IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.01.2023

Pronounced on : 03.03.2023

CORAM : **JUSTICE N.SESHASAYEE**

C.S.No.967 of 2017

S.Peter ... Plaintiff

Vs.

D.R.Balakrishna Raja ... Defendant

Prayer: Civil Suit filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of C.P.C. 1908, to pass a judgment and decree in favour of the plaintiff and as against the defendant:

(a) for directing the defendant to pay the plaintiff the sum of Rs.3,29,27,397/- (Three crores twenty nine lakhs twenty seven thousand three hundred and ninety seven only) along with interest at the rate of 18% per annum with effect from 16.02.2016 till the date of realisation.

(b) directing the defendant to pay the costs of the suit to the plaintiff.

For Plaintiff : Mr.Richardson Wilson

For Defendant : Mr.M.Santhanaraman

JUDGMENT

The suit is laid for recovery of a sum of Rs.2.50 crores with past interest at 18% and future interest at the same rate. The case of the plaintiff is as below:

- The plaintiff is the Chairman of the Madha Group of institutions. The defendant is also a Director of a private company called BKR Hotels and Resorts (P) Ltd., He also owns a proprietary concern by name M/s.Adhiparasakthi Promoters and Property Developers.
- On 16.02.2016, the defendant had approached the plaintiff through a common friend, named Gopi Gundareddy, for a loan of Rs.2.50 crores. On the same day, the plaintiff had advanced Rs.2.50 crores to the defendant and it was paid in cash. The defendant promised to repay the same with interest within one month from the date of borrowing. Indeed, for mobilising the funds for advancing the defendant, the plaintiff had borrowed from M/s Dena Bank. On that day (16.02.2016), he borrowed a sum of Rs.5 crores, and had withdrawn Rs.4.90 crores, out of which he had paid Rs.2.50 crores to the defendant by cash.
- On the expiry of the time stipulated for repayment, the plaintiff began

his demand for return of the money advanced, towards which the defendant had issued a cheque dated 10.01.2017 for Rs.1.25 crores, and it was drawn in his capacity as BKR Hotel and Resorts (P) Ltd., He also issued another cheque bearing the same date as the earlier one, for the balance sum of Rs.1.25 crores, and this was drawn in his capacity as Proprietor of Adhiparasakthi Promoters. On 20.06.2016, the defendant also executed another document wherein he acknowledged his liability to the tune of Rs.2.50 crores.

- Both the cheques referred to above were deposited for encashment on the date mentioned in the cheques, but they both were dishonoured with a banker's note that the funds available in the respective accounts on which the cheques were drawn, were insufficient to meet the loan liability.
- The plaintiff therefore issued notice under Section 138 of Negotiable Instruments Act and instituted S.T.C. No.1564 of 2017 under the said provision before the District Munsif cum Judicial Magistrate Court, Sriperumbudur. In the meantime, proceedings were also initiated before NCLT, Chennai, and BKR Hotels and Resorts (P) Ltd., and Adhiparasakthi Promoters and Property Developers came under its net.

However, the original liability of the defendant is personal in character. In the said circumstances, the plaintiff issued a pre-suit notice dated 09.11.2017, demanding the defendant to repay the loan with interest at 18% p.a., to which the defendant had sent a cryptic reply dated 16.11.2017 denying the entire liability. Hence the suit.

2.In his written statement, the defendant has alleged that in his notice dated 09.02.2017 and also in the complaint in S.T.C. No.1564 of 2017, the plaintiff has alleged that it was M/s.BKR Hotels and Resorts (P) Ltd., which had borrowed the sum of Rs.2.50 crores, and that the two cheques referred to by the plaintiff, were issued by the company towards repayment of the said debt, and hence only that the company and its directors are liable to be prosecuted. However, the plaintiff has now changed the same in the present suit and has founded a cause of action quite contrary to his allegations in the criminal case, and alleges that the loan was borrowed by the defendant in his personal capacity. The contradictions and inconsistencies in the stands adopted by the plaintiff is fatal to the suit, and hence the suit is liable to be dismissed.

3.On the above pleadings, the following issues are framed:

1.Whether the plaintiff has given loan for Rs.2,50,00,000/- to the defendant on 16.02.2016?

2.Whether the defendant has issued two cheques for the above amount?

3.Whether the plaintiff is entitled to receive the said amount with interest?

4.During trial, the plaintiff examined himself as P.W.1 and also examined Gopi Gundareddy, the intermediary who facilitated the loan for the defendant, as P.W.2. The defendant did not enter the box but examined one of his staff as D.W.1. The plaintiff had produced Ext.P1 to Ext.P21 and the defendant had marked Ext.D1 to D3.

5. The learned counsel for the plaintiff submitted that :

- Nowhere in the written statement, the defendant had denied that Rs.2.50 cores was not borrowed by him from the plaintiff, in cash. The defence taken however was certain inconsistencies in the allegations of the plaintiff, vis-a-vis the criminal complaint instituted against him by the plaintiff, and the one he has alleged in the present suit.

- So far as the alleged inconsistencies in the stands of the plaintiff is concerned, this has to be contextually understood. Indeed, the criminal complaint in STC.No.1561 of 2017 on the file of the District Munsif cum Judicial Magistrate, Sriperumbudur was quashed by this Court in Crl.O.P.No.9482 of 2018, essentially on the ground that inasmuch as Ext.P1 & Ext.P2 cheques were in the capacity of M/s.BKR Hotels and Resorts Pvt. Ltd., and also in his proprietary concern M/s.Adhiparasakthi Promoters and Property Developers respectively, and not in the name of the holder of the account namely the company or the business, as the case may be. Indeed, the copy of the complaint is also marked as Ext.D2 in the present case. The structure of Ext.D2 complaint will indicate that the complaint was laid only against the defendant in his capacity as the authorised signatory of the holder of the bank account. And, this precisely is the reason why this Court has quashed S.T.C.No.1564 of 2017.
- If according to the defendant, it is the business that had borrowed the amount, then he is duty bound to produce the books of accounts

of both the company and also the proprietary concern to show how he had brought the said sum in the bank accounts. He, not only has not produced these documents, but also not examined himself to prove his contention and to absolve himself of his liability. Necessarily, adverse inference needs to be drawn against this conduct.

Reliance was placed on the authorities in ***Mohinder Kaur v. Sant Paul Singh*** [(2019) 9 SCC 358] and ***D.Purushotama Reddy and Another v. K.Sateesh*** [(2008) 8 SCC 505].

6. Per contra, the learned counsel for the defendant structured his arguments along the lines of his defence, and projected heavily on the contradictions or inconsistencies in the stands of the plaintiff vis-a-vis the liability he attempts to fasten on the defendant now.

7.1 After weighing the rival submissions, this Court has little hesitant in handing down a decree to the plaintiff, and its reasons are :

(a) That the defendant has not pointedly denied that he had not borrowed Rs.2.50 crores from the plaintiff on 16.02.2016, as pleaded. His only keenness is to shift the burden to the businesses and not to himself.

(b) In his strategy to shift the burden of the liability from himself to the businesses concern, whose affairs he is presiding, he did not choose to produce the books of accounts of these concerns, so as to establish how these monies have been dealt with by the business concerns. Necessarily, adverse inference needs to be drawn against the defendant.

7.2 So far as the rate of interest is concerned, there is nothing on record to indicate that the loan paid in cash was intended for commercial purposes. Hence, this Court chooses not to award future interest at commercial rates, on which the bankers advance loans. That the plaintiff had chosen to borrow the funds from the bank to advance the principal sum to the defendant is something between the plaintiff and its bankers, and there is no evidence to show that the defendant would be liable to pay the interest at which the plaintiff had borrowed the sum from the bank.

8. As indicated earlier, for the reasons disclosed in the previous paragraph,

and also the decision declared in the previous paragraph, this Court also chooses to decree the suit, and directs the defendant to pay the plaintiff the sum of Rs.2.50 crores with past interest at the rate of 12% per annum from the date of loan (16.02.2016) till the date of filing of the suit, and thereafter, further interest at the rate of 6% per annum.

9. In the result, the suit is decreed on the above terms. No costs.

03.03.2023

Index : Yes / No
Internet : Yes / No
Speaking order / Non-speaking

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APPENDIX

I. Witnesses :

Plaintiffs :	
P.W.1	S.Peter
P.W.2	R.Gopu
Defendant :	
D.W.1	R.Priya

II. Exhibits :

Ext.P1	10.01.2017	Cheque bearing No.002334 dated 10.01.2017 drawn on M/s.Karur Vysya Bank, T.Nagar Branch, in favour of the plaintiff by the defendant for a sum of Rs.1,25,00,000/-
Ext.P2	10.01.2017	Cheque bearing No.844815 dated 10.01.2017 drawn on M/s.Indian Bank, Ashok Nagar Branch, in favour of the plaintiff by the defendant for a sum of Rs.1,25,00,000/-
Ext.P3	20.06.2016	Letter addressed to the plaintiff by the defendant
Ext.P4	11.01.2017	Cheque return endorsement by Dena Bank for insufficient funds against Ch.No.002334 for Rs.1.25 crores
Ext.P5	11.01.2017	Cheque return endorsement by Dena Bank for insufficient funds against Ch.No.844815 for Rs.1.25 crores
Ext.P6	12.07.2017	Memo filed by the accused/defendant in C.C.No.1564/2017 on the file of Judicial Magistrate, Sriperumbudur against the complaint by the plaintiff under Section 138 of N.I.Act
Ext.P7	06.04.2018	Memo filed by the accused/defendant in Crl.MP.No.4884/2018 in C.C.No.1564/2017 on the file of Judicial Magistrate, Sriperumbudur against the complaint by the plaintiff under Section 138 of N.I.Act
Ext.P8	30.05.2017	Order of the National Company Law Tribunal, Chennai
Ext.P9	23.02.2016	Statement of Accounts issued by M/s.Dena Bank,

		T.Nagar Branch for the period 09.02.2016 to 23.02.2016
Ext.P10	16.08.2010	Sale Deed executed by Mr.M.Subramani Reddy and others in favour of the defendant
Ext.P11	16.08.2010	Sale Deed executed by Mr.P.Mohan in favour of the defendant
Ex.P12	16.08.2010	Sale Deed executed by Mr.P.Mohan and another in favour of the defendant
Ex.P13	08.09.2010	Sale Deed executed by Mr.Parthiban in favour of the defendant
Ex.P14	08.09.2010	Sale Deed executed by Mr.D.Krishnan and his minors in favour of the defendant
Ex.P15	08.09.2010	Sale Deed executed by Mr.Sekar and another in favour of the defendant
Ex.P16	08.09.2010	Sale Deed executed by Mr.P.Srinivasan and his minors in favour of the defendant
Ex.P17	08.09.2010	Sale Deed executed by Mr.G.Raghupathy and his minors in favour of the defendant
Ex.P18	09.11.2017	Legal notice sent to the defendant by the plaintiff counsel with acknowledgement card
Ex.P19	16.11.2017	Reply legal notice sent by the defendant counsel to the plaintiff counsel
Ex.P20	14.11.2017	Complaint against the defendant by the plaintiff to the Commissioner of Police
Ex.P21	04.04.2019	Statement of Accounts issued by M/s.Dena Bank for the period 01.02.2016 to 28.02.2016
Defendant :		
Ext.D1	09.02.2017	Legal notice to the defendant by the plaintiff through counsel Ms.G.Priya, Advocate.
Ext.D2	23.03.2017	Complaint by the plaintiff against the defendant before the District Munsif cum Judicial Magistrate Court, Sriperumbudur, under Sections 138 & 142 of N.I. Act
Ext.D3	29.09.2021	Letter addressed by the defendant authorising Mrs.R.Priya to attend the court on his behalf in C.S.No.967/2017

03.03.2023

N.SESHASAYEE.J.,

ds

Pre-delivery Judgment in
C.S.No.967 of 2017

03.03.2023