IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

A.S.No. 515 of 2020
and
C.M.P.No. 7036 of 2020

1.M/s. Twaarsh Floritech Company
Private Limited,
rep. By its Managing Director
Mr. Ramneek Singh

2. Mr. Rohan Shetty,
S/o. Mr.Umanath Shetty

3. Mr. Ramneek Singh,
S/o. Pannu Rajpal Singh

... Appellants

Vs.

Suresh Rowvey,
S/o. Late V.K.S. Rowvey .. Respondent

PRAYER : Appeal Suit filed under Sec.96 of Civil Procedure Code r/w Order 41 Rule 1 of Civil Procedure Code, to set aside the judgment and decree dated 16.12.2017 passed by the learned District Judge of Nilgiris at Udhagamandalam in O.S.No.24 of 2014.

For Appellants : Mr.M.Rajasekar

For Respondent : Mr.S.S.Rajesh

JUDGMENT

The appellants herein are the defendants in the suit in O.S.No. 24 of 2014 on the file of learned District Court, Nilgiris at Udhagamandalam. Challenging the findings rendered by the trial judge directing them to pay a sum of Rs.12,75,617/- with interest at the rate of 12% per annum with cost to the plaintiff in the suit, the defendants preferred this appeal.

2. For the sake of convenience, the parties are referred as per ranking in the suit.

3. According to plaintiff, the 1st defendant is the company dealing with growing, cultivating and marketing of flowers, cut flowers etc. The 2nd defendant is one of the acting Directors of 1st defendant company and the 3rd defendant is the Managing Director of the said company. The plaintiff and the 2nd defendant are known each other for several years and due to some financial problem, the 2nd defendant requested the plaintiff for funding aid. Agreeing the same, the plaintiff transferred a sum of

Rs.3,00,000/- in favour of 1st defendant company on 15.11.2010 through his NRI account and again during December 2010, another sum of Rs.1,00,000/- and again in the year of 2011, an additional sum of Rs.5,00,000/- have been transferred to the 1st defendant company. Totally, a sum of Rs.9,00,000/- paid by him and the said payments were made to the 1st defendant company at the instance of 2nd defendant, who was engaged by them. When there is no repayment, in the year of 2013, the plaintiff demanded for repayment and sent email reminding the said settlement. The 2nd defendant acknowledged the same, but not settled the amount. Hence, the suit.

4. The 1st defendant filed a written statement and the same was adopted by defendants 2 and 3. The contention of 2nd defendant that he has not borrowed any loan from the plaintiff, on the other hand, having interest upon the 2nd defendant's business, he has invested the said amount to the 1st defendant's company in anticipation of profit return and the same is subject to the loss of the company. Furthermore, the 1st defendant is the Private Limited, in which, the 2nd and 3rd defendants are Directors, so they

are not liable for the dues of the company, since because the plaintiff invested the amount only in the 1st defendant's company, thereby they denied their liability.

5. Before the trial court, issues were framed as to whether the plaintiff is entitled for the suit claim as prayed for? Both parties adduced oral evidence, but no documentary evidence adduced on the side of both sides. But, the suit was contested by all the defendants. Considering the evidence as well as statements made by both sides, the trial judge held that based upon account statement Ex.A1 and Ex.A2, the plaintiff transferred totally a sum of Rs.9,00,000/- to the 1st defendant's account from his NRI account and the defendants also admitted the said payment, but contend that it was only the investment in the 1st defendant's company and denied that it is not an hand loan, however there is no proof on the side of defendants that it was invested in the 1st defendant's company nor there is a share certificate issued in favour of plaintiff. Further, the said amount was transferred to 1st defendant's account at the request of 2nd defendant and there is no proof that the said amount was invested in the

company for the business purpose nor produced any account by the defendants. Accordingly, the claim made by the plaintiff as such is maintainable and the said claim was decreed with an interest at the rate of 12%. Challenging the same, the defendants preferred this appeal.

6. The learned counsel for appellant would submit that the trial judge failed to take note of the fact that the payment made by the plaintiff as an investment return on profit, for that, 2nd and 3rd defendants neither guarantors nor acknowledged repayment on behalf of company. When there is no such personal guarantee, the 2nd and 3rd defendants are not liable to pay the amount. But, without appreciating the legal proposition, the trial judge decreed the suit in favour of defendants, as such is liable to be set aside.

7. To substantiate his arguments, he relied on the authority reported in *1998 (45) DRJ – Space Enterprises vs. Srinivasa Enterprises Ltd.,* wherein in para 11, High Court of Delhi held as follows:-

“11. In so far as the liability of defendant No.2 is concerned, the effect of the registration of a company under Section 34 of the Companies Act is that it is a distinct and independent persons in law and is endowed with special rights and privileges; a person distinct from its members. Consequently, the company is enabled to contract with its shareholders also, to use common seal and acquire and hold property in its corporate name. The company is distinct from its shareholders and its Directors. Neither the shareholders nor the Director can treat the company's assets as their own. Directors of a company are liable for misappropriation of company's funds and other misfeasance, but not for an ordinary contractually liability of the company. The liability of the embers or the shareholders or the Directors is limited to the capital invested by them. So long the liability is not unlimited under Sections 322 and 323 of the Companies Act and no

special resolution of the limited company making liability of the Directors or the Managing Directors unlimited is alleged. The doctrine of lifting of the corporate veil could be applied in cases of tax evasion, or to circumvent tax obligation or to perpetuate fraud or trading with an enemy are concerned. It is not alleged that the Director has lost the privilege of limited liability and has become directly liable to the plaintiff i.e. creditor of the company on the ground that with his knowledge the company carries on business six months after the number of its members was reduced below the legal minimum number. In absence of such a case it would be totally inappropriate and improper to say that the defendant No.2 is patently covered under Order 37 C.P.C."

8. By way of reply, the learned counsel for respondent/plaintiff would submit that at the request of 2nd defendant to improve the financial

position of the 1st defendant's company, the plaintiff transferred the total sum of Rs.9,00,000/- as loan to the 1st defendant's account at the instance of 2nd defendant and it was not paid as an investment on return as alleged by the defendants. The trial judge rightly appreciated all the facts and evidence and decreed the suit as such is well-reasoned and prayed to dismiss the appeal as no merits.

9. Point is to be decided is whether plaintiff proved his claim or it is an investment made by him in 1st defendant company?

10. The foremost objection raised by the 2nd and 3rd defendants is that the payment made by the plaintiff was the investment towards 1st defendant's company and it is not a loan borrowed by them. The defendants admitted the payment made by the plaintiff, but they would content that it was paid as an investment for profit returns and not the loan. So, the burden is casted upon the defendants to prove that it was paid voluntarily by the plaintiff for investment. As stated by the trial judge, there is no statement of account nor no document adduced on the side of

defendants to prove the same. Even before the trial court, there is no documents adduced to establish their claim, thereby the defendants failed to establish that the said payment was made for the purpose of investment in the 1st defendant's company. Therefore, the authorities relied on by the appellants is not applicable to the facts of the case for the reason that the referred case is not applicable to the facts of case.

11. Furthermore, before the trial court, the 2nd defendant was examined as D.W.1 and he admits that the plaintiff is not a share holder with the 1st defendant's company, on the other hand, the plaintiff proved that the amount was transferred from his NRI account to 1st defendant's account at the instance of 2nd defendant. In order to escape from the liability, now the defendants 2 and 3 taken a defence that only 1st defendant's company is liable, as such is unsustainable one for the aforesaid reasons. So, though the 1st defendant is the registered Private Limited Company, no account statement was produced with regard to transaction, the claim of investment as alleged by the defendants are totally false. Furthermore, the 2nd defendant was already known to the

plaintiff. So, at his request, the said amount was paid by the plaintiff in order to develop his business. Hence, all the three defendants are jointly and severally liable to pay the said amount, which was rightly concluded by the trial judge, which needs no interference. Accordingly, this Appeal Suit is dismissed as no merits and the trial court findings in O.S.No.24 of 2014 are confirmed, thereby the suit is decreed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

13.09.2023

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

District Judge,
Nilgiris at Udhagamandalam.

T.V.THAMILSELVI, J.

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