IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18..03..2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Civil Suit No.219 of 2021

Ameerul Hussain

..... Plaintiff

-Versus-

Mrs.A.Ajimath Begum

.... Defendant

Suit filed under Order VII, Rule 1 of the Code of Civil Procedure read with Order IV, Rule 1 of the Madras High Court Original Side Rules, praying to pass a judgment and decree directing the defendant to pay a sum of Rs.1,22,77,812.50 (i.e.,) Rs.97,25,000/- towards principal and Rs.25,52,812.50 towards interest @ 9% per annum on the principal amount from April 2018 to February 2021, along with interest at the rate of 9% per annum from the date of the suit till date of realization of the entire amount to the plaintiff; and for cost of the suit.

For Plaintiff	:	*Mrs.Uthira Sampath,* *Senior Counsel for* *Mr.T.S.Baskaran*
For Defendant	:	*Mrs.S.P.Arthi*

JUDGEMENT

Suit for recovery of a sum of Rs.1,22,77,812.50 from the defendant together with interest at the rate of 9% per annum on Rs.97,25,000/- from the date of plaint till date of realization of the entire amount; and for cost of the suit.

2. The suit is based on loan transactions.

3. It is the case of the plaintiff that the defendant's husband is a cousin of the plaintiff and both defendant and her husband were having good acquaintance with the plaintiff and his family members. During the year 2014, there were some misunderstanding and differences of opinion between the plaintiff, his father-M.A.Abdul Rahim and brother. The defendant posing himself as a good samaritan tried to help the plaintiff. Therefore, a good relationship developed between them. From the year, 2014 onward, the plaintiff advanced amounts as loan ranging from Rs.25,000/- to 30,00,000/- on various occasions to the tune of Rs.1,07,25,000/-. The details of such loans advanced by the plaintiff from his Accounts maintained with different banks to the defendant are:-

Sl. No.	Transferred from the Account maintained by the plaintiff	Name & Branch of the Bank	Mode of Transaction	Date of Transfer of Money	Amount (in Rs.)
1	0777104000046279	IDBI, Anna Nagar	RTGS	13.05.2024	10,00,000
2	0777104000046279	IDBI, Anna Nagar	RTGS	10.06.2014	30,00,000
3	0777104000046279	IDBI, Anna Nagar	RTGS	11.06.2014	30,00,000
4	1154175000001079	KVB, Anna Nagar	Cheque No.000001	31.12.2015	3,00,000
5	1154175000001079	KVB, Anna Nagar	Cheque No.000002	31.12.2015	5,00,000
6	1154175000001079	KVB, Anna Nagar	Fund Transfer	29.02.2016	5,00,000
7	1154175000001079	KVB, Anna Nagar	Cheque 000004	29.02.2016	2,00,000
8	1154175000001079	KVB, Anna Nagar	Fund Transfer	19.03.2016	1,00,000
9	1154175000001079	KVB, Anna Nagar	Fund Transfer	16.05.2016	5,00,000
10	1154175000001079	KVB, Anna Nagar	Fund Transfer	10.06.2016	5,00,000
11	1154175000001079	KVB, Anna Nagar	Fund Transfer	17.06.2016	2,50,000
12	1154175000001079	KVB, Anna Nagar	Fund Transfer	20.07.2016	2,50,000
13	1154175000001079	KVB, Anna Nagar	Fund Transfer	11.09.2016	5,00,000

14	1154175000001079	KVB, Anna Nagar	Fund Transfer	12.10.2016	25,000
15	1154175000001079	KVB, Anna Nagar	Fund Transfer	19.10.2016	1,00,000

The defendant had not repaid the amount due and payable despite repeated demand by the plaintiff, however, a sum of Rs.10,00,000/- was paid on 12.03.2018 whereby the defendant had acknowledged the amount still due and payable towards the loan advanced by the plaintiff. Hence, the suit for recovery of money.

4. In the written statement, though the defendant admitted transfer of monies as indicated in the plaint to the account of the defendant, it is her specific stand that those monies were not meant for her benefits or for her husband's benefit but were routed out for the plaintiff to put to use in his unlawful activities. All the monies deposited by the plaintiff into the account of the defendant had been handed over to her by means of cash immediately after such deposit was made and neither the defendant nor her husband benefited or enjoyed even a

single rupee therefrom.

5. The defendant further contended that it is incorrect to state that a sum of Rs.10,00,000/- which was paid by her on 12.03.2018 to the plaintiff was an acknowledgment of debt. The suit is barred by limitation.

6. On the basis of the above pleadings on either side, on 11.04.2022, this court has framed the following issues for trial:-

> (1) Whether the plaintiff is entitled to get a decree for recovery of money of Rs.1,22,77,812.50 with interest @ 9% per annum as sought for in the plaint?
>
> (2) Whether the defendant is liable to pay a sum of Rs.1,22,77,812.50 to the plaintiff with interest @ 9% per annum?
>
> (3) Whether the suit claim is barred by limitation?
>
> (4) Whether the plaintiff is entitled for the costs of the suit?
>
> 1.(5) To what other relief the plaintiff is

entitled?

7. During trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and marked Ex.P.1 to P.7. On the side of the defendant, neither any witness was examined nor did she mark any document on her side.

8. The learned counsel for the plaintiff would submit that transfer of amounts from 2014 through banking channel either by way of cheque or electronic mode to the account of the defendant have not been disputed. According to the learned counsel, amounts have been paid from 2014 through various transactions and it was only a running account. When the receipt of amount on various dates is not disputed and that the defendant has admittedly paid a sum of Rs.10,00,000/- on 12.03.2018 towards part liability, limitation is extended by virtue of Section 19 of the Limitation Act, 1963. Therefore, according to the learned counsel, the plaintiff is entitled for a decree as prayed for recovery of the suit amount from the defendant.

9. The learned counsel for the plaintiff would further submit that even as per Section 70 of the Indian Contract Act, 1872, the plaintiff is entitled to

compensation, however, when there are no circumstances indicating to which date repayment of Rs.10,00,000/- was made by the defendant in respect of the claim which is time barred, the plaintiff is entitled to recover the amount as per Section 60 of The Indian Contract Act, 1872. She would therefore submit that the plaintiff is entitled to a decree as prayed for.

10. Per contra, the learned counsel for the defendant would vehemently contend that the entire suit claim is barred by limitation. Mere payment of Rs.10,00,000/- made on 12.03.2018 would not amount to acknowledgement of liability as per law. There was no acknowledgement in writing which is mandatory under Section 19 of the Limitation Act. Therefore, according to the learned counsel, the suit claim is barred by limitation. The payment of Rs.10,00,000/- made on 12.03.2018 would not extend the time barred debt and therefore, the learned counsel for the defendant would contend that the plaintiff is not entitled for decree and the suit has to be dismissed.

11. I have considered the rival submissions carefully.

Issue Nos.1 to 4:-

12. As the question of limitation has been argued, let this court first consider the issue of limitation.

13. The relationship between the plaintiff and the defendant is not in dispute. The fact that the defendant and the plaintiff were maintaining good relationship in the past is also not in dispute. They are closely related to each other. These averments made in the plaint are substantiated by the evidence of P.W.1 in chief and cross examination.

14. It is the specific case of the plaintiff that from 2014 i.e., from 13.05.2014 till 19.10.2016, various amounts were advanced as loan to the defendant and all such payments were made only through banking channel. According to the plaintiff,a sum of Rs.1,07,25,000/-was paid from 2014 to 2016. Though the defendant disputed there were loan transactions, the factum of transfer of monies from his account as pleaded in the plaint was not disputed by the defendant to her written statement. In para 6 of the written statement, it was

categorically admitted by the defendant that all the monies were transferred to his account, however, her defence set up in the entire written statement is to the effect that those monies were transferred to her account only for the plaintiff"s benefit. According to the defendant, the entire money transferred to her account had been paid in cash to the plaintiff immediately. However, the defendant has not entered into the witness box to substantiate her defence that all the monies transferred to her account by the plaintiff through banking channel were paid back to the plaintiff immediately. In the absence of any evidence in this regard having admitted the fact of receipt of amounts on various dates from the plaintiff's account through banking channel coupled with the documents filed on the side of the plaintiff viz., bank statement, this court has to necessarily hold that an amount to the tune of Rs.1,07,25,000/-. was transferred to the defendant on various dates spanning from 13.05.2014 till 19.10.2016. The suit was filed on 08.03.2021. It is the specific case of the plaintiff that the defendant paid a sum of Rs.10,00,000/- on 12.03.2018 towards debt. Any payment towards debt is an acknowledgement and therefore, the suit is within the period of limitation i.e., within three years from the date of last payment and the same is very well maintainable. Therefore, the suit is not barred by limitation.

15. It is not the case of the plaintiff that from 2014 to 2016 there was running account between the plaintiff and the defendant. What was pleaded in the plaint is mere loan transaction. Every loan transaction is said to be individual one. In such view of the matter, in the absence of any proof to show that there was a running account, mere payment in 2018 would not revive the limitation for the entire loan amount. However, at the most, such admission would revive only to the individual loan transactions. The fact that a sum of Rs.10,00,000/- was paid on 12.03.2018 by the defendant to the plaintiff is not in dispute. The only contention of the defendant is to the effect that such payment was never amount to acknowledgement of liability.

16. It is relevant to note that on 31.12.2015, two payments were made by the plaintiff to the defendant as loan by way of cheques one for a sum of

Rs.3,00,000/- bearing cheque No.000001 dated 31.12.2015 drawn on KVB, Anna Nagar Branch and other for a sum of Rs.5,00,000/- bearing cheque No.000002 dated 31.12.2015 drawn on KVB, Anna Nagar Branch and within a period of three years therefrom, on 12.03.2018 a sum of Rs.10,00,000/- was repaid towards part liability. Therefore, now, it has to be seen whether such payment would extend the period of limitation for the loans advanced from 31.12.2015. If the said payment made was taken as repayment and acknowledgement of debts in writing, limitation would automatically extend only for the loans advanced from 31.12.2015 till 19.10.2016. In such case, the last payment would certainly extend the limitation for the loan amount of Rs.37,25,000/-.

17. It is further relevant to note that it is the contention of the learned counsel for the defendant that in the absence of any written or signed acknowledgement, mere payment would not amount to acknowledgement of debt under Section 19 of the Limitation Act.

18. Section 19 of the Limitation Act, 1963 reads as under:-

"Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made: Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Explanation - For the purposes of this section, -

(a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;

(b) "debt" does not include money payable under a decree or order of a court."

19. A careful perusal of the above provision contained in Section 19 of the Limitation Act, 1963 would make it clear that besides payment it has also to be established that there was a written acknowledgement or signed acknowledgement to extend the period of limitation. In the absence of any such written acknowledgement or signed acknowledgement, normally, such payment will not revive limitation. The rigour of proviso to Section 19 of the Limitation would apply only to payment without any evidence in writing just like mere cash payment without any written or signed document by the person who made such payment**.** Now, in the given case it has to be seen whether the payment made by the defendant would amount to acknowledgement in writing or not. It is not the case of the defendant that Rs.10,00,000/- was paid by cash, on the contrary, the payment was effected through banking channel through the defendant's bank account. When the defendant intended to transfer the amount to the plaintiff's account without his authorized signature to the banker to transfer the amount, the banker would not have transferred the amount to the plaintiff's account. Therefore,

when the defendant has made such a written authorization for transfer of money through his banker, such act would certainly come within the ambit of written or signed acknowledgement. Therefore, it cannot now be contended by the defendant that there was no valid acknowledgement of debt. Proviso to Section 19 of The Indian Contract Act 1872, requires only a written or signed acknowledgement. When a person signs a document to his banker to the effect proper payment towards the debt payable by him such circumstance would also certainly in the considered opinion of this court would amount to acknowledgement in writing or signed by the person who made payment towards part liability. In such view of the fact, the payment of Rs.10,00,000/- made on 12.03.2018 could be considered as an acknowledgement for the remaining liability of the defendant to pay the outstanding dues which he had availed as loan on various dates from 31.12.2015 and in such case, till 19.10.2016 , he had received a sum of Rs.37,25,000/-. These facts are not in fact disputed by the defendant.

20. In the light of the above discussions, this court holds that the plaintiff is entitled to recover a total sum of Rs.37,25,000/- less a sum of Rs.10,00,000/- which was admittedly paid by the plaintiff on 12.03.2018 and therefore, as on the date of suit, a sum of Rs.27,25,000/- was due and payable by the defendant towards principal.

21. When there is no privity of contract in respect of interest, interest cannot be ordered unless a notice demanding interest is first caused as per Section 3 of the Interest Act, 2003.

22. Admittedly, as per plaint averments, it is not the case of the plaintiff that there was a contract between him and the defendant in respect of interest payable on the loan amount. It is well settled law that in the absence of any contract for payment of interest, interest is payable only when the demand for such interest was first made.

23. In the instant case, admittedly, only under the legal notice dated 27.01.2021 (Ex.P.6) for the first time interest was claimed on 27th January, 2021.

Therefore, plaintiff is, at the most' entitled to interest @ 9% per annum from the date of legal notice dated 27.01.2021 till date of realization of the decree amount in full.

24. The contention of the learned counsel for the plaintiff that provision of Section 60 of the Indian Contract Act, 1872 would come to the aid of the plaintiff has no legs to stand. Section 60 of the Indian Contract Act provides that where the debtor has omitted to intimate and there are no other circumstances indicating as to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor provided whether its recovery is or is not barred by the law in force for the time being as to the limitation of the suits. Even to apply the provision of Section 60, the amount recoverable should not have been barred by law of limitation. Therefore, Section 60 of the Indian Contract Act will have no application to the case of the plaintiff.

25. Insofar as the Section 70 of the Indian Contract Act, 1872 is concerned,

it deals with compensation to a person in case where such person has done a thing for another person or delivered anything to him, not intending to do so gratuitously and in such case, the other person who enjoys the benefit is bound to make compensation. There is, absolutely, no difficulty for this court to apply the above provision. But, the fact remains that the question of recovery of **compensation or any** money payable to a party, the same must be with in the period of limitation. The period of limitation of three years is reckoned from the date when the amount was paid or anything delivered. Therefore, the proviso contained in Section 70 of the Indian Contract Act, 1872 cannot be applied to recover the entire amount.

26. Considering all the above aspects, this court is of the view that the plaintiff is entitled to recover a sum of Rs.27,25,000/- with interest and for costs of the suit.

27. Since issue with regard to interest has already been elaborately dealt with,, this court is of the view that the plaintiff is entitled to recover principal sum

of Rs.27,25,000/- with interest @ 9% per annum no further discussion is required.

28. Issue Nos.1 to 4 are answered accordingly in favour of the plaintiff.

Issue No.5:-

29. In the light of the discussions made herein above, this court is of the view that the plaintiff is entitled to a decree against the defendant for recovery of Rs.27,25,000/- with interest as discussed above.

In the result, suit is decreed in part with costs. The plaintiff is entitled to a decree for recovery of a sum of Rs.27,25,000/- from the defendant together with interest @ 9% from 27.01.2021till date of realization of the amount in full.

Index : yes / no 18..03..2024
Neutral Citation : yes / no
kmk

Plaintiff's side witness:-
P.W.1 - Ameerul Hussain (plaintiff)

Defendant's side witness:-
Nil

Plaintiff's side documents;-		
Ex.P.1	-	Statement of Account of the plaintiff in respect of account maintained by him with IDBI Bank, Anna Nagar Branch reflecting loan amounts transferred from the plaintiff account to the defendant account for the period between 21.05.2013 and 02.11.2017
Ex.P.2	-	Statement of Account of the plaintiff in respect of account maintained by him with KVB Bank, Anna Nagar Branch reflecting loan amounts transferred from the plaintiff account to the defendant account for the period between 01.04.2015 to 31.03.2016
Ex.P.3	-	Statement of Account of the plaintiff in respect of account maintained by him with K.V.B. Bank, Anna Nagar Branch reflecting loan amounts transferred from the plaintiff account to the defendant account for the period between 01.04.2016 to 31.03.2017
Ex.P.4	-	Statement of Account of the plaintiff in respect of account maintained by him with Axis Bank, Anna Nagar Branch reflecting loan amounts transferred from the plaintiff account to the defendant account for the period between 01.04.2017 to 31.03.2018

Ex.P.5	28.04.2017	Certified copy of the compromise decree made in C.S.NO.979 of 2016 on the file of the file of this Court
Ex.P.6	27.01.2021	Office copy of the notice sent by the plaintiff to the defendant and her husband
Ex.P.7	28.01.2021	Postal Acknowledgment Card (Original)

Defendant's side documents:-
Nil

18..03..2024

N.SATHISH KUMAR.J.,

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