IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.582 of 2022

Dr.Aramuthan, 51 years,
Son of Murugaiyan,
No.46, Perumal Sannathi Street,
Nagapattinam Town & Taluk. ... Appellant/Plaintiff

/versus/

1. Fedrick Rajan, 42 years,
S/o.Rajan.

2. Rajan,
S/o.Arputharaj,

3. Dominic Rajan, 38 years,
S/o.Rajan.

All are residing at
Sivan Kelavithi,
Poraiyar,
Tharagampadi Taluk,
Nagapattinam District. ... Defendants/Respondents

Prayer:- Appeal Suit has been filed under Section 96 of the Civil Procedure Code, pleased to allow the appeal by setting aside the judgment and decree dated 24.08.2022 passed in O.S.No.19 of 2015 on the file of the Principal District Court, Nagapattinam.

For Appellant : Mr.S.Senthil

For Respondents : No appearance

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JUDGMENT

The appeal is filed against the dismissal of the suit for recovery of money. The appellant is a Teaching Faculty member at a College, came into contact with the 1st defendant, who joined him as a Research Scholar. Later, the acquittance became a close friendship, which led the appellant/Plaintiff to invest a sum of Rs.27,00,000/- in a business run by the 1st defendant and his family members.

2. The case of the plaintiff/appellant is that the defendants, who are father and sons, promised him an attractive return of Rs.8000/- per lakh every month as dividend. However, only a sum of Rs.3,63,000/- was paid as dividend for the money invested between February 2012 to October 2012. To make him believe that they were honest persons, the defendants issued 31 post-dated cheques to the plaintiff. Thereafter, the agreed dividends were not paid. Hence, realising that the cheques had been issued without sufficient funds given with intention to cheat. Therefore, the plaintiff lodged a criminal complaint against the defendants and Marie Rajan, (wife of 2nd defendant) to the District Crime Branch, on 22.12.2012.

3. In response, the 1st defendant issued a notice through his Advocate, admitting receipt of Rs.27,00,000/- and undertaking to pay Rs.9000/- per month as interest for the money received. However, he contended that the money was received to invest in an online commodity trading, as per the instructions of the plaintiff and the failure of the online trading company to pay the dividends cannot be fastened on the defendants. The notice of the 1st defendant been duly replied by the plaintiff on 25.07.2013.

4. Based on the complaint given by the plaintiff, a case was registered against the defendants, Fedrick Rajan, A.Rajan, Marie Rajan, Dominic Rajan under Crime No.8 of 2013 for the offences under Section 420 and 506(ii) of I.P.C. The 1st defendant and Marie Rajan were arrested. The investigation is still pending for recovery of the balance amount of Rs.23,37,000/-, after defraying Rs.3,63,000/- received as dividend, the present suit been filed.

5. The 1st defendant filed written statement, which was adopted by the other defendants. In the written statement, it was specifically contended that the money was invested by the plaintiff through the 1st defendant since the plaintiff is a Government Servant and not permitted to involve in commercial activities as per the service code of conduct. The *Multi Commodity Exchange* company, run by *Almighty Capital Management Service* and *Maxpro Marketers Limited,* had cheated not only the plaintiff but also the defendants, who had also invested their money in the said Multi Level Marketing Company.

6. According to the defendants, the plaintiff's money was invested in the said Online Commodity business and the dividends were only paid by them. When the plaintiff came to know that the said *Multi Commodity Exchange* Company had cheated several investors, complaint was given to the police by the defendants under Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1977. Pursuant to the complaint, the property worth Rs.26,00,00,000/- of *Maxpro Marketers Limited* had been confiscated. The cheques alleged to have been issued by the defendants were not given voluntarily or during the transaction as alleged by the plaintiff. It was obtained by force and threat using rowdy elements. The plaintiff, along with anti-social elements came to the house of the defendants on 16.12.2012 and attacked the 1st defendant in the presence of his family members. Out of fear, blank cheques were signed by the 1st defendant and handed over to the plaintiff and his henchmen. It is further stated that, due to the false complaint given by the plaintiff, Marie Rajan, the wife of 2nd defendant was arrested and detained in Sub-Jail, Thiruvarur. She died in the prison unbearable of ignominy. The alleged notice through Advocate was not issued by the 1st defendant on his instructions but it is a creation of the plaintiff as if, the 1st defendant has admitted receipt of Rs.27,00,000/- from the plaintiff.

7. The trial Court, based on the pleadings, framed the following issues:-

> 1. Whether the defendants received any amount from the plaintiff or not?
> 2. Whether these defendants accepted to repay the amount as mentioned in the plaint along with interest or not?
> 3. Whether any cause of action arise to file this suit by the plaintiff or not?
> 4. Whether the Court fee paid by the plaintiff is correct or not?

5. Whether the plaintiff is entitled to get reliefs as required in the plaint or not? And thereby plaintiff is entitled to get the amount as mentioned in the plaint with interest from the defendants or not?

6. What are all other relief?

8. The plaintiff examined as P.W.1 and 14 documents (Ex.A1 to Ex.A.14) were marked on his behalf. The 1st defendant mounted the witness box subjected himself for cross examination but had not filed any document.

9. The trial Court, on appreciation of evidence, found that the plaintiff has given Rs.27,00,000/- to the defendants and same is admitted by the 1st defendant through his notice. The cheques were also issued by the 1st defendant to discharge the money received and payment of Rs.3,63,000/- towards interest also taken into account by the trial Court. However, considering the fact that the money been invested expecting exorbitant interest, which is against the public policy. Further, it is held that any investment by a public servant must be intimated to his Employer. Having failed to intimate about the investment and the agreement for payment of exorbitant interest, the case of the plaintiff only proves borrowal of Rs.27,00,000/- by the 1st defendant but not promise to return the same with interest. For the said reason, the trial Court has dismissed the suit.

10. Being aggrieved by the dismissal of the suit, the plaintiff has preferred the appeal, contending that after holding that the 1st defendant has admitted his liability both in the notice issued through his Advocate as well as in the cross examination, the trial Court ought not to have rejected the case of the plaintiff seeking decree for the money unpaid. The admission of the 1st defendant in the cross examination been overlooked by the trial Court being carried away by the fact that the investment was made expecting exorbitant interest at the rate of 108% p.a. The trial Court has also drawn an adverse inference against the plaintiff for not disclosing the investment to the Employer, even though, he being a Government Servant. The trial Court failed to take note that the money was given only to the defendants as a loan and not investment in a business.

11. The plea of the defendants that the money was invested in an online business on behalf of the plaintiff is not proved by any documentary evidence. Having admitted the receipt of Rs.27,00,000/-, the burden shifted to the defendants to either prove the discharge of the said loan or the investment of the money in the alleged online business. In the absence of proof for either of the two above, the trial Court ought not to have dismissed the suit.

12. Though notice in the appeal was duly served on the defendants, they have not entered appearance despite receipt of the same.

Point for consideration:-

Whether the admission of the 1st defendant in the cross examination about the receipt of Rs.27,00,000/- from the plaintiff is sufficient to grant a decree for recovery of money?

13. The case of the plaintiff is that he paid a sum of Rs.27,00,000/- to the 1st defendant. His attempted to be substantiated through the admission of the 1st defendant, who was examined as D.W.1 and with the help of bank statements and passbook entries, which are marked as Ex.A6, Ex.A10 & Ex.A11. The cross examination of D.W.1 on the whole though he admits receipt of money from the plaintiff on various dates, his consistent stand is that those money was received for the purpose of investing in the Online Trade on behalf of the plaintiff. The police complaint given by the plaintiff, leading to registration of F.I.R in Crime No.8 of

2013 on the file of the District Crime Branch, Nagapattinam, reveals that the plaintiff has given a complaint stating that the 1st plaintiff had collected the money from him and his friend, promising to invest in an online commodity trading business and assured that for every one lakh investment, there would be return of Rs.8000/- per month and after 13 months, the money invested will also be returned. The 1st defendant enticed the plaintiff to promote the scheme among the friends and collect money. As per the complaint, the plaintiff states that on the promise, he has invested Rs.27,00,000/- on various dates in instalment and to make him believe, several cheques were issued to him. For the said investment, the father of the 1st defendant Mr.A.Rajan/the 2nd defendant herein, the mother of the 1st defendant Ms.Mari and brother of 1st defendant Dominic Rajan (3rd defendant) stood as guarantors. After making a complaint that the money was invested in an Online Trade, the plaintiff had come out with a different story in his suit as if, he has given the money to the 1st defendant as loan. The suppression of fact and the expectation of exorbitant interest against the public policy been recorded by the trial Court and the suit been dismissed as enforcement of a contract against the public policy.

14. This Court, after verifying the documents and the oral evidence of the plaintiff and the 1st defendant, hold that the complaint given by the plaintiff and the averments in the plaint are contradictory to each other about the cause of action. In any event, in the absence of specific agreement or admission by the defendants that the money invested or given to the defendants has to be repaid, with or without interest. The defence taken by the 1st defendant that it was a benami transaction on behalf of the plaintiff invested in an Online Trade and later been cheated has to be accepted. Whether in the course of cheating, the defendants had any role has to be tested in the investigation by the District Crime Branch, who are taken the complaint of the plaintiff and investigating the same.

15. This Court is of the view that a contract against the public policy is unenforceable and court cannot pass a decree for an enforcement of contract against the public policy. Accordingly, the ***Appeal Suit No.582 of 2022 is dismissed.*** The judgment and decree passed by the trial Court in O.S.No.19 of 2015 is confirmed. There shall be no orders as to costs.

29.07.2025

Index :Yes/No.
Neutral citation :Yes/No.

To,

1. The Principal District Court, Nagapattinam.
2.The Section Officer, V.R.Section, High Court, Madras.

Dr.G.JAYACHANDRAN,J.

bsm

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