IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-04-2024

CORAM :

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No.1042 of 2012
and
M.P. No. 2 of 2012

H.S.Ramakrishnan .. Appellant

Versus

1.Ramani bai @ Ramani
2.Saraswathi
3.A.Ranganathan
4.A.Badrinarayanan .. Respondents

First Appeal filed under Section 96 of C.P.C., to set aside the judgment and decree dated 25.11.2011 made in O.S. No. 50 of 2010 on the file of the learned Subordinate Judge, Harur.

For Petitioner	:	Mr. Na. Malai Saravanan for Mr.L.N.Pragasam
For Respondents For R1 to R4	:	Mr. J. Hariharan for Mr. V. Nicholas

JUDGMENT

This Appeal Suit has been filed to set aside the judgment and decree dated 25.11.2011 made in O.S. No. 50 of 2010 on the file of the learned Subordinate Judge, Harur.

2. The brief facts, which are necessary to decide the Appeal, are as follows:-

2.1. The Plaintiff before the learned Sub Judge, Harur is the Appellant before this Court. The Plaintiff had filed the suit against the legal heirs of Deepak @ Deepak Kumar for recovery of money of Rs.6,30,000/-. As per the plaint averments, late Deepak @ Deepak Kumar – a close friend of Plaintiff, had borrowed a sum of Rs.6,30,000/- for developing his business. He was already having his own provision store and he was also an agent for Hindustan Lever Products. The deceased Deepak @ Deepak Kumar was living with his parents and sisters as a joint family. He was married and was having two male children. For his urgent family requirement, he borrowed Rs.6,30,000/- from the Plaintiff promising to repay it within a period of three months. He issued a cheque drawn on State Bank of India, Harur Branch, bearing No.0743644 dated 14.08.2005 but requested the Plaintiff to present the cheque after three months. The Plaintiff also advanced the loan amount to Deepak @ Deepak Kumar and received the cheque as security for the same. The first Defendant in the suit is the mother of deceased Deepak @ Deepak Kumar. It is stated that Deepak @ Deepak Kumar along with his wife Vani @ Vasanthi and two minor children committed mass suicide. After the death of Deepak @ Deepak

Kumar the Plaintiff approached the parents of Deepak @ Deepak Kumar for recovery of the sum of Rs.6,30,000/- availed by Deepak @ Deepak Kumar by issuing a cheque in favour of the Plaintiff. The parents of Deepak @ Deepak Kumar admitted that the cheque was issued by their son and promised to repay the same. The father of Deepak @ Deepak Kumar – Ananthapadmanaban died due to illness leaving behind his wife and daughter. The Plaintiff also approached the Defendants and demanded repayment of money. The Defendants postponed the same. The Plaintiff understand that the Defendants are making arrangements to receive the LIC Policies in the name of Deepak @ Deepak Kumar. The first Defendant/mother of the deceased Deepak @ Deepak Kumar is the only legal heir. The Plaintiff issued notice on 04.11.2006 to the Defendants and LIC authorities. Though they received the notice, they did not send reply. Defendants 2 to 4 are trying to grab the assets of Deepak @ Deepak Kumar. Therefore, they are impleaded as proper and necessary parties. The Defendants are liable to discharge the debts of deceased Deepak @ Deepak Kumar. Therefore, the Plaintiff had filed the suit.

2.2. The fourth Defendant filed written statement which was adopted by Defendants 1 to 3 vehemently opposing the filing of the suit. In the written statement it is stated that the Plaintiff was assisting the family members for removal of dead bodies from Deepak @ Deepak Kumar's room. It seems that the Plaintiff had removed the duly signed blank cheque available in the room of the deceased Deepak @ Deepak Kumar, and filled up the same to institute the suit. The Defendants could not deny access to the Plaintiff at that time. The Defendants did not enjoy the death benefit of the deceased Deepak @ Deepak Kumar. The Defendants had incurred huge debt for the medical treatment of Deepak @ Deepak Kumar's father. The sale proceeds of the first item of property could not meet the loan amount for the medical treatment of the father of Deepak @ Deepak Kumar. The suit is to be dismissed as not maintainable.

2.3. An additional written statement was filed by the fourth Defendant adopted by Defendants 1 to 3 claiming that the signature on the cheque is not that of Deepak @ Deepak Kumar. The Plaintiff had not presented the cheque with the bank knowing fully well that it is forged signature. Since the suit cheque is a forged one, the Plaintiff had not presented it before the Bank.

2.4. To the said additional written statement, reply was filed by the Plaintiff denying the contents thereon.

2.5. Based on the above pleadings in the plaint, written statement, additional written statement filed by the Defendants 1 to 4 and reply filed by Plaintiff, the trial Court had framed the following issues:-

"1.Whether the Plaintiff is entitled for the suit claim?

2. To what relief?

Additional issues:-

1.Whether the suit cheque is true and genuine?

2.Whether the suit cheque is issued for consideration?"

2.6. The Plaintiff had examined himself as P.W-1 and one Parthiban was examined as P.W-2 and also marked documents Ex.A-1 to Ex.A-5 on the side of the Plaintiff. On the side of Defendants Mr. Bathrinarayanan/fourth Defendant was examined as D.W-1, Mr. Krishnaraju was examined as D.W-2 and Mr. Ranganathan was examined as D.W-3. In the course of the evidence, the Defendants had marked documents as Ex.B-1 and Ex.B-2.

2.7. After hearing the arguments and on appreciation of evidence, the learned Sub Judge, Harur by judgment dated 25.11.2011 dismissed the suit. Aggrieved by the same, the Plaintiff has filed this Appeal Suit seeking to set aside the judgment of the learned Sub Judge, Harur and to decree the suit.

3. The learned Counsel for the Plaintiff/Appellant would submit that the son of the first Respondent namely Deepak @ Deepak Kumar borrowed

Rs.6,30,000/- from him on 14.08.2005 for his urgent needs promising to repay within three months. For which he issued a cheque bearing No.0743644 dated 14.08.2005 drawn on State Bank of India. The Plaintiff had also paid the amount, but within four days, the said Deepak @ Deepak Kumar died by committing suicide along with his family. The Plaintiff has filed the suit for recovery of the said amount, lawfully paid by him to the deceased Deepak @ Deepak Kumar. However, in the suit, a written Statement was filed by the fourth Defendant/brother of the deceased Deepak @ Deepak Kumar alleging that the Plaintiff might have surreptitiously removed blank cheques from the room of the deceased in the guise of removing the dead body. Even though the Defendants admitted the signature in the cheque as that of deceased Deepak @ Deepak Kumar it was alleged that the amount was filled by the Plaintiff so as to cheat and defraud the Defendants. However, in the additional written statement, the Defendants alleged that the signature in the cheque is not that of deceased Deepak @ Deepak Kumar and that the Plaintiff had forged the signature of Deepak @ Deepak Kumar. If the signature of the Deepak @ Deepak Kumar in the cheque is denied by the Defendants as forged, then the burden is on the Defendants to prove the same by furnishing the admitted signatures of the deceased Deepak @ Deepak Kumar. As the Defendants did not discharge their burden, while so, the trial Court ought to have decreed the suit.

4. The learned Counsel for the Plaintiff/Appellant further submitted that before instituting the suit, a notice dated 04.11.2006 was issued demanding the payment of sum of Rs.6,30,000/-, but no reply was given. While so, the contents contained in the written statement had to be rejected. The trial Court, dismissed the suit on the ground that the cheque was not supported by any consideration and the Appellant had not filed the income tax returns to prove that he had lent money. The fact remains that the Appellant submitted income tax returns but it was not marked as exhibit. The Appellant obtained the copy of the income tax returns for the period from 2005-2011. Further, the father of the deceased Deepak @ Deepak Kumar's property was obtained as a security and the same was marked as document in the trial Court. The fact remains that the property documents have been entrusted to the Plaintiff as a security, which itself would prove that the Plaintiff had paid the amount as loan to the deceased Deepak @ Deepak Kumar. The trial Court grossly ignored the deposition of P.W-1/Plaintiff and Ex.A-1 to Ex.A-5 while dismissing the suit. The Appellant has filed the Income Tax Returns as documents before this Court in M.P. No. 2 of 2012 in A.S. No. 1042 of 2012 to receive the income tax returns as additional documents and prayed for

receiving those documents as evidence in this Appeal.

5. The learned Counsel for the Plaintiff/Appellant further submitted that the Plaintiff/Appellant is a victim of circumstance. He paid the amount in good faith on 14.08.2005. However, within four days thereof, the borrower Deepak @ Deepak Kumar died along with his family by committing suicide. When the Plaintiff/Appellant demanded repayment after the death of Deepak @ Deepak Kumar, his father assured to repay the amount, but he also died. The Plaintiff has duly instituted the suit to recover a lawful and legitimate debt. The Plaintiff also examined himself as P.W-1 and marked documents to prove the plaint averments, but the trial Court, without considering the same has erroneously dismissed the suit. The learned Counsel for the Appellant, therefore, prayed for allowing this Appeal.

6. Per contra, the learned Counsel for the Respondents/Defendants would contend that the fourth Defendant filed written statement in the suit contending that the cheque was signed blank cheque of said Deepak @ Deepak Kumar. However, it is claimed that the Plaintiff has committed forgery and filed the suit. According to the learned Counsel for the Respondents/Defendants, the forgery is not with regard to the signature in the cheque but the contents of the cheque is forged one whereby the amount was

fancifully filled up by the Appellant/Plaintiff which gives a presumption that the cheque is not supported with consideration. The learned Counsel for the Respondents/Defendants further stated that the Defendants also contended that the pathetic circumstance confronted by the family of the Defendants was exploited by the Plaintiff in his favour when Deepak @ Deepak Kumar committed suicide along with his family due to debt burden. The learned Judge, on considering the entire evidence on record, rightly held that the Plaintiff had not proved that the cheque was issued for any consideration. The learned trial Judge accepted the defence of the Defendants that the deceased would not have borrowed the amount from the Plaintiff by stating that the evidence of P.W-1 is very unnatural that he could have advanced such a amount. Therefore, it was held that the cheque said to have been issued by Deepak @ Deepak Kumar was issued for some other purpose and not upon borrowing Rs.6,30,000/- from the Plaintiff. The trial Court, on considering the records, concluded that the suit cheque Number is 0743644 and it was issued during the year 2005. But in the same cheque book the cheque numbers 743641, 743646, 743647, 743658 had been issued and passed during 2003 and 2004. Thereafter, in the year 2005, cheque Numbers 743660, 743668, 753659 were passed during January to March 2005. Similarly, the other cheque book bearing Cheque Number 973501 and other cheques were passed through State

Bank in the account of the deceased. Therefore, the trial Court disbelieved that the cheque number 743644 could not have been issued by the deceased on 14.08.2005 as pleaded by the Plaintiff. Therefore, the learned Counsel for the Defendants submitted that the trial Court, on proper analysis of the evidence on record, rightly dismissed the suit and it does not call for any interference by this Court.

7. Heard the learned Counsel for the Plaintiff/Appellant as well as the learned Counsel for the Respondents/Defendants and perused the materials placed on record.

Points for consideration:

(i) Whether the signature found on the cheque said to have been issued by the deceased Deepak @ Deepak Kumar is forged?

(ii) Whether the judgment of the trial Court, dismissing the suit filed by the Plaintiff for recovery of amount is perverse warranting interference by this Court?

8. It is the definite case of the Plaintiff that he had paid the sum of Rs.6,30,000/- to the deceased Deepak @ Deepak Kumar on 14.08.2005 but within four days, on 18.08.2005, the said Deepak @ Deepak Kumar died by

committing suicide. It is also the case of the Plaintiff that at the time of borrowing the amount, the deceased issued the cheque on his own along with property documents of his father as a security.

9. In order to prove the said contention, the Plaintiff examined himself as P.W-1 and marked Ex.A-1 to Ex.A-5. Ex.A-1 is the cheque, Ex.A-2 is the paper publication, Ex.A-3 is the legal notice, Ex.A-4 is the acknowledgement card and postal receipt and Ex.A-5 is the certified copy of particulars of LIC policies. The Plaintiff had not filed any other documents except the cheque to show that he had lent the sum of Rs.6,30,000/- to the deceased Deepak @ Deepak Kumar. No prudent man would lent such a huge sum to a person without getting any supporting document such as promissory note as proof of having lent the sum.

10. Further, it is the Plaintiff's contention that within four days of receiving the sum of Rs.6,30,000/- the deceased Deepak @ Deepak Kumar committed suicide along with his wife and children. If what is stated by the Plaintiff is true, the deceased after having received the sum of Rs.6,30,000/- would not have ventured to commit suicide as with the said amount he would have been able to tide over the crisis to some extent. Therefore, the Plaintiff

has failed to prove that he lent sum of Rs.6,30,000/- to the deceased Deepak @ Deepak Kumar with appropriate oral and documentary evidence.

11. With regard to Ex.A-1 cheque, the Defendants admit the signature of the deceased Deepak @ Deepak Kumar in the disputed cheque, but contended that the amount in the cheque was filled up by the Plaintiff on his own and the cheque could not have been issued by the deceased Deepak @ Deepak Kumar for a legally enforceable debt and liability.

12. On perusal of the records, it is clear that the signature in the cheque is not disputed by the Defendants. What was disputed is the amount and date in the cheque as filled up by the Plaintiff to institute the present suit taking advantage of the death of the deceased Deepak @ Deepak Kumar. Thus, the Defendants admit the signature in the cheque but denied the contents of the cheque stating that cheque might have been removed surreptitiously by the Plaintiff while removing the dead bodies from the room where the deceased committed suicide. Thus, it is the vehement contention of the Defendants that the cheque had been filled up without due consideration.

13. Having regard to the above admission on the part of the Defendants that the signature in the disputed cheque has been made by the

deceased Deepak @ Deepak Kumar, the Plaintiff had no obligation to send it for Forensic Examination for comparison. The trial Court, on its own, compared the signature of the deceased in the partition deed and concluded that it was identical with the signature in the cheque. When the signature in the cheque is admitted, as per Section 20 of the Negotiable Instruments Act, the holder in due course has every right to fill up the cheque. Merely because the date or amount has been filled up by a person, other than the account holder, it cannot amount to forgery. In such a transaction, when a person signs a blank cheque and hand it over to the person to whom he has to repay the amount, such a cheque is duly authorized to be filled up by the holder in due course. As per the reported ruling of the Hon'ble Supreme Court (by Justice K.T. Thomas and M.B. Shah Bench) in the case of ***K.Bhaskaran Vs. Sankaran Vaidhyan Balan and Another***, reported in ***1999 (7) SCC 510***, an unfilled cheque duly signed is a legal document and it is to be treated as Hundi and the moment it is filled up, it is converted as cheque. The holder in due course is entitled to fill up the cheque. In this case, since the signature in the cheque was admitted by the Defendants, the Plaintiff, who received it, is empowered, authorised and entitled to fill up the cheque.

14. Even though it was held that the cheque was issued by none other

than the deceased inasmuch as his signature therein is admitted, still, the Plaintiff has to prove that he had advanced the money to Deepak @ Deepak Kumar. Merely holding a cheque alleged to have been handed over to the Plaintiff by the deceased, two or three days prior to his committing suicide along with his family, cannot be put to use for filing this suit seeking a decree against the legal heirs of the deceased person.

15. In a circumstance of this nature, the Court will have to be cautious as mere presumption in law under Section 118 of Negotiable Instruments Act and Section 20 of the Negotiable Instruments Act in favour of the person who has custody of the cheque, will not help him to get a decree from the Civil Court. This is more so that in this case, the family of the Defendants were already shattered due to suicide committed by the deceased along with the wife and children.

16. With this background, if the case projected by the Plaintiff is analysed, the Plaintiff is none other than the person, who is residing just opposite to the house of the deceased and who knows the deceased and his family for over a period of more than 10 years. It is a normal human conduct that when a person advances loan to another, who is a businessman, who is his

neighbour and who had been known to the Plaintiff, loans will be paid under good faith that he or she would return it back. But while advancing such loan, the lender has an obligation to seek or execute some document in support of consideration like Promissory Note etc. Such supporting documents are not available in this case.

17. The Plaintiff is alleged to be a moneylender. Therefore, it is expected out of the Plaintiff to have obtained some documents to support the consideration. When the Plaintiff is a money lender, it is unbelievable that he had extended financial assistance to the deceased without getting any document executed, even though the borrower is his neighbour. The amount of loan advanced in the year 2005 to the tune of Rs.6,30,000/- is a huge amount and therefore, the Plaintiff owes a burden to prove the same. Such a normal human conduct is absent in the facts of this case. After death of the Deepak @ Deepak Kumar, the Plaintiff had instituted the suit for recovery of money and also to get an order from the Court regarding the estate of the deceased. Therefore, the learned Trial Judge on proper appreciation of evidence in the light of provisions of Negotiable Instruments Act and the Indian Evidence Act had rejected the claim of the Plaintiff merely on a cheque alleged to have been issued by the deceased, 3 or 4 days prior to his

committing suicide along with his family due to debt.

18. The defence of the Defendants is that the Plaintiff had helped the 1st Defendant to remove the body of the deceased from the room where it was found. At that time, the Plaintiff might have surreptitiously removed the signed blank cheque of Deepak @ Deepak Kumar. If that be so, it has to be proved by the Defendants. In this case, the Defendants have proved the suspicious circumstances by which the disputed cheque landed in the hands of the Plaintiff. To prove such circumstances, the Defendants had examined the bank official through which bank the deceased Deepak @ Deepak Kumar had received a cheque book and made huge cheque transactions. Therefore, the circumstances creating suspicious circumstances against the Plaintiff was placed before the Court by the 1st Defendant through 2nd Defendant. The mere presumption in favour of the Plaintiff cannot be invoked in this case. When a person is facing debts and he seeks advance of Rs.6,30,000/- from a person who is an acquaintance who is known to the deceased over a period of more than 10 years and who is living just opposite to his house, it is unbelievable that the Plaintiff paid the amount without getting any security or document.

19. Even if the deceased might have obtained hand loans without any document, if it had accumulated to the tune of Rs.6,30,000/-, then the normal

human conduct is to have a careful and cautious approach. It is for the person who advances such amount to have received either a Promissory Note or a receipt for payment signed by the person who had received the amount or a document of property as collateral security. None of this is available in this particular case. Therefore, on perusal of the judgment of the Trial Court, the finding of the learned Trial Judge cannot be faulted. He had analysed the evidence, the Negotiable Instruments Act and the Indian Evidence Act. The presumptions available to the Plaintiff alone cannot be invoked in this particular case to grant a decree against the Defendants and to grant a decree against the estate left behind by the deceased.

20. In course of the discussion of the evidence, the learned Judge observed that the Plaintiff in his evidence had stated that his income tax returns had mentioned about the loan advanced to the deceased. If that be so, the Plaintiff ought to have marked those income tax returns before the Trial Court to bring it on record. He had not done so. The Trial Court had a reasonable doubt which is strengthened by the evidence of the D.W-2/bank official. The bank official in his evidence had stated that the suit cheque/Ex.A-1 number is 0743644 and it was issued during the year 2005. But, in the same cheque book the cheque Nos.743641, 743646, 743657, 743658 have been

passed during the period 2003 and 2004. Thereafter in the year 2005 the cheque No.743660, 743668, 753659 was passed during the year 2005 from January to March. Thereafter during the month of April 2005 the other cheque book bearing No.973501 and other cheques were passed through State Bank account in the name of the said Deepak @ Deepak Kumar. So, the related other cheque leafs in the book covered in the suit cheque was passed during the year 2003 to 2005. Thereafter the other cheque was used for collection. This also created a great suspicion that why the suit cheque alone was not presented during the relevant period and the reason stated by the Plaintiff that the said Deepak @ Deepak Kumar asked him 3 months time for repayment of the amount is not acceptable. The reasons stated by the Plaintiff does not inspire confidence. Therefore, finding of the learned Trial Judge that the cheque dated 14.08.2005 is not supported by consideration is found acceptable. The mere presumption in favour of the Plaintiff alone cannot get him a decree from the Civil Court. He has to prove that the cheque was supported with consideration when there is an allegation by the Defendants that the Plaintiff might have removed the signed blank cheques while removing the dead bodies of the deceased and his family members from the room of Deepak @ Deepak Kumar. To overcome that circumstances, the Plaintiff ought to have marked supporting documents to prove that he had advanced the money and obtained further documents such as Promissory Note or receipts from the deceased or any other document for title. In the absence of supporting documents, this Court is unable to come to the rescue of the Plaintiff who knocked at the doors of the Court. The Plaintiff had not disproved the apprehension and suspicious circumstances mentioned by the Defendants in the written statement. Therefore, the judgment of the Trial Judge that Ex.A-1 is not supported with due consideration is found acceptable in the facts and circumstances of the case.

21. The Plaintiff has now preferred M.P.No.2 of 2012 in the above Appeal seeking to mark income tax returns from 2005 to 2011 as additional documents under Order 47, Rule 27 of Civil Procedure Code. The Plaintiff is seeking to mark the said documents to show that he has lent sum of Rs.6,30,000/- to the deceased Deepak @ Deepak Kumar. However, he had not chosen to mark the said documents before trial Court. The reasons adduced by the Plaintiff in the affidavit filed in support of the Petitioner is that he produced the income tax returns. However, it was not marked as exhibits. The reason given by the trial Judge for declining the relief sought by the Plaintiff is that the Plaintiff had not produced any income tax returns to show that he lent the sum of Rs.6,30,000/- to the deceased Deepak @ Deepak

Kumar.

22. On perusal of the documents, it is seen that income tax returns pertaining to the assessment years 2006 to 2007, 2007 to 2008, 2008 to 2009, 2009 to 2010, 2010 to 2011, 2011 to 2012 have been filed. However, the Plaintiff had not given any plausible reason for not producing the said documents before the trial Court and marking the said documents, when they were available with him right through, when the above suit was instituted and during the period when the evidence was taken. In the absence of any valid reason, this Court does not intend to entertain the Plaintiff's plea to mark the additional documents. Hence, the above application is dismissed.

23. In the light of the above discussion, the points for consideration No.1 and 2 are answered against the Plaintiff/Appellant and in favour of the Defendants. The finding of the Trial Judge cannot be treated as perverse.

In the result, **the Appeal Suit is dismissed as having no merits.** The judgment and decree dated 25.11.2011 made in O.S. No. 50 of 2010 on the file of Subordinate Judge, Harur are confirmed. No costs.

29.04.2024

Index : Yes/No

Internet : Yes/No
Speaking Order/Non-Speaking Order
ata

To
The Subordinate Judge,
Harur.

SATHI KUMAR SUKUMARA KURUP, J

ata/srm

Pre-delivery order made in

A.S.No.1042 of 2012

29.04.2024