IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

A.S. No.865 of 2018

1. T.S.Ramanan,
   S/o. T.K.Subramaniya Raja
   Managing Director,
   M/s.Glo Colour Labs (P) Ltd.

2. GLO Colour Labs (P) Ltd.,
   rep. by its Managing Director .. Appellants

Vs

K.Chandrasekar,
S/o. K.S.Krishnamaraja ... Respondent

Prayer:- First Appeal has been filed under Sec.96 of C.P.C. r/w Order 41 Rule 1 of C.P.C., to set aside the judgement and decree dated 07.02.2018 made in O.S.No.378 of 2013 on the file of learned I Addl. District Judge, Coimbatore.

For Appellants	:	Mr.S.Mukunth, Senior Advocate for M/s.Sarvabhauman Associates
For Respondent	:	Mr.N.Vignesh for Mr.B.Nedunchezhiyan

JUDGEMENT

The appellants herein are the defendants in the suit in O.S.No.378 of 2013 on the file of I Addl. District Judge, Coimbatore and they have preferred the above appeal challenging the judgment and decree passed against himself and 2nd defendant company.

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

3. The contention of defendants is that 1st defendant is the Managing Director of 2nd defendant company, who is dealing with a business under the name and style of GLO Colour Labs (P) Ltd. and he was authorised to borrow money from the parties for the development of the company and the plaintiff, who expressed his willingness to contribute share capital. Accordingly, through cheques, totally he contributed a sum of Rs.18,00,000/- on various dates during the year of 2007 to 2008 and at the request of plaintiff, all the amounts paid by him was repaid. As on date, no amount is outstanding, but he falsely claimed as if the 1st defendant borrowed a loan from him and agreed to repay the same with interest by suppressing the real transaction. But, the trial judge erroneously concludes

that the 1st appellant/1st defendant alone is liable to repay the amount borrowed as if he borrowed a loan from the plaintiff with 24% interest, as such is totally unfair and the same is liable to be set aside. Accordingly, he prayed to allow this appeal.

4. By way of reply, the learned counsel for respondent/plaintiff would submit that the 1st defendant was known to the plaintiff and in order to develop his business, he requested the plaintiff to advance a sum of Rs.18,00,000/- as a loan as he is a relative and friend, thereby he gave the said loan amount by way of cheques and the 1st defendant agreed to repay the principal amount along with 24% interest, but inspite of the request, he has not repaid the amount. However, he has paid a sum of Rs.8,70,000/- on various dates, which was adjusted towards interest. As the 1st defendant refused to pay the loan amount availed by him, the plaintiff issued a notice on 11.01.2012 calling upon him to settle the outstanding amount of Rs.26,93,441/-, and the same was replied by the 1st defendant as if he has to pay only a sum of Rs.2,00,000/- towards balance. Hence, he filed a suit for recovery of money.

5. Before the trial court, the plaintiff adduced oral as well as

documentary evidence to prove the loan transaction with the 1st defendant and the trial judge rightly appreciated the facts and granted decree, but restricted the interest to 6%. Hence, the learned counsel for plaintiff prayed to dismiss the appeal as no merits.

6. On considering both side submissions, the fact reveals that according to plaintiff, as a friend, the 1st defendant requested him to advance the loan of Rs.18,00,000/- in order to develop his business. Accordingly, he paid the said amount during the year 2007 to 2008 on various dates through cheques, but the 1st defendant failed to repay the amount with 24% interest. Later, he has paid a sum of Rs.8,70,000/-, which was adjusted towards interest and for the remaining amount, he has filed a suit. The 1st defendant admits the loan transaction, but subsequently he content that the said loan was borrowed as a Managing Director representing the 2nd defendant company and the said amount was invested by the plaintiff in the 2nd defendant company as a share capital. Thereafter, the said amount was repaid to him and since the company sustained loss, they are not able to run the company successfully, thereby they have denied the plaintiff's claim. Before the trial court, three issues were framed and the foremost issue is whether the amount given by the plaintiff to the 1st defendant was the loan or share capital.

7. Considering the oral and documentary evidence adduced on the side of plaintiff, it reveals that there is a money transaction between the plaintiff and the defendants and furthermore, the fact reveals in the reply notice as well as in the written statement that the 1st defendant admits the transaction with the plaintiff and the borrowal of Rs.18,00,000/-, but in the reply notice, Ex.A3, he admits the money transaction without mentioning the amount, however, he would content that he is willing to settle the entire outstanding due to the plaintiff. After filing the suit, while filing the written statement, the 1st defendant admits the borrowal of Rs.18,00,000/- from the plaintiff on various dates from the year of 2007 to 2008 in para 4 of written statement, but he would content that the said amount was contributed by the plaintiff as a share capital to the 2nd defendant company. During evidence, while he was examined as P.W.1, he admits the borrowal of the said amount of Rs.18,00,000/- from the plaintiff. As rightly stated by the learned counsel for plaintiff, after filing the suit, the 1st defendant raised a new defence that the said amount was paid by the plaintiff as share capital in the 2nd defendant company represented by the 1st defendant as a Managing Director. If really, the said amount was contributed in the share capital, while issuing reply notice itself, the 1st defendant ought to have mentioned the same, but he failed. Furthermore, during the cross-examination of P.W.1

and Auditor D.W.2, both have admitted that no share certificate was given to the plaintiff for the said amount of Rs.18,00,000/-. So, if really, the amount was invested as share capital in the 2nd defendant company, they ought to have given the share certificate, but no such certificate was issued. Therefore, the amount was invested as share capital has not been proved by the defendants.

8. Having admitted the loan transaction by the 1st defendant, the burden is casted upon him to prove that the amount was invested as a share capital in the 2nd defendant company and the borrowal of the said amount on behalf of 2nd defendant company. But, as discussed above, while issuing the reply notice, there is no mentioning about the investment of share capital nor they have issued any share certificate to the plaintiff. The evidence of D.W.2, Auditor of 1st defendant also admits during the cross-examination that no such share certificate was issued in favour of plaintiff. The 1st defendant relied the Ex.A4 balance sheet of the year of 2007 to 2008, in which, they have simply mentioned the plaintiff's amount of Rs.18,00,000/- as a current asset of 2nd defendant company, but the said statement is not an authenticated document and it is only a supporting document to the defendants transaction. Therefore, the 1st defendant failed to establish that the said amount was contributed by the plaintiff as a share capital to the 2nd

defendant company. Having admitted the transaction with the plaintiff, the burden is casted upon him to prove that it is not a loan transaction, but he failed to prove the same. The learned trial judge rightly analysed all the facts and evidence and concludes that the amount was not invested in the 2nd defendant company. The admission made by the 1st defendant itself is sufficient to conclude that there is a loan transaction between the plaintiff and the 1st defendant, more particularly, the 1st defendant admits that the plaintiff paid a sum of Rs.18,00,000/- to him. Accordingly, the plaintiff proved that there is a loan transaction between himself and the 1st defendant and when there is no evidence that the said amount was paid to him for investment purpose as a share capital in the 2nd defendant company, the said amount is deemed to be a loan borrowed by the 1st defendant.

9. Admittedly, there is a claim that the plaintiff paid the amount for 24% interest, however, the trial judge awarded 6% of interest, but on seeing the conduct of 1st defendant that he borrowed the loan for business purpose, hence, awarded 12% of interest from the date of denial in the reply notice dated 18.01.2012. Furthermore, the plaintiff also raised objection that the 1st defendant paid a sum of Rs.8,70,000/-, but the same was deducted towards interest, but it was not proved by the plaintiff as observed by the trial judge, for which purpose those amounts were paid. So, the amount was

deducted from the principal amount by the court as such is acceptable one. Furthermore, no cross appeal was filed by the plaintiff challenging the said findings. Therefore, the 1st defendant is directed to pay a sum of Rs.9,30,000/- from January 2012 to till realisation with 12% interest within a period of three months from the date of receipt of copy of this order. Accordingly, this Appeal Suit is dismissed as no merit and the suit is partly decreed for a sum of Rs.9,30,000/- with interest at the rate of 12% from the date of denial i.e. January 2012 till the date of realisation. No costs.

08.09.2023

Index:Yes/No
Internet:Yes/no
Speaking Order/Non Speaking Order
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To
I Addl. District Judge, Coimbatore.

T.V. THAMILSELVI, J.

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