IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: .11.2024

CORAM

THE HONOURABLE Mr. JUSTICE A.A. NAKKIRAN

C.S.No.774 of 2015

A.M. Gopalan,
Proprietor,
M/s. Sree Gokulam Investments,
No.66, Arcot Road, Kodambakkam,
Chennai – 600 024. ...Plaintiff

..Vs..

N. Premananth,
Proprietor,
M/s. Gears,
"Represented by his ad litem Guardian:Mrs.Prathiksha
No.48, Old No.39, Lodd Govindass Nagar Road,
Border Thottam, Off. G.P. Road,
Chennai – 600 002. ...Defendant

This Civil Suit is preferred under Order XXXVII Rule 1 and 2 of the Original Side Rules read with Order XXXIV Rule 1 of the Code of Civil Procedure praying that:

a)Directing the Defendant to pay a sum of Rs.1,77,43,203/- (Rupees One Crore Seventy Seven Lakhs Forty Three Thousand Two Hundred and Three Only) towards the loan outstanding together with interest at the rate of 18% per annum (Compounded);

b). Award an interest at the rate of 18% per annum on Rs.

1,77,43,203/- (Rupees One Crore Seventy Seven Lakhs Forty Three Thousand Two Hundred and Three Only) from the date of the plaint to the date of realization and

c). directing the Defendant to pay the cost of the suit and

For Plaintiff : Mr. L. Rajasekar

For Defendant :Mr.J. Kamaraj
For M/s.S.Sundaragopal

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JUDGMENT

This Civil Suit is filed for the relief as stated in the prayer.

2.The averments found in the Plaint, in brief, are as follows:

a).The Plaintiff is the Proprietor of the Sole Proprietorship concern in the Name and style of M/S Sree Gokulam Investments. As the Defendant had approached the Plaintiff for financial assistance to meet his urgent business commitments and maintained Loan account with the Plaintiff. During 2012, the Defendant has approached the Plaintiff and had finalized all the accounts in respect of the Loan taken by him. On 10.09.2012 the Defendant have approached the Plaintiff and submitted a letter dated 10.09.2012 asking the Plaintiff to adjust a sum of Rs. 4,64,425.00 (Rupees Four Lakhs Sixty Four Thousand four Hundred and Twenty Five only) standing in credit from a Chit with M/s. Sree Gokulam Chit & Finance Co., (P) Limited and after adjusting the said amount, the Defendant had agreed to execute a Promissory Note for the balance outstanding in the Loan account along with the accumulated interest at the rate of 18% per annum (Compounded) and the balance outstanding as on 10.09.2012 was Rs. 1,05,00,000/- (Rupees One Crore and Five Lakhs only).

b). In spite of repeated demands and request made by the Plaintiff, the Defendant have failed to pay the loan amount together with interest thereon. A Legal Notice dated 22.06.2015 was sent and acknowledged by the Defendant on 24.06.2015. In Reply dated 02.07.2015 it has been denied by the defendant. On 10.09.2012, a letter asking the Plaintiff to adjust the Chit amount to the Loan outstanding and arriving at the outstanding amount together with interest. Accordingly, the defendant has agreed to execute a Promissory Note for the outstanding amount of Rs.1,05,00,000/- (Rupees one crore and five lakhs only) and also undertook to repay the said amount together with 18% (compounded) interest without fail. Having acknowledged the receipt of the documents in the letter dated 10.09.2012, the defendant has alleged falsely that he had executed a blank promissory notes, blank papers and blank stamp papers, blank forms and a original title deeds of his property. The amount outstanding in the defendant's loan account as on 17.08.2015 is a sum of Rs.1,77,43,203/- (Rupees One Crore Seventy Seven Lakhs Forty Three Thousand Two Hundred and Three Only) amount together with interest at the rate of 18% per annum (Compounded). Hence, this suit is filed.

3.The case of the Defendant, in a nutshell, as set out in the written statement, is as follows:-

a). It is denied that on 10.09.2012, the defendant executed a Promissory Note in favour of the plaintiff for a sum of Rs.1,05,00,000/- (Rupees One Crore and Five Lakhs only) and had taken back all the old cancelled Promissory Note and the connected papers lying with the plaintiff, It is also denied that in the said Promissory Note alleged to be executed by the defendant, he had agreed to repay the alleged loan amount on demand together with interest thereon at the rate of 18% per annum (compounded) and that the defendant had undertook to repay the amount together with interest thereon within a year which are false and incorrect.

b)The defendant denies the allegations that in spite of the repeated demands made by the plaintiff, the defendant failed to pay the alleged loan amount together with interest thereon. Legal Notice dated 22.06.2015 was on behalf of M/s.Sree Gokulam Investments' and through the defendant's advocates' reply dated 02.07.2015, the defendant called upon it to furnish to him the entire statement of accounts relating to the alleged loan amount with it including the calculation of interest and also the entire details in respect of the chit transaction of not only the defendant, but also his wife Jothi Prem and his daughter M.P.Prathiksha and also the Xerox copies of the alleged letter dated 10.09.2012 and the alleged Promissory Note dated 10.09.2012 alleged to have been executed by the defendant and also to produce the original for comparison. But, nothing was furnished to the defendant.

c).The defendant further submits that through the defendant's advocate reply dated 02.07.2015 he stated that he discharged all the loan transactions through the chit transaction and nothing was due from the defendant to M/s.Sree Gokulam Investments and in the course of chit transaction, M/s.Sree Gokulam Investments obtained from the defendant his signature in blank papers, blank Promissory Notes, blank stamp papers, blank forms etc., and also original sale deed in his favour dated 04.012.2006 registered as document No.2 of 2007 in Sub Registrar Office, Triplicane, relating to his property bearing Old No.39, New No.48, Lodd Govindas Nagar Road, Chennai-600 002 and called upon M/s.Sree Gokulam Investments to return to him forthwith the above said document and all the above said blank papers, blank Promissory Notes, blank stamp papers, blank forms etc., signed by the defendant. But, nothing was returned to the defendant.

d).The defendant apprehends that the above said blank papers, blank Promissory Notes, etc., might have been made use subsequently to institute the above suit. The defendant submits that the alleged letter dated 10.09.2012 and the alleged promissory note dated 10.09.2012 are fabricated document to give life to the discharged and time barred loan transaction and to avoid the return of the above said original document of the defendant and to grab the defendant's property. The defendant submits that there is no transaction between him and the plaintiff in the plaintiff's personal capacity and the above suit deserves to be dismissed in limine.

4.Based on the above said pleadings, the following issues were framed:

i) Whether the plaintiff is entitled for the suit claim?
ii) Whether the defendant has discharged the loan advanced by the plaintiff?
iii) Whether the suit claim is barred by limitation?
iv) To what other relief the plaintiff is entitled to?

5.To substantiate the respective contentions, the plaintiff's Power agent had examined himself as PW1 and 12 documents were marked as Exs.P.1 to P.7 on the side of the plaintiff. On the side of the defendants, the Daughter of the defendant had examined herself as D.W.1 and no document was marked.

6.Heard both sides and perused the materials available on records

Issue Nos.1 to 4:

7. The learned counsel for the plaintiff has submitted that through letter dated 10.09.2012, the defendant had approached the plaintiff asking to adjust a sum of Rs.4,64,425/- standing in credit from a Chit with M/s. Sree Gokulam Chit & Finance Co (P) Limited and further agreed to execute a Promissory Note for the balance outstanding in the loan account along with the accumulated interest at the rate of 18% per annum (compounded) and the balance outstanding as on 10.09.2012 was a sum of Rs. 1,05,00,000/- (Rupees One Crore and Five Lakhs only). To prove the same, Ex.P2-Promissory Note and Ex.P-3-Undertaking letter both dated 10.09.2012 has been marked.

8. It has been further submitted by the learned counsel for the plaintiff that even after the repeated demands, the defendant had failed. to pay the loan amount together with interest thereon. Hence, the plaintiff had forwarded a legal notice dated 22.06.2015 and the same was acknowledged by

the defendant on 24.06.2015. In reply, he denied entire transaction. Hence the suit is filed seeking the relief as prayed therein.

9.The learned counsel for the defendant submits that the defendant had discharged all the loan transactions through the chit transaction that had with M/s.Sree Gokulam Investments and nothing due from the defendant to M/s.Sree Gokulam Investments. In the course of the aforesaid transaction, the plaintiff obtained from the defendant his signature in blank papers, blank promissory notes, blank stamp papers, blank forms etc. and also original sale deed in his favour dated 04.12.2006. Even in reply Notice dated 02.07.2015, the defendant called upon the entire documents, nothing was returned by the plaintiff. Without returning the same, the plaintiff has fabricated the Pronote for a sum of Rs.1,05,00,000/- with the intention to grab the defendant's property by giving life to the discharged and time barred loan transaction. In support of his argument, he relied on the Judgments in the case of "*(i) V.R. Suddha Padayachi Vs. Indian Bank Branch, and others reported in 2000(1) CTC 654 and R.Subramaniam Naidu Vs. T.N. Rajendran reported in 1999(I) CTC 529.* Thus, the defendant seeks to dismiss the suit.

10.On perusal of the records, as per Ex.P2 which has been executed on 10.09.2012 and the suit has been filed on 28.08.2015. Hence, the suit is not barred by limitation. Accordingly, Issue No.3 is answered.

11.The Plaintiff has filed the Ex.P2-Pronote dated 10.09.2012 and Ex.P3-Undertaking letter signed by the defendant dated 10.09.2012 to prove the contention that the loan amount of Rs.1,05,00,000/- was arrived after adjusting the Chit amount of Rs.4,64,425/- out of loan outstanding amount of Rs.1,09,64,425/-. Even though the defendant has contended that the entire loan amount was discharged and Ex.P2 and Ex.P3 were fabricated by the plaintiff, the defendant has not produced statement of accounts or any other documents from the defendant company to disprove the same. In this regard, the defendant has not entered into witness box to disprove the claim of the plaintiff and her daughter alone has entered into witness box and also the defendant has not taken any attempt to examine company manager to deny the contention of the plaintiff. The plaintiff has filed Ex.P4-Statement of Accounts stands in the name of the defendant showing the outstanding loan amount due payable by the defendant. However, The defendant has not filed any counter statement of Accounts or any other documents to disprove Ex.P4 statement.

12.Further, in the course of D.W1 evidence, she deposed that the signature looks like her father's signature. The defendant failed to prove his case by way of letting oral and documentary evidence and at the same time, the evidence and exhibits marked by the plaintiff are acceptable and believable. Accordingly, Issue No.2 is answered. Under such circumstances, according to Ex.P2, the plaintiff is entitled to for the sum of Rs.1,05,00,000/- only with the interest @12% p.a. from the date of the plaint till the date of decree and thereafter 6% from the date of decree till the date of realization. Accordingly, Issue No.1 and 4 are answered in favour of the plaintiff.

13. In the result, the suit is Partly Decreed. No costs.

.11.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
lbm

List of witnesses examined on the side of the plaintiff and the defendant:

PW1 - Mr.N.K.Shanmugam

DW1 -Mrs. M.P.Prathikssa

<u>List of documents marked on the side of the plaintiff:</u>

Ex.P1	Power of Attorney
Ex.P2	Promissory Note
Ex.P3	Undertaking Letter by the Defendant to the Plaintiff
Ex.P4	Statement of Accounts (Ledger Account)
Ex.P5	Legal Notice
Ex.P6	Acknowledgment Card
Ex.P7	Reply Notice

<u>List of documents marked on the side of the defendant:</u>

No documents were marked.

.11.2024

A.A. NAKKIRAN, J,

lbm

Pre-Delivery Judgment in
C.S.No.774 of 2015

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