IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.62 of 2021

M.I.Hasan …Appellant

Vs

A.S.Vijay Anand ...Respondent

Prayer: Appeal Suit is filed under Section 96 read with Order XLI Rule 1 of C.P.C against the Judgement and Decree passed by the XVI Additional City Civil Court, Chennai in O.S.No.5644 of 2013 dated 26.06.2018.

For Appellant: Mr.T.V.Ramanujam, Senior Counsel
for Mr.S.Sivashanmugam

For Respondent: Mr.A.S.Vijay Anand,
Party-in-Person – No Appearance

JUDGMENT

The unsuccessful plaintiff has filed the above appeal challenging the judgment and decree passed by the learned XVI Additional Judge, City Civil Court, Chennai in O.S.No.5644 of 2013.

2. The brief facts which have culminated in filing of this first appeal are herein below set out. The parties for the ease of understanding are referred to in the same ranking as before the trial Court.

3. PLAINTIFF'S CASE:

(i) The plaintiff has filed the above suit for recovery of a sum of Rs. 17,20,000/- together with interest @ 24% per annum on the sum of Rs.10,00,000/- from the date of the suit till the date of realization. It is the case of the plaintiff that the defendant had borrowed a sum of

Rs.10,00,000/- from the plaintiff on 07.10.2009 and issued a cheque dated 07.10.2009 for Rs.10,00,000/-bearing Cheque No.003481 drawn on Axis Bank Ltd., as security and promised to repay the same at 24% per annum. The plaintiff would submit that the amount was paid to the defendant only on the recommendation of a close friend of the plaintiff.

(ii) Despite repeated demands by the plaintiff, the defendant did not re-pay the amount. The defendant's father was a sitting MLA of Tiruttani Constituency and the defendant taking advantage of the same, threatened the plaintiff stating that he has to forget about his amount. Since the amount was not forthcoming, the plaintiff had issued a legal notice dated 18.07.2012 calling upon him to repay the said amount. The notice was returned with an endorsement "unclaimed". Therefore, the plaintiff had come forward with the suit.

4. DEFENDANT'S CASE

(i) The defendant would submit that the suit is a rank forgery and a fraud committed by the plaintiff against him and his father. He would submit that the suit is nothing but an abuse of process of Court. The defendant would submit that he does not know the plaintiff and never had any official dealing with them. The defendant had clearly and categorically denied borrowing any sum of money from the plaintiff as also issuing him with the cheque. The defendant would submit that he was a junior under Mr.G.Karthikeyan who was a close friend of his father and also a lawyer. The defendant would submit that his father would send briefs to the said Karthikeyan, particularly land acquisition matters from the Thiruvallur District, for filing the appeals before this Court.

(ii) In the course of this relationship, the defendant's father, who needed funds for his clients, had borrowed a sum of Rs.10,00,000/- from the said Karthikeyan and similarly, one Sreedhar Babu and Rajendran, the clients of the defendant's father had borrowed a sum of Rs.4,50,000/- and another sum of Rs.5,00,000/- from the said Karthikeyan respectively. The amount was advanced by the said Karthikeyan to the said Sreedhar Babu and Rajendran on the assurance given by the defendant's father about the due repayment of the amount. As a security for these advances, the said Karthikeyan had insisted upon the defendant executing promissory notes without the drawer's name.

(iii) The plaintiff, considering the fact that Mr.Karthikeyan was his senior and a trusted person and believing that the blank cheque would not be misused had handed over the cheque to the said

Karthikeyan. In addition to cheque taken from the defendant, Karthikeyan had forcibly obtained the following documents:

S. No	Nature of Instrument	Dated	Description
1.	Blank Pro-note	07.05.2009	For a sum of Rs. 10,00,000/- (Ten Lakhs only)
2.	Blank Cheque No. "003481" drawn of Axis Bank, Thiruvallur	07.10.2009	The above stated very same amount of Rs. 10,00,000/- (Ten Lakhs only) which was given as an Additional security besides the pronote to you
3.	Blank Pro-note	20.04.2009	For a sum of Rs. 15,00,000/- (Fifteen Lakhs only) at his residence
4.	Blank Cheque No. "003480" drawn of City Union Bank, Thiruvallur	07.08.2009	The above stated very same amount of Rs. 15,00,000/- (Fifteen Lakhs only) which was given as an Additional security besides the pronote dated 20.04.2009

5.	Blank Cheque No. "003482" drawn of City Union Bank, Thiruvallur	07.09.2009	Additional blank cheque given towards the amount of Rs. 3,00,000/- (Three Lakhs only) as interest.

(iv) The defendant would submit that in the month of October 2010, the defendant had paid a sum of Rs.15,00,000/- in cash to Karthikeyan at his residence and on 20.11.2010, the defendant's father further paid a sum of Rs.25,00,000/- and after receiving the sum of Rs.40,00,000/- towards principal and interest, the said Karthikeyan had executed a receipt to that effect. When the defendant had insisted on the return of the promissory notes and cheques, the said Karthikeyan had stated that the documents had been misplaced and he would hand over the same the minute he places hands on it. The father and son believing the said Karthikeyan had not insisted on its return. It appears that this cheque has been given to the plaintiff by the said Karthikeyan and the plaintiff is colluding with the said

Karthikeyan. Therefore, he sought for dismissal of the suit.

5. ISSUES FRAMED:

1. *Whether the plaintiff is entitled to receive the suit claim amount from the defendant?*
2. *Whether the plaintiff is entitled to claim interest from the defendant?*
3. *To what other relief, the plaintiff is entitled to?*

6. TRIAL COURT

(i) The plaintiff had examined himself as P.W1 and marked Exs.A1 to A3. On the side of the defendant, the defendant had examined himself as D.W1 and B1 and B2 were marked. Ex.A1 is the original cheque bearing No.003481 which is said to have been drawn in favour of Hasan, the plaintiff, by the defendant. Ex.A2 is the copy of the legal notice issued by the plaintiff to the defendant and Ex.A3 is his returned cover. Ex.B1 is the notice dated 14.11.2012 which has been sent by the defendant to the plaintiff calling upon him to produce the following documents (i) Income tax returns from 2007 till date (ii) Bank statement from 2007 to date and (iii) Book of accounts maintained in the normal course of business and Ex.B2 is the xerox copy of the Bank statement of accounts and IT returns for the years 2009-2010 and 2010-2011.

7. EVIDENCE:

(i) The plaintiff, as P.W1, in his proof affidavit, would reiterate the contents of the plaint In his cross examination, the plaintiff would submit that he is doing the business of selling home furnitures and appliances on monthly installments. However, he fairly concedes that no documents has been filed to support his statement. He would also submit that a sum of Rs.10,00,000/-, which is said to have been extended as a loan, does not feature in Ex.B2-Bank statement. He would state that the defendant's father has not borrowed any amount from him and also concede that he has not filed any document to show that he had the sum of Rs.10,00,000/- on 07.10.2009. He would also state that during the relevant period, as per Ex.B2, the balance in his account was only a sum of Rs.1,74,286.62/-. In his cross examination, he would also concede that the bank statement-Ex.B2 and Income tax returns do not reflect the amount that has been offered as a loan to the defendant. P.W1 would also state that on earlier occasions, he had extended a loan to the defendant to the tune of sum of Rs.7,00,000/- and Rs.3,00,000/- in 2004. The defendant's mother had also borrowed from him. He would also fairly admit that loans are given only on the strength of promissory notes. He would further admit that though the defendant had defaulted in repayment of the money, he has not presented the cheque for collection, as he thought that the defendant would pay the amount within a period of one year. In response to a question as to who was the friend who had recommended the plaintiff to extend the loan to the defendant, the witness has clearly and categorically stated that he is not in a position to divulge the name.

(ii) D.W1, in his cross examination, would state that his cheque was given to his senior in the first two months of 2010. He has clearly deposed that he does not know the plaintiff. He would also submit that he has filed a criminal complaint with the City Commissioner of Police for return of the cheques.

(iii) The trial Court, on overall consideration of evidence, has returned a finding that the plaintiff has not come to Court with clean hands and has failed to prove and establish that the defendant has executed a cheque after receiving the sum of Rs.10,00,000/-. That apart, the Court has taken note of the fact that the borrowal was not reflected in his bank statements or in the income tax returns. Since the defendant has categorically denied the receipt of the money as also the execution of the cheque in favour of the plaintiff, the burden of proof was on the plaintiff to prove his case. However, the said burden of proof has not been discharged and therefore, dismissed the suit.

8. SUBMISSIONS:

Mr.T.V.Ramanujam, learned Senior Counsel appearing on behalf of Mr.S.Sivashanmugam, learned counsel for the plaintiff would submit that the findings of the Court that the plaintiff has not discharged the onus fixed on him is totally erroneous since the plaintiff had admitted the execution of the cheque. Once the execution of the cheque is executed, the burden is upon the plaintiff to prove that he has not received the consideration. Therefore, the judgment and decree of the Court below has to be set aside and decreed.

9. POINTS FOR CONSIDERATION:

1. *Whether under Ex.A1-cheque has been executed in favour of the plaintiff as security for the sum of Rs.10,00,000/- received by the defendant from the plaintiff?*
2. *Whether the cheque has been given to the defendant's senior as stated by him and not to the plaintiff?*

10. Heard the learned senior counsel appearing for the appellant and perused the materials available on record.

11. DISCUSSIONS:

The plaintiff has come forward with the case that on 07.10.2009, the defendant had borrowed a sum of Rs.10,00,000/- from him and given the cheque-Ex.A1 as security for the said loan. The plaintiff has stated that the loan had been given only on the recommendation of the close friend. However, the plaintiff has refused to divulge the name of the person. This assumes significance since it is the case of the defendant that his senior G.Karthikeyan, to whom these cheques were given, stating that the cheques were misplaced has given it to the plaintiff. The defendant has denied the receipt of the sum of Rs.10,00,000/- and has also questioned the wherewithal of the plaintiff to extend the said loan. Therefore, the onus shifts upon the plaintiff to prove that the amount has been disbursed by the plaintiff to the defendant. In this regard, a perusal of Ex.B2-Bank Statement clearly shows that the plaintiff did have such a huge amount and the highest amount that he had given at the point in time was only a sum of Rs.1,74,286.62/- .which is reflected in Ex.B2-Bank Statement. It is also strange that if the amount was actually borrowed by the defendant or his father, the plaintiff would have deposited the cheque in the bank. However, the plaintiff has not presented the cheque and the explanation offered is rather a lame excuse wherein the plaintiff would submit that he believed that the defendant would repay the said amount in cash. In his cross examination, P.W1 would state that the defendant had promised to repay the amount within a year, which means that the amount should have been paid by 07.10.2010. However, the legal notice-Ex.A2 has been issued only in the year 2012. The suit has been filed on 05.10.2012, just two days before the expiry of the period of limitation. The plaintiff has not been able to prove the passing of consideration, despite the contention of the defendant that he has not issued the cheque nor received any amount from the plaintiff. The defendant has also stated that he does not know the plaintiff. However, P.W1, in his cross examination, would state that he knows the defendant for over 25 years. If that is true, then there was no necessity for the plaintiff to state that he had extended the loan only on the recommendation of a close friend. Therefore, on an entire conspectus of both the oral and documentary evidence, it is clear that the plaintiff has not extended any amounts to the defendant and point of consideration (1) is held against the plaintiff. Therefore, the second point is also against the plaintiff and the trial Court has rightly non-suited the plaintiff. I see no reason to revise the same. The statement of the second defendant that he had given the cheque to his senior Karthikeyan has not been refuted by the plaintiff. Therefore, the second point is also held against the plaintiff. Therefore, the first appeal is dismissed. No costs.

01.12.2023

Index: Yes/No
Speaking order/non-speaking order

srn

To

1. The IV Additional District Court, Coimbatore.

2. The Section Officer, V.R.Section,
   High Court, Madras.

P.T.ASHA, J.,

srn

A.S.No.62 of 2021

01.12.2023