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O.S.A.No.35 of 2



THE HIGH COURT OF JUD ICATURE AT MADRAS

Reserved on 12.02.2024	Delivered on 15.03.2024
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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

O.S.A.No.35 of 2021

M.Balaji

...Appellant

Vs.

1.PerimJanardhana Rao

2.M/s.JAY AR Enterprises,
Represented by its Partner,
PerimJanardhana Rao,
No.7, N.S.Krishnan Street,
Easwaran Nagar, Pammal,
Chennai - 600 075.

3.PerimJanardhana Rao

4.K.Rajendra Reddy

...Respondents

Prayer: Original Side Appeal filed under Clause 15 of the Amended Letters Patent of 1865 and Order XXXVI Rule 1 of the Original Side Rules, against the judgment and decree dated 08.01.2020 passed in C.S.No.941 of 2010.

For Appellants : Mr.Sharath Chandran



for Ms.V.Srimathi
For Respondents : Mr.V.Balasubramanian
for Mr.V.Balasubramanian & Associates
for R1 to R4

J U D G M E N T

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

Challenge in this appeal is to the dismissal of the suit in C.S.No.941 of 2010.

2.The plaintiff in the said suit is the appellant. The plaintiff sued for recovery of a sum of Rs.1,21,66,000/- with interest at 18% p.a. on the principal sum of Rs.79,00,000/- which according to the plaintiff is due and payable by the 1st defendant in the following circumstances.

3.The plaintiff has been doing real estate business, since 2002 and he had invested monies and entered into agreements of sale for properties in and around Bangalore. According to the plaintiff, the 1st defendant approached him expressing an interest in purchasing properties in Bangalore as an investment proposition. The plaintiff, being a real estate trader had



showed certain lands to the 1st defendant, in fact, the 1st defendant purchased 50% of the share in 3 acres of land in Giddanahalli Village of Anekal Taluk, Bangalore Rural District. The plaintiff and the 1st defendant had various transactions between them and in the process, the 1st defendant also expressed interest in purchasing 5 acres 25 guntas of agricultural land, which was held by the plaintiff under an agreement, subject to the condition that it should be converted into non-agricultural land. The sale price was also finalized at Rs.46,00,000/- per acre. Believing the promise made by the 1st defendant, the plaintiff spent huge amounts in obtaining conversion of the land from agricultural to non-agricultural. The plaintiff also entered into agreements with land owners and paid huge advance to them.

4.In view of the confidence reposed on the 1st defendant, the plaintiff paid consideration to the land owners from out of his personal funds and get three sale deeds registered in the name of the 1st defendant. The 1st defendant was liable to pay a sum of Rs.2,56,00,000/- as consideration for the said sales and he had paid a sum of Rs.1,77,00,000/-, leaving a balance of Rs.79,00,000/-. When the plaintiff demanded the monies, the 1st defendant executed an acknowledgment of the liability through his Power of Attorney agent one, Krishnamurthy. The plaintiff subsequently, issued a

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cheque from the bank account of the 2nd defendant, in which, he was a partner and authorised signatory for a sum of Rs.79,00,000/-. The said cheque, on the presentation, was dishonoured by the Bank on 15.04.2008. The plaintiff also initiated proceedings under Section 138 of the Negotiable Instruments Act and unfortunately, those proceedings ended in acquittal on the sole ground that the partnership firm was not made a party to the proceedings.

5.Upon initiation of the proceedings under the Negotiable Instruments Act, the 1st defendant lodged a police complaint against the plaintiff and the 1st defendant's own Power Agent, Krishnamurthy and managed to secure their detention. However, the said First Information Report registered against the plaintiff and the said Krishnamurthy was quashed by this Court. Therefore, according to the plaintiff, he is entitled to payment of a sum of Rs.79,00,000/- with interest, which is covered by the dishonoured cheque and the acknowledgment made by the Power of Attorney on 15.04.2006.

6.The suit was resisted by the defendants contending that there is no concluded contract between the parties. It was also contended that there is no legally enforceable debt. According to the defendant, the bounced

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cheque was stolen by the Power Agent, Krishnamurthy who was also an employee of the 1st defendant. A criminal complaint was also lodged against the said Krishnamurthy and the plaintiff and they were arrested and remanded to judicial custody and First Information Report was also registered on 20.08.2007 and therefore, the cheque dated 30.10.2007 cannot be a valid document, which would create an enforceable debt. The acknowledgment executed by the said Krishnamurthy is also not valid and in the absence of proof of the debt payable, the acknowledgment cannot give a cause of action to the plaintiff to sue. It was also contended that the conviction passed by the learned Magistrate under Section 138 of the Negotiable Instruments Act having been reversed by the Appellate Court, after reaffirms the fact that there is no enforceable debt. On the above contentions, the defendants sought for dismissal of the suit.

7.At trial, the plaintiff was examined as P.W.1 and Exs.P1 to P69 were marked. The 1st defendant was examined as D.W.1 and Exs.D1 to D21 were marked on the side of the defendants. On the above pleadings, the learned Trial Judge framed the following issues for determination:-

"1.Whether the plaintiff is entitled to recover a sum of Rs.1,21,66,000/- from the defendants along with interest at 18%



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*p.a on the principal sum of Rs.79,00,000/- from the date of
plaint ?*

*2.Whether the suit claim is sustainable on speculation as
the plaintiff is a speculator and middle man in real estate
business ?*

3.Whether the suit is barred by limitation ?

4.Whether the suit is bad for mis-joinder of parties ?

*5.Whether the dishonoured cheque will give raise to a
cause of action without any specific promise to pay a time
barred debt under Section 25(3) of Indian Contract Act ?*

*6.Whether the suit claim is sustainable in view of the
provision of Section 139 of Negotiable Instruments Act and
whether the presumption contemplated under Section 139 is
sufficient to prove the claim in the suit without any acceptable
evidence to show that the defendants owe the suit claim to the
plaintiff ?*

*7.Whether the claim of the plaintiff is proved beyond
reasonable doubt in the absence of any legally enforceable
claim to sustain in the suit ?*

8.To what other reliefs, the parties are entitled to ?"

8.The learned single Judge, upon consideration of the evidence placed before him concluded that the plaintiff has not proved the existence of an enforceable debt. The learned single Judge accepted the claim of the defendant that Ex.P10, acknowledgment of liability executed by the Power
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Agent and Ex.P11 / cheque, are documents created in collusion between the plaintiff and Krishnamurthy, Power Agent of the 1st defendant. The learned Judge concluded that there is enough and more material in support of the said claim of the defendant.

9.The learned Judge heavily relied upon the fact that the plaintiff and Krishnamurthy were arrested on a complaint by the 1st defendant in Crime No.470 of 2007 to come to the conclusion, the acknowledgment and the cheques are created documents and sale deeds that were executed in respect of the 5 acres and 25 guntas of land do not reflect anything about the consideration being paid by the plaintiff. The learned Judge also referred to the provisions of the Contract Act regarding the power of the Agent to acknowledge the debts of the principal to reject Ex.P10. On the above conclusions, the learned Trial Judge dismissed the suit even though the issue regarding mis-joinder was found in favour of the plaintiff. Aggrieved, the plaintiff has come up with this appeal.

10.We have heard Mr.Sharath Chandran, learned counsel appearing for the appellant and Mr.V.Balasubramanian, learned counsel appearing for the respondents / defendants.



11.Mr.Sharath Chandran, learned counsel appearing for the appellant would vehemently contend that the learned single Judge has overlooked vital admissions in the cross-examination of D.W.1. The learned counsel would point out that the defendant has come up with different allegations at different points of time regarding the custody of cheques with Krishnamurthy. The learned counsel would point out that the claim that purchase of 5 acres 25 guntas from four farmers in Sarjapur was not denied. The learned counsel would also point out that the defendant had admitted the fact that he had entrusted the purchase of land with the plaintiff and Krishnamurthy for Rs.2,55,00,000/- in the complaint given by him to the Commissioner of Police, Chennai. The learned counsel would also point out that there is no denial of the transaction of the purchase of the land in the written statement filed by the defendant.

12.In support of his submissions, the learned counsel would draw our attention to Ex.P24 dated 15.07.2008, the complaint made by the 1st defendant to the Commissioner of Police, Chennai where there is a specific admission of the 1st defendant that he had engaged the plaintiff to buy an extent of 5.5 acres of land in Sarjhapur for a consideration of



Rs.2,55,00,000/-. He had also admitted in the said complaint that he had issued blank cheques to Krishnamurthy and he had en-cashed them. The learned counsel would also point out that the First Information Report, pursuant to the complaint was quashed by this Court. The learned counsel would also draw our attention to Ex.P42 issued by the Manager of Andhra Bank to demonstrate that the plaintiff has purchased pay orders during the relevant time to pay the stamp duty etc., for the registration of the sale deeds.

13.The learned counsel would also point out that in reply notice marked as Ex.P14 dated 30.05.2008, the defendant had claimed that cheques were given to the plaintiff / Balaji and Krishnamurthy / Power Agent of the 1st defendant to enable them to effect payment to land owners and though the cheque was returned dishonoured on 15.04.2008, he had issued a stop payment instruction under Ex.P23 on 14.07.2008, that is, nearly three months after dishonour of the cheque. While the plea in the reply notice was that the cheques were entrusted with the plaintiff and Krishnamurthy, the plea in Paragraph 7 and 9 of the written statement was that the cheque was stolen by the Krishnamurthy. The learned counsel would also contend that D.W.1, in his cross-examination has admitted that stop payment instructions were given after dishonour of the cheque.



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14.The learned counsel would invite our attention to the fact that D.W.1, in his cross-examination had admitted the said cheque, which was marked as Ex.P11 was given to Krishnamurthy. The learned counsel would also contend that Ex.P46 is a bogus statement prepared by the defendant in connivance with his Chartered Accountant, who was never examined. The learned counsel would also draw our attention to the fact that D.W.1, in his cross-examination had admitted that 20 cheques which are said to have been stolen were issued to third parties, including some of his relatives. On the acknowledgment issued by the Power of Attorney, the learned counsel would submit that though D.W.1 in his examination would state that he has seen the acknowledgment only now, he would subsequently admit that he has seen Ex.P10 even in the year 2008.

15.The learned counsel would also draw our attention to the conflicting stand taken by the defendant in respect of the cheque. On 30.05.2008, in a reply notice issued under Section 138, the defendant would claim that the cheque in question was entrusted with Krishnamurthy. The learned counsel would draw our attention to the following statement made in the said reply notice, which was marked as Ex.P14.

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"Since my client used to travel abroad frequently he had signed 20 cheque leaves from 401071 to 401090 in Blank for the purpose of enabling Your client Balaji and his friend Krishnamurthy to withdraw the money from the account of my client for effecting the payment to the land owners."

16. On 14.07.2008, the defendant had in the stop payment letter issued to the Bank had claimed that the cheques were missing. The relevant portion of the letter reads as follows:-

"This is to inform you that the following signed cheques are missing from our office which may misuse by any body got in their hands. Hence we would instruct you to stop the payment of the below cheques immediately to avoid to misuse the same.

- 1. Cheque No. 406180*
- 2. Cheque No. 401681 (suit cheque)*
- 3. Cheque No. 401694*
- 4. Cheque No. 401695*
- 5. Cheque No. 401696*
- 6. Cheque No. 401697*
- 7. Cheque No. 401699*
- 8. Cheque No. 401700"*

17. On 15.07.2008, in a complaint made to the Commissioner of Police, which was marked as Ex.P24, the defendant would claim that



Krishnamurthy and the plaintiff has misused the blank cheques issued by him. Therefore, on three different occasions, the defendant has chosen to take three different stands regarding the issuance of cheque. The learned counsel would also draw our attention to the oral evidence of the 1st defendant where he would admit that reply notice under Ex.P14 dated 30.05.2008 was issued under his instructions. He would also admit that in the stop payment notice he had stated that the cheques were missing. In the written statement in the suit, it is pleaded that the cheques were stolen by Krishnamurthy. The learned counsel would also draw our attention to the cross-examination of the 1st defendant where, he has admitted that he has signed the cheques and handed it over to Krishnamurthy. These admissions, according to the learned counsel, shows the prevaricating stand taken by the defendant, which would render his defense unreliable.

18.The learned counsel would also point out that D.W.1, in his cross-examination would admit that he was aware of the acknowledgment / Ex.P10 made by Krishnamurthy even during the year 2008 and he had not taken any steps to dispute the same. Relying upon the above circumstances, the learned counsel for the appellant would contend that the learned single Judge was not right in concluding that there was no enforceable debt and

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proceeding to dismiss the suit.

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19.Contending contra, Mr.V.Balasubramanian, learned counsel appearing for the respondents / defendants would submit that once it is found that the Agent has no power to issuance of acknowledgment of debt, the suit cannot be based on Ex.P10 / the acknowledgment of debt. As far as the cheque is concerned, the learned counsel for the respondent would submit that the proceedings under Section 138 of the Negotiable Instruments Act having been dismissed on the fact that there is no enforceable debt. Having been come to conclusion, the learned single Judge was right in dismissing the suit. The learned counsel would also submit that the learned single Judge has after considering the evidence arrived at the conclusion that there is no enforceable debt and therefore, the defendant cannot be made liable for the suit claim. We have considered the rival submissions.

20.On the submissions of the learned counsel on either side, the following points arise for determination:-

i) Whether Ex.P10 could be held to be valid on the ground of implied authority available to the agent to acknowledge the debt of the principal.



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ii) *Whether Ex.P11 cheque was issued for an enforceable debt.*

Point No.1:-

21.Mr.Sharath Chandran, learned counsel appearing for the appellant would submit that D.W.1, in his evidence has admitted that he was aware of the acknowledgment issued by Krishnamurthy even in the year 2008 and he has not taken any steps for have the acknowledgment disputed or canceled. This, according to the learned counsel for the appellant, go a long way to show that Krishnamurthy, the Power Agent had an implied Authority to acknowledge the debt.

22.The learned counsel for the appellant would rely upon the judgment of the House of Lords in ***Bigg Vs. Strong*** reported in ***6 W.R. Page 536*** wherein, it was held that implied authority can be presumed from the silence of the principal. Vice Chancellor, Sir John Stuart speaking for the Court observed as follows:-

"[598] The VICE-CHANCELLOR (Sir John Stuart).

By the agreement of the 31st of August 1855 it is



expressed that the father and the son agreed to sell the land in question to the plaintiff. The agreement is signed by the son on behalf of himself and his father.

The Plaintiff's right to specific performance must depend on his establishing a case of previous authority by the father to the son, or a subsequent recognition by the father. There is no sufficient evidence of previous authority from the father to the son, therefore the real question is whether there was a sufficient recognition by subsequent conduct of the father.

It is clearly established that the father had full notice of the agreement, if not immediately, or on the same day, yet certainly within five days after it was signed. It cannot be considered that any express act on his part, such as signature of the agreement by himself or any other solemnity by him after he became privy to the act done by his son on behalf of both, was essentially necessary. Subject to his right to a reasonable opportunity to express his dissent, every additional day and hour of silence after he became privy to the contract operates as tacit acquiescence, and raises the presumption of assent. It cannot be said that tacit recognition is insufficient, for, if in perfect silence he accepted the price to which he knew he was entitled according to the agreement, it could not be said that the assent and recognition were not sufficiently binding. On the other hand, had he silently refused to accept the price, it might have raised a presumption of dissent."



23.Relying upon the above passage, the learned counsel appearing for the appellant would contend that the long silence on the part of the defendant after having come to know about the acknowledgment would definitely demonstrate that the Agent, Krishnamurthy had an implied authority to acknowledge the debt. During the course of hearing, the learned counsel would draw our attention to the judgment of a Division Bench of this Court in **Ramasawmy Chetty Vs. Alagappa Chetty** reported in **1915 Volume 28 MLJ 199** wherein, the Division Bench had held that silence itself can be held to be acquiescence in commercial transaction.

24.Reference is also made by the learned counsel for the appellant to the judgment of the single Judge of this Court in **Sultan Mahomed Rowther Vs. Muhammad Esuf Rowther and others** reported in **AIR 1930 Mad 476** wherein, the learned Judge had after considering the provision of Sections 197 & 199 of the Contract Act concluded that where an Agent does an act exceeding his authority and the principal on being apprised of the fact fails to communicate to the Agent his determination not to be bound by it within a reasonable time, it must be presumed that there was implied ratification.

25.Relying upon the aforesaid judgments, the learned counsel for the



appellant would implore us to conclude that the very fact that the defendant did not chose to repudiate the acknowledgment under Ex.P10. Though he was aware of it even in the year 2008, he having admitted the same in his deposition before the criminal Court in the proceedings under Section 138 of the acquiescence should be presumed. The learned single Judge had referred to the power of attorney document and found that the document does not confer power to acknowledge a debt. Therefore, the learned Judge has on the plain language of the Power of Attorney document concluded that the acknowledgment is not binding on the principal, being in excess of the powers conferred on the Agent. The learned Judge has also referred to Sections 226 & 227, which relate to actions of the Agents exceeding the authority and concluded that the principal is not bound by anything in excess of authority, which is separable.

26. We have no quarrel preposition of law as adverted to by the learned Judge. However, we find that attention of the learned Judge has not been drawn to the decisions cited above, which are to the effect even the action of the Agent in excess of his authority, if not repudiated within a reasonable time by the principal would lead to a presumption that the principle has acquiesced to the action of the Agent.



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27. In the case on hand, Ex.P10 is the acknowledgment which is dated 15.04.2006. We find from the cross-examination of D.W.1 that he was aware of Ex.P10 even when he deposed before the criminal court in the Section 138 proceedings. Ex.P31 is the deposition, by way of affidavit, of the defendant before the criminal court which tried the C.C.No.19342 of 2008 filed under Section 138 of the Negotiable Instruments Act. A perusal of the same shows that the plaintiff had claimed that Krishnamurthy, the Power of Attorney and Balaji / the plaintiff herein had hatched a conspiracy, pursuant to which the acknowledgment came to be executed. The acknowledgment that is marked as Ex.P10 in these proceedings have been marked as Ex.P19 in the criminal case and there is a specific reference to the said acknowledgment executed by Krishnamurthy as the General Power of Attorney and the defendant herein. The said affidavit has been filed on 07.10.2009 before the criminal court. Therefore, it is clear that the defendant was aware of the acknowledgment namely, Ex.P10 even during the pendency of the criminal proceedings in the year 2009. In his further evidence, which forms part of Ex.P31, it is claimed that the cheque that was handed over to Krishnamurthy was misused by him and the present plaintiff to make illegal gains.



28. Drawing our attention to the said evidence, the learned counsel appearing for the appellant would submit that even assuming that the acknowledgment was in excess of authority, the defendant on coming to know about it, has not chosen to repudiate the same or has not chosen to take any action to have it declared invalid. Therefore, according to the learned counsel for the appellant, the defendant had acquiesced to the action of the Agent in acknowledging the debt. The learned counsel would also point out to the different stands that have been taken by the defendant with reference to the issuance of cheque and the acknowledgment made at various points of time before the Courts and the Authorities to buttress his submission that the defendant does not have a consistent case and therefore, his evidence should not be relied upon.

29. We have already pointed out the prevaricating stand taken by the defendant while discussing the arguments of the learned counsel for the appellant. At the risk of repetition, we must point out that while reply to the notice issued under Section 138 dated 30.05.2008 (Ex.P14), the defendant had claimed that the cheques were given to the plaintiff and Krishnamurthy to enable them to effect payment to the land owners and the cheque which was entrusted has been misused by them. In the stop payment instructions

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issued by him on 14.07.2008 (Ex.P23), it is stated that the cheque in question has been lost. The said document reads as follows:-

"This is to inform you that the following signed cheques are missing from our Office which may misuse by anybody got in their hands."

30.In the complaint that is lodged on the very next day namely, 15.07.2008 to the Commissioner of Police, Chennai, the defendant would claim that the cheques were given to Krishnamurthy towards the purchase of the lands at Sarjhapur and it is also stated therein that the said Krishnamurthy duly filled up the blank cheques and en-cashed them. In the written statement filed in the present suit, the defendant had claimed that the cheque was stolen by Krishnamurthy. In cross-examination, the defendant had made a very faint attempt to cover up his vacillating stands that have been taken by him at every stage. The above evidence of D.W.1 read as a whole does not inspiring the confidence that is required.

31.We found that Ex.P31, which is a deposition of a living person before a Court has been marked in evidence without any objection. Since we felt that this action is against the provisions of Section 33 of the Evidence Act, which prohibits marking of the evidence of a living person in

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the subsequent proceedings, except for the limited purpose of contradicting him with its earlier statements. Upon being quizzed about the above legal position, the learned counsel appearing for the appellant would submit that what is prohibited under Section 33 is marking of the evidence of a living person in a proceeding, to which, he is not a party or where there is no opportunity for him to explain the contents of the deposition. The learned counsel would submit that it can always be used to contradict with his earlier statements. There is no prohibition under law for marking of deposition, which has been put to the very same witness and he has either admitted the statement or explained it.

32.The learned counsel would invite our attention to the judgment of the Hon'ble Supreme Court in ***Union of India Vs. Moksh Builders and Financiers Ltd. and Others*** reported in ***(1977) 1 SCC 60*** wherein, the Hon'ble Supreme Court considered the scope of Section 33 and held that the provisions of Section 33 does not override the provisions relating to admissions contained in the Evidence Act. Paragraph 23 of the said judgment of the Hon'ble Supreme Court, which is relevant for our purpose reads as follows:-

"23.Another argument which has been advanced against



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the admissibility of the aforesaid admissions of defendant 3 is that they could be evidence only in terms of Section 33 of the Evidence Act. That argument is also quite untenable because Section 33 deals with statements of persons who cannot be called as witnesses, and does not restrict or override the provisions relating to admissions in the Evidence Act. The High Court also committed a similar error of law in its impugned judgment. The aforesaid admissions of defendant 3 are therefore satisfactory evidence to prove that he himself was the owner of the house and his son, defendant 2 was merely a "benamidar" for him."

The learned counsel would point out that the said judgment of the Hon'ble Supreme Court has been reiterated and followed by the Kerela High Court in ***Jose Valayaveedan Vs. George K.Giri*** reported in **2012 3 KLT 479**.

33.The learned counsel would also draw our attention to the judgment of the Calcutta High Court in ***Soojan Bibee Vs. Achmut Ali*** reported in **14 BLR 3**. The Division Bench, while considering the scope of Section 33, observed as follows:-

The Judge then speaks of the depositions (and this is the only way in which he refers to the deposition of Achmut Ali), and says: "The other two documents, copies of the deposition of Hider Ali and Achmut Ali, two persons on all hands admitted to be alive, are wholly inadmissible, as it is not shown that these



persons are dead or cannot be found, or are incapable of giving evidence. Further the depositions in question were not given in proceedings between the same parties." He appears to have overlooked that S.33 does not apply to the deposition of a witness in a former suit when the witness is himself a defendant in the subsequent suit, and the deposition is sought to be used against him, not as evidence given between the parties, one of whom called him as a witness, but as a statement made by him, which would be evidence against him whether he made it as a witness or on any other occasion. It is used against him as an admission; S.33 has no application to such a case as the present. The sections of the Evidence Act which do apply are the sections relating to admissions. The not considering the deposition of Achmut Ali as an admission was a mistake. As to the deposition of the other witness, the Judge is right. Although Hider Ali is dead, this is not a suit between the same parties, and his evidence in the former suit would not be evidence in this."

34. According to the learned counsel, the purpose for which, Ex.P31 was filed into Court was only to show the contradicting and prevaricating stands taken by the defendant at various stages of the proceeding. Therefore, the learned counsel would submit that the admission of Ex.P31, in evidence cannot be faulted. On the power of agent to make an



acknowledgment on behalf of the principal, we have already pointed out that the learned Judge has gone by the provisions of Sections 226 & 227 of the Contract Act, which provided that any act done by the agent in excess of the authority cannot bind the principal.

35.As already observed by us, the judgments of the Division Bench as well as the single Judge of this Court were not brought to the notice of the learned Judge when he pronounced on the right of the Agent to acknowledge the debt of the Principal. The clauses in the Power of Attorney document, which is filed as Exs.P69 have been extracted by the learned Judge. There is nothing in the said instrument which authorizes the agent to acknowledge the liability of the principal. However, even Section 186 of the Contract Act provides that Agents Authority can be express or implied. Section 187 of the Contract Act defines express or implied authority. The said provisions reads as follows:-

"187. Definitions of express and implied authority.-

An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case. - An authority is said to



be express when it is given by words spoken or written."

36. In ***Sulthan Mohammad Rowther Vs. Muhammad Esuf Rowther and others*** reported in ***AIR 1930 Mad 476***, the Hon'ble Justice Sundaram Chetty considered the question of implied ratification by the principal of an act of an Agent in excess of the Authority conferred upon them wherein, the learned Judge observed as follows:-

"Where an Agent does not act exceeding his authority and the principal on being apprised of the fact fails to communicate to the Agent his determination not to be bound by it within a reasonable time, it must be presumed that there was implied ratification."

37. We have already extracted the observations of the Vice Chancellor in ***Bigg Vs. Strong*** reported in ***6 W.R. 536*** and the observations of the Division Bench in ***S.R.M.A.R Ramasawmy Chetty Vs. A.L.K.R. Alagappa Chetty*** reported in ***1915 Volume 28 MLJ 199***. We have already referred to the evidence of D.W.1 before the criminal Court, wherein there is a specific admission that he knew about the acknowledgments has been made by the Power of Attorney in excess of his Authority even in the year 2009 and he has admitted that he had not taken any steps to have it declared invalid till he



deposed in the present suit in the year 2018. This long silence despite the fact that the defendant have been prosecuting several litigations in the interregnum including the criminal complaint filed by him which was quashed, impel us to conclude that the defendant had by his acquiescence ratified the action of the agent in issuing an acknowledgment in excess of the authority.

38. We therefore, conclude that the defendant cannot now turn around and contend that the acknowledgment being in excess of Authority is not valid. The acknowledgment in question Ex.P10 is dated 15.04.2006. Thereafter, the defendant has made several complaints to the Authorities regarding the actions of Krishnamurthy but he has not chosen to take any steps to have the acknowledgment nullified. The defendant in his evidence has admitted that he has not even informed of the termination of the Power of Attorney to the agent and claims that it is not necessary. There is no evidence to show that he had informed Krishnamurthy and the present plaintiff that the acknowledgment was in excess of the Authority conferred on Krishnamurthy. We therefore, conclude that the acknowledgment, Ex.P10 is valid and it will bind the defendant.

**Point No.2:**

39.This leads us to the next question as to whether Ex.P11, cheque is issued for an enforceable debt. It is the contention of Mr.V.Balasubramanian, learned counsel for the defendant that the criminal court that dealt with Section 138 proceedings in C.C.No.19342 of 2008 had held that the cheque was issued for an legally enforceable debt had furnished to the defendant. The said sentence was reversed in Crl.A.No.878 of 2010 by the Fast Track Court No.8, Bangalore City and the said judgment has been marked as Ex.D19.

40.The learned counsel would draw our attention to the findings of the Appellate Court to the effect that the cheque was not issued for an enforceable debt and therefore, the said finding will have to be accepted. We are unable to subscribe to the contentions of the learned counsel for the appellant. The finding of the Criminal Court is not binding on us when we decide on a civil liability. It is the specific contention of the plaintiff that he had incurred expenses during the course of the transaction and he has also paid a part of sale consideration on behalf of the plaintiff. The cheque was issued for reimbursing those expenses that were incurred by the plaintiff.



41.As we had already pointed out, the defendant had taken different stands at different times regarding the very issuance of the cheque. As rightly contended by the learned counsel for the appellant at the first blush, the claim of the plaintiff before us appears to be far reaching and unacceptable. If we are to look at the conduct of the defendant, the different stories set up by him to justify the possession of the cheque by the plaintiff give credence to the claim of the plaintiff. On the accounts statement that is filed by the defendant said to have been issued by his Chartered Accountant, the defendant has been forced to admit that many of the cheques which are said to have been missing or which are said to have been entrusted with the Krishnamurthy and the plaintiff have been issued to his friends and relatives. This by itself would show that the theory that the cheques were lost or misplaced or entrusted with Krishnamurthy are all falsehoods.

42.In cross-examination, the defendant has admitted that he has signed Ex.P11 cheque and he has handed it to Krishnamurthy and to a specific query seeking a reason for the statement in the proof affidavit showing that the cheque went missing, the defendant had very cleverly answered saying that since the said Krishnamurthy did not submit account, he presumed that the cheques were missing. We must also point out at this

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juncture, criminal complaint lodged by the defendant against Krishnamurthy and the present plaintiff was quashed by this Court. It is also seen from the evidence of the plaintiff that the statement of accounts issued by the plaintiffs' Chartered Accountant which has been marked as Ex.P46 has been demonstrated to be false and misleading. Most of the cheques referred to therein have been shown to have been issued to various other persons than Krishnamurthy. This by itself would show that the defendant has made very serious attempts to project a false case and make it a probable defense.

43.As rightly pointed out by Mr.Sarath Chandran, learned counsel appearing for the appellant, the course of conduct would show that the cheque was issued by the plaintiff for an enforceable debt and is supported by the acknowledgment of debt also. We are therefore, unable to sustain the findings of the learned single Judge to the effect that the plaintiff has not proved that the cheque was issued for an enforceable debt.

44.In the light of the above conclusion, this Appeal is **allowed**, we set aside the judgment of the learned single Judge and the suit in C.S.No.941 of 2010 will stand decreed as prayed for with costs. The parties are directed to bear their own costs in this appeal. Consequently, connected miscellaneous

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petitions, if any, are closed.

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(R.S.M., J.) (R.S.V., J.)
15.03.2024

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Internet: Yes

Index: Yes

Speaking

Neutral Citation : Yes

R.SUBRAMANIAN, J.
and
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