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C.S.No.269 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09..10..2023

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Civil Suit No.269 of 2022

Ravi Krishnan

..... Plaintiff

-Versus-

Vijay R. Vakharia

..... Defendant

Suit filed under Order IV, Rule 1 of the Madras High Court [Original Side] Rules, 1956 r/w order VII Rule 1 of the Code of Civil Procedure, 1908 praying for a decree directing the defendant to pay a sum of Rs.1,07,69,779/- with interest at 12% p.a. from the date of plaint till date of realization and for costs.

For Plaintiff : Mr.B.Ravi

For Defendant : Set Ex-parte

JUDGEMENT

This is a suit for a money decree based on the dishonored cheques for recovery of a sum of Rs.1,07,69,779/- from the defendant with interest at 12% p.a. from the date of plaint till date of realization and for costs.



2. The case of the plaintiff in brief is that he is the cousin of late Lakshmi Balu, wife of A.Balu @ Balasubramanian [hereinafter will be referred in short as “A.Balu”]. The said A.Balu and Lakshmi Balu had no issues from the wedlock. Lakshmi Balu predeceased A.Balu on 05.01.2013. A.Balu's elder brother had also predeceased him. The said A.Balu and his wife Lakshmi Balu owned a flat at Chamiers Road in Chennai. The defendant was the neighbour. The couple had decided to sell their flat for a total sale consideration of Rs.2,00,00,000/- (Rupees Two Crores only). The defendant had agreed to purchase the same. The defendant approached A.Balu through one Gunasekaran who was the driver of A.Balu. Accordingly, the property was conveyed to the defendant. Though the sale consideration was agreed at Rs.2,00,00,000/- (Rupees Two Crores only), there was an oral agreement between both the vendor and the purchaser that the purchaser (defendant herein) shall pay a sum of Rs.1,27,44,000/- (Rupees One Crore Twenty Seven Lakhs and Forty Four Thousand only) at the time of registration of the property and pay the balance of Rs.72,56,000/- (Rupees Seventy Two Lakhs and Fifty Six Thousand only) as the fund was arranged by him. Such an agreement was arrived at at the request of the defendant as he was not having sufficient fund in hand and was requiring some time to arrange for the entire sale consideration. It



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was also agreed by the defendant to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to one Gunasekaran towards commission for his work. The defendant also agreed to permit A.Balu to continue his possession of his flat during his life time. The sale was concluded and a deed of sale was registered in favour the defendant on 12.12.2011 by A.Balu and his wife. The defendant had paid the balance sale consideration of Rs.72,56,000/- as agreed and undertook by him through a cheque on 09.03.2012.

3. Immediately thereafter, the defendant approached the said A.Balu for loan of Rs.85,00,000/- and the said A.Balu had lent a sum of Rs.25,00,000/- to the defendant on 12.03.2012 through a cheque drawn on Canara Bank which was cleared on 14.03.2012 and the balance loan of Rs.60,00,000/- was paid to the defendant on 10.12.2012 through a cheque drawn on Canara Bank which was cleared on 12.12.2012. That apart, Balu also paid a sum of Rs.10,00,000/- being the agreed commission amount payable to Gunasekaran on behalf of the defendant at his request and promised that he would reimburse the same. The defendant did not repay neither the loan amount nor the commission amount which was paid by A.Balu on behalf of the defendant. However, the defendant had issued three cheques dated 01.08.2015, for Rs.25,00,000/-, Rs.25,00,000/- and Rs.10,00,000/-



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bearing Cheque Nos.561338, 561339 and 561340 respectively drawn on Oriental Bank of Commerce, R.K.Salai, Chennai in favour of the deceased Balu. When the cheque bearing No.561340 was presented by A.Balu for collection, it was returned as unpaid on 27.08.2015 with the reason “insufficient funds” . The two other cheques which were presented for collection were also returned unpaid on 23.10.2015.

4. Due to his ill-health, the deceased A.Balu requested the plaintiff to take complete care of his estate and he made the plaintiff as his nominee in his bank account and also authorized the defendant to sign cheques and operate his account and deal with the bank on all issues without any limitations. He also gave a letter on 31.08.2015 under which he had assigned the responsibility of collecting and recovering the debt owed by the defendant in the presence of Gunasekaran and one M.Suresh.

5. After the death of Balu on 10.09.2015, the flat was under the possession of the plaintiff and his staff had been put in occupation of the same. It was the plaintiff who had performed the last rites of the deceased as per wishes of the deceased. Initially, the defendant had agreed to repay the amount borrowed by him and told the plaintiff to retain the possession of the flat until repayment of the loan.



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The defendant did not repay the loan amount. Hence, the plaintiff caused a legal notice on 23.12.2015 demanding repayment of loan. On 23.12.2015 the defendant issued a reply through his counsel repudiating the claim of the plaintiff. In the last week of December, 2015, the defendant prevented the staff members of the plaintiff from entering the flat. The plaintiff issued a rejoinder on 16.01.2016 to the reply notice. Thereafter, the plaintiff had filed a suit in O.S.No.2166 of 2016 on the file of the XII Assistant Judge, City Civil Court, Chennai for mandatory injunction to remove the iron gate which prevented the ingress and egress to the property. Pending the above said suit, the defendant sold the property to one V.Raman and Kamala Raman. Hence, the present suit for recovery money.

6. Though the defendant entered appearance through his counsel and filed his written statement, he was set ex parte on 27.07.2023 as none represented him on that date. Thereafter the case was posted for evidence of the plaintiff. On 26.09.2023, the plaintiff examined himself as P.W.1 , one P.Gunasekaran who acted as a broker for the sale of the property and also a witness to the Gift Deed has been examined as P.W.2 and one M.Suresh who was the other witness to the Gift Deed was examined as P.W.3 and Ex.P.1 to P.20 have been marked. As the defendant was already set exparte, on 04.10.2023, the suit was directed to be



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posted on 09.10.2023 for arguments of the plaintiff. Accordingly, the suit has been

listed today for arguments.

7. Heard the learned counsel for the plaintiff and perused evidence of the plaintiff as P.W.1 and Ex.P.1 to Ex.P.20 carefully.

8. The plaintiff (P.W.1) in his evidence has clearly narrated how the defendant is liable to pay the amounts covered under three different cheques. The plaintiff has also established the deceased Balu had assigned the debts to him to collect. The plaintiff has also filed the gift deed dated 17.07.2015 in his favour. The defendant though filed a detailed written statement denying the allegations made in the plaint and contending that it was Balu who had requested him for a loan and he arranged for Rs.72,56,000/-, the defendant had not chosen to contest the suit and he remained exparte.

9. Ex.P.1 is the certified copy of the sale deed executed by A.Balu and Lakshmi Balu in favour of the defendant on 12.12.2012. Ex.P.2 is the statement of account of the deceased Balu for the period between 01.01.2012 to 30.03.2012. Ex.P.3 is the original cheque counter foils for Rs.25,00,000/- and Rs.60,00,000/- respectively. Ex.P.4 is the Original Pass Book pertaining to A/c N.2604101000585 for the period from 2011 to 2013. Ex.P.5 is the computer generated copy of



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Income Tax Returns of deceased Balu for the period from 2012 to 2013 along with section 65B affidavit. Ex.P.6 is the computer generated copy of the death certificate of Lakshmi Balu dated 19.01.2013. Ex.P.7 is photo copy of the legal heirship certificate. Ex.P.8 is the original Gift Deed executed by late Balu in favour of the plaintiff on 17.07.2015. Ex.P.9 is the true copy of the letter of authority executed by deceased Balu in favour of plaintiff to handle the bank account dated 24.07.2015. Ex.P.10 is the original cheque No.561338 & 561339 for Rs.25,00,000/- each and Cheque No.561340 for Rs.10,00,000/- drawn on Oriental Bank of Commerce, R.K.Salai, favouring A.Balu towards repayment of loan dated 01.08.2015. Ex.P.11(series – 4Nos.) are the printout of the E-mail correspondence between the plaintiff and the defendant with Section 65B affidavit. Ex.P.12 is the original return memo by bank for Cheque No.561340 for Rs.10,00,000/- dated 27.08.2015. Ex.P.13 is the original letter of assignment of debt for recovery of money dated 31.08.2015. Ex.P.14 is the computer generated copy of death certificate of A.Balu @ Balasubramanian dated 18.09.2015. Ex.P.15 (series – 2 Nos.) is the original return memo by bank for cheque Nos.561338 & 561339 for Rs.50,00,000/- dated 23.10.2015. Ex.P.16 is the office copy of the legal notice issued by the plaintiff to the defendant dated 03.11.2015 along with postal receipt



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and returned cover. Ex.P.17 is the photocopy of the reply notice sent by the defendant through a counsel dated 23.12.2015. Ex.P.18 is the office copy of the rejoinder to reply issued by the plaintiff dated 16.01.2016 along with postal receipt. Ex.P.19 is the certified copy of the sale deed executed by Vijay R.Vakharia favouring V.Raman and Kamala Raman dated 09.06.2016. Ex.P.20 is the printout of the E-mail correspondence between the Auditor of late A.Balu to the plaintiff dated 30.01.2017 along with Section 65B affidavit.

10. The entire money transactions were borne out by records. The evidence available on record would only indicate that after the entire sale consideration was paid, the defendant approached the deceased A.Balu for a loan and availed the loan. The cheques which were given by the defendant were dishonored. The plaintiff has established the liability of the defendant to pay the amount covered under the cheque. P.W.2 and P.W.3 supported the case of the plaintiff. The defendant has not controverted the averments made in the plaint and he remained ex parte. Considering the evidence and the documents available on record this court is of the view that the plaintiff has established his case and therefore, he is entitled for a decree as prayed for in the suit, however, post decree he is entitled for interest on the suit amount only at 6% p.a.



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In the result, the suit is decreed with costs. The defendant is directed to pay a sum of Rs.1,07,69,779/- to the plaintiff with interest at 12% p.a. on the abovesaid amount from the date of plaint till this date and thereafter @ 6% p.a. on 1,07,69,779/- till date of realization in full.

Since the immovable property of the defendant has already been attached under Order 38, Rule 5 of CPC before the judgment, it is needless to say that there need not be further attachment in the execution proceedings.

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Witnesses Examined on the side of the Plaintiff:

P.W.1 – Ravi Krishnan (Plaintiff)

P.W.2 – P.Gunasekaran

P.W.3 – M.Suresh

Witnesses examined and on the side of the defendant:-

Nil

Documents marked on the side of the Plaintiff:

Ex.P.1	12.12.2011	Certified copy of the sale deed executed by A.Balu and Lakshmi Balu in favour of the defendant
Ex.P.2	-	statement of account of the deceased Balu for the period between 01.01.2012 to 30.03.2012
Ex.P.3	-	Original cheque counter foils for Rs.25,00,000/- and Rs.60,00,000/- respectively.
Ex.P.4	-	Original Pass Book pertaining to A/c N.2604101000585 for the period from 2011 to 2013.
Ex.P.5	-	Computer generated copy of Income Tax Returns of deceased Balu for the period from 2012 to 2013 along with section 65B affidavit.
Ex.P.6	19.01.2013	Computer generated copy of the death certificate of Lakshmi Balu
Ex.P.7	26.02.2014	Photocopy of the legal heirship certificate.
Ex.P.8	17.07.2015	Original Gift Deed executed by late Balu in favour of the plaintiff
Ex.P.9	24.07.2015	True copy of the letter of authority executed by deceased Balu in favour of plaintiff to handle the bank account dated 24.07.2015
Ex.P.10	01.08.2015	Original cheque No.561338 & 561339 for Rs.25,00,000/- each and Cheque No.561340 for Rs.10,00,000/- drawn



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		on Oriental Bank of Commerce, R.K.Salai, favouring A.Balu towards repayment of loan
Ex.P.11 (series- 4 Nos.)		Printout of the E-mail correspondence between the plaintiff and the defendant with Section 65B affidavit.
Ex.P.12	27.08.2015	Ex.P.12 is the original return memo by bank for Cheque No.561340 for Rs.10,00,000/-
Ex.P.13	31.08.2015	Original letter of assignment of debt for recovery of money
Ex.P.14	18.09.2015	Computer generated copy of death certificate of A.Balu @ Balasubramanian
Ex.P.15 [Series – 2 Nos.]	23.10.2015	Original return memo by bank for cheque Nos.561338 & 561339 for Rs.50,00,000/-
Ex.P.16	03.11.2015	Office copy of the legal notice issued by the plaintiff to the defendant along with postal receipt and returned cover.
Ex.P.17	23.12.2015	Photocopy of the reply notice sent by the defendant through a counsel
Ex.P.18	16.01.2016	Ex.P.18 is the office copy of the rejoinder to reply issued by the plaintiff along with postal receipt.
Ex.P.19	09.06.2016	Certified copy of the sale deed executed by Vijay R.Vakharia favouring V.Raman and Kamala Raman dated
Ex.P.20	30.01.2017	Printout of the E-mail correspondence between the Auditor of late A.Balu to the plaintiff along with Section 65B affidavit.

Documents marked on the side of the defendant:

Nil

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