



WEB COPY

A.S.No.325 of 2018
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2026

CORAM

THE HONOURABLE MR . JUSTICE N.SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

A.S.No.325 of 2018
& C.M.P.No.8222 of 2018

1. V.Ganesh Kumar
2. Mrs.Uma Maheswari

... Appellants

Versus

N.V.Krishnan

... Respondents

First Appeal filed under Section 96 of CPC to set aside the judgment and decree passed in O.S.No.487 of 2012 dated 29.08.2017 on the file of V Additional District Judge, Coimbatore.

For Appellants : Mr.S.Saravanakumar

For Respondent : Mr.C.Umashankar
for Mr.S.Sairaman

JUDGMENT

(Judgment of the Court was made by **N.SATHISH KUMAR, J.**)

Challenging the judgment and decree of the trial Court decreeing the suit for Rs.30,00,000/- with interest at the rate of 12% per annum from 1/11



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04.06.2009 being the date of deed of confirmation till the date of decree and thereafter, 6% per annum on Rs.30,00,000/- till the date of realization and also directed to pay interest on the sum of Rs.20,00,000/- jointly and severally to the plaintiff at the rate of 12% per annum from 04.06.2009 being the date of deed of confirmation till 18.01.2011, being the date when the said amount has been transferred to the account of the plaintiff.

2. The brief facts leading to the filing of the suit is as follows:

The plaintiff is engaged in stone crushing activities in the name and style of “Sri Tamilzh Krishna Blue Metals”. First defendant is the husband of second defendant. First defendant and the second respondent are running proprietary concerns in the name and style “Dynamic Equipments and Conveyors Co.,” and “Varshini Equipments” respectively and are engaged in manufacture of Stone Crushers. In addition to Stone Crushers, first respondent is also engaged in the business of manufacture of Conveyors. The plaintiff had placed an order with first defendant for a sum of Rs.50 lakhs for the purchase of crusher machine by availing a loan from the State Bank of India, Walajapet Branch. The amount was paid to the first defendant by way of a Demand Draft bearing No.043581 dated 19.08.2008. The first defendant, having received the payment, issued a receipt in its letter pad and



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also assured to supply the stone crusher within 45 days from the date of payment, but the first respondent did not supply the equipment as promised in stead he sent a letter dated 06.05.2009 admitting his inability to supply the equipments and promising to repay the amount to the plaintiff. However, neither the machine was supplied nor the amount was repaid. Subsequently, Defendants 1 and 2 have jointly executed a “Deed of Confirmation” on 04.06.2009 in favour of the plaintiff in the presence of two witnesses. Defendants 1 and 2 have also given their property to an extent of 45 cents in S.F.No.13/1C, which stands in the name of second defendant as a collateral security for the payment received from the plaintiff. Subsequently, when the plaintiff demanded for return of payment with compensation charges as agreed, the second defendant issued a cheque dated 23.12.2009 for a sum of Rs.5 lakhs and another cheque dated 31.12.2009 for a sum of Rs.60 lakhs towards the principal amount of Rs.50 lakhs and Rs.15 lakhs towards compensation for failure to supply the machine as agreed. It is stated by the plaintiff that when the plaintiff presented the cheque for collection, the same got dishonoured with an endorsement “Funds Insufficient” and in this regard, a criminal case in C.C.No.66 of 2010 has also been filed under Section 138 of Negotiable Instruments Act, 1881. After the filing of the said



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complaint, Defendants 1 and 2 transferred a sum of Rs.20 lakhs to the plaintiff's account towards part payment on 18.01.2011 and the second defendant had also issued three cheques dated 17.03.2011, 21.03.2011 and 28.03.2011 with a request to not to present the cheques for collection. However, the remaining amount has not been paid. Hence, the above suit has been filed for recovery of money.

3. It is the case of the first defendant that since his Company was closed and when he was attempting to clear the loans, the plaintiff filed the cheque bounce case before the Judicial Magistrate II, Walajapet and according to first defendant, he is liable to pay only Rs.2 lakhs and the second defendant had never received any amount from the plaintiff and only in order to harass the second defendant, she was added as a party to the criminal proceedings.

4. It is the case of the second defendant that she never executed any collateral security for the property described in the plaint and hence, the plaintiff cannot seek a charge or lien over the property and the dispute is between the plaintiff and first defendant. It is her further case that she has not given any cheque to the plaintiff as mentioned.



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5. Based on the above pleadings, the following issues were framed:

“(i) Whether the deed of confirmation dated 04.06.2009 is true and binding?

(ii) Whether the second defendant created collateral security for the loan borrowed by the first defendant?

(iii) Whether the plaintiff is entitled to the suit claim?

(iv) To what relief?”

6. Before the trial Court, on the side of the plaintiff, plaintiff himself was examined as PW1 and Exs.A1 to A13 were marked. On behalf of the defendants, 1st defendant himself was examined as DW1 and 2nd defendant was examined as DW2 and Exs.B1 to B5 were marked.

7. The trial Court, based on the oral and documentary evidence, decreed the suit as prayed for. Hence the defendants are before this Court with the present appeal.

8. The main contention of the learned counsel for the appellants is that though the first defendant has received a sum of Rs.50,00,000/- for supply of machineries, since the machineries could not supplied as promised, he has almost repaid a sum of Rs.48,00,000/- and only a sum of Rs.2,00,000/- is to be paid by him to the plaintiff. Much emphasis has been placed on Ex.B5



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receipt said to have been given by the plaintiff. In sum and substance, it is the contention of the learned counsel for the appellants that the trial Court has not properly appreciated the evidence in this regard.

9. Per contra, the learned counsel appearing for the respondent / plaintiff would submit that the receipt of Rs.50,00,000/- has not been disputed by the defendants and that apart, the defendants have also taken a defence that Rs.48,00,000/- has already been paid, but they have not produced any document to prove the same. Ex.B5 is a created document for the purpose of the case. Further, even in the written statement filed by the defendants, there is no pleadings with regard to so called discharge of the amount except stating that he paid Rs.28,00,000/- on 05.07.2010 to the plaintiff, but the contents of Ex.B5 is contrary to the said pleadings and therefore, Ex.B5 relied on by the defendants cannot be countenanced.

10. In the light of the above, now the points that arise for consideration are

- i) Whether the appellants/defendants have discharged their burden in proving the repayment of Rs.48,00,000/- out of Rs.50,00,000/- given by the plaintiff?
- ii) Whether Ex.B5 is an afterthought and created one?



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Points 1 and 2

11. The fact that the plaintiff has placed an order for supply of crush machines to the first defendant is not in dispute. The plaintiff has also stated that he availed a loan of Rs.50,00,000/- from State Bank of India. In fact, the amount has been paid by way of Demand Draft to the first defendant. These aspects have also not been disputed by the defendants in the written statement. Though there is a general denial, the receipt of demand draft for Rs.50,00,000/- is not disputed in the written statements. It is the contention of the defendants that since the machineries could not be supplied, the defendants repaid Rs.20,00,000/- on 18.01.2011. However, remaining amount of Rs.30,00,000/- has not been paid.

12. It is the specific case of the plaintiff that both the defendants have also executed a Deed of Confirmation dated 04.06.2009 marked as Ex.A5 besides issuing cheques towards the payment. It is the case of the first defendant that out of remaining amount of Rs.30,00,000/-, he paid Rs.28,00,000/- on 05.07.2010, which has been acknowledged by the plaintiff under Ex.B5, but the plaintiff denied the execution of Ex.B5. On a careful perusal of Ex.B5, it is seen that Rs.14 lakhs said to have been paid on 02.07.2010 and another sum of Rs,14 lakhs said to have been paid on



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05.07.2010, but there is no pleadings in the written statements regarding the payment said to have been made on 02.07.2010. If really Rs.14 lakhs was paid on 02.07.2010, a prudent person would have demanded proper acknowledgment or receipt. No prudent person would give such a huge amount without insisting for receipt. Further, the signature in Ex.B5 is also totally denied by the plaintiff. It is relevant to note that it is admitted by the defendants that they also issued cheques, but when the plaintiff presented them for payment, they got bounced and proceedings under the Negotiable Instruments were also initiated. Now it is informed that the criminal case has already been disposed of on 25.04.2023. When the criminal cases are pending in the same matter and if the plea discharge has been made, normal prudence of the person is to make payment in Court. Therefore, Ex.B5, which was not filed along with the written statement, but was produced later with the leave of the Court, in our view is a created document for the purpose of the case. It is also to be noted that since the plaintiff has availed loan for the purchase of machineries, but the defendants have not supplied machineries, SARFAESI proceedings have also been initiated against the plaintiff by the Bank.



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13. It is also relevant to note that the defendants have also executed Deed of Confirmation for the receipt of Rs.50 lakhs. Though a defence was taken by the second defendant that she is no way connected with the transaction, the fact remains that while returning Rs.20 lakhs, the said amount was transferred from the account of second defendant. The issuance of the cheques by the second defendant is also not disputed. DW2 also admitted her signature in Ex.A5 and Ex.B1. Though the second defendant has contended that she is no way connected with the business of first defendant, the fact remains that the first and second defendant are running their business in the same building and a sum of Rs.20 lakhs has been transferred to the plaintiff towards part payment of the amount. The discharge pleaded by them has not been established. Further, when the criminal case is pending, paying Rs.14,00,000/- at the first instance on 02.07.2010 without obtaining receipt itself is highly doubtful and the payment of further sum of Rs.14,00,000/-has also not been proved in the manner known to law. In fact, there is no evidence on record to show that the defendants in fact had such huge amount to repay the amount to the plaintiff. The execution of Ex.B5 has not been proved. The defendants having admitted the execution of Ex.A5-Deed of Confirmation, they are



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liable to pay the amount. Accordingly, the points are answered in favour of the respondent /plaintiff and against the appellants/defendants. We do not find any merits in the appeal and the same is liable to be dismissed.

Accordingly, this appeal is dismissed. The judgment and decree of the V Additional District Judge, Coimbatore dated 29.08.2017 in O.S.No.487 of 2012 is confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

[N.S.K.,J.] [R.S.V.,J.]
23.02.2026

Index: Yes/No
Neutral Citation: Yes
gpa

To

1. V Additional District Judge
Coimbatore
2. The Section Officer
VR Section
Madras High Court



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