



WEB COPY



Second Appeal No.18 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.18 of 2019
and C.M.P.No.286 of 2019

M.Venugopal

.... Appellant

-Vs-

T.Sakthivel

.... Respondent

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 04.03.2016 passed in A.S.No.46 of 2014 on the file of the Second Additional District and Sessions Court, Salem in confirming the judgment and decree dated 07.03.2014 passed in O.S.No.260 of 2011 on the file of the I Additional Sub Court, Salem.

For Appellants	: Mr.P.Mani
For Respondents	: Mr.Anbalagan

J U D G M E N T

The present Second Appeal arises out of the judgment and decree of the Additional District and Sessions Judge, Salem in A.S.No.46 of 2014. By the said judgment and decree dated 04.03.2016, the learned Additional District and Sessions Judge confirmed the judgment and decree of the Court of the I Additional Subordinate Judge at Salem in O.S.No.260 of 2011.



Second Appeal No.18 of 2019

WEB COPY

For the sake of convenience, the parties are referred to as per their rank in the original suit.

2. O.S.No.260 of 2011 was presented for recovery of a sum of Rs.1,44,128/- together with interest at the rate of 12% per annum from the date of filing of the suit till the decree and for further interest of 9% per annum from the date of the decree till the date of realisation.

3. The case of the plaintiff is that on 22.08.2007, the defendant had borrowed a sum of Rs.80,000/- towards his family expenses. In discharge of the said amount, the defendant had issued a cheque on 31.12.2007 in a cheque bearing No.799548 drawn on ICICI Bank, Sevvapet Branch, Salem. Since the amount was not repaid, the plaintiff had approached the defendant for the same. The defendant had called upon the plaintiff to present the cheque and assured that it will be honoured. The plaintiff had presented the cheque on 31.12.2007 and to his shock and surprise, the same was returned on 02.01.2008 stating the funds in the bank is insufficient. Being left with no other alternative, the plaintiff issued a lawyer's notice on 10.01.2008 to the defendant. The defendant received the notice on 14.01.2008 and issued a reply on 28.01.2008. In order to give an opportunity to the defendant, the plaintiff approached the



Second Appeal No.18 of 2019

defendant again and sought for repayment of the amount. As the defendant was evading the repayment, he presented the suit of recovery of money.

4. Summons were issued on the defendant and he entered appearance through a counsel. He filed a detailed written statement, whereby he pleaded that the plaintiff and defendant are close relatives and that the plaintiff had approached the defendant for help in commencing retail rice business. On the request of the plaintiff, the defendant had issued a blank cheque with only his signature as a "friendly gesture" to the plaintiff. Thereafter, the plaintiff started a retail business and is running the same. The defendant pleaded that he had approached the plaintiff on several occasions to return the cheque, but the plaintiff did not do so. On the contrary, he had unauthorisedly presented the same and the cheque was returned. He would plead that the suit be dismissed.

5. On the basis of these pleadings, the I Additional Subordinate Judge, Salem framed the following issues:

1. Whether the plaintiff is entitled for the suit claim as prayed for?
2. To what relief?



Second Appeal No.18 of 2019

6. On the side of the plaintiff, he examined himself as P.W.1 and marked Exs.A1 to A6. On the side of the defendant, he did not examine anyone else other than himself, he file not file any documents in support of his case.

7. On the basis of the pleadings and evidence let in before him, the learned trial Judge came to the conclusion that the suit presented on 23.12.2010 deserves to be decreed and accordingly decreed the same.

8. An appeal was preferred before the learned II Additional District and Sessions Judge at Salem, who, in and by way of his judgment dated 04.03.2016 dismissed the appeal.

9. Aggrieved by the concurrent findings of the Court below, the present Second Appeal had been presented before this Court on 08.01.2019. The Second Appeal was admitted on the following substantial questions of law on that date:

1. *Whether in law the suit as instituted by the plaintiff is barred by limitation when the same has not been filed within 3 years from the date of borrowal and handing over of the post dated cheque issued unconditionally as per Article 19 of the Limitation Act?*
2. *Whether the lower appellate Court erred in law in taking*



into account the date mentioned in the post dated cheque for computing the date of delivery of the post dated cheque alleged to have been issued unconditionally for the purpose of Section 18 of the Limitation Act?

3. *Whether the judgment and decree passed by the Courts below are sustainable in law when they have rendered perverse findings on mere surmises and conjectures without any basis?*

10. Mr.P.Mani, learned counsel for the appellant would submit that the loan having been given on 22.08.2007 that should be treated as commencement of limitation for the suit. He would state that the suit having been filed three years after the date on which the alleged transaction was entered into, is hopelessly barred by time. He urges though he has not pleaded limitation as ground to defeat the suit, he would rely upon Section 3 of the Limitation Act and would urge that it is the duty of the Court to take into consideration the provisions of the Limitation Act and that the Courts below having erroneously failed to consider this plea, his appeal deserves acceptance.

11. Though notice has been served on the respondent and a counsel entered appearance, none appeared for the respondent.

12. The two questions of law of limitation being inextricably linked, they



are heard together.

WEB COPY

13. There is no dispute on the following dates.

- (a) The loan is said to have been given on 22.08.2007.
- (b) The defendant had given an unfilled cheque on that day itself,
- (c) The date of the cheque was 31.12.2007,
- (d) The cheque was presented on 31.12.2007,
- (e) It was returned on 02.01.2008, and
- (f) Thereafter, with the exchange of notices on 10.01.2008 and 28.01.2008, the suit came to be filed on 23.12.2010.

14. The factum of issuance of the cheque is not in dispute. Though the defendant had pleaded that the cheque was actually handed over in March 2007, he had not let in any evidence worth its name to substantiate the same. On the contrary, the plaintiff had filed the cheque under Ex.A1, and the counterfoil and the return memo under Exs.A2 and A3 to substantiate his pleadings. The cause of action for the purpose of filing a suit on the basis of the cheque that had been issued and dishonoured would arise on the date on which the cheque had been returned. This is because, if the cheque had been honoured on 31.12.2007 ie., the date from which its validity commences, then the question of filing the suit for recovery of money itself will not arise. This is



Second Appeal No.18 of 2019

because, the debt incurred on 22.08.2007 would have been extinguished on 31.12.2007.

15. In the facts of this case, the cheque having been given with a specific date on 31.12.2007, the plaintiff became aware of the dishonour thereof only only on 02.01.2008. He had a period of three years from the date of intimation of the dishonour viz., 02.01.2008 to 01.01.2011 to present the suit. Fortunately for the plaintiff, he had presented the suit on 23.12.2010 ie., at least 8 days before the lapse of the period of limitation. To reiterate, it is not the date of issuance of the cheque that should be considered in a suit for recovery of money on the basis of a cheque that has been dishonoured, but it should be the date on which the dishonour is intimated to the plaintiff. If that date is taken into consideration, the suit is in time. Therefore, the questions of law framed by Mr.Mani are answered against the appellant and in favour of the respondent. The Second Appeal is dismissed. Costs throughout. Consequently, connected miscellaneous petition is also dismissed.

06.06.2024

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



WEB COPY



Second Appeal No.18 of 2019

V.LAKSHMINARAYANAN, J.

KST

To

- 1.The I Additional Subordinate Judge
Salem.
- 2.The Additional District and Sessions Judge
Fast Track Court-II, District Judge
Salem.

S.A.No.18 of 2019

06.06.2024