IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No. 384 of 2020

J. Girija .. Appellant

Versus

1. Ananda Sivan Archana
2. R.Sakthivel
3. M/s.Lemur Global Private Limited
   Represented by its Directors
   N.Sakthivel & Ananda Sivan Archana,
   Having office at No.23, Unicon House,
   Thambu Chetty Street, 1st Floor,
   George Town, Chennai – 600 001.
4. Valsala Vasu .. Respondents

Appeal Suit filed under Section 96 r/w. Order XLI, Rule 1 of Civil Procedure Code against the judgment and decree of dismissal of suit dated 04.10.2019 passed in O.S. No. 4488 of 2017 by the learned XV Additional Judge, City Civil Court, Chennai.

For Appellant : Mr. R. Munuswamy
For Respondents : No representation

JUDGMENT

The Plaintiff, whose suit in O.S. No. 4488 of 2017 was dismissed on 04.10.2019 by the learned XV Additional Judge, City Civil Court, Chennai, is on Appeal.

2. The brief facts, which are necessary for the disposal of this Appeal Suit, are as follows:-

2.1. The Plaintiff had instituted the suit in O.S. No. 4488 of 2017 against the Defendants for recovery of money of Rs.15,00,000/- (Rupees Fifteen Lakhs) together with interest at the rate of 18% per annum from the date of plaint till realisation.

2.2. According to the Plaintiff, the first Defendant is the wife of one Rajesh and daughter-in-law of the fourth Defendant. The Defendants 1 and 2 are the Directors of the third Defendant, which is a Private Limited Company. The Plaintiff is a close relative of the fourth Defendant. The son of the fourth Defendant by name Rajesh, who is the husband of first Defendant, was employed in Marine Department in Chennai Port Trust. According to the Plaintiff, the said Rajesh, along with the Defendants 1 to 4, informed the

Plaintiff that he is intending to launch a logistics and transport business in the name and style of M/s. Lemur Global Private Limited. According to the Plaintiff, the said Rajesh and Defendants 1 to 4 requested to extend financial assistance for commencing the business. On the basis of such request, the Defendants 1 and 2 and the said Rajesh borrowed Rs.6,00,000/- (Rupees Six Lakhs) on 28.03.2013 through a cheque No. 402812 drawn in favour of Mr.Rajesh and he had executed a promissory note on 28.03.2013 in favour of the Plaintiff. Again, a sum of Rs.5,00,000/- (Rupees Five Lakhs) was borrowed on 15.04.2013 vide cheque No.402818 dated 15.04.2013 drawn in favour of the fourth Defendant, by deducting Rs.15,000/- towards interest for the first month and the cheque was drawn only for Rs.4,85,000/-. On receipt of the cheque, a promissory note was executed by the fourth Defendant on 15.04.2013. Subsequently, Mr. Rajesh borrowed Rs.4,00,000/- (Rupees Four Lakhs) by cash on 28.11.2013 and on that day, Mr. Rajesh executed a consolidated promissory note for Rs.15,00,000/- (Rupees Fifteen Lakhs) acknowledging the total payment of Rs.15,00,000/- (Rupees Fifteen Lakhs) made by the Plaintiff. According to the Plaintiff, during the second week of May 2014, the Defendants and Mr. Rajesh informed her to encash a sum of Rs.5,00,000/- bearing Cheque No. 351070 dated 15.05.2014. When the Plaintiff presented the cheque for collection with State Bank of India, West

Velacherry Branch, it was dishonoured on 09.07.2014. When the Plaintiff informed this to the Defendants, they have pleaded not to resort to any legal action and sought for some time. In the meantime, Mr.Rajesh, husband of the Plaintiff was terminally ill and he died on 15.02.2016. Therefore, the Plaintiff postponed the demand for repayment sometime. When the Plaintiff made her demand during September 2016, the Defendants pleaded to waive the payment of interest, which the Plaintiff agreed considering the family situation of the Defendants. The Defendants therefore issued a cheque for Rs.15,00,000/- (Rupees Fifteen Lakhs) during October, 2016 and when it was presented on 04.10.2016, it was dishonoured on 15.11.2016. The Plaintiff therefore issued a notice dated 01.12.2016 and on receipt of the same, the first Defendant alone sent her reply notice denying the liability. The Plaintiff therefore filed S.T.C. No. 70 of 2017 against the first Defendant before the learned Judicial Magistrate No.I, Poonamallee and it is pending. Notwithstanding the institution of S.T.C. No. 70 of 2017, the present suit was filed by the Plaintiff for recovery of the amount.

2.3. On notice, the first Defendant filed a written statement contending *inter alia* that she is not a Director in the third Defendant Company and she is looking after the HR activities only from May 2012 to 2nd November 2013 and thereafter, she ceased to have any connection with the third Defendant Company. The money transaction, by which Rs.15,00,000/- (Rupees Fifteen Lakhs) was paid by the Plaintiff, is only between her husband Rajesh and the fourth Defendant and she has not received any amount from the Plaintiff. For the amount borrowed by her husband and her mother-in-law, she cannot be penalised and therefore, she is not a proper and necessary party to the suit. It is further stated that after the death of her husband, it is the fourth Defendant who had received the insurance amount, terminal benefit from the employer of her husband – Rajesh and therefore the fourth Defendant alone is liable to pay the debt to the Plaintiff. The Plaintiff therefore prayed for dismissal of the suit.

2.4. The learned XV Additional Judge, City Civil Court, Chennai, had framed the following issues:

> *(i) Whether the promissory note dated 28.11.2013 for the sum of of Rs.15,00,000/- executed by Rajesh is true, valid and enforceable?*
>
> *(ii) Whether the Defendants are liable to pay a sum of Rs.15,00,000/- to the Plaintiff?*
>
> *(iii) Whether the Plaintiff is entitled to recover a sum of Rs.15,00,000/- from the Defendants together with interest at the rate of 18% per annum?*
>
> *(iv) To what other relief the Plaintiff is entitled?*

2.5. Before the trial Court, the Plaintiff examined herself as P.W-1 and one G. Vinod Prasant as P.W-2 and marked ten documents as Ex.A-1 to Ex.A-10. On behalf of the Defendants, the first Defendant examined herself as D.W-1 and marked five documents as Ex.B-1 to B-5. The trial Court concluded that the promissory note executed by Rajesh, husband of the first Defendant was on 28.11.2013 and the suit had been filed on 24.08.2017. In between the execution of the promissory note and filing of the suit, the Plaintiff had not made any acknowledgment of debt from the deceased Rajesh. Furthermore, the promissory notes have not been executed by the first Defendant. In any event, the right to demand repayment of the amount ends on 28.11.2016 and therefore, the suit filed on 24.08.2017 is belated. The Plaintiff has not established as to when the cheque for Rs.15,00,000/- (Rupees Fifteen Lakhs) was issued by the first Defendant and the cheque would have been given by Rajesh prior to his death on 15.02.2016. The trial Court also concluded that P.W-1 in her evidence had stated that the fourth Defendant had paid a total sum of Rs.5,75,000/- on various dates, but she had not disclosed it in the plaint. Therefore, the trial Court held that the Plaintiff had suppressed material facts and she had not come with clean hands. Accordingly, the trial Court dismissed the suit filed by the Plaintiff.

2.6. Aggrieved by the judgment of dismissal of the suit by judgment dated 04.10.2016 in O.S.No.4488 of 2017 passed by the learned XV Additional Judge, City Civil Court, Chennai, the Plaintiff had filed this Appeal Suit.

3. The learned Counsel for the Appellant submitted that the trial Court committed a grave error in holding that the Plaintiff had conveniently omitted to ask the interest till the date of filing of the suit which creates doubt in the mind of the Court. When the issuance of cheques were not denied by the first Defendant and the Plaintiff is the holder in due course, she has the authority to fill up the same under Section 20 of the Negotiable Instruments Act. In any event, it is not the case of the Defendants that the cheques were misused by the Plaintiff for an amount more than their liability. While so, the trial Court erred in holding that the liability under Ex.A-1 to Ex.A-3 is not availed for the benefit of the third Defendant Company without any evidence to support it. The trial Court totally over-looked the fact that the third Defendant Company had acknowledged the liability and issued the suit cheques vide Ex.A-2 to Ex.A-5 through the Defendants 1 and 2. The trial Court erroneously held that there cannot be two cheques for Rs.5,00,000/-

(Rupees Five Lakhs only) and Rs.15,00,000/- (Rupees Fifteen Lakhs only) for the total due of Rs.15,00,000/- (Rupees Fifteen Lakhs only). When the fact remains that Ex.A-4 cheque for Rs.5,00,000/- (Rupees Five Lakhs only) was presented and dishonoured, at the request of the Defendants, no action was taken based on dishonour of Ex.A-4. Subsequently, a consolidated acknowledgment for the entire dues of Rs.15,00,000/- (Rupees Fifteen Lakhs only) was obtained. Therefore, the findings of the trial Court are illogical and contrary to the pleadings and evidences.

4. The learned Counsel for the Appellant also contended that the trial Judge erred in holding that Ex.A-4 was dated after the death of Rajesh and hence, the issuance of cheques and dates of cheques are doubtful. When it is the specific case of the Plaintiff that the first Defendant, as authorised signatory of the third Defendant Company, issued four cheques prior to death of Rajesh on 15.02.2016 and the suit was filed after the death of Rajesh, it does not in any way affect the claim of the Plaintiff.

5. The first Defendant denied the signature found in the cheques, whereas she did not deny the signature in Ex.A-4 and Ex.A-5 either in her written statement even though the said cheques have been filed along with the

plaint. In any event, the first Defendant accepted the cheque belong to her and attempted to project a new case of denial of signature only in her oral evidence as D.W-1. However, the first Defendant did not take any steps to compare her signature in the cheque. The legal presumption under Section 20 and Section 118 of Negotiable Instruments Act, 1881 apart from Order VIII, Rule 3 and 5 of C.P.C has not been considered by the trial Court. Hence, the findings of the trial Court that the cheques under Ex.A-4 and Ex.A-5 suffer with legal enforceability is a misconception.

6. The learned Counsel for the Appellant submitted that the learned trial Judge erroneously held that the alleged payment of Rs.5,75,000/- (Rupees Five Lakhs and seventy five thousand only) made by the fourth Defendant on various dates towards alleged interest payable was suppressed by the Plaintiff and claimed interest in its entirety. When the Plaintiff did not claim interest till the date of filing of the suit, it cannot be held to be a suppression. The trial Court had drawn wild presumption that the Plaintiff had approached the Court with unclean hands and thereby erroneously dismissed the suit. The trial Court had committed gross miscarriage of justice in dismissing the suit totally by completely giving go bye to the pleadings and evidence available on record. The findings of the trial Court are contrary to statutory provisions under

Section 20 and Section 118 of Negotiable Instruments Act, 1881. Therefore, the learned Counsel for the Appellant prayed for allowing this Appeal Suit.

7. In support of his contention, the learned Counsel for the Appellant relied on the reported decision of the Hon'ble Supreme Court in ***(2019) 4 SCC 194 [Bir Singh vs. Mukesh Kurmar]*** wherein it is held as under:

> *"B. Debt, Financial and Monetary Laws – Negotiable Instruments Act, 1881 – Sections 139, 20 and 87 – Presumption that cheque, duly signed and voluntarily made over to payee, was in discharge of debt or liability – Arises irrespective of whether cheque was post-dated or blank cheque for filling by payer or any other person, in absence of evidence of undue influence or coercion."*

8. Inspite of service of notice and the name of the Defendants having been printed in the list, there is no appearance for the Defendants.

Points for determination:

(1) Whether the finding of the trial Court that the liability under Ex.A-1 to Ex.A-3 was not available for the benefit of the third Defendant Company, is perverse?

(2) Whether the finding of the trial Court is contrary to the provision of Section 20 and 118 of the Negotiable Instruments Act?

(3) Whether the judgment of the learned XV Additional Judge, City Civil Court, Chennai in O.S.No. 4488 of 2017

dismissing the suit for recovery of money is perverse and is to be set aside?

9. As per the evidence of the Plaintiff, the Defendants 1 to 4 borrowed money on behalf of the third Defendant Company for the development of the third Defendant Company on various dates. It is stated that the husband of the first Defendant and son of the fourth Defendant Rajesh borrowed Rs.5,00,000/- (Rupees Five Lakhs only) and subsequently, for all the amount borrowed from the Plaintiff, the husband of the first Defendant Rajesh had executed a consolidated promissory note for Rs.15,00,000/- (Rupees Fifteen Lakhs only) in favour of the Plaintiff. Admittedly, the said Rajesh died on 15.02.2016. It is stated that for sometime after the death of Rajesh, the Plaintiff did not insist for repayment of the loan amount. However, after the ceremonies are over, the Plaintiff sought refund of the money for which, the first Defendant alleged to have issued cheques in her capacity as one of the Directors of the third Defendant Company. When the pre-suit notice was served, the first Defendant received it and replied. In the reply notice, the first Defendant refuted the claim of the Plaintiff that she is one of the Directors of the third Defendant Company. It was her claim that she was only a HR Manager of the third Defendant Company. The Directors were - her husband

Rajesh (since deceased), the second Defendant and fourth Defendant mother-in-law of the first Defendant.

10. It is the contention of the first Defendant in the written statement that the borrowal was by the husband of the first Defendant Rajesh and the fourth Defendant Valsala - mother of Rajesh. Both are relatives of the Plaintiff. The Plaintiff had lent the amount only on satisfaction that the husband of the first Defendant Rajesh and the fourth Defendant Valsala have resources to repay the amount. The first Defendant had denied the claim of the Plaintiff that she had not executed promissory note in favour of the Plaintiff and she is not a signatory to any of the document as proof of the borrowal. The Defendant also examined herself as D.W-1 and marked documents

11. Before the trial Court, the Plaintiff marked documents Ex.A-1 to Ex.A-10. Ex.A-1 is the promissory note dated 28.03.2013 for Rs.6,00,000/- (Rupees Six Lakhs) executed by the husband of the first Defendant and the son of the fourth Defendant Rajesh in favour of the Plaintiff wherein the witnesses are the second Defendant and the fourth Defendant. On perusal of Ex.A-1, it is found that the recitals does not mention about the name of the third Defendant Company or the borrowal was in favour of the development of the

third Defendant Company or for any commercial purpose. It only mentions that for the family necessity and to settle some loan, Rs.6,00,000/- (Rupees Six Lakhs only) was borrowed by Rajesh (since deceased) agreeing to repay the amount of Rs.6,00,000/- (Rupees Six Lakhs only) with interest at the rate of 3% per month and to repay the amount within 11 months. Ex.A-2 is the promissory note executed by the fourth Defendant-Valsala dated 15.04.2013 in which her son Rajesh is the witness. Here also, it is mentioned as "for family expenses" and the same interest of 3% per month was agreed for repayment of the amount within six months. Ex.A-3 is the promissory note dated 28.11.2013 for Rs.15,00,000/- (Rupees Fifteen Lakhs only) executed by Rajesh (since deceased) agreeing to repay the amount with interest of 3% per month within one year to the Plaintiff. In this document Ex.A-3, the second Defendant Sakthivel and one Loganathan are the witnesses. Ex.A-4 is the cheque issued by the first Defendant on behalf of M/s.Lemur Global Private Limited (Authorised signatory) for Rs.5,00,000/- (Rupees Five Lakhs only) dated 15.05.2014 drawn on IDBI Bank, Parrys Branch, bearing cheque No.351070. The cheque was presented by the Plaintiff in State Bank of India, West Velacherry Branch and it was returned with an endorsement "funds insufficient". Ex.A-4 contains the returned memo issued from the State Bank of India. Ex.A-5 is the cheque signed by the first Defendant drawn on IDBI

Bank, Parrys Branch, bearing No.351073 for Rs.15,00,000/- (Rupees Fifteen Lakhs only) on behalf of M/s. Lemur Global Private Limited as authorised signatory by the first Defendant. Ex.A-5 contains memorandum from the Punjab National Bank, Valasaravakkam Branch, which also mentions that it was returned for "insufficient funds". Ex.A-6 is the notice issued on behalf of the Plaintiff to the first Defendant seeking repayment of loan borrowed by her husband Rajesh and her mother-in-law. The contents of Ex.A-6 is the subject matter of the averments in the plaint in O.S.No.4488 of 2017. Ex.A-7 is the postal acknowledgment card for the notice under Ex.A-6. Ex.A-8 is the reply notice by the first Defendant for the notice under Ex.A-6. The first Defendant in her reply under Ex.A-8 disputes the claim of the Plaintiff that she had issued cheque on behalf of M/s.Lemur Global Private Limited, third Defendant Company. She claims that if the cheques mentioned by the Plaintiff are true, she is duty bound to return it, failing which, the first Defendant reserve her right to take appropriate action through Court for the consequences. She claims that cheques are created by the Plaintiff.

12. Ex.A-9 is the petition for quash filed by the first Defendant in Crl.O.P.No.11164 of 2017 to quash the private complaint preferred by the Plaintiff herein in O.S.No.4488 of 2017 for dishonour of cheques bearing

Nos.351070, 351071, 351072, 351073 drawn on IDBI Bank, Parrys Branch, Chennai. Ex.A-10 is the Company Master Data of the third Defendant Company in which the name of the Directors are mentioned as Karthikeyan, Ananda Sivan Archana, the first Defendant herein, Nachimuthu Sakthivel, the second Defendant herein. The date of commencement of the respective post of Directors are mentioned as 05.04.2013 regarding Karthikeyan, 27.02.2012 regarding the first Defendant Ananda Sivan Archana and 27.02.2012 regarding the second Defendant Nachimuthu Sakthivel. The end date is given as 06.03.2014. The status of the Company is given as strike off. That shows the Company is non-existent after 06.03.2014. The cheque dated 15.05.2014 and 04.10.2016 under Ex.A-4 and Ex.A-5 are subsequent to Ex.A-10 wherein the Company was struck off from the Registrar of Companies. Therefore, as on the date of execution of Ex.A-5 and Ex.A-6, the Company is not in existence.

13. The Plaintiff's son Vinod Prasant examined himself as P.W-2 and supported the claim of the Plaintiff. He is not the witness to any of the documents mentioned above. His evidence does not carry any weight in the eyes of law. P.W-1 was cross-examined. She had admitted that the deceased Rajesh and the fourth Defendant are related to her. Deceased Rajesh is her cousin and the fourth Defendant is her aunt. She admitted in cross-

examination that the five cheques mentioned in the notice under Ex.A-6 was given to her in the year 2013 duly signed as well as blank cheques. The suggestion of the learned Counsel for the first Defendant that Ex.A-3 was created by the Plaintiff subsequent to the death of Rajesh, it was denied by her. She admitted in cross-examination that in all the promissory notes Ex.A-1 to Ex.A-3 it is mentioned that it is for the benefit of the family and nowhere it is mentioned that it is for the development of the third Defendant Company M/s.Lemur Global Private Limited. Thus, it is evident that the amount was not borrowed for the development of the third Defendant Company, as projected by the Plaintiff in the plaint.

14. The first Defendant examined herself as D.W-1. Ex.B-1 is the complaint preferred by the Plaintiff before the learned Judicial Magistrate No.I, Poonamallee regarding dishonour of the cheques wherein she had stated that at the behest of Sakthivel, Director of the Company, the Accused had issued cheque as authorised signatory. Ex.B-2 is the cash receipt challan for payment of medical reimbursement on behalf of the deceased Rajesh to the fourth Defendant. Ex.B-3 is the Salary Certificate issued to the first Defendant regarding her consolidated salary of Rs.25,000/- from 04.05.2012 to 01.11.2012 issued by the second Defendant. Ex.B-4 is the Service Certificate-

cum-relieving letter issued by the second Defendant to the first Defendant dated 04.11.2013 stating that she was holding the post of HR and general administrative functions. Ex.B-5 is the letter by the first Defendant to the Deputy Chairman, Chennai Port Trust, requesting for medical reimbursement for the treatment given to her husband Rajesh in Kerala at Amrita Hospital, Kochin from 27.01.2016 to 15.02.2016. On 15.02.2016 he died. The medical bills of Amrita Hospital amounting to Rs.5,19,351/- and it was sought to be refunded by the first Defendant. The first Defendant as D.W-1 was cross-examined. In her cross-examination, she admitted that she had not claimed that she was also a Director in the third Defendant Company and she had not mentioned the same in the reply notice under Ex.A-8. She admits that the cheques mentioned by the Plaintiff are in the name of the third Defendant Company. She denied the suggestion that the loan availed by Defendants was for the development of the third Defendant Company. She had specifically stated that it was borrowed only for the purpose of personal level for the family purpose of the fourth Defendant and her son the deceased Rajesh. She denied the suggestion that Ex.A-4 and Ex.A-5 were signed by her as one of the Directors of the third Defendant Company. She had admitted in her cross-examination that she had not filed any petition disputing her signature under Ex.A-4 and Ex.A-5. On appreciation of evidence, it is found that when D.W-1 had not taken steps to dispute her signature under Ex.A-4 and Ex.A-5, the cheques issued by her binds her.

15. The Plaintiff as P.W-1 in her cross-examination had admitted that Rajesh and the first Defendant had issued four cheques. Therefore, blank cheques duly signed by the first Defendant as authorised signatory for the borrowal by Rajesh binds her as well as the fourth Defendant. As on the date of filing of the suit, the third Defendant Company did not have any money left in the account with the third Defendant Company through its Bank IDBI Bank. The Plaintiff was able to proceed against the promissory notes for Rs.6,00,000/- (Rupees Six Lakhs only) and Rs.5,00,000/- (Rupees Five Lakhs only) which are under Ex.A-1 and Ex.A-2. She states that for the several borrowal the deceased Rajesh had executed a consolidated promissory note for Rs.15,00,000/- (Rupees Fifteen Lakhs only). She admitted in cross-examination that cheque for Rs.5,75,000/- (Rupees Five Lakhs and Seventy Five Thousand only) was collected towards interest.

16. In the light of the above deposition of P.W-1 as well as D.W-1, the reasoning of the learned Judge in paragraph 16 is found acceptable. The husband of the first Defendant Rajesh died on 15.02.2016. The cheque under

Ex.A-5 was dated 04.10.2016. Therefore, the wife of Rajesh is not expected to accept liability for Rs.15,00,000/- (Rupees Fifteen Lakhs only) after the death of Rajesh on 04.10.2016. From the admission made by the Plaintiff, it is found that all the four cheques were given to her during the lifetime of Rajesh and she had presented it, filled it up subsequent to the date of death of Rajesh.

17. It is contended by the learned Counsel for the Appellant that when the first Defendant denied the signature in the cheques, it is for her to prove it by taking out necessary application to compare the signature. The Plaintiff cannot be expected to prove the signature of the Defendants who denied the signature. Therefore, the observation of the learned XV Additional Judge in paragraph 17, to dismiss the suit is found unacceptable. When first Defendant as D.W-1 was in the witness box, she had admitted that she had not preferred any application to compare the signature with the disputed signature under Ex.A-4 and Ex.A-5. But the reasoning of the learned Judge in paragraph 18 was that loan was availed for development of the third Defendant Company was not true as per the documents under Ex.A-1 to Ex.A-3.

18. It is to be mentioned that the third Defendant Company did not have any obligation for the money borrowed by the individuals Rajesh and the

fourth Defendant. Therefore, the third Defendant Company cannot be fastened with liability for the borrowal of money by the deceased Rajesh and the fourth Defendant in their individual capacity. Therefore, the learned Judge had rightly non-suited the Plaintiff. There is no legally enforceable debt on behalf of the third Defendant Company under Ex.A-1 to Ex.A-3. The blank cheque alleged to have been issued by the first Defendant was filled up by the Plaintiff based on which Ex.A-6 was issued. Ex.A-6 did not contain the fact that the fourth Defendant had repaid Rs.5,75,000/- (Rupees Five Lakhs and Seventy Five Thousand only). Therefore, what was projected in the plaint that Rs.15,00,000/- was the loan availed by the Defendants 1 to 4 cannot be true.

19. The decision of the Hon'ble Supreme Court in ***(2019) 4 SCC 194 [Bir Singh vs. Mukesh Kurmar]*** relied on by the learned Counsel for the Appellant/Plaintiff are factually distinguishable. The facts in this case is that the Defendant 1 to Defendant 4 on behalf of the third Defendant Company alleged to have borrowed money from the Plaintiff on various dates and issued cheques towards repayment of the loan. The loan was for the purpose of developing the third Defendant Company. The Defendants 1, 2 and 4 are the Directors of the third Defendant Company. Whereas Ex.A-1 to Ex.A-3 are promissory notes in which it was specifically stated that the amount is

borrowed for the family expenses by the fourth Defendant and the son of fourth Defendant Rajesh. The first Defendant is not a signatory to those documents.

20. It is alleged that Ex.A-4 and Ex.A-5 cheques were signed by first Defendant on behalf of third Defendant Company. As per Ex.A-10 Master Data of the company, Ex.A-1 is the promissory note dated 28.03.2013 for Rs.6,00,000/- (Rupees Six Lakhs) which was signed by Rajesh. Ex.A-2 is the promissory note dated 15.04.2013 for Rs.5,00,000/- (Rupees Five Lakhs) in which the fourth Defendant had signed as borrower and the Plaintiff also had signed it as a lender and the son of fourth Defendant Rajesh (since deceased) also signed as a witness. Ex.A-3 is a promissory note dated 28.11.2013 executed by Rajesh son of fourth Defendant for Rs.15,00,000/- (Rupees Fifteen Lakhs) in which the second Defendant and one Loganathan are the witnesses. In Ex.A-1 and Ex.A-2, it is mentioned as "for family expenses". In Ex.A-3 it is mentioned as "for business purpose". In Ex.A-1 to Ex.A-3 there is no recital that the amount is borrowed on behalf of the third Defendant Company. Ex.A-4 is the cheque bearing No.351070, dated 15.05.2014 for Rs.5,00,000/- (Rupees Five Lakhs). Ex.A-5 is the cheque bearing No.351073, dated 04.10.2016 for Rs.15,00,000/- (Rupees Fifteen Lakhs). These are the

cheques signed by the first Defendant as authorised signatory for M/s.Lemur Global Private Limited drawn on IDBI Bank, but they were returned on presentation by the bank.. When Ex.A-1 to Ex.A-3 did not contain the name of the third Defendant Company M/s.Lemur Global Private Limited, the claim of the Plaintiff that on behalf of the third Defendant Company the Defendants 1, 2 and 4 borrowed money will not help her to seek recovery of money from fourth Defendant. If the plaint averments contained the pleadings that the Defendants 1, 2 and 4 borrowed money on promissory notes for their family expenses along with consolidated promissory note executed by the son of fourth Defendant Rajesh for Rs.15,00,000/- (Rupees Fifteen Lakhs) then the suit for recovery of money is maintainable. The suit was filed against the Company and its Directors claiming that the borrowal was for the development of the third Defendant Company M/s. Lemur Global Private Limited whereas the facts are different. That was admitted by the Plaintiff in her cross-examination. Therefore, the findings rendered by the learned XV Additional Judge, City Civil Court, Chennai that the suit for recovery of money on a promissory note against the Company is not maintainable, is found reasonable and proper.

21. The person who had signed the cheque is only an authorised

signatory and she is not a Director of the Company. As per the evidence available before the trial Court, she was signatory to the cheque but not the Director of the Company. The second Defendant was the Director of the Company but he did not sign the cheque. The second Defendant had signed the promissory note as a witness wherein the fourth Defendant had borrowed money for family expenses. Ex.A-3 was signed by Rajesh. He was not the Director of M/s.Lemur Global Private Limited. The reasoning of the learned XV Additional Judge, City Civil Court, Chennai that there is no proof to consider that the third Defendant Company had any legal obligation to repay the loan to the Plaintiff is found proper. The promissory notes under Ex.A-1 to Ex.A-3 are connected with personal loan of the executants/Defendants 4 and her son deceased Rajesh. Therefore, the suit as framed is not maintainable against the Defendants 1 to 4. The reasoning given by the learned Trial Judge cannot be faulted especially when the Plaintiff instituted the suit claiming that the deceased Rajesh along with Defendants 1, 2 and 4 have borrowed money for their business purpose.

22. In the light of the above discussion, the points for determinations-1 and 2 are answered against the Appellant/Plaintiff and in favour of the Respondents/Defendants. Since the points for determination 1 and 2 having

been answered against the Appellant/Plaintiff, point for determination 3 is also answered against the Appellant/Plaintiff and in favour of the Respondents/Defendants. The judgment of the learned XV Additional Judge, City Civil Court, Chennai in O.S.No.4488 of 2017, dated 04.10.2019, dismissing the suit for recovery of money is found proper which does not warrant any interference by this Court.

In the result, **this Appeal Suit is dismissed** as having no merits. The judgment of the learned XV Additional Judge, City Civil Court, Chennai in O.S.No.4488 of 2017, dated 04.10.2019 is confirmed. No costs.

21.12.2024

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

To

1. The XV Additional Judge,
   City Civil Court, Chennai.

2. The Section Officer,
   Vernacular Records Section,
   Madras High Court, Chennai.

SATHI KUMAR SUKUMARA KURUP, J

srm

Judgment
A.S. No. 384 of 2020

21.12.2024