IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2024

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THE HON'BLE MR.JUSTICE **V.LAKSHMINARAYANAN**

CRP No.3475 of 2024 &
CMP.No.18804 of 2024

Mohan Rajes : Petitioner

versus

1.Dayalan Rajes
2.Gowri Pandiyanathan : Respondents

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal order dt. 19.06.2024 in IA No.9/2024 in OS No.212/2012 on the file of II Additional District Court, Salem

For Petitioner : Mr.R.R.Pradeep for
Mr.S.Sethuraman

For Respondent 1 : Mr.Sri Ganesh

For Respondent 2 : Mr.N.Sivabalan

ORDER

This civil revision petition arises against the order passed by the learned II Additional District Judge at Salem in I.A.No.9 of 2024 in O.S.No.212 of 2012 dated 19.06.2024.

2. O.S.No.212 of 2012 is a suit presented by the civil revision petitioner seeking recovery of a sum of Rs.13,81,000/- together with interest and for costs.

3. The plaintiff, the first defendant and the second defendant are siblings. The plaintiff and the first defendant had borrowed loans through two accounts. One of cash credit for a sum of Rs.40,00,000/- for Stanmore estate and another sum of Rs.17,31,000/- for Vaithankadu estate, both the estates are situated in Yercaud. In order to service the loan, the plaintiff and the first defendant had opened a joint saving bank account.

4. The plaintiff would state that the understanding between the parties

was that 50% of the loan amount was to be paid by the plaintiff and the remaining 50% was to be paid by the first defendant. He would further plead that from their personal accounts the plaintiff and the first defendant used to transfer monies to the joint Saving Bank Account and from the Joint Saving Bank Account, the amounts used to be transferred to the loan accounts.

5. The plaintiff would further plead that the second defendant is not liable to pay any amount. According to the plaintiff, the account become a non-performing asset due to the recalcitrant attitude of the first defendant. Consequently, the bank initiated proceedings of SARFAESI Act and issued a 13(2) notice on 09.01.2007.

6. At the instance of a common friend, one Ramsundar, the parties entered into a memorandum of Compromise on 17.02.2007, whereby the plaintiff undertook to pay 50% of the amounts towards discharge of the loan and the first defendant was to bear the remaining. As on 29.10.2011, the total outstanding payable to Tamilnadu Merchantile Bank is Rs.83,98,000/-

and after adjusting a sum of Rs.1,12,000/- which was paid by the Coffee Planters' Association as a subsidy, the remaining balance was Rs.82,86,000/-. The plaintiff would plead that this amount had to be paid by the plaintiff and the first defendant in equal sums namely Rs.41,43,000/- each. Sadly, the first defendant only remitted a sum of Rs.27,62,000/- leaving a balance of Rs.55,24,000/-. The plaintiff paid this amount in order to settle the dues of the bank. He would claim that as he has paid as excess of Rs.13,81,000/-, hence, he presented the suit.

7. The first defendant would admit to the loan and the maintenance of the joint account and transfer of monies from their personal accounts to the joint accounts. However, he would state that the amount of Rs.27,62,000/- (1/3rd of Rs.82,86,000/-) that he paid was in full discharge of his liability, since the second defendant was also liable to pay her share. Insofar as the memorandum of understanding is concerned, the first defendant would agree that the memorandum of understanding was entered into but he would plead that he never acted upon.

8. On these pleadings, the parties went to trial.

9. At this stage of evidence, the plaintiff took out an application in I.A.No.5 of 2023 seeking a direction to the Manager, Tamil Nadu Mercantile Bank, Yercaud Branch to produce the accounts relating to the loans that had been taken by the plaintiff and the first defendant. The manager, PW2 produced the accounts from 10.01.2004 to 24.03.2010 and it was received as Ex.A9. Insofar as the joint account that was maintained by the plaintiff and the first defendant is concerned, the statement was produced as document No.3 annexed in the plaint. For the period prior to 10.01.2004, the manager stated that it is not available in the branch but perhaps the same is available in the head office.

10. Not being satisfied with Ex.A9, the plaintiff issued a notice to the first defendant to produce the ledger folio for the period from 01.06.2006 to 24.09.2007 for his personal account maintained with the Tamil Nadu Mercantile Bank, Yercaud Branch. Since the first defendant did not produce the same, the plaintiff took out an application in I.A.No.9 of 2024. After

receiving a counter from the defendants, the learned Trial Judge went on to dismiss the application. Hence, the revision.

11. Learned counsel for the petitioner would argue that the learned Trial Judge, while dismissing the application, had not made a difference between the loan account that produced under Ex.A9 and the personal account of the first defendant, which was sought to be produced under the instant application. He would state that what was sought for in I.A.No.5 of 2023 was the loan account, which had been jointly availed by the plaintiff and the first defendant and what was sought for under the present application was the personal account of the first defendant from which the amounts were transferred by the first defendant to the joint saving account maintained by the plaintiff and the first defendant.

12. Per contra, Mr.Sri Ganesh would argue that there are several disputes pending between the parties and in any event, since the loan account and the joint accounts are already before the court, it is only a question of reconciliation of the accounts. In this sense, he would plead that

perusal of the joint account, which is produced along with the plaint as document No.3 would show as to who contributed to what extent and it does not require a disclosure of the personal account of the first defendant. He would add that the entire idea of the plaintiff is to procure evidence in this case so that it can be used in other litigations, which are pending between the parties. In addition, he would point out that the relief sought for in the application exceeds the period sought for in the notice to produce that was given by the plaintiff to the first defendant. He would point out that the notice to produce was for a period from 01.06.2006 to 24.09.2007, whereas the application seeks for the production of the accounts from the time the accounts were opened by the first defendant till 29.09.2011. Hence, he seeks for confirmation of the order.

13. I have carefully considered the arguments on either side and gone through the records.

14. I have to agree with the submissions of the learned counsel for the civil revision petitioner that the learned Trial Judge seems to have mixed up

the accounts between the parties and dismissed to the application. There are several accounts maintained by the parties. There are two personal saving accounts, one joint saving account and the loan account. What was produced by the PW2 under Ex.A9 is the statement relating to the loan account.

15. With respect to joint account, the plaintiff need not ask for the first defendant to produce the same as he had already produced it under document No.3. What was ought to be summoned under I.A.No.9 of 2024 was the individual personal account maintained by the first defendant. This certainly cannot be confused with the statement made by the PW2 at the time of production of Ex.E9.

16. Now, turning to the period to which the plaintiff would be entitled, I have to agree with Mr.Ganesh. As pointed out by him, the original demand to produce documents was only for the period from 01.06.2006 to 24.09.2007. Yet, for reasons not explained in the affidavit, it had bloomed into a period from inception to 29.09.2011. The petitioner pleads after

27.05.2006, the first defendant was only making 1/3rd share of the loan amount as against the agreed 50%. If that be the situation then the period that is fixed from 01.06.2006 to 24.09.2007 would be suffice.

17. It is here that the fear expressed by the learned counsel for the first respondent seems to loom large. It is not in dispute that by 09.01.2007, the loan account had become sticky and had been declared as a non performing asset. The final payment was made on 29.10.2011, which would obviously be reflected in Ex.A9. Therefore, the plea of division of ratio of 50:50 between the plaintiff and the first defendant for the period should be confined only as sought for by them on 04.02.2024 in their notice to produce.

18. Therefore, I am of the view that the civil revision petition deserves to be allowed, not to an extent that was sought for by civil revision petitioner, but only to the extent of issuing summons to the Manager, Tamil Nadu Mercantile Bank, Yercaud Branch to produce the statement in account No.02300710400010 for the period from 01.06.2006 to 24.09.2007.

19. With the above direction, this civil revision petition stands allowed. No costs.

18.09.2024

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Index : Yes/No
Speaking Order/Non-speaking order
Neutral Citation : Yes/No

V.LAKSHMINARAYANAN, J.

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To

The II Additional District Court, Salem.

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