U. Ram Babu and Another Vs. M/s. De Great Agro Farm Private Ltd., Rep. by its Managing Director G. Devakumar and Others

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Court : Chennai

Decided On : Feb-01-2017

Judge : N. Sathish Kumar

Appeal No. : C.S. No. 263 of 2011

Appellant : U. Ram Babu and Another

Respondent : M/s. De Great Agro Farm Private Ltd., Rep. by its Managing Director G. Devakumar and Others

Judgement :

(Prayer: Civil Suit filed under Order IV Rule 1 of Original Side Rules 1956 read with Order VII Rule 1 CPC praying for the following judgment and decree against the defendant.

a) Directing the defendants 1 to 4 to pay jointly and severally to the plaintiffs a total sum of Rs.36,42,000/- (Rs.thirty six lakhs and forty two thousand only) together with interest at therate of 12% per annum from 18.03.2011 for the said Principal amount of Rs.36,00,000/- (Rupees Thirty six Lakhs Only) till realization and b) costs of the suit.)

1. The suit is filed for recovery of a sum of Rs.36,42,000/- along with interest at the rate of 12% per annum on the sum of Rs.36,00,000/- from the date of plaint till the

date of realization and for costs.

2. The brief facts of the case of the plaintiffs are as follows:

The second defendant is the Managing Director of the first defendant. The third defendant is the wife of the second defendant and the fourth defendant is the brother of the second defendant. The defendants 2 and 3 have approached the plaintiff and sought for financial assistance in order to develop the first defendant company. In view of the relationship with them, the plaintiff agreed to provide funds. Accordingly, the defendants have availed loan of Rs.36,00,000/- on various dates. The defendants 2 and 3 executed loan cum guarantor agreement dated 07.12.2009 and agreed to pay interest at the rate of 12% per annum. The second defendant along with his brother, the fourth defendant herein, also executed a promissory note dated 07.12.2009 for the said amount and agreed to pay interest at the rate of 12% per annum. Thereafter, the defendants have failed to repay the said amount. Inspite of repeated requests, finally the first defendant has issued a cheque dated 15.12.2010 in his capacity as a proprietor to the plaintiff for a sum of Rs.36,00,000/- drawn on Andhra Bank. However, the above cheque was dishonoured when presented for encashment. Therefore, the plaintiff issued legal notice to the defendants on 11.02.2011. The defendants failed to repay the amount. Hence the suit.

3. The brief averments of the written statement filed by the second defendant and adopted by the other defendants:

Denying the entire averments of the plaint, it is the allegation of the defendants that the first defendant and the first plaintiff were jointly doing real estate business from the year 2007. In the course of the said business transaction, the first defendant borrowed a sum of Rs.10,00,000/- from the first plaintiff on 06.11.2009 to invest the same in their business, when they purchased a large extent of property. At that time, as the first plaintiff insisted the first defendant to give security to the said amount, having no other alternative, the defendants executed a mortgage deeds for Rs.10,00,000/- by mortgaging their properties. The first plaintiff, having not satisfied with the above mortgage deeds obtained several blank cheques and stamp papers from the defendants with their signatures.

Subsequently, the first plaintiff had defrauded the first defendant by not giving his lawful share in the business. When the first defendant continuously demanded his share, the first plaintiff deposited two cheques obtained from the defendants and issued legal notice, after their return, claiming that they had lent Rs.2,16,00,000/- as hand loan to start a wind mill power project and the cheques were issued towards repaying the amount. The contradictions found in the legal notice issued by the first plaintiff and the plaint would show that the plaintiffs had never paid any money to the defendants and filed this suit only to force the defendants to accept their unlawful and unjust terms. The properties of the second defendant's family were sold to the second plaintiff and deposited a sum of Rs.67,20,000/- towards the sale consideration in the account of the first defendant and the first plaintiff also deposited the share of the first defendant in his account. Now the first plaintiff is making attempts to show that the payments deposited by him in the accounts of the first defendant and his company towards sale consideration as the amount borrowed by the first defendant. Hence, prayed for dismissal of the suit.

4. On the basis of the above pleadings, this Court framed the following issues on 26.10.2015.

1. Whether the first plaintiff and the second defendant were doing real estate business as partners?

2. Whether the second defendant borrowed Rs.10,00,000/- (Rupees Ten Lakhs only) from the second plaintiff by creating three mortgage deeds in his favour?

3. Whether the plaintiffs had paid Rs.1,30,00,000/- (Rupees thirty six lakhs to the first defendant towards financial assistance for his real estate business?

4. Whether the second plaintiff had paid the amounts on various dates in the account of the first defendant towards the sale consideration and profit due to the first defendant?

5. Whether the defendants had executed the promissory note dated 07.12.2009 for consideration?

6. Are the defendants liable to pay the amount claimed by the plaintiffs?

7. What other reliefs are the plaintiffs entitled for?

5. On side of the plaintiff, the first plaintiff examined him as P.W.1 and marked Ex.P.1 to Ex.P.9. Though the defendants have filed written statement, they have not contested the suit.

Exhibits produced on the side of the plaintiffs:

S.No.	Exhibits	Date	Description
1.	P-1	07.12.2009	Promissory note executed by the defendants
2.	P-2	07.12.2009	The loan cum guarantee agreement executed by the defendants
3.	P-3	15.12.2010	The dishonoured chequed given by the first defendant
4.	P-4	11.02.2011	The dishonoured memo issued by Andhra Bank
5.	P-5	11.02.2011	The intimation issued by Axis bank
6.	P-6	--	The statement of accounts of the first plaintiff for the period from 01.04.2007 to 31.03.2009 of Axis Bank
7.	P-7	--	The statement of accounts of thesecond plaintiff for the period from 01.04.2007 to 31.03.2009 of Axis Bank

8.	P-8	--	The statement of accounts of the first plaintiff for the period from01.04.2009 to 31.12.2009
9.	P-9	--	The statement of accounts of thesecond plaintiff for the period from 01.04.2009 to 31.12.2009

Witnesses examined on the side of the plaintiffs:
P.W.1. - U.Ram Babu

6. Issue Nos.1 to 7:-

The suit is filed for recovery of a sum of Rs.36,00,000/- together with interest at the rate of 12% per annum. P.W.1 in his evidence has stated that the first defendant is a company and the second defendant is the Managing Director, the third defendant is the wife of the second defendant and the fourth defendant is the brother of the second defendant. The second and third defendants borrowed a sum of Rs.36,00,000/- on various dates through cheques drawn on Axis Bank, Adyar Branch and they have also executed a loan cum guarantor agreement dated 07.12.209 agreeing to repay the amount along with the interest at the rate of 12% per annum. Besides the second and fourth defendants have also executed a promissory note for the said amount on the same date. Thereafter, the first defendant issued a cheque dated 15.12.2010 which was also dishonoured. Thereafter, they have failed to pay the amount inspite of the repeated request and demand made by the plaintiff.

7. Ex.P.1 is the promissory note executed by the second and fourth defendants dated 07.12.2009 for a sum of Rs.36,00,000/-. Ex.P.2 loan cum Guarantor Agreement executed by the second and third defendants. The same clearly indicate that the defendants 2 to 4 have borrowed a sum of Rs.36,00,000/- through bank cheques agreeing to repay the said amount along with interest at the rate of

12% per annum. Ex.P.2 cheque dated 15.12.2010 drawn on Andhra Bank issued by the second defendant has been filed. Ex.P.4 and Ex.P.5 are the dishonoured memos issued by the bank to show that the above cheque was dishonoured for insufficient funds. Ex.P.6 and Ex.P.7 are bank statements of the plaintiffs for the period from 01.04.2007 to 31.03.2009. Ex.P.8 and Ex.P.9 are also bank statements of the plaintiffs from 01.04.2007 to 31.03.2009. The evidence of P.W.1 remained unchallenged.

8. From the above documents and the evidence of P.W.1, the execution of the promissory note is also not denied. The presumption under section 118 of the Negotiable Instruments Act comes into operation in favour of the plaintiff in respect of passing of consideration and other aspects. From the above documents, the loan agreement executed by the second and third defendants and the promissory note executed by the second and fourth defendants, which are also not denied, this Court hold that the plaintiffs are entitled for the suit claim and the issues are answered in favour of the plaintiffs.

In the result, the suit is decreed as prayed for with costs together subsequent interest at the rate of 6% interest from the date of decree till the date of realization.