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APPEAL (CAD) NO.2 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL (CAD) NO.2 OF 2023

Canara Bank

Perambalur Branch

Rep. By its Branch Manager

Having Office at Thuraiyur Main Road,

Perambalur Taluk, Perambalur District.

... Plaintiff / Appellant

Vs.

1.Sellapillai

2.Gowri

3.Vimala

... Defendants / Respondents

PRAYER: First Appeal filed under Section 13(1) of Commercial Act read with 96 C.P.C., to set aside the decree and judgment dated 12.07.2022 passed by the Principal District Judge, Perambalur, in O.S.No.23 of 2020 (Filing No.OS/361/2020) (CNR No.TNPB010010272020) with costs.

For Plaintiff / Appellant : Mr.S.Kesavan

For Defendants / Respondents : Mr.Avinash Wadhvani



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J U D G M E N T

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The plaintiff in O.S.No.23 of 2020 is on appeal.

2.For convenience, the parties will be referred to as per their rank in the Suit.

3.The Suit was laid by the plaintiff / Bank seeking recovery of a sum of Rs.14,80,219/- with subsequent interest at 14.70% allegedly due on a mortgage by deposit of title deeds dated 20.09.2005 created by the defendants to secure a borrowing of a sum of Rs.3,20,000/- made by them for purchase of a Tractor. According to the plaintiff, the loan was advanced on 24.09.2005 and the defendants had agreed to repay the same with interest at 10% per annum in 9 yearly instalments and the repayment was commenced from 24.09.2006. However, the Loan Waiver Scheme was brought in the year 2007 and a portion of the loan which remained unpaid as on 09.07.2008 was waived as per the Scheme introduced by the Central

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Government for waiver of agricultural loans. Contending that there was a balance of about Rs.2,53,155/- on the said date and the same with accrued interest had swollen to Rs.14,80,219/- the plaintiff sought for recovery of the said amount.

3.1.The Suit was resisted by the defendants contending that the entire loan was waived as per the Scheme and as such, they are not liable to pay any amount. The claim of the Bank that the defendants had executed acknowledgments of debt on 12.08.2008, 05.08.2011, 03.08.2014 and 28.07.2017 was specifically denied and those documents were termed as false and concocted.

3.2.On the above pleadings, the learned Trial Judge framed the following issues:

“1.Whether the plaintiff is entitled preliminary decree as prayed for?

2.Whether the suit loan was already waived in the year 2008?

3.To what other relief?”



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3.3.The Manager of the plaintiff / Bank one Mr.Pradeeppraja

was examined as P.W.1 and Exs-A.1 to A.19 were marked. First defendant

Mr.Sellapillai was examined as D.W.1 and Ex-B.1 was marked.

3.4.Upon consideration of the evidence on record, the learned

Trial Judge came to the conclusion that the entire loan was discharged and

as such, the Bank has no claim under the mortgage. Therefore, the Suit was

dismissed.

3.5.The learned Trial Judge did not go into the question of the

truth or falsity of the documents / acknowledgments of debt which were

marked as Exs-A.6 to A.9. Aggrieved by the said dismissal of the Suit, the

plaintiff is on appeal.

4.We have heard Mr.S.Kesavan, learned counsel appearing for

the appellant and Mr.Avinash Wadhvani, learned counsel appearing for the

respondents.



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5.Mr.S.Kesavan, learned counsel appearing for the appellant

Bank would vehemently contend that the Trial Court was not right in concluding that the entire debt was discharged. Ex-B.1 is the loan waiver instrument. The learned counsel would submit that what was waived was only the outstanding overdue as on 09.07.2008 i.e., a sum of Rs.,1,60,904/- and the balance was treated as subsisting debt. He also claimed that the defendants had executed Exs-A.6 to A.9 acknowledgments of debt and therefore, according to the learned counsel, the claim of the defendants that the entire loan was waived is incorrect.

6.Contending contra, Mr.Avinash Wadhvani, learned counsel for the respondents would submit that a reading of Ex-B.1 would show that what was waived was the entire debt and not a sum of Rs.1,60,904/- alone as contended by the appellant Bank. He would also pointed out that though a specific plea regarding the validity of the acknowledgments of debt which were marked as Exs-A.6 to A.9 was taken in the written statement,



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no attempt was made by the Bank to prove them by examining either the persons who had signed as witnesses.

7.We have considered the rival submissions.

8.On the arguments of the learned counsel on either side, the following points arise for determination in this appeal:

(i)Whether Ex-B.1 could be construed as waiver of the entire loan outstanding.

(ii)Whether the appellant Bank has proved the acknowledgments of debt marked as Exs-A.6 to A.9.

POINT NO.(i)

9.Ex-B.1 is the certificate issued by the Bank regarding waiver of loan. Issuance of such certificate is not denied. It is contended that what was waived is Rs.1,60,904/-, i.e., the debt which was not paid on time. A reading of Ex-B.1, in our considered opinion, does not explicitly



state that what was waived is only a portion of the loan and the remaining was outstanding. Clause – 2 of Ex-B.1 states the amount of loan not repaid on time, which is shown as Rs.1,60,904/-. Clause 2(இ) shows the amount that is to be repaid up to 31.12.2007 as Rs.3,76,036/- and the same as on 29.02.2008 as Rs.3,80,192/-. Neither the Bank nor the defendants have produced the Loan Waiver Scheme to enable the Court to decide as to what would be the amount that could be waived by the Bank. In the absence of any such records, we have to go only by Ex-B.1, which reads as follows:

2. உரிய நேரத்தில் செலுத்தப்படாத கடன்களின் விவரம் (ரூபாயில்)	ரூ. 1,60,904/-
இ) மேற்படி கடனில் டிசம்பர் 31, 2007 அன்று வரை மீதமுள்ள பிப்ரவரி 29, 2008 வரை திரும்பச் செலுத்தப்படாத தொகை	ரூ. 3,76,036/- ரூ. 3,80,192/-

10.In the light of said statement made in Ex-B.1, we are unable to accept the contention of the learned counsel appearing for the appellant Bank that what was waived is only a portion of the debt and not the entire debt. Point No.(i) is answered accordingly.



POINT NO.(ii)

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11.Learned counsel appearing for the appellant Bank would fall back of Exs-A.6 to A.9 to show that what was waived was only a portion of the debt and not the entire debt. He would point out that the respondents / defendants had acknowledged the debt even after the date of waiver namely 09.07.2008. We are unable to countenance the submission of the learned counsel for the appellant Bank as the Bank has not ventured to prove Exs-A.6 to A.9. As already stated that there is a specific denial of execution Exs-A.6 to A.9 in the written statement.

12.In the light of the same, it is for the appellant Bank to prove the execution of those documents by the defendants. The Bank has not taken any steps for proving those documents by examining the person who has signed as witness. Though D.W.1 who is a signatory to the documents has been examined as defence witness, there is not even a suggestion put to him that those documents were signed by the defendants



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at the relevant dates. Not even an attempt has been made by the learned
counsel for the Bank to draw the attention of the witness to those
documents. In the light of the shoddy trial that has been conducted in the
Trial Court, we do not accept the contention of the appellant Bank that
Exs-A.6 to A.9 have been proved in accordance with law. In the absence of
such proof, we cannot take them as an acknowledgments of a subsisting
debt. Point No.(ii) is answered accordingly.

13.In the light of the above conclusions, we see no merit in
this appeal and the appeal fails and accordingly, it is dismissed. However,
there shall be no order as to costs in this appeal.

[R.S.M., J.]

[R.S.V., J.]

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Index : No

Internet : Yes

Neutral Citation : No

Speaking Order

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R.SUBRAMANIAN, J.

AND

R.SAKTHIVEL, J.

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To

The Principal District Judge
Principal District Court
Perambalur.

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