

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 24.2.2015.

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

S.A.No.493 of 2007
and
M.P.Nos.1 and 2 of 2007

ICICI Bank Ltd.

Represented by its Branch Manager
200/1 Royapettah High Road
Chennai-4.

...Appellant/Defendant in Trial Court

vs.

Trishla Apparels Pvt. Ltd.,
represented by its Director
Mylapore, Chennai-4.

...Respondent/Plaintiff in Trial Court.

Second Appeal against the judgment and decree dated 9.10.2006 made in A.S.No.34 of 2006 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.V, Chennai, confirming the judgment and decree dated 8.4.2005 made in O.S.No.368 of 2003 on the file of the learned XII Assistant Juge, City Civil Court, Chennai.

For appellant : Mr.S. Ragunathan

For respondent : Mr.S. Suresh Kumar

JUDGMENT RESERVED ON :22.12.2014

JUDGMENT

The judgment and decree, dated 9.10.2006 made in A.S.No.34 of 2006 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.V, Chennai, confirming the judgment and decree dated 8.4.2005 made in O.S.No.368 of 2003 on the file of the learned XII Assistant Juge, City Civil Court, Chennai, are under challenge in this second appeal.

2. The appellant is the defendant in the suit in O.S.No.368 of 2003, whereas the respondent is the plaintiff.

3. For easy reference and for the sake of convenience, the

appellant may hereinafter be referred to as the defendant and the respondent be referred to as the plaintiff wherever the context so require.

4. The necessary facts leading to the filing of the suit are as under:-

a. On 5.1.1995 the defendants had sanctioned the overdraft credit facility for a sum of Rs.55,00,000/- on completing the formalities. The plaintiffs were operating the facility through their current account No.CC270. Again on 14.5.1997, the defendants had enhanced the overdraft credit facility to Rs.60,00,000/- from Rs.55,00,000/- in respect of the said current account and also sanctioned additional secured overdraft facility to the plaintiffs for a sum of Rs.15,00,000/- in respect of the current account No.CC1446.

b. The defendants were adjusting the amount payable towards the credit facility from the accounts of the plaintiffs periodically. While so, the defendants have debited from the accounts of the plaintiffs under the heads of "Penal interest" and "Special Tax".

c. In spite of several letters objecting the debiting of penal interest and special tax as arbitrary and no notice was given or explanation called for, for making such debit. The plaintiffs have not committed any default in payment to levy penal interest and there is also no reason for deducting the amount in respect of special tax.

d. Since the deductions were arbitrary and not in accordance with the terms and conditions of overdraft credit facility, the defendants have given credit to a portion of penal interest, but failed to give credit in respect of special tax without any reason.

e. Thereafter, the defendants had transferred and merged the account No.CC270 with the current account No.CC1446 with effect from 17.8.2002. The merged account No.CC1446 is being operated till date.

f. On 27.11.2002, a notice was given to the defendants demanding to pay a sum of Rs.1,75,589.65 towards wrongful debit upto 31.12.1998 within 15 days from the receipt of the notice. However, as there was no response, the plaintiffs filed a suit

seeking for the following reliefs:-

aa. To declare that the debit made by the defendants on the heads 'Penal Interest' and 'Special Tax' from the account of the plaintiffs bearing A/c Nos.2270 merged with CC 1446 are not lawful;

bb. To Grant permanent injunction restraining the defendants from debiting any amount from the account of the plaintiffs bearing Account Nos.CC 270 and CC 1446 under the heads "Penal Interest" and "Special Tax".

cc. To direct the defendants to pay to the plaintiffs a sum of Rs.1,85,139.65 with future interest at the rate of 6% p.m on the said sum from the date of the plaint till the date of realisation and also for costs.

5. The defendants resisted the suit by filing their written statement denying the allegations made in the plaint. It is stated that the suit is barred by limitation. After scrutinisation and due verification, the defendants had sanctioned the credit facility under the head of 'Open cash credit' for a sum of Rs.55,00,000/-. The plaintiffs had accepted the terms and conditions laid down in the sanction letter, dated 5.1.1995, in which the plaintiffs had agreed to pay interest at the rate of 19% plus interest tax.

6. Subsequently, the open cash credit facility was extended to Rs.60,00,000/- and also sanctioned credit facility under the head of secured overdraft for a sum of Rs.15,00,000/-, vide sanction letter, dated 14.5.1997.

7. At the time of availing the said credit facilities, the plaintiffs agreed the terms and conditions laid down in the sanction letter, dated 5.1.1995 and agreed to pay interest at the rate of 19% plus interest tax and as per Section 4 Clause 1 of Interest Tax Act, 1974, there shall be charges on every Scheduled Bank for every assessment year commencing on or after the first day of April, 1975, an interest tax in respect of its chargeable interest of the previous year at the rate of 2% of such chargeable interest.

8. As far as the penal interest is concerned, the Bank shall charge over due (penal) interest at 2% over and above the applicable rate of interest in case;

- a. If the borrower had committed default in complying the terms and conditions of sanction;
- b. If the irregularities found in cash credit account;
- c. If stock statement and other financial papers are not submitted by the borrower and
- d. If the limits are due or un-renewed.

At this juncture, the respondents had charged the penal interest at the rate of 2% over and above the applicable rate of interest for the cash credit limit as the borrower had failed to furnish the stock statements and other financial papers regularly, in accordance with the terms and conditions as agreed by the plaintiffs.

9. The plaintiffs had not submitted the said financial papers and stock statements regularly in time during each period and furnished the financial papers inadequately and incompletely. Under these circumstances, the defendants could not analyse the financial position, which resulted in penalty. The defendants could not decide about the working of the plaintiffs in the absence of financial papers as to renew or to reduce or to enhance or to recall the advance.

10. In the letter, dated 28.9.1999 sent by the Regional Office of the defendants, the plaintiffs had agreed to pay the interest tax to the defendants.

11. The plaintiffs had issued a letter dated 1.10.1999 saying that in case of default, the defendants are at liberty to charge over due interest applicable from time to time and the defendants have also undertook to pay penal interest for the excess sanctioned limit and therefore, the question of prior notice does not arise.

12. The plaintiffs had put on notice about the debit of special tax and penal interest periodically by furnishing the statement of accounts and the same had also been filed by the plaintiffs as documents.

13. From the year 1996 to 2002, the plaintiffs did not raise any objection for debiting the special tax as well as the penal interest in the event of default in payment of any instalments as well as the non compliance of the terms of agreement. Besides, the plaintiffs had themselves acknowledged their liability to pay a sum of Rs.29,96,257.64/- and Rs.1068.68/- under OCC and secured over draft respectively which includes the special tax and penal interest already debited in their accounts by their letter, dated 26.2.2001 and therefore, the question of issuing prior notice does not arise.

14. Since the plaintiffs had already closed their accounts as early as on 17.8.2002 the above suit becomes infructuous and liable to be dismissed.

15. Based on the material proposition of facts arising from the pleadings of the parties to the suit, the trial Court has formulated as nearly as four issues for the better adjudication of the suit.

16. In order to substantiate their respective cases, both the plaintiffs and the defendants were directed to face the trial. Accordingly, one Vinoth Kumar was examined as P.W.1 and during the course of his examination Exs.A1 and A28 were marked. On the other hand, one Lakshmanan was examined as D.W.1 and during the course of his examination Exs.B1 to B5 were marked.

17. On evaluating the evidences both oral and documentary, the trial court had proceeded to decree the suit.

18. Having been aggrieved by the impugned judgment and decree of the trial Court, dated 8.4.2005, the defendants had preferred an appeal in A.S.No.34 of 2006 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.V, Chennai.

19. Since that appeal was also dismissed and not being satisfied with the judgment and decree of the first appellate court, the present second appeal has been filed by the defendants.

20. Heard Mr.S.Ragunathan, learned Counsel appearing for the appellant and Mr.S. Suresh Kumar, learned counsel appearing for the respondent.

21. The learned counsel appearing for the appellants has contended that the suit filed for declaration of amounts, which had been debited towards penal interest upto 1998 and towards special tax during the year 1999 and March 2000 as unlawful and recovery of the same and the suit was filed in January 2003, which is barred by limitation and therefore, the second appeal has to be allowed dismissing the suit.

22. The learned counsel has submitted that the suit was not for the balances due on a mutual open and current account as contemplated in Article I of the Limitation Act, but for recovery of specific debit of penal interest for the period upto 1998 and

Special Tax for the period upto 31.3.2000 and therefore, the suit ought to have been filed within three years from the date of last debit, but the courts below erred in decreeing the suit by holding that the suit was governed by the provisions of Article I instead of Article 58 or Article 113 of the Limitation Act and the courts below had failed to appreciate that Article I would not apply for declaratory reliefs as sought for by the respondent.

23. The learned counsel has argued that as per the terms of the sanction agreed to and accepted by the respondents, the penal interest was charged and debited from the respondent's account not only when the account of the respondents is overdrawn but also when the respondents had failed to furnish stock statements at periodic intervals.

24. The learned counsel has maintained that the courts below erred in holding that the appellants had not intimated the respondents with regard to the debiting of penal interest as the appellants have been furnishing the statement of accounts every month clearly indicating the debit of penal interest and special tax to their account.

25. In support of his contention, the learned counsel has relied on the following decisions:-

a. The Tea Financing Syndicate Ltd vs. Chandra Kamal Bez Barua (AIR 1931 Calcutta 359).

b. M/s. Roshan Lal Kuthiala and another vs. Raja Rana Yogendra Chandra and others (AIR 1996 Himachal Pradesh 14). This judgment deals with the issue of limitation and operation of mutual, open and current account. The relevant paragraphs are extracted hereunder:-

“(38) There is no doubt that, as per pleadings, as reflected from of the plaint, the transactions under reference have been pleaded to be accounts between the parties, which were mutual, current and open. An account is mutual, open and current when it is an account between two parties, having mutual dealings which is running or current, that is, not closed, and open, that is, not settled. Thus, where one person supplies to other person one kind of goods or work and obtains from him another kind, debiting him with the cost of the former and crediting him with the cost of the latter, the account is mutual. There must, as such, be a mutual credit founded on a subsisting debt on the other side or an express or an implied agreement for a set off of mutual

debts. Where there was obligation only on one side and at no time was there over payment, it cannot be said that there was mutual, open and current account. In the present case, as the evidence has been discussed above, this case does not come under Art. 1 of the Limitation Act inasmuch as even if the evidence or the accounts statements Ex. P1 to Ex. P13 are believed to be correct, at no point of time, the present plaintiff has been in debit of any amount towards the defendants. But on the other hand the part payment of the interest or the principal amount in favour of the plaintiff by the defendants, without there being any over payment in favour of the plaintiff does not bring this transaction under Art. 1 of the Limitation Act. Thus, in order that the account liability was mutual, there must be transactions on each side, creating independent obligations on the other and not merely transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligations. In the present case, as per accounts referred to above and the evidence discussed in this behalf, those do not fulfil the aforesaid essential requirements to bring the suit within the ambit of Art, 1 of the Limitation Act.

50. There is no doubt that under Section 3 of the Indian Limitation Act it is the duty of the Court to dismiss the suit in case it is barred by time and even if no such plea had been taken by the opposite party, but where exemption of acknowledgment of the liability for extending the period of limitation has been prayed for, it is obligatory upon the plaintiff to plead such an exemption in the plaint itself. In the present case it has not been so done specifically. Otherwise also these letters Ex. P14 and Ex. P15, alleged to have been written by late Shri Roshan Lal Kuthiala did not acknowledge the liability to pay the amount under reference. "

c. G. Gopal Chettiar vs. Shanmuga Nadar and brothers (AIR 1967 Madras 360 (V 54 C 115). In this judgment it is held that though it is a question of fact in each case whether the account is open, mutual and current, the account must fulfil the requirements of reciprocal demands involving transactions on each side, creating independent obligations on the other, and not merely transactions which create obligations on one side, those on the other being merely

complete or partial discharge of such obligations, i.e., reciprocity of dealings is essential.

Citing the above, the learned counsel pleaded to allow the appeal.

26. On the other hand, the learned counsel for the respondent has submitted that the suit was not barred by limitation as the last debit was made on 30.6.2000 and as per Article - I "for the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties, the period of limitation is three years and the time from which period begins to run is the close of the year in which the last item admitted or proved is entered in the account and such year to be computed as in the account" and therefore, since the suit has been filed within three years, the suit is not barred by limitation.

27. The learned counsel has argued that though the defendants have been adjusting the amount payable towards the credit facility from the accounts periodically, they debited the amounts from the accounts of the plaintiffs in respect of penal interest and special tax and the plaintiffs had written several letters saying that such debiting of amounts in respect of penal interest and special tax were arbitrary and not in accordance with the terms and conditions of the credit facility.

28. In support of his above contentions, the learned counsel has relied on the following decisions:-

a. Nopany Investments (P) Ltd. vs. Santokh Singh (HUF) ((2008) 2 SCC 728). This judgment deals with the maintainability of the Second Appeal. The relevant portions are as follows:-

"7. From the above observations of this court in the aforesaid two decisions, we can come to this conclusion that it is usually the Father of the family, if he is alive, and in his absence the senior member of the family, who is entitled to manage the joint family property. In order to satisfy ourselves whether the conditions enumerated in Tribhovandas's case [supra] have been satisfied in the present case, we may note the findings arrived at by the High Court, which are as follows: -

(i) Jasraj Singh, in his cross examination before the trial court had explained that his eldest brother Dhuman Raj Singh (supposed to be the Karta of the HUF) has been living in United Kingdom for a long time. Therefore, the trial court had rightly presumed that Dhuman Raj Singh was not in a position to discharge his duties as

Karta of the HUF, due to his absence from the country.

(ii) The respondent produced the Xerox copy of the power of attorney given by Dhuman Raj Singh to Jasraj Singh.

(iii) The trial court relied upon the law discussed in the books namely, "Principles of Hindu Law" by Mulla and Mulla and "Shri S.V. Gupta on Hindu Law", wherein it has been observed that ordinarily, the right to act as the Karta of HUF is vested in the senior-most male member but in his absence, the junior members can also act as Karta. (Emphasis supplied)

(iv) There was no protest by any member of the joint hindu family to the filing of the suit by Jasraj Singh claiming himself to be the Karta of the HUF. There was also no whisper or protest by Dhuman Raj Singh against the acting of Jasraj Singh as the Karta of the HUF. It may also be noted that the High Court relied on the decision of this court in Narendrakumar J. Modi Vs. Commissioner of Income Tax, Gujarat II, Ahmedabad [(AIR) 1976 SC 1953], wherein it was held that so long as the members of a family remain undivided, the senior member of the family is entitled to manage the family properties and is presumed to be manager until contrary is shown, but the senior member may give up his right of management, and a junior member may be appointed manager. Another decision in Mohinder Prasad Jain Vs. Manohar Lal Jain [2006 II AD (SC) 520], was also relied upon by the High Court wherein it has been held at paragraph 10 as follows:

"10. A suit filed by a co-owner, thus, is maintainable in law. It is not necessary for the co-owner to show before initiating the eviction proceeding before the Rent Controller that he had taken option or consent of the other co-owners. However, in the event, a co-owner objects thereto, the same may be a relevant fact. In the instant case, nothing has been brought on record to show that the co-owners of the respondent had objected to eviction proceedings initiated by the respondent herein."

Having relied on the aforesaid decisions of this Court and a catena of other decisions and the

findings arrived at by it, as noted hereinabove, the High Court rejected the argument of the appellant that Jasraj Singh could not have acted as the Karta of the family as his elder brother, namely, Dhuman Raj Singh, being the senior most member of the HUF, was alive. In view of our discussions made herein earlier and considering the principles laid down in Tribhovandas's case [supra] and Sunil Kumar's case [supra], we neither find any infirmity nor do we find any reason to differ with the findings arrived at by the High Court in the impugned judgment. It is true that in view of the decisions of this court in Sunil Kumar's case [supra] and Tribhovandas's case [supra], it is only in exceptional circumstances, as noted herein earlier, that a junior member can act as the Karta of the family. But we venture to mention here that Dhuman Raj Singh, the senior member of the HUF, admittedly, has been staying permanently in the United Kingdom for a long time. In Tribhovandas's case [supra] itself, it was held that if the Karta of the HUF was away in a remote place, (in this case in a foreign country) and his return within a reasonable time was unlikely, a junior member could act as the Karta of the family. In the present case, the elder brother Dhuman Raj Singh, who is permanently staying in United Kingdom was/is not in a position to handle the joint family property for which reason he has himself executed a power of attorney in favour of Jasraj Singh. Furthermore, there has been no protest, either by Dhuman Raj Singh or by any member of the HUF to the filing of the suit by Jasraj Singh. That apart, in our view, it would not be open to the tenant to raise the question of maintainability of the suit at the instance of Jasraj Singh as we find from the record that Jasraj Singh has all along been realizing the rent from the tenant and for this reason, the tenant is now estopped from raising any such question. In view of the discussions made herein above, we are, therefore, of the view that the High Court was fully justified in holding that the suit was maintainable at the instance of Jasraj Singh, claiming himself to be the Karta of the HUF."

b. Bachahan Devi and another vs. Nagar Nigam, Gorakhpur

and another (2008 (2) CTC 790). In this judgment, it is held that in order to bring an application of Order XLI Rule 25 the appellate court must come to a conclusion that the lower court has omitted to frame issues and/or has failed to determine any question of fact which in the opinion of the appellate court are essential for the right decision of the suit on merits. Once the appellate court comes to such a conclusion it may, if necessary, frame the issues and refer the same to the trial court.

c. To substantiate his contention that an account may be called a mutual, open and current account, there must be independent transactions resulting in possibility of reciprocal demands and shifting balances and the accounts must be open and continuing, the learned counsel has relied on the decision in V.K. Abraham vs. N.K. Abraham (AIR 1978 Madras 56) and Kesharichand Jaisukhal vs. Shillong Banking Corporation (1965) 3 SCR 110).

d. In support of his case that when the lower appellate court has independently considered all issues, omission to frame points for determination will not render decree of lower appellate court invalid, the learned counsel has relied on the decision in S.M.Ponnaiah Nadar & Sons rep. by its partner S.M.P. Arunachalachamy and 6 others vs. R.C.Diocese of Madurai represented by its Procurator Father S. Jesudasan Arch Bishop's House K. Pudur, Madurai. (2000 (IV) CTC 30).

29. The points for consideration arose in this second appeal are:-

- a. Whether the suit is barred by limitation?
- b. Whether the Sanction Letter, dated 5.1.1995 provide for levying of penal interest and special tax?

30. The main contention of the learned counsel for the appellants is that the suit is barred by limitation as it has not been filed within the period of limitation. Since the plaintiffs sought for the relief of declaration, as per Article 58 of the Limitation Act, the period of limitation is three years and the time from which period begins to run is when the right to sue first accrues.

31. In this regard, the lower appellate court has considered at length and has come to the conclusion that the suit is not barred by limitation and Article 58 of the Limitation Act is not applicable, but Article - I is applicable.

32. The bone of contention of the learned counsel for the appellants is that since the plaintiffs sought for the relief of

declaration, Article 58 would come into play. On the other hand, the contention of the learned counsel for the respondents is that though the suit has been filed for the relief of declaration, the suit is relating to accounts and when there is specific provision under Article - I , Article 58 will not come into play.

33. At first, it is to be decided that whether the suit is relating to accounts and that the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.

34. It is the case of the appellants that on 5.1.1995 they had sanctioned the overdraft credit facility for a sum of Rs.55,00,000/- on completing the formalities. The plaintiffs were operating the facility through their bank current account No.CC270. Again on 14.5.1997, the defendants had enhanced the overdraft credit facility to Rs.60,00,000/- from Rs.55,00,000/- in respect of the said current account and also sanctioned additional secured overdraft facility to the plaintiffs for a sum of Rs.15,00,000/- in respect of the current account No.CC1446.

35. So, it is clear that the suit is relating to accounts and now it is to be determined that such account is mutual, open and current account.

36. To prove that the account being maintained by the plaintiffs with the defendants is mutual, open and current account, the learned counsel for the plaintiffs has relied on the decision (AIR 1978 Mad 56) (V.K. Abraham vs N.K. Abraham), wherein it is observed as under:-

" Prior to the Supreme Court decision in Hindustan Forest Co. v. Lalchand, another case came before a Bench of this court in Kesava Chettiar v. Ramanathan Mudaliar, in which the plaintiff, a wholesale merchant, carrying on business in yarn had dealings with the defendant, a retailer, in the same business. The retailer was advancing substantial sums before supplies of yarn were made by the wholesaler. Subsequent to October 1946, payments made by the retailer to the wholesaler were mostly in the nature of payment of price for the yarn supplied. On 7-8-1947 there was a credit balance in favour of the retailer. But after a short period of two months the retailer had again to pay further sums as against the supply of yarn. In the suit filed by the wholesaler, the question of the applicability of Article 85 of the Indian LIMITATION Act, 1908, came up for consideration. The following

propositions were set out in that case-"1. To constitute a MUTUAL ACCOUNT between two parties, the essence of the transactions should be looked at in order to find out if independent obligations arise on both sides, resulting in possibility of reciprocal demands, even though the transactions may relate to the same commodity or to the same kind of business. 2. Before deciding whether a particular course of dealings is a continuous course of transactions independent of the other transactions involved in the case, the number of dealings do not count to decide whether the counter-claim arises upon casual transactions. The real import of the casual transactions should be taken note of in deciding the question whether they give rise to independent obligations or whether they are merely a mode of liquidation of the obligation already undertaken by the party. 3. A shifting balance may, no doubt, be a test of MUTUALity, but its absence cannot be taken to be conclusive proof against MUTUALity. The real point to be noticed is not whether balances actually shifted but whether the nature of the transactions was such that it was capable of giving rise to shifting balances. 4. The absence of actual reciprocal demands would not matter, because the point to be considered is whether such demands were capable of being made on the ACCOUNT by one party upon the other. " A learned single Judge of the Andhra Pradesh High Court in Anumukonda anjaneyalu v. Agricultural Traders, has doubted the correctness of this decision in the light of the decision of the Supreme Court in Hindustan Forest Co. v. Lalchand. Whatever may be the justification for this criticism, with reference to the conclusion on facts, we do not find that any one of the propositions extracted above is OPEN to question or is in conflict with any authority. We consider that these propositions do continue to be valid notwithstanding any doubt about the correctness of the actual decision in that case. "

37. In the light of the principles laid down in the above said decision, this Court is of view that the account being maintained by the plaintiffs with the defendants is mutual, open and current account.

38. Therefore, instead of Article 58, Article -I is applicable to decide whether the suit is barred by limitation or not.

39. It is the case of the plaintiffs that on 30.6.2000 the defendants have made the last debit and on which date the period of limitation begins to run.

40. Now, it is pertinent to see the Article - I, which reads as under:-

	Description of suits	Period of Limitation	Time from which period begins to run
PART - 1	SUITS RELATING TO ACCCOUNTS		
1.	For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties	Three years	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.

41. According to the plaintiffs as well as the defendants, the last debit was made on 30.6.2000. As per the above said Article I, the period of limitation is three years and the time begins from the close of the year in which the last item admitted or proved is entered in the account and such year to be computed as in the account.

42. The suit in this case was filed on 20th January 2003. As indicated earlier, the last transaction was held on 30.6.2000. As per the said Article I, the account of the plaintiffs having been closed at the end of the calendar year i.e., 31.12.2000 and the period of limitation would be on 31.12.2003 and therefore, the suit was filed well within the time and it is not barred by limitation.

43. As far as the next question is concerned, a perusal of the sanction letter, 5.1.1995 reveals nothing about the penal interest or special tax. But in the written statement the defendants have stated that the plaintiffs accepted the terms and conditions laid down in the Sanction Letter, dated 5.1.1995 in which the plaintiffs agreed to pay interest at the rate of 19% p.a. plus interest tax.

44. Further, in the written statement, it is stated that the circumstances under which, the penal interest and special tax would be levied, which are as under:-

"As far as the penal interest is concerned, the Bank shall charge over due (penal) interest at 2% over and above the applicable rate of interest in case;

a. If the borrower had committed default in complying the terms and conditions of sanction;

b. If the irregularities found in cash credit account;

c. If stock statement and other financial papers are not submitted by the borrower and

d. If the limits are due or un-renewed.

At this juncture, the respondent had charged the penal interest at the rate of 2% over and above the applicable rate of interest for the cash credit limit as the borrower had failed to furnish the stock statements and other financial papers regularly, in accordance with the terms and conditions as agreed by the plaintiffs."

45. But D.W.1 has deposed as under:-

"Ex.B3 ல் அபராத வட்டி என்பது நிர்ணயிக்கப்பட்ட கடன் தொகை மேல் கடன் பெற்றாலும் Drawing power க்கு மீறி அபராத வட்டி வசூலிக்கப்படும் என சொல்லப்பட்டுள்ளது. வாதி Sanction Limit யை மீறிவிட்டதாக வாதிக்கு அறிவிப்ப, எதுவும் இதுவரையில் கொடுக்கவில்லை. Sanction limit யை மீறிவிட்டதற்கும் Drawing Power யை மீறிவிட்டதற்கும் எங்களிடம் ஆவணம் கிடையாது.

46. He has further deposed as under:-

P.A. ல் 2 % அபராத வட்டி வசூலிக்கப்படும் என நிபந்தனையில் சொல்லப்படவில்லை. அந்த தொகை பணம் பெறுபவர் Default செய்தாலும் அனுமதிக்கப்பட்ட கடனை விட அதிகபடியாக கடன் வாங்கினாலும் சரிவர கணக்கு சமர்ப்பிக்கப்படவில்லை என்றாலும் அபராத வட்டி விதிக்கப்படும் என நிபந்தனை உள்ளது. இந்த நிபந்தனை பற்றி வாதிக்கு அறிவிப்ப, அனுப்பப்பட்டதா என தெரியாது.

47. It is not the case of the defendants that;

a. the plaintiffs had committed any default in complying with the terms and conditions of sanction,

b. the defendants found the irregularities in cash credit account;

c. the stock statement and other financial papers are not submitted by the plaintiffs and

d. the limits are due or un-renewed. Further, it is not the case of the defendants that the plaintiffs had failed to furnish the stock statements and other financial papers regularly, in accordance with the terms and conditions as agreed by the plaintiffs. From the above evidence and their case, it is clear that without any reason or basis the defendants had debited the amount in respect of penal interest and special tax.

48. Further, in view of the letters and demand from the plaintiffs, the defendants gave credit to a portion of the penal interest deducted, however, they failed to give credit to the special tax debited by them without any reason.

49. From the above, it is clear that without any basis or reason or without any violation or fault on the part of the plaintiffs, since they have debited the amount in respect of penal interest, they gave credit to a portion of the penal interest deducted. Therefore, considering all these aspects and considering both oral and documentary evidence, the courts below have decreed the suit as prayed for and therefore, this Court does not like to interfere with the findings of the courts below.

50. For the aforesaid reasons, the second appeal fails and the same is dismissed confirming the judgment and decree of the courts below. However, there will be no order as to costs. Connected M.Ps. are also dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rnb/mra

To

1. The Additional District and Sessions Judge,
Fast Track Court No.V, Chennai.
2. The XII Assistant Judge, City Civil Court, Chennai.

3. The Section Officer, V.R. Section, High Court, Madras.

Copy to: The Registrar, City Civil Court, Chennai.

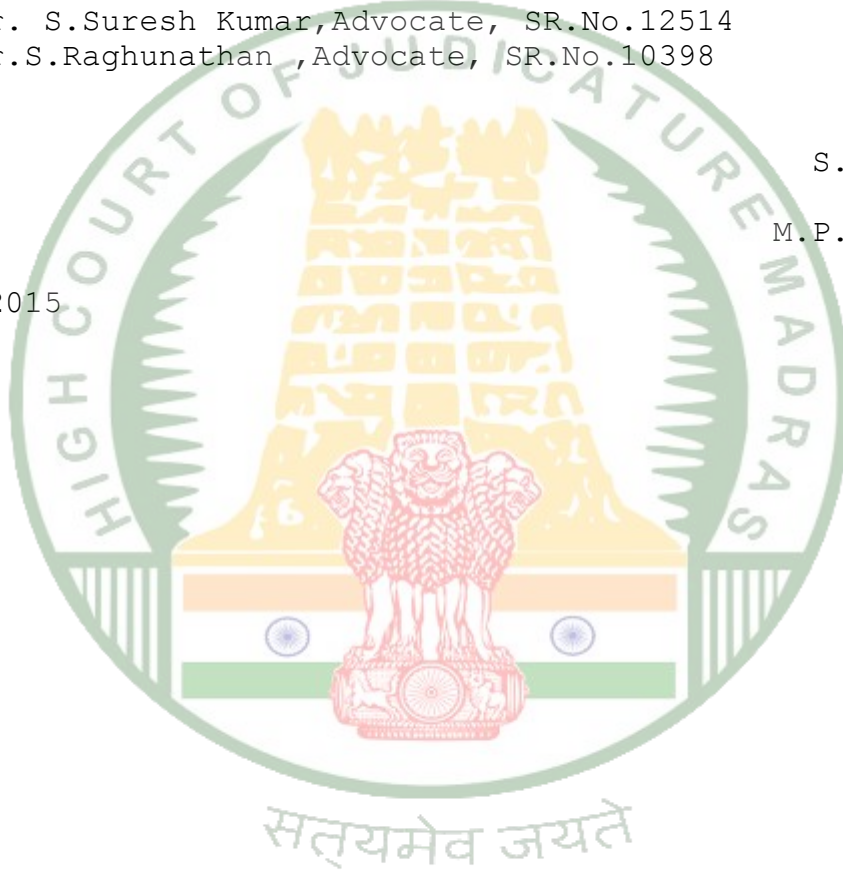
1 cc to Mr. S.Suresh Kumar, Advocate, SR.No.12514

1 cc to Mr.S.Raghunathan, Advocate, SR.No.10398

S.A.No.493 of 2007

M.P.Nos.1+2 of 2007

jp(co)
pmk.26.3.2015



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