Orders reserved	Orders pronounced
21.08.2024	11.09.2024

A.No.1972 of 2024
and O.A.No.186 of 2024
in C.S.No.55 of 2024

RMT.TEEKAA RAMAN,J.,

The plaintiff is the applicant in this case.

2. The petitioner/plaintiff filed C.S.No.55 of 2024 for the recovery of money allegedly made by the plaintiff to the defendant through RTGS. A sum of money amounting to Rs.1,10,00,000/- was claimed along with interest @ 18%, totalling Rs.1,38,05,000/-.

3. A written statement has been filed by the respondent/defendant.

4. In the plaint, the plaintiff specifically avers that the plaintiff that the defendant is a close relative who approached him for financial assistance in 2019 for the business run by the defendant under the name and style of "Adit International Plastic Products Private Limited". The business is located at No.238, Developed Plot, SIDCO, Industrial Estate, Thirumudivakkam (Near Pallavaram), Chennai, and the plaintiff claimed that payments and transactions were made between them, leading to the law suit.

5. The date of filing of the suit is on 12.01.2023.

6. The written statement filed by the defendant wherein he had denied that the amount advanced by the plaintiff has averred in the plaint is not a loan.

7. It is further contended by the defendant that defendant's grand-father, namely Late Arunachala Devar, had two wives. The defendant's father, A.Paramasivam was born to first wife, and father-in-law of the plaintiff, namely A.Ramachandran, and another brother, A.Subbiah, were born to the second wife. Therefore, the defendant's father, Paramasivan, and the plaintiff's father-in-law, Ramachandran, are step brothers, and all lived in Karisangapuram Village, Thoothukudi District.

8. Since the defendant's grand father passed away, the father-in-law has moved over to Chennai and hence the defendant's father relinquished his right in all his father's property which is located in the native village of his two step brothers, namely Ramachandran and A.Subbiah Devar.

9.The father-in-law of the plaintiff, namely A.Ramachandiran, agreed to compensate defendant's father with a monetary benefit of Rs.1,10,00,000/- in exchange for the relinquishment of the defendant's father's right over the above mentioned property. Therefore, the suit claim is not a loan but an amount paid towards the relinquishment right of the defendant's father in the ancestral property.

10. Accordingly, the said amount which defendant's father is entitled was paid by the plaintiff to the defendant in three installments as follows:-

1.	*Rs.27,00,000/-*	*05.01.2019*	*by way of cheque*
2.	Rs.26,00,000/-	05.01.2019	by way of cheque
3.	Rs.17,00,000/-	29.01.2019	by way of cheque
4.	Rs.25,00,000/-	in the year 2019	by way of cheque from plaintiff's wife
5.	Rs.15,00,000/-	in the year 2019	by way of cheque from plaintiff's brother in law

11. Admittedly, the above Item Nos.4 and 5 are not paid by the plaintiff.

12. It is a specific case of the defendant, both in the counter application as well as in the written statement that the total sum of Rs.1,10,00,000/- paid by the plaintiff is not a loan transaction as alleged by the plaintiff. The sum is only consideration which the plaintiff and the defendant are not entitled to pay the defendant-father in turn for the relinquishment of the defendant's father's right over the defendant's grand father's property. Hence, prayed for dismissal of this application.

13. Heard the learned counsel for the petitioner and the respondent.

14, In both the written statement as well as in the counter, it is specifically stated that plaintiff paid a sum of Rs.10 lakhs and another sum of Rs.3 lakhs by way of cash, and the same is admitted by the defendant. It has also been returned that the payment of said amount of Rs.30 lakhs by the plaintiff as a loan to the defendant, and the said Rs.30 lakhs as a loan by the defendant to the plaintiff is also admitted. This assumes significance.

15. The learned counsel for the respondent contended that the suit is filed on 1.12.2023. The loan payment by way of cheque by the plaintiff was on 29.01.2019, and hence suit claim is barred by limitation.

16. The learned counsel for the petitioner contended that during the interregnum period Rs.30 lakhs has been paid and repaid between the plaintiff and the defendant, and hence he could stated that the suit claim is not barred by limitation. The point of limitation is left open to be decided at the time of trial.

17. In the instant case, out of 5 incidents of payment, the first 3 installments, as mentioned in the above tabular column, was by way of cheque made by the plaintiff on 05.01.2019 and 29.01.2019 plaintiff wife paid cheque in the year 2019. Rs.25 lakhs and the petitioner's brother in law paid Rs.15 lakhs in the year 2019.

18. On the plea of limitation, I am not expressing any view.

19. Admittedly, the learned counsel for the respondent stated that no prudent man can lend a huge amount like Rs.1,10,00,000/- without any surety or promissory note and wait for 4 years without any demand or claim is found to have enforce.

20. Considering the entirety of the circumstances and also the statements made in the written statement and counter statement, as well as the date of the filing, I find that an order of attachment could not be made, hence, this application stands closed.

21. Taking into account the allegations and counter-allegations made, the amount that has been claimed in the suit, and the point of limitation that has to be decided only at the time of final disposal in the suit.

22. In the result, this application is closed.

11.09.2024

nvi

RMT.TEEKAA RAMAN,J.,

nvi

Order in
A.No.1972 of 2024
and O.A.No.186 of 2024
in C.S.No.55 of 2024

11.09.2024