IN THE CITY CIVIL COURT AT CHENNAI

Present : Tmt.L.Maheswari, M.L.,

VII Assistant Judge

Monday, the 25nd day of November, 2024

I.A.No.4/2023

in

O.S.No. 8903/2022

(CNR.No.TNCH01- 031120 -2022)

K.Naveen
No.19, North Park Street,
Subam Complex,
Chennai – 600 053. ... Petitioner/ 2nd Defendant

-Vs-

1. Mrs. Rinkle R.Jain,
Door No.9-3-11, 2nd floor,
Brahmin Street,
Vijayawada 520 001. … 1st Respondent/Plaintiff

2. Mrs.N.K.Kumaran,
No.2/5, Bakthavachalam Street,
Vijhayalakshmipuram,
Ambattur, Chennai – 600 053. … 2nd Respondent/1st Defendant

This Petition came up before me for final hearing on 07.11.2024 in the presence of M/s.S.R.Thiagarajan, Vasudha Thiagarajan and K.Seetharaman, Counsel for the Petitioner/2nd Defendant and M/s.T.Srikanth and T.Shrinikethan, Counsel for the 1st Respondent/Plaintiff, and M/s.S.Selvakumari, Counsel for the 2nd Respondent/1st Defendant, and upon hearing the arguments of both sides and perusing the written argument filed by the 1st respondent/plaintiff and upon perusing the records and having stood over for consideration till this day, this court delivered the following:

ORDER

This petition is filed u/o VII Rule 11(d) of the of CPC to reject the above plaint since the same is barred under Order VII Rule 11(d) in as much as the dispute that had arisen between the parties hereto is more in nature as commercial transaction which will attract the mischief of the Sec 2 (1)(c)(i) of Commercial Act, 2015.

2. Brief averments made in the affidavit filed by the Petitioner is as follows:-

This petition has been filed by the petitioner/2nd defendant under order VII rule 11(d) of CPC. The petitioner has stated that there is no transaction between the petitioner/2nd defendant and 1st respondent/plaintiff. However, the 1st respondent had initiated the summary suit on the strength of certain pro-notes. The petitioner did not execute any pro-note infavour of the 1st respondent. The 1st respondent being a financier who lends money the relationship between the party is that of a financier and borrower and such borrowels for commercial purpose, therefore the suit shall fall within the jurisdiction of commercial dispute would attract the mischief of Sec 2(1)(c)(i) and commercial work and as such Civil Court dealing with the normal suit for recovery of money shall not have any pecuniary jurisdiction to deal with the such suit and this court shall not have jurisdiction. It is not a loan availed by a friendly person and as such the loan can not be captained as friendly borrowel. Therefore, the suit is liable to be rejected.

3. Brief averments made in the Counter affidavit filed by the 1st Respondent/plaintiff is as follows:-

The 1st respondent/plaintiff filed the counter and stated that, he filed the suit for recovery of money. The petitioner is liable to pay the borrowel amount along with interest. Since the plaintiff filed this suit under Order XXXVII Rule 1 CPC, the defendant filed the leave to defend application, the said petition was also allowed by this Court, thereafter the defendant filed written statement in the present suit. When the matter posted for trial the petitioner filed this petition. The subject matter of the suit required to be proved in trial, since leave to defend has been allowed. The petitioner known to the 1st respondent. The petitioner/2nd defendant along with the 2nd respondent/1st defendant and approached the respondent for a short term accommodation and promised to repay the loan along with interest as and when demanded by the respondent/plaintiff. If any of the averment raised by the petitioner are true, the same would have been raised in their leave to defend application or written statement. This petition filed only to delay the proceedings. The transaction between the respondent/plaintiff and the petitioner/defendant is only between individuals without any commercial trappings as claimed by the petitioner. Neither the respondent/plaintiff nor the petitioner/2nd defendant have stated anything about any mercantile documents where both the respondent and the defendant have executed a loan agreement on the basis of which loan was furthered by the respondent. When there is no such documents the transaction is solely on the promise of the defendant, the same cannot be classified as commercial transaction. Further the case of the petitioner that, the petitioner disputes the lender borrower relationship and as claimed that the present suit transaction in connected with this suit in CS.No.185 of 2022 in the leave to defend application filed by the petitioner and in his written statement. The said CS.No.185 of 2022 has been filed by this petitioner as an ordinary suit and not as a commercial suit. There is no explanation on the part of the petitioner as to why CS.No.185 od 2022 was filed as an ordinary suit instead of commercial suit. The transaction between the petitioner and the respondent does not bear any commercial trappings. The petitioner has taken plea in his leave to defend petition and written statement that, there is no previty of contract with the respondent or that there exist no lender borrower relationship between them, in such circumstances the averment of the petitioner that the suit transaction falls within the ambit of Sec 2(1)(c) of Commercial Court is baseless. Upon coming into force of commercial court act with effect from 31.02.2015 certain provisions of CPC was amended and in the said amendment order 37 of CPC and Order VII Rule 16 were not amended. When the petitioner denies the transaction and allege that no privity of contract, in such circumstances stating that the suit will fall with in the commercial transaction is with the sole object of misleading the court. Hence seeks to dismiss the petition.

4.Points for determination:-

Whether this petition has to be allowed?

5. Points:-

6. This petition has been filed by the petitioner/2nd defendant under Order 7 rule 11 CPC. The petitioner has stated that there is no transaction between the petitioner/2nd defendant and 1st respondent/plaintiff. However, the 1st respondent had initiated the summary suit on the strength of certain pro-notes. The petitioner did not execute any pro-note infavour of the 1st respondent. The 1st respondent being a financier who lends money the relationship between the party is that of a financier and borrower and such borrowels for commercial purpose, therefore the suit shall fall within the jurisdiction of commercial dispute would attract the mischief of Sec 2(1)(c)(i) and commercial work and as such Civil Court dealing with the normal suit for recovery of money shall not have any pecuniary jurisdiction to deal with the such suit and this court shall not have jurisdiction. It is not a loan availed by a friendly person and as such the loan can not be captained as friendly borrowel. Therefore, the suit is liable to be rejected.

7. On the other hand the 1st respondent/plaintiff filed counter and stated that, he filed the suit for recovery of money. The petitioner is liable to pay the borrowel amount along with interest. Since the plaintiff filed this suit under Order XXXVII Rule 1 CPC, the defendant filed the leave to defend application, the said petition was also allowed by this Court, thereafter the defendant filed written statement in the present suit. When the matter posted for trial the petitioner filed this petition. The subject matter of the suit required to be proved in trial, since leave to defend has been allowed. The petitioner known to the 1st respondent. The petitioner/2nd defendant

along with the 2nd respondent/1st defendant and approached the respondent for a short term accommodation and promised to repay the loan along with interest as and when demanded by the respondent/plaintiff. If any of the averment raised by the petitioner are true, the same would have been raised in their leave to defend application or written statement. This petition filed only to delay the proceedings. The transaction between the respondent/plaintiff and the petitioner/defendant is only between individuals without any commercial trappings as claimed by the petitioner. Neither the respondent/plaintiff nor the petitioner/2nd defendant have stated anything about any mercantile documents where both the respondent and the defendant have executed a loan agreement on the basis of which loan was furthered by the respondent. When there is no such documents the transaction is solely on the promise of the defendant, the same cannot be classified as commercial transaction. Further the case of the petitioner that, the petitioner disputes the lender borrower relationship and as claimed that the present suit transaction in connected with this suit in CS.No.185 of 2022 in the leave to defend application filed by the petitioner and in his written statement. The said CS.No.185 of 2022 has been filed by this petitioner as an ordinary suit and not as a commercial suit. There is no explanation on the part of the petitioner as to why CS.No.185 od 2022 was filed as an ordinary suit instead of commercial suit. The transaction between the petitioner and the respondent does not bear any commercial trappings. The petitioner has taken plea in his leave to defend petition and written statement that, there is no previty of contract with the respondent or that there exist no lender borrower relationship between them, in such circumstances the averment of the petitioner that the suit transaction falls within the ambit of Sec 2(1)(c) of Commercial Court is baseless. Upon coming into force of commercial court act with effect from 31.02.2015 certain provisions of CPC was amended and in the said amendment order 37 of CPC and Order VII Rule 16 were not amended. When the petitioner denies the transaction and allege that no privity of contract, in such circumstances stating that the suit will fall with in the commercial transaction is with the sole object of misleading the court. Hence seeks to dismiss the petition.

8. According to the petitioner/2nd defendant, the 1st respondent/plaintiff is a financier who lends money therefore the relationship between the party is that of a financier and borrower and such borrowel for commercial purposes the suit shall fall within the jurisdiction of commercial dispute would attract the mischief of Sec 2(1)(c)(i) and commercial court and as such the civil court dealing with the normal suit for recovery of money shall not have any jurisdiction to deal with the suit which falls under the commercial court act.

9. On the other hand, the respondent has stated that, the suit transaction between the parties is only between individuals without any commercial trappings. The petitioner has not stated anything about any mercantile documents were both the parties have executed a loan agreement on the basis of which loan was furthered by the respondent, in the absence of mercantile document this loan cannot be classified as commercial transaction. Further the petitioner filed CS.No.185 of 2022 before the Hon'ble High Court in respect of the same transaction as an ordinary suit instead of commercial suit. Further the petitioner has not whispered any one the above averments in his written statement or leave to defendant application.

10. Learned counsel for petitioner relaid the judgment of our Hon'ble Apex Court as well as High Court in support of his contention.

a) 2022 Livelaw (SC) 678 – M/s. Patil Automation Private Ltd. And ors. Vs. Rakheja Engineers Private Ltd.

b) Manu/SCOR/133281/2023 – dated 13.10.2023 – Yamini Manohar Vs. T.K.D. Keerthi

c) CRP.NO.4244 of 2023 – dated 15.03.2024 – T.V.Krishna Moorthy and Ors. Vs. Kanakadhara Finance and ors,

11. Learned counsel for respondent in support of his case relied the judgment of our Hon'ble Supreme Court as well as Hon'ble High Court,

a) (2020) 15 SCC 585 – Ambalal Sarabhai Enterprises Limited Vs. K.S. Infraspace LLP and Another,

"has categorically held that the commercial dispute pertaining to immovable property arises only when the property is used or being used, exclusively for trade or commerce"

b) Summons for Judgment No.9 of 2021 – Bharat Huddanna Shetty Vs. Ahuja Properties & Developers,

"whereby it has been held that a friendly loan does not fall within the definition of a commercial dispute."

c) 2021 SCC Online Bom 5032 – Glasswood Reality Pvt. Ltd., and others Vs. Chandravilas reported in

" *the definition 'Commercial' and whether a singular transaction by way of hand loan would fall within the meaning of 'commercial dispute' was considered it has been held that it would not."*

d) 2021 SCC Online Calcutta 4240 – Lady Moon Towers private Limited Vs. Mahendra Investment Advisors Private Limited,

"*Paragraph No.20, 21 is relied on, to show that the suit on Promissory Note would not fall within the definition of commercial dispute."*

and argued that, as per the above judgment, this suit does not fall under the commercial dispute, since the petitioner/2nd defendant has not obtained the loan for trade or business, further the pro-note does not fall under the caption of mercantile document.

12. Since the above petition filed under order VII rule 11 CPC, it is relevant to mention order VII rule 11 CPC. In order to decide whether the plea taken by the petitioner in the present application comes under the ambit of order VII Rule 11 CPC.

"*<u>Rejection of plaint</u>:-*

The plaint shall rejected in the following case:-

a) Where it does not disclose a cause of action;

b) Where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;

d) where the suit appears from the statement in the plaint to be barred by any law.

e) where it is not filed in duplicate;

f) where the plaintiff fails to comply with the provisions of Rule 9"

13. The petitioner has stated that the above suit is barred Under Order VII Rule 11(d) of CPC, therefore it has to be decided first, whether this suit is barred by any law as per order VII Rule 11(d) CPC.

14. The petitioner has stated that, as per Sec 2(1)(c)(i) of commercial court act 2015 the 1st respondent/plaintiff being a financier, the transaction between the parties to be taken as a commercial transaction, therefore this court has no jurisdiction to entertain this suit and the same is barred by law.

15. Since the petitioner has taken the above ground for rejection, it is pertinent to mention here Sec 2(1)(c)(i) of the commercial court act,

"*Ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;*

16. As per the above provision only an ordinary transactions of merchants, bankers, financiers and traders which relates to mercantile documents were covered under Commercial dispute. However the present suit has been filed by the plaintiff based on the pro-note, therefore whether the pro-note does fall within the definition of mercantile document to be decided here.

17. In this aspect learned counsel for respondent stated that the term "mercantile" defined in Ramanatha Aiyar's Law Lexicon, as per the said law lexicon mercantile means:-

"pertaining to merchants or the business of merchants; having to do with trade or the buying and selling of commodities; having to do with trade or commerce".

18. Therefore it is clear that mercantile document should relate to "trade or buying or selling of commodities"

19. In the present case there is no such transaction between the petitioner and respondent.

20. Further learned counsel for respondent argued that, as per Sec 137 of Transfer of Property Act, the following documents alone to be taken into consideration as mercantile document, i.e.,

"a bill of lading, dock-warrant, warehouse keeper's certificate, railway receipt, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented."

Therefore as per the above provision the pro-note cannot be construed as a mercantile document that too in the absence of any Commercial transaction between the parties.

21. In the present case the defendants have borrowed the money based on a promissory note, but as stated above the pro-note does not fall under the definition of mercantile document.

22. Further it is settled law that, while deciding, the petition filed under Order VII Rule 11 CPC the averments mentioned in the plaint alone to be taken into consideration. The petitioner has taken the plea, as to commercial dispute, only in the present application, the petitioner has not even taken the above plea in his written statement or leave to defend petition. On perusal of plaint there is a cause of action to

taken on file of the above case and the plaint does not disclose any commercial transaction between the petitioner and respondent. Further even assuming that this court has no jurisdiction to decide the commercial dispute then the said jurisdictional point is not a ground for rejection of plaint under Order VII Rule 11(d) CPC. In case if there is no jurisdiction the plaint to be returned and not to be rejected as claimed by the petitioner.

23. Further though the word financier mentioned in section 2(1)(c)(i)of the act it will not include all the financiers under the commercial court act, and it will not include all the financial transactions as a commercial dispute, in this aspect the purpose of borrowel to be taken into consideration in order to bring the financial transaction under the commercial flavour.

24. In this aspect it is pertinent to mention the relevant portion of the written statement filed by the petitioner/2nd defendant herein.

"It would be relevant to mention that this defendant had previously availed certain individual loan from Mr.Vijay M. Jain and had executed various undated, unfilled blank pronotes, letters of undertakings, blank, inchoate, deeds, documents, promissory notes etc., Evidently those blank, unfilled, undated promissory notes, letters of undertaking have been misused by Mr.Vijay M. Jain who has manipulated and concocted those documents in collusion and connivance with the plaintiff and others which might have been assigned in favour of the plaintiff for the alleged debt or claims."

25. From the above relevant portion of written statement it reveled that the petitioner/2nd defendant herein, himself admitted in the written statement that, he obtained individual loan, but now the petitioner trying to coat the commercial flavour to this case which is not acceptable. Therefore this suit does not falls under the commercial court act, hence the above plea taken by the petitioner stands unacceptable.

26. Further our Hon'ble High Court in a similar case in CRP.(PD).N0.2943 of 2024 and C.M.P.No.15755 of 2024 dated. 06.08.2024 – D.Pratish Vs. M/s. Prerna Finance, Rep. By its Propreitrix Prerna Bafina held that,

"Insofar as the plea on the Commercial Courts Act is concerned, the learned Trial Judge has analysed the aspect in detail and reject the plea. I am ad idem with the view taken by the learned Judge. A reading of the plaint shows that the amounts claimed were not lent during the course of a "Commercial transaction". It is a private transaction without any "commercial" or business" line. A private transaction will not be covered by the Commercial Courts Act, 2015. The Commercial Courts Act is "transaction centric" and not "person centric". That not being the situation here, I have to conclude that the Trial court has jurisdiction."

27. Since our Hon'ble High court held in the above judgment that all the transaction between the Financier and individual does not fall under the Commercial Court Act. A reading of the plaint to be disclose, the amount claimed were lent during the course of a "Commercial Transaction". In the present case a reading of a plaint does not disclose that the amount were lent for commercial transaction, per contra the petitioner himself admitted in his written statement that, he obtained "individual loan". Therefore the plea taken by the petitioner in the present case stands unacceptable.

28. Further the petitioner in his leave to defend application or in his written statement did not taken any one of the above plea which is taken in the present petition. Per contra, he has stated in the written statement leave to defend application that he did not borrowed money and executed a pro-note to the plaintiff and he borrowed money from one Mr.Vijay M. Jain and executed various undated, unfilled, blank pro-notes to him and there is no privity of contract between the petitioner and the plaintiff, therefore the above defense taken by the petitioner in his written statement requires elaborate trial.

29. Further Learned counsel for petitioner relaid the judgment of our Hon'ble Apex Court as well as High Court in support of his contention.

a) 2022 Livelaw (SC) 678 – M/s. Patil Automation Private Ltd. And ors. Vs. Rakheja Engineers Private Ltd.

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30. On careful scrutiny of judgments relied by the petitioner it revealed that in the above said judgments our Hon'ble Apex Court as well as Hon'ble High Court elaborately discussed about the pre- institution mediation which is mandate under Sec 12(A) of the Commercial Court Act, therefore the judgment relaid by the learned counsel for petitioner are not commensurate with the facts and circumstances of this petition.

31. Therefore as discussed above there is no bar to filed the present suit thus this court has jurisdiction to try this suit.

32. Apart from the above, whether the petitioner borrowed money and executed a pro-note directly to the plaintiff, whether the petitioner and the plaintiff have the privity of contract those things can not be decided in the present petition. Unless the trial conducted in the main suit, the issues involved in the suit cannot be decided, as the issues involved in the present suit are mixed question of fact and law. Therefore, there is no merits in the application, thus the same is liable to be dismissed.

In the result, this petition is dismissed. No cost.

Directly dictated to the steno - typist, typed by her, corrected and pronounced by me in open court on this the 25th day of November, 2024.

L MAHESWARI

Digitally signed by L MAHESWARI
Date: 2024.11.25 19:40:57 +0530

VII Assistant Judge
City Civil Court, Chennai.

<u>Petitioner's side Witnesses & Exhibits : Nil</u>
<u>Respondent's side Witnesses & Exhibits : Nil</u>

L MAHESWARI
Digitally signed by L MAHESWARI
Date: 2024.11.25 19:41:02 +0530

VII Assistant Judge
City Civil Court, Chennai.

Draft/Fair Order in
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