.132, St.Mary's Road
Alwarpet, Chennai-600 018

.. Appellant

Vs.

1.M/s.Prabhudas Gurumukh Singh
represented by its Partner
Mr.Giridharilal Prabhudass
“Jai Prabhu Nivas”
No.2, 1st street, Haddows road
Nungambakkam, Chennai-600 006

2.M/s. Sujatha Films
“Sujatha Centre



O.S.A.No.197 of 2012

No.4, Sheshadri road
Alwarpet, Chennai-600 018

3.Mrs.Sujatha Venkateswaran

.. Respondents

Prayer:- Original Side Appeal filed under Order 36 Rule 1 of the Original side Rules read with Clause 15 of Letters Patent against the judgment and decree dated 30.06.2011 made in C.S.No.237 of 2005 and dismiss the suit in C.S.No.237 of 2005.

For Appellant : Mr.V.Meenakshi Sundaram

For Respondents : Mr.M.Santhanaraman for R1

R2&R3 not ready in notice.

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

This intra Court Original Side Appeal has been preferred by the 1st defendant, aggrieved by the judgment and decree dated 30.06.2011 made in C.S.No.237 of 2005 on the file of Original Side of this Court.

2. The 1st respondent as plaintiff filed the said suit in C.S.No.237 of 2005 for recovery of a sum of Rs. 57,99,700/- together with interest at 18%



O.S.A.No.197 of 2012

WEB COPY

p.a on Rs.25,00,000/- and also prayed for a preliminary mortgage decree with further prayer to bring the property to sale by public auction in the event of default committed by the defendants in payment of the decree amount and for a personal decree against the 3rd defendant in the event of the sale proceeds not being sufficient to satisfy the decreetal amount.

3. It is the case of the plaintiff/1st respondent that the 1st defendant company represented by its Chairman and Managing Director Mr.G.Venkateswaran, approached the plaintiff firm in October 1999, seeking financial assistance to the tune of Rs.25,00,000/- offering the property of the 2nd defendant as security. The plaintiff agreed to the request of the 1st defendant and lent a sum of Rs.25,00,000/- by executing a bond dated 20.10.1999, which was executed by the Managing Director of the 1st defendant company and the original title deeds of the property offered as security were also handed over to the plaintiff and thereby an equitable mortgage stood created.

4. It is the further case of the plaintiff/1st respondent that even subsequent to the said transaction, the 1st defendant company was in the



O.S.A.No.197 of 2012

WEB COPY

habit of borrowing various amounts to the tune of several lakhs on various dates from the plaintiff and was also paying interest promptly. Further, it is also stated that additional collateral security was also given by the 1st defendant since the borrowing became huge and another property of the 2nd defendant was given as collateral security. The 3rd defendant is the wife of the Chairman and Managing Director of the 1st defendant and the said 3rd defendant stood as guarantor in her personal capacity for the amounts borrowed by the 1st defendant company. It is the specific case of the plaintiff/1st respondent that repayments were only through cheques issued by the appellant/1st defendant company.

5. The plaintiff/1st respondent further contends that the 1st defendant used to repay monies every now and then and the total outstanding got reduced and therefore, the 1st defendant requested the plaintiff to return the original title deeds pertaining to ground and first floors of the mortgaged property, retaining the title deed pertaining to the second floor which would adequately secure the amounts due to the plaintiff.



O.S.A.No.197 of 2012

WEB COPY

6. The plaintiff/1st respondent further stated that as of April 2003, the 1st defendant company was due and payable a total sum of Rs.46,60,000/- towards principal and interest, in respect of which 95 post dated cheques were issued totalling in all Rs.46,60,000/- towards discharge of liability of the plaintiff. It is also pleaded that the Chairman and Managing Director, Mr.G.Venkateswaran committed suicide on 04.05.2003 and the plaintiff was in dark as to how the monies due to them could be recovered, especially since it was belatedly known to them that there were several other claims against the 1st and 2nd defendant companies. In this factual matrix the suit came to be filed.

7. The 1st defendant filed a written statement denying liability to pay the suit claim. Paragraphs 3 and 4 of the written statement are extracted herein below:

“...

3. This defendant is maintaining regular books of accounts. From the records of this defendant it is found that there was no entry in the account books that the plaintiff had advanced amounts to this defendant. Moreover, the Board of this defendant have not authorised Mr.G.Venkateswaran or anyone



WEB COPY



O.S.A.No.197 of 2012

else at any point of time to borrow any money from the plaintiff either by the erstwhile Managing Director Mr.G.Venkateswaran or any other Director.

4. From the records of this defendant it is found that there were some transactions between the plaintiff and Mr.G.Venkateswaran in his personal capacity. In fact this defendant paid amounts to the plaintiff by cheques to a tune of more than 2 crores at the instance of Mr.G.Venkateswaran and the said amounts were debited to the personal account of Mr.G.Venkateswaran.

8. The above paragraphs in the written statement of the 1st defendant clearly point out to the fact that the 1st defendant has only contended that the Chairman and Managing Director had no authority to borrow money from the plaintiff and that in respect of the amounts paid by the 1st defendant to the plaintiff by cheques totalling a sum of more than two crores, it was only at the instance of Mr.G.Venkateswaran and that internally the said amounts were debited to the personal accounts of Mr.G.Venkateswaran. The 1st defendant also contended that suit is barred by limitation and also liable to be dismissed, since no proper statement of accounts were filed evidencing the actual amount paid by the 1st defendant



O.S.A.No.197 of 2012

WEB COPY

towards interest. Ultimately, the 1st defendant also contended that the property which was given as security to the plaintiff was attached by the Income Tax Department and subsequently the property was also sold in auction by the Income Tax Department. Citing the above, the 1st defendant sought for dismissal of the suit.

9. Before the learned Single Judge, the following issues were framed:

“1. Whether the plaintiff is entitled to a preliminary decree for Rs.57,99,700/- with interest at the rate of 18% p.a as prayed for?

2. Whether suit is barred by Limitation?

3. Whether the interest claimed by the plaintiff is usurious in nature?

4. To what relief, the plaintiff is entitled?”

10. At trial, Mr. Giridharlal Prabhudas was examined as P.W.1 and Exs.P.1 to P.16 were marked. On the side of the defendants one Mr. P. Raghuraman was examined as D.W.1 on behalf of the appellant/1st defendant and no documents were marked. The defendants 2 and 3 did not choose to contest either the suit or the present appeal. Infact, despite a decree against them, defendants 2 and 3 have also not filed any appeal also.



O.S.A.No.197 of 2012

WEB COPY

11. This Court has paid anxious consideration to the arguments put forth on the side of the appellant as well as the 1st respondent/plaintiff. The only moot point that requires consideration is as to whether the plaintiff is entitled to recover the suit claim from the 1st defendant, especially in the light of the defence set up by the 1st defendant that its Chairman and Managing Director had no authority to borrow monies from the plaintiff/1st respondent.

12. It is seen from the plaint averments and also conjoint reading of the averments in the written statement, the 1st defendant's case is very specific. The transactions between the appellant and the 1st respondent/plaintiff are not denied. It is only stated that the borrowings made by the Chairman and Managing Director of the 1st defendant was on his personal account and not for the appellant/1st defendant. In this backdrop, the oral and documentary evidence have been perused by this Court. Exhibits P5,6,7,10,11,12 ad 13 are letters sent by the Chairman and Managing Director in the letter head of the appellant/1st defendant. All these letters specifically refer to the borrowing and also security offered on behalf of defendants 1 and 2. Ex.P.14 is yet another letter dated 15.10.2002 addressed by the said Mr.G.Venkateswaran as Chairman and Managing



O.S.A.No.197 of 2012

WEB COPY

Director of the appellant/1st defendant, in the letter head of the appellant/1st defendant. A reading of the said letter, discloses the fact that the financial assistance was for production of a film in the appellant/1st defendant's name, where Mr.G.Venkateswaran was the Managing Director and that the monies were required only for production of a film by the appellant/1st defendant. Infact, the Chairman and the Managing Director Mr.G.Venkateswaran, has further categorically mentioned in the said letter that the security of the appellant/1st defendant shall stand extended to the plaintiff/1st respondent and that as the Managing Director, Mr.G.Venkateswaran was entitled to offer the security to enable smooth completion of the film produced by the appellant/1st defendant. Even though the appellant's counsel referred to certain exhibits which were not on the letter heads of the appellant/1st defendant company, considering the overwhelming documentary evidence, this Court has no hesitation to hold that the monies were borrowed by the Chairman and Managing Director Mr.G.Venkateswaran only for the appellant/1st defendant's need and purpose and not for his personal use. Infact, all the cheques which have been marked as Ex.P.16 series are only cheques favouring the plaintiff/1st respondent for various amounts on various dates and all the



O.S.A.No.197 of 2012

WEB COPY

cheques are issued by the appellant/1st defendant company.

13. The next question that falls for consideration is as to whether the Chairman and Managing Director, Mr.G.Venkateswaran had authority to borrow monies from the plaintiff and whether such borrowings would bind the appellant/1st defendant. This contention is met by the 1st respondent/plaintiff's counsel arguing that it would be far fetched for the plaintiff/1st respondent to know the internal dealings of the appellant/1st defendant company. In short, the counsel for the 1st respondent/plaintiff argued the 'Doctrine of Indoor Management'.

14. In support of the said contention cited the following three authorities in support of his contentions.

1. Dehradun-Mussoorie Electric Tramway Co Vs. Jagmandar Das and others, 1931 SCC Online All 172: AIR 1932 All 141

2. Lakshmi Ratan Cotton Millls, Co. Ltd., Kanur vs. J.K.Jute Millls Co. Ltd., 1956 SCC online All 370: AI 1957 All 311.

3. Punj Star Industries Pvt Ltd Vs. Atna Engineering Pvt. Ltd & Ors, 2010 SCC Online Del 3016.



O.S.A.No.197 of 2012

WEB COPY

15. The Hon'ble Division Bench of the Allahabad High Court in the case of ***Dehradun-Mussoorie Electric Tramway Co Vs. Jagmandar Das and others***, referring to Halsbury's "Laws of England", Volume 5, page 302, held that persons contracting with the company and dealing in good faith may assume that acts within the power of the company have been properly and duly performed and are not bound to enquire whether acts of internal management have been regular. The Division Bench also held that persons dealing bonafide with the Managing Director are entitled to assume that he had all powers as he purports to exercise as long as such acts are not ultravires to the company.

16. In the judgment reported in ***Lakshmi Ratan Cotton Mills, Co. Ltd., Kanur vs. J.K.Jute Mills Co. Ltd.***, another Division Bench of the Allahabad High Court in a similar set of facts as in this case held that even if there was no resolution authorising the persons to enter into a transaction on behalf of the defendant company, the claim of the plaintiff as a creditor cannot be affected. The Division Bench further held that a bonafide creditor, in the absence of any suspicious circumstances, is entitled to presume that all required formalities have been complied with and that the



O.S.A.No.197 of 2012

WEB COPY

resolution is only a mere matter of indoor or internal management which cannot be used to defeat the just claim of the bonafide creditor. The Division Bench also placed reliance on the leading authority in the ***Royal British Bank's*** case.

17. All the above judgments have placed reliance on the leading authority in ***Royal British Bank Vs Turquand reported in (1856) 6 E & B Reports, 327 : 1856 (119) ER 886 (A)***. Infact, this case is often referred to as ***Turquand's Rule*** and has been followed by various Courts for over a century. In essence the ratio laid down by the English Court in Royal British Bank's case is that a third party is entitled to infer a fact of a resolution authorising the person representing the company to be legitimate. In other words it protects the rights of a third party from the internal transactions of the company, knowledge of which is alien to the third party.

18. In the present case also the said 'Doctrine of Indoor Management' or ***Turquand's Rule*** can be applied. This Court does not find any malafides or lack of bonafides on the part of the 1st respondent/plaintiff.



O.S.A.No.197 of 2012

WEB COPY

The plaintiff/1st respondent had all reasons to believe the representations of the Chairman and Managing Director of the appellant/1st defendant. The 'Doctrine of Indoor Management' has been followed in various judgments of the Hon'ble Apex Court as well as this Court. In this case also this Court deem it fit to apply the said Doctrine and holds that the plaintiff/1st respondent cannot be made to suffer because of the internal transactions that are now put against the plaintiff/1st respondent to defeat the suit claim.

19. This Court has already found that the Chairman and Managing Director has represented himself only on behalf of the appellant/1st defendant company. The mere fact that there was no resolution or authorisation for the said Mr.G.Venkateswaran to borrow monies from the plaintiff cannot be put against the 1st respondent/plaintiff in order to defeat their lawful entitlement of the monies borrowed from them.

20. This Court also takes into consideration the fact that several of the transactions are post the suit transaction in October 1999 and the appellant's counsel has contended that these documents are of no avail and the plaintiff/1st respondent has miserably failed to prove its lawful



O.S.A.No.197 of 2012

WEB COPY

entitlement to the suit claim. However, this Court does not find any force in the said contention, for two principal reasons viz., 1) The specific stand of the appellant/1st defendant in the written statement in paragraphs 3 and 4 which has already been extracted supra. 2) The various documents filed to evidence the factum of the borrowing of the suit claim being only by the appellant/1st defendant through its Chairman and Managing Director.

21. Therefore, we are unable to accept the arguments of the learned counsel for the appellant/1st defendant that the Chairman and Managing Director of the 1st defendant company had no authority and that the liability cannot be fastened on the appellant/1st defendant. Infact, this Court also finds that despite pleading and letting in oral evidence to the effect that the appellant/1st defendant had necessary documents/evidence to establish that the transactions undertaken by Mr.G.Venkateswaran with the plaintiff were only in his personal capacity, no shred of evidence had been let in. The appellant/1st defendant has not even filed the account books or the necessary documents to establish the plea of internal adjustment between the company and Mr.G.Venkateswaran.



O.S.A.No.197 of 2012

WEB COPY

22. This Court has also gone through the judgment of the learned Single Judge and finds that the learned Single Judge has come to the right conclusion in holding that the plaintiff is entitled to a decree as prayed for.

23. One another submission made by the learned counsel for the appellant is that the suit is barred by limitation. In this connection, the counsel for the appellant argued that the plaintiff has not filed the statement of accounts and no pronotes have been filed to substantiate the suit claim.

24. This Court is unable to accept this limb of the argument for the simple reason that the suit is not based on a promissory note but only on a mortgage by deposit of title deeds. The period of limitation provided by the statute viz., the Limitation Act is 12 years for recovery of monies due on mortgage. In the instant case, admittedly the borrowing was in October 1999 and the suit came to be filed in 2005 and therefore, this Court holds that suit is well within time and not barred by limitation.

25. This Court also finds that the learned Single Judge has also rightly



O.S.A.No.197 of 2012

WEB COPY

factored the sale of the property offered as collateral, pending the suit, at the instance of the Income Tax Department and therefore held that the plaintiff is not entitled to a mortgage decree but only to a personal money decree against the defendants, jointly and severally. This Court does not find any infirmity in the said finding of the learned Single Judge.

26. In fine, this Original Side Appeal is dismissed with costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R.J) & (P.B.B.J)
24.02.2023

Internet : Yes
Index:Yes/No
Speaking/Non-speaking order
Neutral Citation:Yes/No
To
1.The Sub Assistant Registrar (Original side)
High Court, Madras

2.The Section Officer
VR Section,
High Court, Madras



WEB COPY



O.S.A.No.197 of 2012

S.S.SUNDAR, J.,

and

P.B.BALAJI, J

kpr

Pre-delivery judgment in
O.S.A.No.197 of 2012

24.02.2023