IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.161 of 2021

R.Srinivasan … Appellant

Vs.

S.A.Jhan Mohamed ... Respondent

Prayer:- Appeal is filed under Section 96 of C.P.C to set aside the judgement and decree in O.S.No.6499 of 2015 dated 17.03.2020 on the file of the VI Additional City Civil Court at Chennai.

For Appellant : M/s.Vinod Paul Tyagaraj David

For Respondent : No appearance

JUDGEMENT

The defendant who has unsuccessfully contested the suit O.S.No.6499 of 2015 on the file of the VI Additional Judge, City Civil Court, Chennai is the appellant before this Court.

2. The facts which have culminated in the filing of the above First Appeal are herein below set out and the parties are referred to in the same ranking as before the Trial Court.

Plaintiff's Case:-

3. The plaintiff had filed the above suit for recovery of a sum of Rs.10,49,328/- together with interest at 24% per annum on Rs.5,40,000/- from 04.10.2003 till the date of realization along with penal interest on the arrears of interest, until the date of realization.

4. It is the case of the plaintiff that he had advanced a sum of Rs.5,40,000/- to the defendant on 04.10.2000. The defendant had executed a promissory note promising to repay the said sum together with interest at 24% per annum. The plaintiff would submit that when he had made a demand, the defendant had issued a cheque for a sum of Rs.5,40,000/- dated 13.12.2000, drawn on the Central Bank of India, T.Nagar Branch, Chennai and when the said cheque was presented for collection, the same was returned with the endorsement "insufficient funds" and “payment stopped by the drawer”. Thereupon, the plaintiff had issued a legal notice to the defendant demanding the re-payment of the sum of Rs.5,40,000/-. The defendant had issued a reply admitting the execution of the promissory note but however, contending that the money had been retained in lieu of an apprehended tax arrears in respect of a property sold by the plaintiff vide a registered sale deed dated 08.06.2000.

5. It is the case of the plaintiff that even in the sale deed, the plaintiff had assured the defendant that they would indemnify the defendant's loss against any claim for arrears of tax made if any prior to June 2000 and the contention of the defendant that the sum of Rs.5,40,000/- is given as security for anticipated arrears of property tax is absolutely without any basis and is a figment of the defendant's futile imagination. Therefore, the plaintiff had come forward with the suit in question.

Written Statement of the Defendant:-

6. The defendant had filed a written statement inter alia denying the allegations contained in the plaint and the claim of the plaintiff that the sum of Rs.5,40,000/- was a loan. The defendant would submit that the plaintiff, his wife and his son were the co-owners of the property situate at Door No.22, Vallabha Agraharam, Triplicane, Chennai. The said property was sold to M/s.Chennai Hotels (India) Pvt Ltd. The

defendant is the Managing Director of the said company. The defendant would submit that he and his close relatives had purchased the entire property for valuable consideration under a Registered Sale deed dated 08.06.2000.

7. At the time of the purchase, the plaintiff, his wife and his son had informed the defendant that there would be a huge demand for enhanced property tax which was pending as the Corporation were to take a decision on enhancing the property tax. The plaintiff had demanded that a sum of Rs.5,40,000/- be paid towards arrears of enhanced property tax which the defendant had agreed to retain their amounts and it is for this reason that the defendant had executed the promissory note. There was no loan transaction as stated and therefore, it is his contention that the plaintiff had come to Court with unclean hands.

8. It is also the case of the defendant that the anticipated arrears of property tax is based on a notice issued in September 2000 i.e, after

the sale deed which had been executed on 08.06.2000. Therefore, the defendant is in no way liable to pay the arrears of tax.

9. The defendant would contend that even in the sale deed it has been clearly mentioned that it is the plaintiff who had to pay the arrears of enhanced tax and it is for this reason that the money was retained. The defendant would submit that the plaintiff has totally suppressed all these facts and come forward with the suit in question. The defendant would further submit that it was he who had taken steps to challenge the enhancement of the tax by the Corporation and the plaintiff has not moved a little finger in this regard. The defendant would further contend that he had paid the arrears of enhanced property tax to the tune of Rs.2,48,288/-. Therefore, he sought for the dismissal of the suit.

Trial Court

10. On considering the pleadings, the learned Trial Judge had framed the following issues:-

1. Whether the plaintiff is entitled to recover a sum of Rs.10,49,328/- from the defendant or not?

2. Whether the plaintiff is entitled to get interest at 24% p.a. as against the defendant or not?

3. To what other relief?

11. On the side of the plaintiff, the plaintiff had examined himself as P.W.1. and to prove his case marked Ex.A.1 to A.9 as follows:- The plaintiff had marked Ex.A.1 which is the promissory note executed by the defendant in favour of the plaintiff; Ex.A.2 which is the cheque that has been issued by the defendant on 13.12.2000; Ex.A.3 which is the cheque return memo; Ex.A.4 is the letter which is sent by the plaintiff to the defendant informing him that the cheque when presented had bounced and asking him to settle the amount at the earliest; Ex.A.5, is the reply of the defendant dated 06.01.2001, wherein he has taken a stand that there is no loan transactions between the plaintiff and the

defendant and that the promissory note Ex.A.1 has been executed only as a security for the sum of Rs.5,40,000/- which was retained by the Chennai Hotels India Pvt. Ltd. from out of the total sale consideration; Ex.A.6 is the rejoinder issued by the plaintiff to the defendant wherein the defense raised in the reply statement had been categorically denied; Ex.A.7 is the reply issued by the defendant; Ex.A.8 is the rejoined sent by the plaintiff to the notice of the defendant and the acknowledgment card of the same is marked as Ex.A.9. During the cross examination of P.W.1. Ex.B.1 to B.4.

12. On the side of the defendant, the defendant had examined himself as DW.1 and to prove his case marked Ex.B.5 to Ex.B.8 as follows; Ex.B.5, is the sale deed executed by Ms.Jamila Begum w/o, Jhan Mohammed dated 08.06.2000; Ex.B.6. is the property tax collection/receipts issued by Corporation of Chennai. The receipt is in respect of the property tax for the period 1998 first half to 2002-2003 second half; Likewise, Ex.B.7 are the tax payments to the CMWSSB and; Ex.B.8 is the copy of the Proceedings of the Taxation Appeals

Tribunal, of Corporation Chennai.

13. P.W.1 in his chief examination had reiterated the contents of the plaint and he had also marked Ex.A.1 to A.9 and in his cross examination, P.W.1 had clearly and categorically stated that a sum of Rs.5,40,000/- had been paid only as a loan to the defendant for running his business. The defendant have not been able to elicit any contra evidence from the plaintiff in the cross examination. The defendant, on the contrary, in his cross examination, has not been able to establish the contents of his written statement that the sum of Rs.5,40,000/- had been retained towards arrears of enhanced tax. He had also admitted that such a recital had also not found in the sale deed. Further, in the sale deed the vendor had clearly and categorically undertaken to pay the arrears of tax as well as enhanced tax till June 2000. Therefore, on the face of the records, the contention of the defendant stands disproved. Ultimately, on considering the evidence and arguments, the learned Trial Judge had decreed the suit in favour of the plaintiff. It is aggrieved by this judgment and decree that the defendant has filed the

present First Appeal.

Points for consideration:-

14. The points that arise for consideration in the above First Appeal are:-

1. Whether the plaintiff had extended a loan of Rs.5,40,000/- to the defendant for which the defendant had executed Ex.A.1 pro note as a security and has failed to repay the loan?

2. Whether the sum of Rs.5,40,000/- was the sum retained by the defendant towards any claim for arrears of property tax?

15. Heard the counsel for the appellant.

Discussion:-

16. The only defence which has been pleaded is that the sum of

Rs.5,40,000/- had been retained towards the arrears of the property tax. The pleadings in this regard found in paragraph numbers 5 and 6 of the written statement which read as follows:-

> *5. This defendant submits that at the time of purchase of the property from the plaintiff and his wife and son, there were huge demand for enhanced property tax pending by the Corporation of Chennal and in anticipation of increase in Property Tax a sum of Rs:5,40,000/- was requested to be paid over as security for payment of arrears of enhanced property tax and the plaintiff agreed to the same. The plaintiff wanted a security for the anticipated property tax arrears of Rs.5,40,000/- paid by him towards anticipated increase in property tax, and represented that if any amount less*
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> *than the same is ultimately held to be payable then that would have to be refunded to him. Under the aforesaid*

circumstances, this defendant executed the promissory note in blank which was not really and factually supported by any consideration. Thus there was no loan transaction as a matter of fact and realty. Thus the plaintiff has come to court with unclean hands and on this sole ground, the suit is liable to be dismissed. The claims to the contra made as if there is a loan transaction between the plaintiff and this defendant is absolutely false and the same is denied. The Plaintiff will have to prove the same.

6. This defendant submits that for enhancement of property tax for the property sold by the plaintiff, his wife and son, a demand notice was issued in September 2000, this was precisely the reason this defendant did not and could not retain from out of the sale consideration paid, the anticipated tax arrears at the time of sale which was in June 2000, since the notice *was received only in September 2000. This defendant insisted the plaintiff for payments and thus received the sum of Rs.5,40,000/- towards anticipated property tax, since the claim for enhanced and arrears of property tax related to period of ownership of plaintiff and his wife and son to the property was a huge sum of about Rs.5,50,000/-. The Corporation of Chennai increased the annual rental value from Rs.54,500/- to 10,88,669/- and the half yearly property tax from Rs.6,525/- per half year to Rs.1,30,096/- per half year. Thus the difference of half yearly property tax per half year payable alone came to Rs.1,23,571/-. The enhanced property tax was claimed for the years 1998-99 onwards, which was during the period of ownership of the property by the defendant and his wife and son and thus the anticipated enhanced claim in Tax at Rs.1,23,571/- for a period of four half years and for the entire tax payable for the first half of 2000-2001 upto sale was calculated and* *roughly was estimated at Rs.5,40,000/- which amounts were alone claimed and given by the plaintiff to this defendant, who took the promissory note to secure his interest for refund claims, if and when the property tax reduction is secured, as an appeal had been preferred against the assessment order of enhanced claims for the property tax."*

17. It is rather strange that a purchaser is asked to furnish security for arrears of tax payable for the period prior to the sale in his favour. In such circumstances, normally, the purchaser withholds some money from the total sale consideration towards the dues. However, a perusal of the plaint as well as the evidence would indicate otherwise that too when the plaintiff as the seller had undertaken to pay the arrears of tax including the enhanced tax till the date of sale, namely, June 2000. Therefore, the defense taken by the defendant has not been substantiated. However, the defendant had admitted the execution of Ex.A.1 promissory note and the dishonouring of the cheque and the

retention of the sum of Rs.5,40,000/-. The Trial Court on considering Ex.B.6 property tax receipts had come to the conclusion that out of these tax receipts which commenced from the second half year of 1998-1999, the defendant was able to prove that the enhanced arrears of tax payable by the plaintiff would amount to a sum of Rs.1,86,413/- after deducting that sum from the sum of Rs.5,40,000/- retained by the defendant, the plaintiff was entitled to a sum of Rs.3,53,587/-. In these circumstances, the Trial Court had rightly decreed the suit. The sum of Rs.3,53,587/- was the amount that remained with the defendant after deducting the arrears of tax that would be payable by the plaintiff. The defendant has not borrowed money from the plaintiff and Ex.A.1 has been executed only as security for the amount retained by the defendant from the sale consideration. The points for consideration is therefore held against the plaintiff.

18. The plaintiff has sought for interest at the rate of 24%. Admittedly, the demand for enhanced property tax is yet to be made as there is nothing to show that a demand has been made. Therefore the

claim could be made anytime. Taking into account the above contention, interest of justice would be sub-served if the interest rate alone is reduced to 9% p.a. as against the 18% p.a. granted by the Trial Court. Therefore, interest at the rate of 9% is levied on the sum of Rs.3,53,587/- from the date of filing of the suit till the date of decree and thereafter 6% p.a. on Rs.3,53,587/-. Therefore, the above appeal is partly allowed and the decree of the VI Additional City Civil Court,Chennai is modified only to extent of rate of interest. No costs.

09.11.2023

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

1. The VI Additional City Civil Court at Chennai.

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

P.T.ASHA, J.,

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