IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.229 of 2017

M/s.Sree Gokulam Chits & Finance Co., (P) Ltd.,
Represented by its Director-Operations
V.C.Praveen,
No:66, Arcot Road,
Kodambakkam,
Chennai – 600 024. ..Appellant

Vs.

1.Nagabhushanam.P
2.Mrs.Mrunalini.P ..Respondents

Appeal filed under Section 96 of Civil Procedure Code Read with Order 41 & 41A CPC., praying to set aside the Judgment and the Decree dated 15.12.2016 passed in O.S.No.52 of 2015 by the Hon'ble XIX Additional City Civil Court, Chennai.

For Appellant : Mr.L.Rajasekar

For Respondents : No appearance

JUDGMENT

The Appeal Suit has been filed to set aside the Judgment and the Decree dated 15.12.2016 passed by the XIX Additional City Civil Court, Chennai.

2. The plaintiff is the appellant, instituted a suit for recovery of money based on the Promissory Note. The plaintiff is M/s.Sree Gokulam Chits & Finance Company Private Limited, represented by its Director (Operations), which is a company registered under the Companies Act.

3. The suit was instituted to recover a sum of Rs.24,59,283/- towards loan amount and the interest at the rate of 18% per annum from 01.04.2014 to 30.11.2014 based on the Promissory Note, Ex.A3 dated 20.12.2011.

4. Plaint averments reveal that the defendants had borrowed a sum of Rs.15,00,000/- at the office of the plaintiff at Kodambakkam, Chennai and both the defendants have jointly executed a Promissory Note on 20.12.2011. The defendants had agreed to repay the said amount on demand together with compound interest at the rate of 18% per annum. The defendants were irregular in payment of the interest and committed default. The defendants had remitted a sum of Rs.40,000/- by cash on 03.03.2012 and the same was

credited to the defendant's account. Plaintiff made demands to repay the loan, which was neglected by the defendants and thus, the plaintiff issued a legal notice on 05.12.2014 and thereafter, instituted suit for recovery of money.

5. The defendants denied the plaint averments by stating that the plaintiff company is not authorized to do finance business of lending money to any loanee. Thus, the suit is to be dismissed in *limine*. Defendants never borrowed a sum of Rs.15,00,000/- by executing a suit Promissory Note allegedly executed on 20.12.2011. The defendants had not executed any such Promissory Note jointly on 20.12.2011 or agreed to repay the said amount at the rate of 18% interest per annum. Non-Banking finance companies are prohibited to recover the interest at compound rate either monthly or yearly rest. Defendants further denied the allegations raised in the complaint and contended that for fabricating the loan account and by interpolating an amount of Rs.40,000/- was entered as if remitted by the defendants.

6. At the outset, the defendants denied the Execution of Ex.A3, Promissory Note. The plaintiff already filed A.R.C.No.742 of 2014 against

the same defendants before the Arbitrator for Central Chennai Chit Fund cases Court. The first defendant joined in the Chit conducted by the plaintiff company in Secunderabad Branch, Vide Chit Series G2L 385 ticket No.16 for the value of Rs.25,00,000/- dated 06.08.2011, which was ended on 06.03.2013. Meanwhile, the first defendant received an amount of Rs.18,74,900/- from the plaintiff, which was reflected in the Statement of Accounts of the Indian Overseas Bank, Rashtrapati Road, Secunderabad. The first defendant was also a member in another chit in the plaintiff company at Secunderabad Branch in G2L/465/12 dated 05.12.2011 for Rs.25,00,000/-. The first defendant participated in the Chit Auction and became successful bidder and got an amount of Rs.15,00,000/- on 27.12.2011 vide Cheque No.210967, which was issued by the plaintiff. The plaintiff company and the Branch Manager of Secunderabad colluded together and utilized first defendant's cheques bearing (1) No.541590 and (2) 541591 for the amount of Rs.4,00,000/- and Rs.2,00,000/- respectively. The plaintiff's Branch Manager Mr.M.Dilip Kumar, Secunderabad, got clandestine profit. Those withdrawals are done without any intimation to the first defendant, which was reflected in the Bank Statement. Actually those two cheques were taken by the plaintiff after the Defendant No.1 has become successful bidder in the above mentioned chits. The plaintiffs got blank signed cheques and blank Promissory Notes, which were signed by Defendants 1 and 2 jointly. Plaintiff's Branch Manager at Secunderabad got defendant No.2's signature and also demanded that it is meant for security purpose only. It is relevant to mention that the date of the Suit Promissory Note and the date of disbursement of the second Chit auctioned amount of Rs.15,00,000/- are nearly coincided. The plaintiff got some more blank Promissory Notes and Blank Cheques from the defendants. But, the plaintiff misused the Promissory Note and filed the suit as if it is an independent money transaction. The written statement further states that the Promissory Note was obtained for security purpose for the chits mentioned above.

7. The defendants further stated that the suit promissory note is not an independent cause of action, but linked with two chit groups. Thus, the suit is to be dismissed with costs.

8. The trial Court, based on the pleadings, framed the following issues:

"(1) Whether the plaintiff is entitled for a decree directing the defendants to pay a sum of Rs.24,59,283/- (Rupees Twenty Four Lakhs Fifty Nine Thousand Two Hundred and Eighty

Three only) towards the Loan amount and the interest at the rate of 18% per annum from 01.04.2014 to 30.11.2014?

(2) Whether the plaintiff is entitled for a decree directing the defendants to pay interest at 18% per annum for Rs.15,00,000/- (Rupees Fifteen Lakhs only) from the date of plaint till the date of realisation?

(3) To what reliefs the plaintiff is entitled to?"

9. One witness was examined on the side of the plaintiff and Exs.A1 to A10 were marked. On the side of the defendants, one witness was examined and Exs.B1 to B5 were marked.

10. The trial Court adjudicated Issue No.1 based on the alleged Pro-note dated 20.11.2011, alleged to have been executed by the defendants after borrowing a sum of Rs.15,00,000/ from the plaintiff, agreeing to repay the same with interest at the rate of 18% per annum on demand. The plaintiff in order to substantiate their claim, had their Manager of the company examined as P.W.1 and marked Exs.A1 to A10. The defendants categorically contended that they were the members in 2 number of Chits and they took the amount as highest bidders in the Chits and thereafter, executed number of blank cheques and Pro-notes as insisted by the

plaintiff's Chit Company and therefore, the Pro-note has nothing to do with any loan transaction and the said Pro-notes were obtained by the plaintiff company in blank Form as a security for the chit transactions that the defendants had with the plaintiff's Chit Company. Apart from the Promissory Notes, the defendants were having mortgage transactions with the plaintiff's Chit Company and they have deposited their original title deeds with the plaintiff's Chit Company and raised a mortgage loan and therefore, the present suit is not maintainable. In support of their contentions, the first defendant was examined as D.W.1.

11. The trial Court considered the scope of Section 118 of the Negotiable Instruments Act, which paves way for a presumption in favour of the plaintiff that the Pro-note in question was executed by the defendants, when once the defendants admitted their signature as their own in the Pro-note. Therefore, the presumption under Section 118 of the Negotiable Instruments Act is made available to the plaintiff, since the signature has not been disputed by the defendants, so also, the execution of Promissory Note. The trial Court further considered that the said presumption is rebuttable and the defendants are entitled to rebut the said contentions even by establishing preponderance of probabilities. As per the plaintiff, the suit

promissory note was executed by the defendants, after receiving the consideration alleged under the Pro-note. But the defendants contested by stating that they never approached the plaintiff, asking for a loan under the Pro-note. However, the defendants did not deny several other transactions existed with the plaintiff's Chit Company regarding chit amount or otherwise and they have disputed that the Pro-note was obtained from them only as a security for prompt payment of chit transactions. Therefore, the trial Court arrived at a conclusion that the defendants able to establish strong preponderance of probabilities by marking Exs.B1 and B2 through D.W.1 and Exs.B3 to B5 through D.W.1. P.W.1 on the other hand when confronted during the course of examination in cross, would admitted that the defendants were having several other transactions with the plaintiff company. Therefore, it is for the plaintiff to prove the independent transaction with reference to the Promissory Note based on which, the suit was instituted. It is for the plaintiff to prove that the Pro-note transaction was no way connected with the chit transactions or other transactions. It is not in dispute between the parties that Arbitral Proceedings were initiated in respect of the chit transaction and the default committed by the defendants in respect of the chit amounts. While doing so, the plaintiff has to independently establish that the Pro-note transactions are unconnected with the chit transaction and the Pro-note transactions were made independently and the money allegedly paid in the Pro-note was made unconnected with the chit transactions.

12. In the above context, the trial Court considered the chit transactions also. The defendants are the members in 2 number of Chit Transactions with the plaintiff's Chit Company. The first defendant took part in the auction and became a successful bidder on 06.10.2011 for the priced Chit amount of Rs.6,25,000/- and the first defendant received a sum of Rs.18,74,900/-, which was also reflected in the first defendant's Statement of Account from the Indian Overseas Bank, Rashtrapathi Road, Secunderabad marked as Ex.B4. The first defendant had been in the another Chit also in the group G2L/465/12 dated 5.12.2011 for Rs.25,00,000/- and he participated in the Chit Auction and became a successful bidder and took an amount of Rs.15,00,000/- on 27.12.2011 vide Cheque No.210967. The defendants have stated that two cheques bearing cheque No.541590 and 541591 for a sum of Rs.4,00,000/- and 2,00,000/- respectively were clandestinely utilised by the plaintiff's Company and its Branch Manager at Secunderabad. The defendants have stated that the blank cheques and Promissory Notes were signed by them as security. In the deposition of

P.W.1 during cross, it was admitted that the plaintiff's Company had filed A.R.C.No.744/2014 in respect of the chit transactions. The trial Court made a finding that under those circumstances, where there are several transactions admitted between the plaintiff and the defendants, the genuinity of the Promissory Note transaction must be proved by the plaintiff and the burden is heavily on the plaintiff to dispel the cloud of suspicion in respect of the different transactions. However, the plaintiff have failed to do so. They have attempted to link the chit transaction and the Statement of Accounts, which is relied. The trial Court formed an opinion that the Bank statements, which would reveal the chit transaction and the Pro-note transactions are coincided and therefore, the plaintiff had failed to prove the alleged Pro-note transaction as independent and unconnected with the chit transaction made by the defendants. Even in respect of the alleged repayment of Rs.40,000/- on 03.03.2012, the plaintiff had failed to prove the same. Mere allegation in this regard would be insufficient to form an opinion that the Pro-note transaction is independent. When the Statement remains unsubstantiated and uncorroborated with the documents, the payment of Rs.40,000/- reflected in Ex.A4 document cannot be relied upon.

13. In this context, the trial Court made a finding that when question was raised in respect of the alleged payment of Rs.40,000/- as reflected in Ex.A4 document, P.W.1 would reply that it is not stated in Ex.A4, which is a Legal Notice dated 5.12.2014, which bears no whisper about the alleged repayment of Rs.40,000/- on 03.3.2012, which alone would save the limitation for the institution of the suit. Further, the plaintiff has not established that they have initiated action against the defendants for their non payment right from 03.03.2012 to 5.12.2014. Since the defendants denied the alleged payment made on 03.3.2012, the period of default according to the plaintiff becomes still more huge from 20.12.2011 to 05.12.2014.

14. Perusal of the plaintiff's Exhibits shows that they all pertain to G2L-0465-KDM/12, a Chit transaction for Rs.25,00,000/- (Ex.A8). Ex A9 again bears reference to another Chit Ticket No.R2H/0007/jMM/17 for a sum of Rs.5,00,000/-. Ex.A10 pertains to some other Account number, the relevancy of which is not explained by the plaintiff before the trial Court. Ex.B1 admittedly is the Notice issued by the plaintiff's Chit Company to the defendants, wherein the plaintiff's clearly state that the defendants had

participated in the auction, prized the Chit and received the amount by executing the Pro-note along with the 2nd defendant. It is also seen in the same notice that the plaintiff has spoken about the deposit of title deeds as a collateral security and the Chit group is G2L 385 Ticket No.16 for the value of Rs.25,00,000/-. Similarly, Ex.B2 marked through D.W.1 is also not disputed. Ex.B3 is the application for arbitration in A.R.C.No.744/2014 filed against these defendants.

15. Considering the documents and the deposition of the witnesses, the trial Court arrived at a conclusion that the plaintiff have failed to prove that the suit alleged Pro-note transaction is independent and their chit transaction with the defendants. On the other hand, the defendants have probablised that the suit could have been executed only as a Security for their prompt repayment of the other transactions like Chit and Mortgage that they had with the plaintiff. Therefore, the trial Court found that the preponderance of probabilities were established by the defendants to rebut the claim of the plaintiff regarding the suit Promissory Note transactions.

16. When the Preponderance of Probabilities established is strong enough to arrive at a conclusion and the plaintiff has not established that the

suit promissory Note transactions are independent, this Court do not find any infirmity in respect of the finding as the proposition adopted is also in consonance with the established principles of law and thus, this Court is not inclined to interfere with the findings made by the trial Court for dismissal of the suit instituted by the plaintiff.

17. Accordingly, the Judgment and the Decree dated 15.12.2016 passed in O.S.No.52 of 2015 by the XIX Additional City Civil Court, Chennai stands confirmed and the Appeal Suit in A.S.No.229 of 2017 is dismissed. No costs.

14.02.2023

Index : Yes
Speaking order
Neutral Citation:Yes
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To
The Judge,

XIX Additional City Civil Court, Chennai.

S.M.SUBRAMANIAM, J.

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