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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07..11..2023

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Civil Suit No.247 of 2021

KR.Palaniappa Chettiar

... Plaintiff

-Versus-

M.Senthil Nathan

... Defendant

Suit filed under Order IV, Rule 1 of the Madras High Court Original Side Rules r/w Order VII, Rule 1 of CPC, praying for a judgment and decree directing the defendant to pay the plaintiff a sum of Rs.1,08,86,398/- with subsequent interest at 18% p.a. from the date of plaint on Rs.1,01,63,376/- and on Rs.7,23,022/- till date of realization; and for costs of the suit.

For Plaintiff: Mr.K.Chandrasekaran

For Defendants : Mr.R.Jayaprakash

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JUDGEMENT

The suit is for a judgment and decree directing the defendant to pay a sum of Rs.1,08,86,398/- to the plaintiff with subsequent interest @ 18% p.a. on Rs.1,01,63,376/- on Rs.1,01,63,376/- and on Rs.7,23,022/- from the date of plaint till date of realization and for costs of the suit.

2. The case of the plaintiff in brief is that the defendant is a business man and he is known to the plaintiff. The defendant has been borrowing amounts from the plaintiff for his business need from time to time. As on 05.10.2019, he was due to pay a principal amount of Rs.76,40,000/-to the plaintiff as settled between them and the interest due for two years from November, 2017 to October, 2019 was Rs.27,50,400/-. The ending period of interest due was however, wrongly endorsed by the defendant as December, 2019 on the reverse of the promissory note. The defendant admitted that he owed the plaintiff Rs.1,03,90,400/- and accordingly, he executed a promissory note on 05.10.2019 for Rs.1,03,90,400/- in his own hand agreeing to pay the same with interest @ 18% p.a. on demand. Subsequently, the defendant paid Rs.35,00,000/- on 16.10.2020, Rs.3,00,000/- on 04.06.2021 and Rs.2,00,000/- on 05.06.2021. Thus, due credit was given in a sum of Rs.35,00,000/-. The interest amount of Rs.32,72,976/- which was due

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then and unpaid up to 31.07.2021 was added to the principal sum of Rs.1,03,90,400/- and thus the total amount due was Rs.1,36,63,376/- and after giving credit to the tune of Rs.35,00,000/- paid above, the balance of due as on 31.07.2021 was Rs.1,01,63,376/-. Despite repeated demands, the defendant neither paid the principal nor interest. Hence, he issued a notice on 09.07.2021 demanding repayment of loan. However, in the notice dated 09.07.2021 it has been wrongly claimed as Rs.1,12,38,728/- but the actual due was Rs.1,01,63,376/-. However, there was no response from the defendant.

3. It is the further case of the plaintiff that besides the loan borrowed from him, the defendant borrowed amount on 05.10.2019 from his son and he was due to pay a sum of Rs.22,23,600/- to his son. In this regard he executed a promissory note agreeing to pay a sum of Rs.22,23,600/- with interest on demand. Subsequently, the defendant made an endorsement on the reverse of the promissory note admitting that he owed principal of Rs.16,35,000/- and interest @ 18% p.a. for two years from November, 2017 to October, 2019 agreeing to pay the same on demand. Here also the ending period of interest due was however, wrongly endorsed by the defendant as December, 2019 on the reverse of the promissory note. On 14.10.2020, the defendant paid a sum of Rs.20,00,000/-.

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The interest payable @ 18% p.a. on Rs.22,23,60/- up to 14.10.2020 was Rs.4,10,117/-. After adjusting a sum of Rs.20,00,000/- paid on 14.10.2020, the balance due was Rs.15,89,883/- Thus, the principal amount due as on 14.10.2020 was Rs.6,33,717/- and interest @ 18% p.a. thereon up to 31.07.2021 is Rs.90,305/- and the total amount due as on 31.07.2021 was Rs.7,23,022/- This amount was endorsed by the defendant in favour of the plaintiff on 05.07.2021. Despite repeated demands, the defendant neither paid the principal nor interest. Hence, he issued a notice on 09.07.2021 demanding repayment of loan. However, in the notice dated 09.07.2021, it has been wrongly stated that actual due was Rs.5,60,321/- and it was purely an error in the calculation and the actual amount due was Rs.7,23,022/-. Though defendant executed promissory note in favour of P.Kathiresan (son of the plaintiff), the original holder of the promissory note endorsed the promissory note in favour of the plaintiff.

4. Even though the defendant received the notices dated 09.07.2021, he neither complied with the demand nor replied. The plaintiff as regards the promissory note endorsed in his favour is a bonafide holder in due course. Hence, this suit for recovery of Rs.1,01,63,376/- and Rs.7,23,022/- in all for a sum of Rs.1,08,86, 398/- with subsequent interest based on the promissory note

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dated 05.10.2019 executed by the defendant in favour of the plaintiff and promissory note dated 05.10.2019 executed by the defendant in favour of Mr.Pl.Kathiresan, who in turn, endorsed the same in favour of the plaintiff.

5. The defendant filed his written statement denying the averment made in the plaint and inter alia contending that the defendant has approached the plaintiff in 2013 for loan and borrowed a sum of Rs.92,65,000/- on various dates since 2013. The rate of interest agreed between the parties was at 3% p.m. and 36% p.a. Due to severe financial hardship, the defendant without any alternative agreed to pay such a high rate of interest and executed promissory notes. The defendant was promptly paying interest with great difficulties until December, 2017 and in all he paid more than four times of interest @ 36%. p.a. towards interest to the plaintiff until December, 2017. Thereafter also, the defendant made various part payments until December, 2019. In December, 2019, the defendant was forcibly summoned to the office of the plaintiff where he was asked to execute fresh promissory notes in favour of the plaintiff and his son. When the defendant required the plaintiff to return the promissory notes executed earlier and to reconcile the actual principal and interest, the plaintiff and his son informed him that the promissory notes were elsewhere and they would return the

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same later and pressurized the defendant to execute fresh promissory note. The situation forced the defendant to execute promissory note as demanded by the plaintiff and his son without reconciling the account and the plaintiff is yet to return the promissory notes already executed by the defendant.

6. It is the further case of the defendant that there was a settlement arrived at for Rs.1,00,00,000/- and out of which, a sum of Rs.55,00,000/- was already paid by him to the plaintiff and thus, there is only a sum of Rs.45,00,000/- is due. However, the suit has been filed for exorbitant amount. The defendant disputed the liability and prayed for dismissal of the suit.

7. Based on the above pleadings of either party, the following issues have been framed for trial:

(1) Whether the suit is barred by limitation?

(2) Whether the plaintiff has received exorbitant interest at 36% p.a. from the defendant from 2013 to 2017?

(3) Whether the suit promissory notes were executed by the defendant under threat and coercion?

(4) Whether the discharge pleaded is true?

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(5) To what other relief the plaintiff is entitled?

8. During trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and marked Ex.P.1 to Ex.P.5. On the side of the defendant, he examined himself as D.W.1, however, no documentary evidence was let in on behalf of the defendant.

9. Heard both sides.

10. The learned counsel for the plaintiff would submit that execution of promissory notes is not in dispute. The borrowal is also not in dispute. Therefore, according to the learned counsel, the plaintiff is entitled for decree for recovery of money from the defendant with subsequent interest as prayed for.

11. Per contra, the learned counsel for the defendant would contend that though the defendant admitted that he borrowed amounts from the plaintiff in 2013, he had already paid exorbitant amount towards interest. According to him, the suit promissory notes were obtained from the defendant under coercion and compulsion.

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12. The learned counsel for the defendant would further contend that the plaintiff had agreed for final settlement of Rs.1,00,00,000/- in lieu of the amounts due under two different promissory notes and accordingly, the defendant had paid a sum of Rs.55,00,000/- and a sum of Rs.45,00,000/- is only due to be paid. However, according to the learned counsel, the plaintiff came up with the suit for recovery of more than Rs.1.00 crore. Hence, the learned counsel for the defendant prayed for dismissal of the suit.

Issue Nos.1 to 4:

13. The suit has been filed for recovery of Rs.1,08,86, 398/- due on promissory notes dated 05.10.2019 executed by the defendant with subsequent interest. Ex.P.1 and Ex.P.2 are the suit promissory notes. Ex.P.1 is the promissory note executed by the defendant in favour of the plaintiff. Ex.P.2 is the promissory note executed in favour of Pl.Kathiresan the son of the plaintiff and the son of the plaintiff had, in turn, made over the promissory note in favour of his father, the plaintiff herein. Thus, the plaintiff is the holder in due course in respect of the second promissory note. The defendant has not disputed the execution of promissory note and the endorsements made on the reverse of them

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admitting that he owed the sum to the plaintiff. Though the defendant put forth a defence that the suit promissory notes were obtained under compulsion and coercion at the office of the plaintiff, there is no specific pleading or any evidence to establish that the said promissory notes were signed under coercion or any undue influence was exerted on him.

14. It is well settled law that for the plea of coercion necessary material particulars have to be pleaded in the plaint as per Order VI, Rule 4 of CPC. However, on a careful perusal of the entire averment in the plaint, this court is of the view that no such pleading as to the nature of threat or coercion was made by the plaintiff.

15. It is not disputed by the defendant that in 2013, he was under severe financial hardship and in fact, he himself stated in written statement that he had borrowed a sum of Rs.92,65,000/- from the plaintiff and his son on various dates since 2013. On the reverse of Ex.P.1 and Ex.P.2 promissory notes the defendant made endorsements acknowledging the principal and interest amounts due under the promissory notes. The plaintiff himself admitted that there were part payments towards the loan amounts. The amounts paid by the defendant were

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given credit. Be that as it may, when the loan transactions were admitted and receipt of Rs.92,65,000/- on various dates in 2013 was also admitted by the defendant, without there being any pleadings in the written statement in this regard and in the absence of any plausible material to prove the nature of discharge, the plea of discharge which was projected during the arguments, cannot be accepted. The onus lies heavily upon the defendant to establish the plea of discharge. Mere oral evidence would not be sufficient to prove the plea of discharge. As the loan transactions and execution of promissory notes and the acknowledgment of debts were admitted, the statutory presumption available to the negotiable instruments would get attracted as to the date and also consideration passed on the promissory notes. In the absence of any of the circumstances or probabilities to dislodge such legal presumption, this court has no other option but to accept the promissory notes executed by the defendants for the consideration passed on to him already.

16. On considering the entire oral and documentary evidence available on record, this court is of the view that the defendant having admitted the execution of the promissory note failed to establish the plea of discharge of partial amount under the suit promissory notes. No probabilities have been brought on record to

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discharge the legal presumption. When the loan transaction one between the defendant and the plaintiff and the other loan transaction between the defendant and the plaintiff's son have been admitted by the defendant, the plaintiff is certainly entitled for decree as prayed for.

17. Though one of the issues was framed as to the limitation, even assuming that on the date of execution of the promissory notes, no consideration was passed on the promissory notes, the available oral and documentary evidence would themselves indicate that suit promissory notes came to be executed for the amounts due and payable by the defendant in respect of the loan transactions took place between the plaintiff and his son and the defendant. That would make it clear that promissory notes were executed for the consideration already passed. Even assuming that debts are time barred by limitation, when there are documents executed by the defendant acknowledging the debts, such time barred debts are enforceable as per Section 25(3) of the Indian Contract Act, 1872. Therefore, the plaintiff is entitled to a judgment and decree for recovery of the suit amounts from the defendant. The issues Nos.1 to 4 are answered accordingly in favour of the plaintiff and against the defendant.

Issue No.5

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18. For the foregoing discussions, the plaintiff is entitled to a decree and judgment for recovery of the suit amount and insofar as interest is concerned, since the defendant had already paid huge amount towards contractual interest and other facts and circumstances of the case, the plaintiff is entitled to recover the suit amount with further interest interest @ 7% p.a. on Rs.1,01,63,376/- and on Rs.7,23,022/- from the date of decree till date of realization.

In the result, the suit is decreed as prayed for with costs. The defendant is directed to pay a sum of Rs.1,08,86,398/- to the plaintiff together with subsequent interest @ 18% p.a. on Rs.1,01,63,376/- and on Rs.7,23,022/- from the date of plaint till 06.11.2023 and thereafter @ 7% p.a. from the date of decree till date realization.

Index : yes / no
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Neutral Citation : yes / no
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List of witnesses examined on the side of the plaintiff:

P.W.1-KR.Palaniappa Chettiar (Plaintiff)

List of Witnesses examined on the side of the defendants:

D.W.1-M.Senthil Nathan (Defendant)

List of documents marked on the side of the plaintiff:

Ex.P.1	05.10.2019	Promissory Note executed by the defendant for Rs.1,03,90,400/- in favour of the plaintiff with an endorsement on the reverse of it acknowledging the debts – principal and interest payable under the promissory note
Ex.P.2	05.10.2019	Promissory Note executed by the defendant for Rs.22,23,600/- in favour of Pl.Kathiresan with an endorsement on the reverse of it acknowledging the debts – principal and interest payable under the promissory note and an endorsement made by the holder of promissory note whereby he made over the promissory note in favour of the plaintiff.
Ex.P.3	07.07.2021	Office copy of the legal notice issued by the plaintiff
Ex.P.4	29.06.2021	Downloaded copy of Encumbrance Certificate filed along with Certificate under Section 65B of the Evidence Act for the period between 01.01.2002 and 28.06.2021 in respect of property in S.No.281/1, 281/2, 281/3, 281/4, 281/5, 282/2, 282/3, 282/4, 282/7 & 282/8 of Triplicane Village
Ex.P.5	29.06.2021	Downloaded copy of Encumbrance Certificate filed along with Certificate under Section 65B of the Evidence Act for the period between 01.01.1975 and 28.06.2021 in respect of property in S.No.281/1, 281/2, 281/3, 281/4, 281/5, 282/2, 282/3, 282/4, 282/7 & 282/8 of Triplicane Village.

List of documents marked on the side of the Defendant(s): Nil

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