courtkutchehry.com

Company : Sol Infotech Pvt. Ltd.

Website : www.courtkutchehry.com

Printed For :

Date : 24/08/2025

Esjaypee Impex Private limited Vs Jagdish B. Ahuja

Court: Madras High Court

Date of Decision: Aug. 29, 2011

Acts Referred: Penal Code, 1860 (IPC) â€" Section 420

Hon'ble Judges: R. Banumathi, J; B. Rajendran, J

Bench: Division Bench

Advocate: C. Seethapathi, for the Appellant; G.B. Sabaridas, for R. Subramanyam and Associates, for the Respondent

Final Decision: Dismissed

Judgement

R. Banumathi, J.
Being aggrieved by the dismissal of the application in A. No. 6092 of 2009 in C.S. No. 879 of 2003 and declining to

send the xerox copies of the Cheques for obtaining handwriting expert''s opinion, Appellant has preferred this appeal.

2. The Respondent/Plaintiff filed the suit in C.S. No. 879 of 2003 on the file of this Court for recovery of a sum of Rs. 26,80,583/- together with

interest on Rs. 21,50,000/-. Case of Respondent/Plaintiff is that Plaintiff is carrying on business inter alia in financing. Appellant/1st Defendant

Company availed the loan from the Plaintiff on various dates (i) 2.1.2002 a sum of Rs. 4,50,000/-; (ii) 22.5.2002 a sum of Rs. 12,00,000/- and

(iii) 10.7.2002 a sum of Rs. 5,00,000/-, totally Rs. 21,50,000/-. The said loan amounts were disbursed by the Plaintiff by way of cheques in

favour of the 1st Defendant Company drawn on M/S. Tamilnadu Mercantile Bank Limited, Mandvi Branch, Mumbai. In consideration for the said

loan availed, the 1st Defendant Company, through its Directors, is said to have executed demand promissory note in favour of the Plaintiff concern

on the dates of availment of loan agreeing to repay the aforesaid loan on demand from the Plaintiff.Calling upon the 1st Defendant to repay the loan

amount with interest, Plaintiff issued legal notice dated 6.6.2003 and 1st Defendant Company has sent its reply notice dated 11.7.2003 denying

borrowal interlinking the transaction with another concern - M/S. Ganesh International. Thereafter, the Respondent/Plaintiff filed suit for recovery

of Rs. 26,80,583/- together with interest at 18% per annum.

3. On receipt of notice of application in the suit seeking for furnishing security, Appellant/1st Defendant entered appearance through its counsel.

Appellant/1st Defendant had filed A. No. 6092 of 2009 stating that the plaint documents No. 1 to 4, which are allegedly executed by the

Managing Director, are forged and demonstrably not the signatures of the Managing Director and that even the rubber stamp of the Company have

been duplicated. Stating that the plaint documents 1 to 4 are forged, the Appellant/1st Defendant filed the application seeking to send the plaint

documents No. 1 to 4 for forensic examination along with Appellant/1st Defendant"s admitted signatures in Cheques mentioned in the Schedule for

the purpose of comparison and obtaining the opinion of the handwriting expert.

4. Upon consideration of the submissions, the learned single Judge held that all admitted signatures filed in the enclosures are only xerox copies and

that comparison of disputed documents cannot be made with the signatures found in the xerox copies of the documents. The learned Judge further

held that if at all any opinion is given by the handwriting expert, it is nothing but an opinion given by the Forensic Science Department, which is not

a positive science and therefore held that referring the documents containing disputed signatures along with admitted signatures to the Forensic

Science Department is unnecessary exercise and on those findings dismissed the application.

5. Challenging the impugned order, the learned Counsel for the Appellant Mr. Seethapathy submitted that the Appellant was disputing the signature

on his behalf and that even the rubber stamp of the Appellant Company was not genuine and had been duplicated and the learned Judge ought to

have appreciated the contention of the Appellant and the application ought to have been allowed. It was further contended that the signatures of

the Appellant"s Managing Director were forged and fabricated and the Managing Director offered to present himself before the Handwriting

Expert of the Forensic Science Department and to sign in front of the expert so that the same could be compared with the disputed signatures and

while so learned Judge erred in saying that the enclosures were only xerox copies and therefore the comparison could not be made.

6. Reiterating the findings in the impugned order, the learned Counsel for Respondent/Plaintiff has submitted that the Respondent/Plaintiff has filed a

criminal case against the 2nd Defendant "Mahendra Parmer", Managing Director of 1st Appellant Company before Inspector of Police, APMC

Market Police Station, Navi, Mumbai for the offence u/s 420 Indian Penal Code and thereafter the application to send the documents to

Handwriting Expert has been filed with a view to counter blast the said proceedings. It was further submitted that the Appellant/1st Defendant has

not even chosen to file the written statement and while so the application to send for the plaint documents 1 to 4 to Handwriting Expert has been

filed only to delay the proceedings.

7. So far as the suit claim is concerned, even though the Suit is of the year 2003, the Appellant/1st Defendant is yet to file the written statement. It

is seen from the contents in the reply notice and the submissions of the learned Counsel for the Appellant that the Appellant is one of the leading

import-export houses in South India and one of the largest kirana item dealers and are doing huge turnover of several crores. Further case of

Appellant is that the Plaintiff is a constituent of the Ahuja Group of Concerns based in Bombay, which includes among others a firm under the

name and style of ""Ganesh International"" and another by name ""Gautam Overseas""(Plaintiff). Case of Appellant is that there has been No. direct

business Company with the Plaintiff viz., Gautam Overseas, but only with Ahuja Group. Further case of Appellant is that in the course of their

business, Mr. Gopal Ahuja of Ahuja Group approached the 1st Defendant/ Appellant to help in inter alia co-ordinating two import transactions of

an item called Star Aniseed (Badiyan Khatal Fruit) for which the said Ahuja Group has entered into purchase contracts with M/S. Vietnam

International Agricultural Produce and Foodstuff Import Export Limited, Hanoi, Vietnam and that the entire transaction was to be routed through

M/S. Spices Trading Corporation Limited, Bangalore. The first consignment of goods is valued at Rs. 39,05,167/-. For clearing the second

consignment of goods, the Appellant is said to have spent huge amount towards cost of goods, import duty, clearing charges, but M/S. Ganesh

International of Ahuja Group denied to take delivery of the goods and in the meanwhile international price of Star Aniseed fell rapidly due to

adverse market conditions and the consignments were finally sold at huge loss. As per the Appellant''s statement of accounts, the Ahuja Group

owes a sum of Rs. 25,55,931.67 under various heads. In the reply notice, the Appellant/1st Defendant has denied having any direct dealings with

the Plaintiff Gautham Overseas and the suit claim.

8. In the reply notice, even though Appellant/1st Defendant has set forth their case in the Suit, the Appellant/1st Defendant is yet to file the written

statement. In February, 2004, the Appellant/1st Defendant entered appearance and collected copies of the plaint and the documents.

Even though the Appellants have entered appearance, Defendants have not yet filed the written statement. Even though the application to send for

the plaint documents No. 1 to 4 to handwriting expert was filed in February, 2004, the Appellant got it numbered only in 2009. When the

Appellant has not even filed the written statement setting forth their defence, the Suit would be listed only under the caption ""undefended Board

While so, in 2009, without even filing the written statement, the Appellant has chosen to file the application -A. No. 6092 of 2009 praying to send

the plaint documents 1 to 4 to the Handwriting expert.

9. In the application, the Appellants have alleged that the plaint documents No. 1 to 4 are forged and fabricated. We have also perused the plaint

documents No. 1 to 4 viz., (1) an extract copy of the Resolution of the Board Meeting of the Defendant held on 2.12.2001; (2) Demand

Promissory Note for Rs. 4.50 lakhs, dated 2.1.2002; (3) Demand Promissory Note for Rs. 12 lakhs, dated 22.5.2002; (4) Demand Promissory

Note for Rs. 5 lakhs, dated 10.7.2002, and documents 2 to 4 are Bills of exchange issued by the 1st Defendant - Esjaypee Impex Private Limited

company signed by the Director. For sending the plaint documents 1 to 4 containing the disputed signatures, the Appellants have also filed xerox

copies of 5 cheques dated 8.4.2002, 9.4.2002, 14.3.2002, 15.3.2002 and 14.3.2002 drawn on Canara Bank, Chennai issued by the 1st

Defendant Company signed by the Managing Director. According to the Appellant, those Cheques filed in the Schedule of the application contain

the admitted signatures of the 2nd Defendant and therefore prayed that the plaint documents 1 to 4 have to be sent to the handwriting expert for

comparison with the admitted signatures found in the Bills of Exchange. As rightly pointed out by the learned single Judge, the documents

containing the sample signatures are only xerox copies, which will not be of any assistance for the purpose of comparing the disputed signatures in

the plaint documents 1 to 4.

10. The learned Counsel for the Appellant contended that if at all the Court felt that the Cheques filed by the Appellant are only xerox copies and

that the same cannot be compared, the Court ought to have given an opportunity to the Appellant to summon the concerned Bank in calling for the

original Cheques to enable the handwriting expert to compare with the original signatures.As pointed out earlier, sofar, the Appellant has not even

chosen to file the written statement setting forth their defence. Before ever filing the written statement, the Court cannot make a roving enquiry and

collect evidence for the defence to be set forth by the Defendant. The Appellant/Defendants ought to have taken steps immediately on receipt of

the Court summons.

11. Learned Counsel for the Appellant has contended that the Managing Director/2nd Defendant expressed his readiness to be personally present

before the handwriting expert to give sample signatures and the Court should have given an opportunity to the Appellant to enable them to

substantiate their defence of forgery. This contention does not merit acceptance. The plaint documents No. 1 to 4/ Bills of Exchange are of the

year 2002. Any sample signature presently taken from the Managing Director would not be a contemporary signature to be used for comparison.

12. It is seen from the counter affidavit of the Plaintiff and submissions of the learned Counsel for the Respondent/Plaintiff that the

Respondent/Plaintiff has filed a criminal complaint against Mahendra Parmer, Managing Director of the 1st Appellant Company in Crime No.

0309428/2004 before the Inspector of Police, APMC Market Police Station, Navi Mumbai for the Offence u/s 420 Indian Penal Code, in which

the Investing Officer is said to have directed Mahendra Parmer to appear before them. When the investigation in the criminal case is stated to be

pending, in the civil suit, there cannot be any parallel investigation through handwriting expert regarding the genuineness of the signatures. Since the

Appellant did not diligently prosecute the application nor filed the original contemporary documents for the purpose of comparison of the disputed

signature, the learned single Judge rightly dismissed the application. We do not find any reason warranting interference.

13. For the foregoing reasons, the Original Side Appeal is dismissed. However, there is No. order as to costs.