



A.S.No.856 of 2014

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Date of Reserving the Judgment	Date of Pronouncing the Judgment
27.06.2024	16.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.No.856 of 2014
and
M.P.Nos.1 & 2 of 2015

- 1.The Chairman, ICICI Bank Limited,
- 2.The Managing Director, ICICI Bank Limited,
- 3.The Joint Managing Director,ICICI Bank Limited,

Address: 1 to 3: “Land Mark”, Race Course Circle,
Vadodara- 390 007.

4.The Regional Head,
ICICI Bank Limited
SME Group, 6th Floor,
West Wing,
Santhome By Pass Road,
Chennai- 600 028.

5.The Chief Manager,
ICIC Bank Limited,



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1090, Tiruchi Road,
Coimbatore-641 018.

6.The Branch Manager,
ICICI Bank Limited,
K.M.P.Complex,
Near Gowri Theatre,
Salem-4.

... Appellants/Defendants

-Vs-

The Kaavery Educational Trust,
Rep. by its Secretary S.K.Elangovan,
Mr.Kalipatti,
Mecheri, Mattur Taluk,
Salem District.

... Respondent/Plaintiff

Appeal suit filed under Section 96 read with Order 41 of the Civil Procedure Code, 1908, as against the judgment and decree dated 28.11.2013, made in O.S.No.201 of 2010, on the file of the learned III-Additional District Judge, Salem.

For Appellant : Mr.S.Suresh
for M/s.T.Srinivasaraghavan & Associates

For Respondent : Mr.K.Doraisami
Senior Counsel



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for M/s.Muthumani Doraisami

J U D G M E N T

1(a). The defendants are the appellants herein.

1(b). The respondent/plaintiff filed a Suit in O.S.No.201 of 2010 for refund of Front End Fees viz., Rs.12,00,000/-, Based upon the request made by the Respondent/Plaintiff to the Defendant/Bank under Ex.A1 dated 08.01.2007, a sanction letter was given, sanctioning six crores for the construction of the building, wherein the service charges (Front End Fees) at the rate of 1.5% with split up figures are mentioned. Initially all the required documents have been given, subsequently, certain documents have been found to be defective.

1(c). Since the original Managing Trustee viz., Kanthasamy died, the trust deed has to be redrafted and finally under Ex.A2 dated 14.03.2007, payment was received by the Plaintiff and he was paid Rs.8,00,000/- by way



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of cheque dated 31.03.2007.

1(d). Subsequently, another amount of Rs.4,00,000/- has also been paid (Ex.A9). As per Ex.A8/sanction letter was given and on 10.08.2007 (under Ex.AS) the plaintiff has expressed his unwillingness to get along with the loan process and proceedings has been completed and by communication dated 08.03.2008, the plaintiff was asked to execute the deed of hypothecation of movables to 3 I Infotec Trusteeship Services Limited.

2.Learned counsel for the appellant submitted that it is only for movables and not for immovables and this has triggered the plaintiff to withdraw the consent and accordingly, as per Ex-A15, the plaintiff informed the Bank to not to proceed further and asked for refund.

3. After trial, the learned District Judge has held that the clause contained in sanction letter and deed of hypothecation are contrary to Section 23 of the Indian Contract Act and accordingly ordered refund and hence the Appeal.



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4. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

5. The defendant Bank filed this appeal on the ground that the Front End Fees is unrefundable and the trial Court has committed error in granting the decree. Reliance is placed upon the letter of the plaintiff dated 12.03.2008 (Ex.P13).

6(a). The learned Senior Counsel Mr.K.Doraisamy appearing for the respondent/plaintiff could contend that at each stage of the process of the loan, new advantage in a hidden formula has been introduced and at the end of the completion before sanctioning of the loan as sought for by the respondent/plaintiff, a new condition has been incorporated to the effect that the plaintiff school has to execute a mortgage in favour of a third party which is projected as a security trustee by the defendant bank for the benefit of the



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6(b). No such condition has ever been made either at the proposal or during the process of the proposal and by calling upon the respondent/plaintiff to execute a equitable mortgage of the school property to a third party through an agreement is against the provisions of the Indian Contract Act and hence he has filed a suit for recovery of the amount of Rs.12,00,000/-, which is captioned as 'Front End Fees' to the bank.

6(c). According to the learned Senior Counsel the so called caption of “non-refundable was introduced” only in the “middle of the process” of the application and not at the commencement of the completion of the formalities. He made submissions in support of the judgment of the trial court.

7. Before the trial Court following issues have been framed:

1. Whether the plaintiff is entitled for recovery of amount with



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interest thereon?

2. Whether the plea of the defendant that the amount is non-refundable since it is a Front End Fees is true, valid and binding upon the parties?
3. To what other relief the plaintiff is entitled?

8. After perusing the oral and documentary evidence adduced before the trial Court and the submissions made by the respective parties, following points arise for determination of this appeal:

1. Whether the plaintiff is entitled for the refund of Rs.12,00,000/- along with 9% interest?
2. Whether the plea of the defendant that the suit claim is false under the non-refundable clause is true, valid and bind upon the parties?
3. Whether the order of the lower Court is sustainable in law?
4. To what other relief the plaintiff is entitled for?



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9. Before the venture into the rival submissions made by the respective parties, a summary of facts that leading to the filing of the appeal are as under:

- (a) The respondent/plaintiff is an Educational Trust founded with the object to start Polytechnic, ITI and Engineering Colleges. The plaintiff Trust was making substantial income from its properties. The plaintiff Trust also was collecting donations from the students and also fees. On this background, the plaintiff approached the appellant bank seeking financial assistance for the purpose of construction of college buildings, landscaping, guest-House buildings, Staff quarters, Installation of electrical lines. This was considered by the appellant bank and the same was acceded to.
- (b) Thereupon, the respondent/plaintiff was informed about the conditions on which the loan will be disbursed and by an instrument dated 08/01/2007, the appellant bank issued a letter to the respondent/plaintiff on the credit arrangement



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and this was accepted. The credit facility sought for by the respondent for a limit of Rs.60 Million. This loan was for the commercial purposes.

- (c) As per the credit arrangement letter dated 08/01/2007, the credit facility to the tune of Rs.60 million was sanctioned by the appellant bank to the respondent/plaintiff on the condition that the respondent/plaintiff should return the duplicate copy of the Credit arrangement letter dated 08/01/2007 duly signed by the Authorised Signatory of the Trust as acceptance of the terms and conditions therein in the annexure and the credit will be made available only on completion of all documents and receipt by the appellant bank and the documents duly executed by the borrower.

10. According to the appellants/defendants the suit is bad since in the agreed arrangement referred to the above, there is a specific stipulation that



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Front End Fees was not refundable and explanation offered by the defendant both in his pleadings as well as the evidence of DW1 is to the effect that the expression Front End Fees means and includes the scrutiny of the title of the properties of the borrower, appraisal of the validity of the documents, documentation, etc., and also the creation of charges. It was also provided that Front End Fees was exclusive of service tax that means that the Front End Fees was intended for meeting the expenses, remuneration fees, etc., in the course of the processing of the loan application. Only on that score it was provided that the said fees would be exclusive of Service Tax.

11. It is a specific case that of the defendant that the respondent/plaintiff accepted the terms and conditions annexed to the Credit arrangement letter and the respondent/plaintiff remitted a sum of Rs.8 lakhs on 31/03/2007 towards the Front End Fees.

12(a). The learned counsel for the appellants/defendants draw my



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attention to Ex.B3 and Ex.B4 and further could contend that in the credit arrangement letter dated 31/12/2007, the respondent/plaintiff had accepted to create mortgage and other security on the terms and conditions and in such form and manner which are satisfactory to the appellant bank over the specific property. In view of this, the respondent/plaintiff had to execute the mortgage deed as well as other security documents as required by the appellant bank and could further contend that by the expression the Security Trustee, it is meant that it is an entity which is holding the security of the respondent/plaintiff for the benefit of the appellant bank till the loan is repaid fully.

12(b). Yet another point that was projected by the appellant bank is the Security Trustee is a Trustee of the Security of the borrower for the lender. This is an in built mechanism made by the appellant bank for safeguarding the public money. The respondent/plaintiff entered into a deed of Hypothecation with the security trustee, namely, M/s.3I Infotech Trusteeship Services Limited, which is a company incorporated under the Companies Act, 1956 and having its registered office at Navi, Mumbai.



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12(c). At this juncture, the appellant bank received a letter dated 07/03/2008 from the respondent/plaintiff that the amended terms and conditions were not acceptable to the respondent/plaintiff and the plaintiff demanded the return of the original documents. By letter dated 12/03/2008 the respondent/plaintiff assured the appellant bank that it would not claim refund of Front End Fees Fees. Therefore it is clear that the respondent/plaintiff abruptly stopped the process of loan disbursement at the very final stages. The Front End Fees being the processing fee and the same has been exhausted and spent for the purpose of earmarked the same is not refundable.

13. It is no doubt to that disbursement of agreed loan amount is payable only if borrower namely, the respondent/plaintiff claims but following the terms and conditions of the agreement and also executing the necessary document. In this case, it is specifically projected by the defendant that the front end fees is a processing fees. It is meant for the purpose of processing including appraisal, documentation, legal scrutiny and so on. When the front



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end fees had been ear-marked for specified purpose and when the respondent/plaintiff had specifically admitted that the front end fees is non-refundable, against the said term of the contract then the respondent/plaintiff cannot ask for refund of the processing fees.

14. At this juncture the documentary evidence that was referred to by the bank as stated supra Ex.B3, Ex.B4 and Ex.B13 dated 31.12.2007, 31.12.2007 and 12.03.2008 respectively. In this connection, answer elucidated during the cross-examination of the DW1 assumes significance.

15(a).The trial Court has observed that வா.சா.ஆ.1ன் அடிப்படையில் 08.01.2007ம் தேதி கடன் ஏற்காட்டு கடிதத்தின் படி ரூ.6கோடி கடன் கொடுப்பதாக ஒப்புக்கொண்ட பிரதிவாதி வங்கியினர் 30.06.2007ம் தேதி ஒப்புக்கொண்டபடி கடன் தொகை எதுவும் வழங்கவில்லை என்றும், அதன்பின்னிட்டும் 16.07.2007ம் தேதி 2வது முறையாக கடன் ஏற்பாட்டு கடிதம் ஏற்பட்டு, அதன் அடிப்படையில் Front End Fee ஆக ரூ.8,00,000./ வாதியால் பிரதிவாதி வங்கிக்கு



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செலுத்தப்பட்டுவிட்ட நிலையில், 2வது கடன் ஏற்பாட்டு கடித்தின் அடிப்படையில், குறிப்பிட்ட காலத்திற்குள் 20.11.2007ம் தேதி வரை கடன் தொகை எதுவும் வழங்கவில்லை என்றும், 3வதாக 3.12.2007 அன்று வா.சா.ஆ.ரீன்படி கடன் ஏற்பாட்டு கடிதம் அனுப்பி அதன் அடிப்படையில் வாதி குசடிவே நுனே குநநள ஆக ரூ.4.00,000./ 31.01.2008ம் தேதி கட்டண தொகையை செலுத்திவிட்ட பின்பும், மேற்படி வாதிக்கு பிரதிவாதி வங்கியால் 31.12.2007ம் தேதிய கடன் ஏற்பாட்டு கடிதத்தின் அடிப்படையில் கடன் தொகை எதுவும் வழங்கப்படவில்லை.

15(b). Thus this Court finds that after the receipt of letter Ex.A1 dated 08.01.2007 for the agreed facility, no loan amount has been disbursed and further more as per the bank letter dated 16.08.2007 in respect of the communication Rs.8,00,000/- has been paid as front end fees, but the amount was not disbursed and another Rs.4,00,000/- was called upon to be paid as per the letter dated 31.12.2007 and 07.01.2008, namely Ex.A8 and Ex.A9. It has been clearly admitted by the DW1.



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15(c). Thus the trial Court has given a finding that the amount of payment of front end fees to the tune of Rs.8,00,000/-, Rs.4,00,000/- was called upon by the appellant bank only during the “middle of the transaction not at the processing of the transaction” assumes significance. The said amount has also been paid, but the sanctioned loan amount was not granted.

16(a). Yet another point in respect of the admission of DW2 touching upon the stand of the appellant/defendant bank is that in the initial stage of communication, “no such pre-condition” has been put to the respondent/plaintiff.

16(b). As per Ex.A1-Credit Arrangement Letter, whatever condition to be imposed is different from the front end fees. It was introduced at a later point of time.

16(c). The trial Court has held that the front end fees to the extent of Rs.12,00,000/- was introduced after the offer has been accepted by the



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respondent/plaintiff. It is against the provisions of the Indian Contract Act.

16(d). In the evidence of DW1 both in chief and cross-examination, he has admitted that though there is no specific clause in the initial stage of the process with regard to the non-refundable nature of front end fees of Rs.12,00,000/-, subsequently it was accepted by him. In the cross-examination, he had categorically admitted that “அதற்காக Front End Fees செலுத்தவேண்டுமென்று வா.சா.ஆ.8ன் படி கேட்டு, ரூ.4,00,000/ பெற்றுக்கொண்டுவிட்டதாகவும், வா.சா.ஆ.8 காலம் 17ல் அவ்வாறு பெற்ற பணம் (non refundable) என்று குறிப்பாக குறிப்பிடப்படவில்லை என்றும், வாதியால் சமர்ப்பிக்கப்பட்டுள்ள வா.சா.ஆ.8ல் உள்ள காலம் பல இடங்களில் பூர்த்தி செய்யப்படாமல் உள்ளது. So also வா.சா.ஆ.21ல் வாதியின் நிறுவனத்தின் சொத்தை 3வது நபரான Infotec Trusteeship Services Ltd., என்ற கம்பெனியின் பெயரில் செக்யூரிட்டி எழுதிக்கொடுக்க வேண்டுமென்று கேட்கப்பட்டுள்ளது, அந்த 3ம் நபரான Infotec Trusteeship Services Ltd., கம்பெனிக்கு தலைமை அலுவலகம் எங்கு உள்ளது என்று தெரியாது, கிளை



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WEB COPY அலுவலகம் சென்னையில் உள்ளது.

17. Further he has admitted that எனது பிரமாண பத்திரிக்கையில், ரிசர்வ் வங்கியில் ஒப்புக்கொண்டபடி எங்கள் வங்கியால் வாதிக்கு தரப்படும் கடன், செக்யூரிட்டி டிரஸ்ட் என்ற 3ம் நபர்மூலம் தான் தரப்படவேண்டுமென்று கூறப்பட்டுள்ளது என்பதற்கு நான் நீதிமன்றத்தில் ஆதாரம் ஒப்புவிக்கப்படவில்லை.

18. More over, செக்யூரிட்டி டிரஸ்ட் என்ற 3ம் நபர் நிறுவனத்திற்கும், பிரதிவாதி வங்கிக்கும் எந்தவிதமான நேரடி ஒப்பந்தம் எதுவும் ஏற்படவில்லை, என்னிடம் காட்டப்படும் ஆவணங்கள் அனைத்தும், பி.வா.சா.ஆ.3 முதல் 9, 11, 12 ஆகிய அனைத்து ஆவணங்களிலும் எல்லா பக்கத்திலும் கோடு போட்டு ரத்து செய்யப்பட்டுள்ளது.

19(a). In view of the admitted position of the defendant-DW1 in his oral evidence, the general clause mentioned in the first offer letter cannot be referred to for so as to include front end fees. Subsequently by modifying it as



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a non-refundable amount and calling upon the respondent/plaintiff to execute a mortgage deed in respect of third party, which is not a party to the present contract of loan agreement, appears to be that bank is not fair on his customers.

19(b). In other words, the defendant DW1 in his cross-examination has admitted that neither in Ex.A1 nor in Ex.B1, the term 'front end fees is non-refundable' is not specifically mentioned. Further more, what was stated in the proposal for mortgaging the property for the loan amount of the bank is within “to the satisfaction of the bank”. Subsequently, it appears that the appellant bank has called upon the plaintiff based on Ex.B1 to give a declaration that they have to execute a personal guarantee agreement with a third party with name 3I Infotech Trusteeship, who are not a party to the agreement.

19(c). The contention was placed before the Court that subject to the satisfaction of the bank mentioned in the communication between the party is



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to be interpreted as directed by the bank either for himself or to any person of his nominee. This Court is unable to accept the said contention for the simple reason that there is no such a phrase or sentence is found in any of the communication between the parties and hence, this Court constrained to observe that the said communication by the appellant bank is nothing but “changing the rule during the middle of the game”.

20. On a combined reading of Ex.A1 and Ex.A21, absolutely there is no clause in Ex.A1 and Ex.A21 that the plaintiff Trust School has to execute a mortgage deed in favour of a third party namely 3I Infotech Trusteeship Ltd., as a security for the loan amount. In the absence of any phrase like either to to his nominee or as directed by the bank in any of the communications by the appellant bank, I have no hesitation to come to the conclusion that the said condition incorporated by the appellant bank in Ex.A21 runs contrary to Ex.A1 and Ex.A27.

21(a). During the course of the argument, this Court puts a specific



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question to the appellant bank counsel to answer the point. The only reply that could be get from the appellant bank counsel is that since there is a word “to the satisfaction” in Ex.A7 to be in all the source be included.

21(b). Further more for the mortgage in respect of a third party as admitted by the first defendant-DW1 in the cross-examination, there is no specific clause mentioned that a third party coming to the contract nor agreement or terms agreed by the plaintiff to execute the mortgage deed in favour of a third party. To a contract mortgaging the Trust School property in the absence of any agreed terms between the parties found to have force.

21(c). Thus the trial Court has rightly come to the conclusion that on a combined reading of Ex.A1 and Ex.A7, the word introduced and mentioned in Ex.A7 that the respondent/plaintiff has to execute the mortgage to the satisfaction of the bank is one thing and calling upon the respondent/plaintiff Trust School to execute the mortgage deed in favour of a totally unconnected person (with reference to the loan) 3I Infotech Trusteeship Ltd is nothing but



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violation of the provision of the contract.

21(d). So also satisfaction of the appellant bank is one and calling upon the respondent/plaintiff school to execute a mortgage deed in favour of a third party is yet another. The clause that has been introduced in the middle of the game in Ex.A7 cannot be stated too fair.

21(e). In other words, at no stretch of imagination in Ex.A7, a new clause has been incorporated by the appellant bank calling upon the school to agree the mortgage deed to the satisfaction of the bank be extended beyond the legal limit in favour of the third party who is no way connected with the agreement and hence this Court is of the considered view that the appellant bank trying to trap the respondent/plaintiff to grab the properties of the Trust School under the guise of availing loan. When the plaintiff was aware and refused, the appellant bank, in a unmerciful manner and unfair trade practice, has refused to refund Rs.12,00,000/- on the ground that it is a front end fees which is non-refundable.



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22(a). A perusal of Ex.A1 dated 08.01.2007 at 8th cloumn 4th point it is mentioned only has to be mortgaged to the ICICI bank the defendant/appellant herein. Further at Sl.No.7 with regard to the creation of the charge it is mentioned as the trust shall create surety stipulated by ICICI bank in the form and the minor satisfactory to the bank.

22(b). As per Ex.A2 dated 14.03.2007 front end fees of Rs.8,00,000/- was paid. Even as early as on 10.08.2007 under Ex.A5 as the plaintiff entertained a doubt with regard to the dubious methodology adopted by the appellant bank for the request of refund of front end fees. As per Ex.A9 another amount of Rs.4,00,000/- has been paid as balance of front end fees. Only under Ex.A12, the bank has introduced new clause by way of clause 2 Point No.4 that front end fees is not refundable after collecting the front end fees as stated in Ex.A9, Ex.A5 and Ex.A2. After collection of the fees the bank has indulged to inform the plaintiff trust school that the amount paid as front end fees is not refundable.



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22(c). In other words, the rule is changed in the middle of the game. Under Ex.A26 dated 05.03.2008 the appellant/defendant bank called upon the respondent to create the security in favour of the security trust which is totally contrary to the Ex.A1 dated 08.01.2007 which is extracted supra.

22(d). This factual position has been duly elucidated by the plaintiff counsel during the trial from DW1 cross-examination as extracted supra also indicates that execution or creating the surety in favour of the surety trust was introduced only under Ex.A26 on 05.03.2008 and not before.

22(e). Yet another incident of changing the rule in the middle of the game under E.A27 is the same was sent on 05.06.2008. Under Ex.A15, the plaintiff has executed the surety to 3I Infotech Trusteeship Ltd realising the fact the plaintiff has sent a letter that he has no longer interest in the bank for availing since 3I Infotech Trusteeship is totally a different entity from the bank and hence he felt that he was trapped and the school is trapped.



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23(a). At this juncture, it is pertinent to note that introduction of the front end fees and subsequently modifying the front end fees as a non-refundable and further introducing a third party surety trusteeship which in the end of the completion of the process of Ex.A1-offer letter. In short, all the three conditions that has been imposed by the appellant bank amounts to “changing the rule” or “amending the rule in the middle of the game” after trapping the customer and accordingly the trial Court has rightly come to the conclusion that the appellant bank has indulged in imposing condition after condition without disclosing anything under Ex.A1, Ex.B1 and Ex.A5 and therefore, the trial Court is rightly negated that the front end fees collected by the bank is to be returned for the reason stated supra.

23(b). Furthermore, this Court also noticed that though an explanation is offered by the appellant bank that the expression security trustee is meant that it is an entity which is holding and security for the respondent/plaintiff for the benefit of the appellant bank till the loan is repaid, according to the bank



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security trustee is a trustee of security of the borrower for the lender and it is an in-built mechanism of the appellant bank for safeguarding the public money.

23(c). If such a stand is taken by the appellant bank, it ought to have been incorporated in a clear terms to the plaintiff-Educational Institution under Ex.A1, Ex.A2 and Ex.B1. Having failed to disclose so much of hidden changes behind the loan being sanctioned the loan, I find that the bank has indulged in unfair trade practice in inviting the respondent/plaintiff under the guise of loan and thereafter compelled to mortgage in respect of unknown third party and when the respondent/plaintiff wanted to wrinkle out of the transaction, the bank has shown the ugly face of non-refund of front end fees on the introduction of clause during the middle of the game. The said reasoning has been rightly rejected by the trial Court.

23(d). In this connection, DW1 in the cross-examination, has categorically admitted that he himself is not known whether the proposed



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security trust is available and he could only say one of the branch is available at Chennai. When the Senior officer of the defendant bank was examined, he himself is not in a position to explain whereabouts of the proposed mortgagee with whom the plaintiff has to execute a mortgage deed in respect of the amount to be sanctioned by the bank for which he was called upon to execute the mortgage of the entire Trust School with an unknown third party and hence, it is due to the onerous condition being added one by one by the defendant bank. During the course of the sanction of the loan the plaintiff has withdrawn his proposal and asking for the refund of the amount paid.

23(e). Hence, for the reasons discussed supra, this Court comes to the conclusion that the respondent/plaintiff is entitled for the claim as made and this Court answered the plea of the defendant bank that the condition that the front end fees is not refundable which is introduced only at the end of the completion of the transaction is bad in law against the provisions of the Contract Act and hence, a similar finding rendered by the trial Court. However for different reasoning as stated supra, the judgment of the trial Court does not suffer from any irregularity or illegality warranting interference in the



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appeal stage. All the points are hold against the appellant bank. Accordingly I find no merit in the appeal and the appeal is liable to be dismissed.

24. In the result,

1. This appeal suit is dismissed.
2. The judgment and decree dated 28.11.2013 made in O.S.No.201 of 2010, on the file of the learned III-Additional District Judge, Salem, is hereby confirmed.
3. From the adjudication paper, I find that pursuant to the interim order passed on 05.12.2014 in M.P.No.1 of 2015 wherein the appellant bank was directed to deposit 50% of the decree amount of Rs.15,84,001/- which comes to Rs.7,92,001/- has been deposited to the credit of the O.S.No.201 of 2010 before the trial Court and hence the respondent/plaintiff is permitted to withdraw the above said amount without any further reference from the trial Court and balance of the amount to be deposited within a period of eight (8) weeks from the date of receipt of a copy of this order.
4. There shall be no orders as to costs. Consequently, connected



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miscellaneous petitions are closed.

16.12.2024

NCC : Yes / No

Index : Yes / No

PJL

To

1.The III-Additional District Judge,
Salem.

2.The Section Officer,
VR Section,
Madras High Court,
Chennai.



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RMT.TEEKAA RAMAN, J.

PJL

JUDGMENT
IN
A.S.No.856 of 2014

16.12.2024