



A.S.No.324 of 2014

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2023

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS JUSTICE R.KALAIMATHI

A.S.No.324 of 2014
and
M.P.No.1 of 2014

K.S.P.Ramesh

...Appellant

Vs.

M.Rani

...Respondent

Prayer: First Appeal filed under Section 96 of C.P.C., r/w. Order 41 Rule 1 of C.P.C., against the judgment and decree dated 14.11.2013 made in O.S.No.281 of 2007 on the file of the IV-Additional District Judge, Ponneri.

For Appellant : Mr.V.Balasubramanian
for Mr.R.Natesh Kumar

For Respondent : Mr.T.K.Hariharan for Mr.K.Sivasubramanian



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J U D G M E N T

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(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The defendant in O.S.No.281 of 2007 on the file of the IV-Additional District Court, Ponneri is on appeal, aggrieved by the decree granted in the said suit for recovery of money to the tune of Rs.22,17,630.30/-. The said suit was filed by the respondent herein.

2.The claim of the plaintiff / respondent was that monies were due by the defendant on three different heads. The first head being, the balance due on monetary transactions through bank transfers by issuance of cheques, amounting to Rs.12,63,133.24/- as on 31.03.2007. The second head is the charges leviable for processing Orid Dhall (Black Gram) at Rs.110 per bag on 3,413 ½ gunny bags of 100 kilograms each. The third head is hand loans that were advanced to the defendant at Rs.5,00,000/- on 21.09.2001 and Rs.3,00,000/- on 02.10.2001 and various small amounts amounting to Rs.5,012.06/-. As regards the third head is concerned, the plaintiff claimed that the defendant had repaid the sum of Rs.1,50,000/- on 05.09.2002, Rs.76,000/- on 22.04.2003 and another sum of Rs.101/- on 01.04.2006, leaving the balance of Rs.5,79,012.26/-. Thus, in all, the

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plaintiff claimed a sum of Rs.22,17,630.30/-. It should be pointed out at this juncture that the defendant is the brother-in-law (husband's brother) of the plaintiff.

3.The defendant resisted the suit contending that all the suit claims are not true. It was claimed that the business in dealing with Orid Dhall was the business of the father, Thiru.K.S.Pandian and after the father, the two sons were carrying on the business. After the death of elder son, the plaintiff, who is the wife and his son was running the said business. While admitting that there were financial transactions between the two Dhall Mills, the defendant would contend that the bank entries were made to enable the plaintiff to borrow loans from the State Bank of India. As regards the other two claims namely, processing charges and hand loans, the defence was one of complete denial. The Trial Court on the pleadings of the parties framed the following issues:-

“1) Whether the suit is barred by limitation?

2) Whether the plaintiff is entitled to claim



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*Rs.22,17,630.30/- with at the rate of interest 24% per annum
from the defendant?*

3)To what relief?"

4.At trial, the son of the plaintiff was examined as P.W.1 and one Rajendiran was examined as P.W.2 and Exs.A1 to A7 were marked. On the side of the defendant, the defendant examined himself as D.W.1 and one Ganesan, a person said to have been working as Accountant in both the mills was examined as D.W.2 and Exs.B1 to B3 were marked. The learned Trial Judge, accepted the claim of the plaintiff on all the three heads and decreed the suit as prayed for.

5.We have heard Mr.V.Balasubramanian for Mr.R.Nateshkumar, learned counsel for the appellant and Mr.T.M.Hariharan for Mr.K.Sivasubramanian, learned counsel for the respondent.

6.Mr.V.Balasubramanian, learned counsel for the appellant would vehemently contend that the cheques, that are depicted in the statement of account marked as Ex.A4, were given in order to show that the plaintiff had



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more income, so as to enable the plaintiff to get Bank loan. Therefore, the

Trial Court was not right in granting a decree based on Ex.A4 alone.

7.As far as the second claim, namely, the processing charges for Orid Dhall, the learned counsel for the appellant would point out that Ex.A7 / series of receipts, which are relied upon by the plaintiff, are all created on a particular day namely, 31.03.2007 and they bear continuous serial numbers. The learned counsel for the appellant would submit that though D.W.1 would admit that there are supporting accounts to show that the Dhall was processed at the plaintiff's mill at the relevant point of time, the same was not produced. The learned counsel would submit that these bills have been created only for the purpose of making the claim and in the absence of supporting evidence, the Trial Court was not right in accepting the same.

8.As far as the third claim is concerned, the learned counsel for the appellant would submit that there is no evidence to prove the lending or the repayment, except the oral evidence of P.W.1, who is also the son of the



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plaintiff. As regards the repayment of Rs.101/- on 01.04.2006, the learned counsel would submit that the said sum was paid on the account opening day and it is the practice in several business houses in that area. The total amount claimed on third head is Rs.8,05,012.06/- and the amount said to have been repaid is shown as Rs.2,26,101/-. Mr.V.Balasubramanian, learned counsel for the appellant would submit that the claim itself would show that the claim is imaginary and created.

9.Contending contra, Mr.T.M.Hariharan, learned counsel for the respondent would submit that all these claims were made part of the legal notice, which was issued prior to the suit on 07.05.2007 and the suit came to be filed on 27.07.2007. The absence of reply to Ex.A6, legal notice would itself amount to admission of all the claims made in the plaint. He would also point out that as regards the first claim namely, Ex.A4, all the transactions were through Bank account and the same have been reflected in Ex.A5, Income Tax Return for the year 2005-2006, which shows the opening balance to be Rs.7,68,133.24/-.

10.The learned counsel for the respondent would submit that



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being Bank transactions, there cannot be any doubt about the payments that were made. A perusal of the Ex.A4, according to the learned counsel, would show that there has been payments both ways and the debit balance as on 31.03.2007 was Rs.12,63,133.24/-. Ex.A4, which is a ledger account of the defendant with the plaintiff depicts the opening debit balance of Rs.7,68,133.24/- and apart from the payments made by the plaintiff to the defendant, the payments made by the defendant to the plaintiff are also reflected therein and the closing debit balance as on 31.03.2007 was at Rs.12,63,133.24/-. Therefore, according to Mr.T.M.Hariharan, this is an indisputable amount and the Trial Court was right in granting a decree for the said sum.

11.As regards the second claim namely, process charges claimed at Rs.3,75,485/-, the learned counsel would submit that Ex.A7 (Series) would prove that the defendant had engaged the services of the plaintiff for processing of Orid Dhall and the said amount is due under those bills. He would also submit that D.W.1, in his evidence has admitted that there were financial transactions between the two mills and that evidence would be



sufficient to establish the claim made on the second head.

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12.In so far as the third head of the claim is concerned, Mr.T.M.Hariharan would submit that repayment of Rs.101/- on 01.04.2006 will be sufficient to prove the borrowing of Rs.8,05,012.06/- by the defendant. We have considered the rival submissions.

13.The following points are framed for determination in this appeal:-

“i) Whether the plaintiff has established the fact that the amounts claimed under the various heads are due and payable ?

ii) Whether Ex.A7 (series) by itself would establish the second claim made in the suit ?

iii) Whether the payment of Rs.101/- on 01.04.2006 would be taken as a proof of repayment of portion of the loan i.e., Rs.2,26,101/- as claimed by the plaintiff out of the total borrowing of Rs.8,05,012.06/-.”



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14.As regards the first claim is concerned, we find considerable force in the submissions of the learned counsel for the respondent. The statement, Ex.A4, which is a ledger maintained by the plaintiff shows various payments having been made by the plaintiff to the defendant and various payments having been received by the plaintiff from the defendant. The opening balance of Rs.7,68,133.24/- is correlated with the opening balance shown in the Income Tax Returns for the year 01.04.2005 to 31.03.2006. The same tallies with the ledger account and all the transactions are bank transactions and the defendant also admits those transactions. But, his contention is that those transactions were built up to show that the plaintiff had more income so as to enable the plaintiff to borrow. If the plaintiff's income has to be boosted, it should have been one way payment by the defendant to the plaintiff. It can't be both ways. We are therefore, unable to accept the submission / defence of the appellant with reference to the first claim. Therefore, we sustain the decree as far as the claim of Rs.12,63,133.24/- as evidenced by Ex.A4, the ledger accounts.

15.Adverting to the second claim, as rightly pointed out by the



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learned counsel for the appellant, all the bills in Ex.A7(series) have been prepared on the same day i.e., 31.03.2007. This in our considered opinion, is not a normal conduct in the course of business. Any person, engaging in a business would give bills on the same day, they would not wait till the end of the year, to prepare the bills on the last date of the financial year. More over, P.W.1 in his evidence has admitted that he has got accounts to back the bills, which are filed as Ex.A7 (Series) but, he has not produced those accounts. In the absene of supporting documents, we do not think, the Trial Court was right in believing the bills solely on the ground that there was no reply to Ex.A6, legal notice. The absence of reply to a legal notice can lead to certain consequences but, there the Court has to exercise its discretion judicially and only if the plaintiff proves her case, the absence of reply can be taken as an admission. The plaintiff has come up with a wholly improbable case. The absence of reply annot be used to mulct the defendant with the liability. More over, the defendant in the written statement has specifically denied having used the services of the plaintiff for the purpose of processed Dhall. It should also be pointed out that the bills produced as Ex.A7 series bear continuous serial numbers which makes it more



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unbelievable.

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16.The plaintiff has not chosen to produce the Income Tax Returns for the relevant year namely, 01.04.2006 and 31.03.2007 to support Ex.A7 (Series), which becomes very weak link in the absence of supporting documents. We are therefore, unable to sustain the finding of the Trial Court that the plaintiff has established the fact that the services of the plaintiff were used by the defendant for processing Dhall for the magnitude of 3,41,300 kilograms that is 3,413 gunny bags of 100 kilograms each through the period from 01.04.2006 to 31.03.2007. We therefore, hold that the decree granted for the said sum cannot be sustained.

17.The third claim is hand loans. There is no evidence, except the oral evidence of P.W.1, who is the son of the plaintiff on the hand loans. The loan of Rs.8,05,012.06/-, is said to have been paid at Rs.5,00,000/- on 05.01.2001, Rs.3,00,000/- on 02.10.2001 and various amounts to the tune of Rs.5,012.06/-. It is claimed that the defendant had repaid a sum of Rs.1,50,000/- on 05.09.2002 and Rs.76,000/- on 22.04.2003. All these



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transactions are on the face of them barred by limitation, since the suit has been filed only in July, 2007. In order to escape the same, the plaintiff has come out with the theory of payment of Rs.101/- on 01.04.2006. The defendant, in our opinion, has explained the payment of Rs.101/-, that too on 01.04.2006. It is a practice prevailing among the business community in this part of the country to have certain amount of income on the first day of the financial year, that is when the accounts are opened and this explanation offered by the defendant on payment of Rs.101/- on 01.04.2006 is acceptable. In the absence of any other evidence relating either receipt or repayment of the said loans, we do not think, the Trial Court was justified in concluding that this payment of Rs.101/- on 01.04.2006 would amount to acknowledgement of a debt, which had become time barred by then. We are therefore, unable to sustain the decree in respect of third item also.

18.In result, the First Appeal is partly allowed. The decree in respect of the first claim for a sum of Rs.12,63,133.24/- is sustained and the decree for remaining amounts namely, Rs.3,75,485/- and Rs.5,79,012.26/- granted under the second and third claims are set aside. There shall be no



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order as to costs, in view of the fact that the appellant has partially succeeded. Consequently, connected miscellaneous petition is closed.

(R.S.M.,J.) (R.K.M.,J.)
13.07.2023

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Internet: Yes/No

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Speaking/Non-speaking order

Nuetral Citation : Yes/No

To:-

The IV-Additional District Court,
Ponneri.



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R.SUBRAMANIAN, J.
and
R.KALAIMATHI, J.

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