



A.S.(MD).No.220 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:23.09.2024

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN
AND
THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN

A.S.(MD).No.220 of 2018
and
C.M.P.(MD).No.726 of 2019

Raja Holding (Firm),
Rep.by its Managing Partner,
R.V.Subramaniam,
No.69, Town High School Road,
Kumbakonam

... Appellant/Plaintiff

Vs.

1.N.Navaneethakrishnan [Died]

2.N.Kanthimathi

3.S.Rajinikanth

4.N.Meenakshi

...Respondents 1 to 4/Defendants 1 to 4

5.S.Geetha

6.S.Sakthivel

... Respondents 5 & 6

(Respondents No.5 and 6 are brought on record as
LRS of the deceased 1st Respondent vide Court
order dated 4/10/2019 made in
CMP(MD).No.4583/2019 in AS.No.220/2018)



A.S.(MD).No.220 of 2018

Prayer : First Appeal filed under Section 96 of Civil Procedure Code, praying to set aside the Judgment and final decree dated 23.12.2016 in O.S.No.51 of 2013 on the file of the Principal District Judge, Thanjavur in so far as against the appellants and grant the decree as prayed for in favour of the appellant against the third and 4th defendant.

For Appellant	: Mr.A.RL.Sundaresan (Senior Counsel) for Mr.C.Mahadevan
For Respondents	:R1 and R2 died :Mr.R.Paranjothi for R3 :Mr.Harish Vaidyanathan for Mr.Guru Dhananjay for R4 :R5 and R6 No appearance.

JUDGMENT

[Order of the Court was made by **K.K.RAMAKRISHNAN, J.**]

The plaintiff in O.S.NO. 51 of 2013 on the file of the Principal District Judge, Thanjavur, has filed this appeal challenging the dismissal of the suit against the third and fourth defendants and also the dismissal of the claim of interest of 30% as agreed by the first and second defendants to pay the amount of Rs.3,98,20,200/- with the interest of 30%.

2.For better appreciation of fact and easy reference, the rank of the parties stated in the Court below is followed hereunder:



A.S.(MD).No.220 of 2018

WEB COPY

2.1.The appellant is running a finance business in the name of M/s.Raja Holding (Firm registered under the partner ship Act 1932) at Door No.69, town High Secondary School Road, Kumbakonam.

3.The first defendant is arrayed as first respondent in this appeal and the second defendant is arrayed as second respondent and the third and fourth defendants are arrayed as third and fourth respondents. During the pendency of the appeal, the first defendant died and hence, the legal heirs are added as a party to this proceeding.

4.The case of the plaintiff before the trial court

4.1.The first and second defendants, son-in-law is third defendant and the daughter is fourth defendant. First and second defendants have jointly borrowed a sum of Rs.2,78,00,000/- upon execution of 13 promissory notes on various dates commencing from 30.06.2009, with undertaking to repay the amount with interest of 36% per annum for the family business Senthilnathan Agency and N.Meena Enterprises and for other family expenses. Apart from that on 30.03.2011, the defendants 1 and 2 jointly borrowed a short term loan amount of Rs.3 crores from the plaintiff on 30.03.2011 upon executing the promissory note in favour of the plaintiff with undertaking to pay the interest for the said loan at the rate of 36% per annum. Thereafter they have made some payment and agreed to repay the entire



A.S.(MD).No.220 of 2018

WEB COPY

amount by executing undertaking letter dated 07.05.2011 with promise to pay the amount within a week. Again on 22.10.2011 D1 and D2 have jointly executed confirmation letter acknowledging the repayment of the amount of Rs.2,99,40,000/-. In the said letter, they undertook to repay within 20 days. The third defendant/son-in-law and the fourth defendant/daughter of the defendant Nos.1 and 2 specifically undertook to repay the amount by executing the guarantee letter dated 15.11.2012. They were also not interested in the repayment. On the basis of the letter dated 07.05.2011, 22.10.2011 and 15.11.2012, all the defendants are jointly and severally liable to pay the debt amount. Since, the defendants 3 and 4 in the guarantee letter dated 15.11.2012 demanded reduction of interest and also some interest was paid and the plaintiff filed a suit claiming 30% interest. The plaintiff suit was filed for recovery of the amount of Rs.3,99,20,220/- with agreed interest of 30% from the date of plaint till the date of realization.

5.The case of the defedants 1 and 2 before the trial court:

They defendant Nos.1 and 2 have filed the written statement admitting the relationship and also admitted the above mentioned transaction in the plaint. They also admitted the execution of the promissory notes, execution of the undertaking letter dated 07.05.2011, 22.10.2011 and further the guarantee letter executed by D3 and D4 dated 15.11.2012. But, they sought to dismiss the suit against D3 and D4 and



A.S.(MD).No.220 of 2018

WEB COPY

also they sought the benefit under the Tamil Debt Relief Act and also raised a plea that the rate of interest was against the law and the same amounts to the collection of usurious interest. They also pleaded that more than 3.35 crores have already been paid to the plaintiff. They also pleaded that the amount was not obtained for anyother family business and as a Kartha of the family.

6. The case of the defendants 3 and 4 before the trial court:

They denied that the amount was borrowed for the business purpose and for the Senthilnathan agency and N.Meena enterprises. They pleaded that there was a negotiation relating to the repayment of the loan amount in their presence and during the said negotiation, they persuaded the defendants 1 and 2 to pay the amount with reasonable and admissible rate of interest. The said document dated 15.11.2012 is not properly stamped and inadmissible inevidence. Therefore, they are not necessary parties to the suit and hence they prayed to dismiss the suit under Order 1 Rule 10 of C.P.C. on the ground of misjoinder of the party. They also pleaded that the suit claim with the interest is against law and there is no privity of contract between the plaintiff and the defendants. They also reserved the right to file the petition to reject the plaint on the ground that they are not necessary and proper party to the suit.

7. Finding of the learned judge :-



A.S.(MD).No.220 of 2018

WEB COPY

7.1. The learned trial Judge after completion of the pleadings framed more than 13 issues. To prove the case of the plaintiff, P.W.1 to P.W.4 were examined and Ex.A1 to Ex.A39 were marked. On the side of the defendants, the first defendant was examined as DW1 and the third defendant was examined as DW3 and the officer from the City Union Bank, Kumbakonam, was examined as DW2 and the marked Ex.B1 to B4 and Ex.C1 to Ex.C4 were filed with documents ie., relating to account statement of fourth defendant in the City Union Bank, Kumbakonam.

8. The learned Trial Judge has dismissed the suit against D3 and D4 on the ground that they are not a proper party to the suit and there was no tripartite agreement and hence the claim on the basis of Ex.A19 dated 15.11.2012, executed by the D3 and D4 is not maintainable. The learned trial judge also decreed the suit against the D1 and D2 with direction to pay interest at the rate of 12% from the date of the plaint upto the date of the decree and further interest of 6% from the date of decree till realization by passing the impugned judgement and decree in O.S.No. 51 of 2013 on the file of the Principal District Judge, Thanjavur dated 23.12.2016. Challenging the same, the appellant have filed this appeal.

9. The learned Senior Counsel Mr.A.R.L.Sundaresan appearing for the appellant made the following submissions:



A.S.(MD).No.220 of 2018

9.1.D3 and D4 have filed the written statement and they admitted the execution of A19 dated 15.11.2012. The Ex.A19 was the letter of guarantee and both D3 and D4 clearly undertook to pay the amount and the same is letter of guarantee. They have filed the interlocutory application in I.A.No. 14 of 2014 to remove them from the array of the defendants in the suit under Order 1 Rule 10 of C.P.C., stating that they are not the necessary and proper party. The same was dismissed and aggrieved over the same they filed the C.R.P.No. 678 of 2015 before this court and this court dismissed the said petition and held that they cannot be heard to say that they are unnecessary party. In the said circumstances, the Learned Trial Judge finding that D3 and D4 is not proper party is erroneous one.

9.2. Under the Ex.A19, D3 and D4 clearly gave an undertaking to repay the amount and the same was not properly considered by the learned trial judge. Ex.A19 satisfied all the ingredients of the guarantee and therefore the dismissal of the suit against the D3 and D4 is not accordance with law.

9.3. Once the learned trial Judge gave a finding that the appellant is entitled to 30% interest on the basis of Ex.A18, the learned trial Judge ought to have granted interest of 30%. He has no discretionary power to award interest when there was a commercial transaction and there is an agreement to pay the commercial interest.

Apart from that there was no appeal either by the D1 & D2 or by D3 & D4 therefore



A.S.(MD).No.220 of 2018

he seeks to set aside the dismissal of suit against the D3 & D4 and decree the suit against the D3 & D4 and also grant interest of 30%.

9.4.D1 and D2 made number of alienation in order to defeat and thwart the claim of the plaintiff and also made the transfer of the valuable property in favour of the D4 and D3 and the said special circumstances ought to have been taken by the Learned Trial Judge to decree the suit.

10.The learned counsel for the D3 and D4 made the following submission:

10.1. The learned trial Judge considered the various documents namely Ex.A17, A18 and A19 and has held that the D3 & D4 had not signed A17 and A18 and D1 & D2 had not signed the A19 and hence there was no triparte agreement and therefore the claim against D3 & D4 is not maintainable. The said finding is on the basis of the evidence and appreciation of the contents of the documents. Therefore, this court has no power to interfere with said finding.

10.2. The learned trial judge specifically held that the D3 & D4 is not proper party and the suit is not maintainable against them. There is no perversity in the said finding and the same needs no interference.

10.3. The learned trial judge considering the payment made by D1 & D2, has reduced the interest and therefore the same needs no interference.



A.S.(MD).No.220 of 2018

10.4. The alienation made in favour of the D3 & D4 to pay the bank dues cannot be taken against the D3 & D4 to fix the liability of D1 and D2.

10.5. The plaintiffs obtained the Ex.A19 under threat and coercion and the same was stated in the counter affidavit filed before this court in the C.M.P.No. 726 of 2019 filed before this court by the plaintiff under order 39 rule 1 and 2 of C.P.C., claiming the relief of restraining the defendants from alienating the properties. In the said counter affidavit, it is clearly stated that the document was executed under threat and coercion. Therefore, the claim is not maintainable on the basis of Ex.A19 against the D3 and D4.

11. The learned senior counsel Mr.A.R.L.Sundaresan made the following reply:

11.1. The Learned counsel for D3 & D4 raised a new plea of threat and coercion. In the written statement, he never raised the said plea and also D1 and D2 also admitted the said execution. D1 also deposed before this court above the execution of Ex.A19. In the said circumstances the said plea is liable to be rejected.

12.This Court considered the rival submission and perused the record and also the precedents relied upon by them.

13.The following points for determination arise in this appeal:



A.S.(MD).No.220 of 2018

WEB COPY
of Ex.A19?

13.1. Whether appellant is entitled to get decree against D3 and D4 on the basis

13.2. Whether the learned trial Judge is correct in awarding the interest of 12% from the date of the suit up to date of the decree 12% and 6% till the date of recovery?

14. Discussion on the plea of Coercion and undue influence

The respondents admitted their relationships. The first and second defendants in the suit are the parents of the fourth defendant. The third defendant is the husband of the fourth defendant. The appellant case is that D1 and D2 borrowed a sum of Rs.2,78,00,000/- upon executing 13 promissory notes with undertaking to repay the amount with 36% per annum and this is not disputed. They committed default and hence, they further agreed to repay the said amount of the remaining amount of Rs.2,99,40,000/- on 07.05.2011. Further, D1 and D2 acknowledged and confirmed the said loan amount with undertaking to repay the amount by letter dated 22.10.2011. To discharge the said amount, in order to save D1 and D2, D3 and D4 jointly executed letter of undertaking to pay the agreed debt amount mentioned in the letter dated 20-10-2011. The said undertaking is marked as Ex.A19. On the basis of Ex.A19, the suit was filed by the appellant to repay the amount. D3 and D4 have filed the written statement stating that the said document is inadmissible and



A.S.(MD).No.220 of 2018

WEB COPY

also the same is not in the stamp paper and hence, the same is not admissible. The claim made on the basis of the same is not legally sustainable. They further pleaded that they never agreed to repay the loan amount. They also pleaded that they are not necessary party to the suit and hence, the suit is liable to be dismissed on the ground of the mis-joinder of party. But, during the course of the interlocutory proceedings, they took a stand that the said document was obtained by the force and under duress. This Court considered the evidence available on record. The case of D3 and D4 that the same was obtained under duress cannot be accepted on the ground that they neither raised a plea in the written statement nor established the said plea. Their specific case during the chief examination, is that the said document was obtained by force. They further admitted that they have not taken any action against the person, who had obtained this said document by force. They also admitted that they never raised the said plea in the written statement.

15. It is well settled, as per the order 6 Rule 4 of the C.P.C. pleadings must be specific relating to the "*undue influence*" etc., Further, order 8 rule 5 of the C.P.C.also demands specific denial of the Ex.A19 with required pleadings under which circumstances it had been executed.

16. Pleadings are foundation of the litigation. Pleadings not only define the issues between the parties for the final decision of the court at the trial, and also they



manifest and exert their importance throughout the whole process of the litigation.

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17.This Court is unable to find any pleadings of either coercion or undue influence and the only available pleadings is as follows:

This defendant only stated that this defendant will inform or persuade the borrowers to pay the amount borrowed with reasonable and admissible rate of interest and never agreed to pay the amount, if not paid by the defendants 1 and 2. Hence there was no undertaking to repay the amount. Under no stretch of imagination, the plaintiff can contend, that the letter dated 15.11.2012 is a guarantee document and therefore, this defendant and fourth defendant are also liable for suit claim. The document dated 15.11.2012 is not properly stamped and it is clearly inadmissible in evidence. Based on the invalid, inadmissible and not properly stamped document, the plaintiff has no right to implead this defendant and fourth defendants in the above suit. Hence, this defendant is not either jointly or severally liable to pay the suit claim. In view of this defendant and fourth defendant are unnecessary party to the suit, the suit as against this defendant has to be dismissed as per the provisions of Order 1 Rule 10 of the C.P.C. For instituting a case against wrong person.

Therefore, the learned trial judge also has not framed any issue.

18.During the course of the trial, D3 examined himself as D.W.3. In his



A.S.(MD).No.220 of 2018

WEB COPY

evidence, he specifically deposed that the plaintiff's son and another person came and obtained the signature under the threat in his house, from him and his wife. At that time, their servants were available in the house. They threatened and obtained the signature and left the house around 1'o clock on the day. He never called any person to help. He never made a police complaint. He also did not disclose the same to any person. He also admitted that he never disclosed the above fact in the written statement also. Curiously, he further deposed that no force was used to obtain the signature. Considering the said deposition of D.W.3, this Court has every reason to hold that D.W.3 had made false story to disown their liability. His evidence is not trustworthy. Apart from that, D.W.1 admitted that D3 and D4 executed A19. In the said circumstances, the plea of the execution of the said document under duress is nothing but without plea and without any iota of evidence. Hence, new case of D3 and D4 in the course of the present appeal suit proceedings that the same was obtained by the force and coercion has no legs to stand on. Therefore, this Court declines to accept the argument of the learned counsel for the defendants 3 and 4 that Ex.A19 had been obtained by force and coercion on the basis of the averment made in the counter affidavit filed in the interlocutory application filed by the appellants under order 39 rule 1 and 2 of CPC to restrain the defendants from making alienation cannot be accepted. Accordingly, Ex.A19 is executed without any



A.S.(MD).No.220 of 2018

force or duress as argued by the learned counsel for the appellant.

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19.Discussion on the contents of Ex.A19:

19.1.The next contention of the learned counsel for D3 and D4 that the said contents of the document could not create any liability either under the implied guarantee or the expressed guarantee.

19.2.On the plain words of the Ex.A19 it is clear that the defendants 3 and 4 under took to repay the amount of Rs.2,99,40,000/-. There is a clear promise to make the repayment of D1 and D2 without any ambiguity either in the form or words of the contents of the Ex.A19. Before making further discussion on this issue, it is relevant to extract the contents of Ex.A19 which reads as follows:

S.Rajinikanth & R.Meenakshi,

42 fourth Street,

Arulanada Nagar,

Thanjavur

15.11.2012

Mr.R.V.Subramanian,

M/s. Roja Holdings,

No. 69, Town Higher Secondary School Road,



A.S.(MD).No.220 of 2018

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Dear Sir,

With regards to the borrowal of Shri. M.Naveentha Krishnan and Shrimathi. N.Kanthimathi we have come to understand that the total principal amount due to you is Rs.2,99,40,000.00/- (Rupee Two Crores Ninety Nine Lakhs Forty Thousand only).

With reference to the numerous discussions that we had on the above subject, and in consideration of the borrowers age and as requested by you, we have come forward to undertake and facilitate the repayment of the same before 31.03.2013. And as assured by you, we also request you to offer us a waiver/ concession on the same.

Thanking you

Sincerely

S.Rajinikanth

R.Meenakshi



A.S.(MD).No.220 of 2018

WEB COPY

20. From the above contents of Ex.A19, there is a clear enumeration of the following facts:

20.1. There is undeniable liability to pay a sum of Rs.2,99,44,000/-.

20.2. There is unequivocal, clear, unambiguous undertaking to pay the said amount.

20.3. There is a promise to accelerate, speedup and quicken the repayment before 30.03.2013.

20.4. Above all, their intention to undertake the payment not only on the basis of the relationship and surrounding circumstances namely, mother-in-law of D.W.3 transferred her property in favour of D.W.3.

20.5. Therefore, in view of the above discussion, this Court has firm opinion that the essential condition of guarantee as required under Section 126 of the Contract Act to mulct liability of the D1 and D2 under Ex.A19 is available in its clear terms. Hence, the learned trial judge's finding that there is no privity of contract is not correct. Therefore, D3 and D4 are liable to pay the amount of Rs.2,99,40,000/-. In the view of the above discussion, the contention of the counsel that there was no undertaking and there was no obligation created under Ex.A.19 cannot be accepted.



A.S.(MD).No.220 of 2018

21. Discussion on the mis-joinder of party

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During the pendency of the suit, D3 and D4 have filed the interlocutory application under Order 1 Rule 10 of C.P.C., before the learned trial Judge to exonerate them from the suit as mis-joinder of parties. The said plea was negatived by the learned trial judge and the same was confirmed by this Court in C.R.P. (MD).No.678 of 2015. In the said circumstances, the learned judge's finding that they are not necessary party to the proceedings is perverse and the same is liable to be set aside.

22. Discussion on interest:

22.1. The learned Senior counsel appearing for the appellant contended that the learned trial judge without any reason granted decree for by the liability from the date of the plaint and grant of 12% interest from the date of the plaint to the date of the judgment and the subsequent interest of 6% is not in accordance with law. This Court perused the various communications said to have taken place between the parties. In Ex.A18, there was a reference about the number of communication to reduce the interest on behalf of the D1 and D2. In Ex.A19 also, there is a reference about the reduction of interest. Even as per the appellant's case, the original agreed interest of 36% was reduced to 30%. Further, there was a payment also made towards the interest. In assessing the overall circumstances, this Court concurs with



A.S.(MD).No.220 of 2018

WEB COPY

the awarding of interest by the learned trial Judge at the rate of 12% from the date of the plaint to the date of decree and subsequent interest of 6% from the date of the decree till realisation. There is no reason to interfere with.

22.2. In view of the above discussion, the finding of the learned trial judge that D3 and D4 are not liable to pay the amount under Ex.A19 is erroneous and hence, the same is liable to be set aside and the finding of the learned trial Judge in awarding the interest as discussed above is in accordance with law and the same is not required to be interfered.

23. Accordingly, the appeal is partly allowed with cost payable by D.3 and D.4 in the following terms:-

23.1. The judgment and the decree passed by the learned Principal District Judge, Thanjavur, in O.S.No.51 of 2013, dated 23.12.2016 is set aside in respect of the portion of dismissing the suit against D.3 and D.4.

23.2. All the defendants D.1 to D.4 are jointly and severally liable to pay the decree amount granted in O.S.No.51 of 2013.

23.3. The plaintiff is entitled to relief of decree as against D-3 and D-4 also.



A.S.(MD).No.220 of 2018

Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CS III)

// True Copy //

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Sub Assistant Registrar
(CS- I/ II / III / IV)

sbn

TO

The Principal District Judge, Thanjavur.

Copy to:

The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.C.MAHADEVAN, Advocate (SR-52839 dated 23/09/2024)

+1 CC to M/s.KBS LAW OFFICE, Advocate (SR-53031 dated 23/09/2024)

+1 CC to M/s.GURU DHANANJAY, Advocate (SR-53539 dated 24/09/2024)

A.S.(MD).No.220 of 2018

and

C.M.P.(MD).No.726 of 2019

23.09.2024

MGJ(04.10.2024) 19P 7C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023