

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 17.12.2014

Pronounced on : 19.01.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

A.S.No.916 of 2009

1.K.P.M.Chinnasamy @ K.P.Chinnasamy

2.Chellammal

3.Loganathan

... Appellants/Defendants 1, 2&3

-Vs-

1.A.N.Suresh Babu

2.The Manager

Central Bank of India

Shevapet, Salem-2

... Respondents/Plaintiff &
Defendant 4

Appeal Suit filed under Order 41 Rules 1 and 2 of CPC r/w section 96 of C.P.C against the judgment and decree of the Additional District Judge (FTC No.1), Salem dated 23.06.2008 made in O.S.No.105/2006.

For Appellants : Mr.P.Jagadeesan

For Respondents : Mr.S.Kalyanaraman

J U D G M E N T

The defendants 1 to 3 in the original suit are the appellants in the appeal. The first respondent as plaintiff filed O.S.No.105/2006 before the trial court praying for a decree against the appellants herein/defendants 1 to 3 directing them to pay a sum of Rs.12,31,981/- with subsequent interest at the rate of 12% per annum till realisation and cost. Though no relief was sought for against the second respondent herein, the second respondent was arrayed as 4th defendant in the original suit on the premise that the loan transaction was arranged through the second respondent/4th defendant.

2. The claim was made on the basis of the plaint averments, which are, in brief, as follows:

i) The first respondent/plaintiff is the proprietor of Orbit Overseas doing export business and he was maintaining an account with the Central Bank of India, Sevvapet Branch, Salem, namely the second respondent. The first appellant owed money to the Central Bank of India in respect of the credit facilities availed by him for his business. Through one Kalyanasundaram, who was the

then Manager of the said branch of Central Bank of India, the first appellant/first defendant requested the first respondent/plaintiff for providing him a loan of Rs.7,20,000/- and the first respondent/plaintiff also agreed for the same. The said amount was paid to the first appellant by debiting a sum of Rs.7,20,000/- from the account of the first respondent and crediting the same to the account of the first appellant. The first appellant agreed to repay the same together with an interest at the rate of 16.75% per annum. As agreed he was paying interest and as on 28.02.2006 there was a balance of Rs.13,53,901/-.

ii) When a demand was made, the first appellant executed a Deed of Undertaking dated 04.03.2006 promising that he would repay a sum of Rs.5,00,000/- within seven days and the balance amount with interest within two months. The appellants 2 and 3 agreed to be the guarantors for the proper repayment of the said amount. The first respondent also met several times the appellants 2 and 3 and requested them to pay the amount. Thereafter, all the three appellants paid a sum of Rs.2,00,000/- on 01.04.2006 and obtained a receipt in the name of the appellants 2 and 3. They also promised to pay another sum of Rs.2,00,000/- on or before 30.04.2006. Thereafter a sum of Rs.2,00,000/- was to be paid on or before 01.06.2006 and the entire balance amount was to be paid on or before 01.07.2006. A xerox copy of the receipt obtained from the first respondent on 01.04.2006 was also handed over to the first respondent.

iii) As the appellants failed to pay the balance, a legal notice dated 19.04.2006 came to be issued to the first appellant and also to the bank. The first appellant did not care to issue any reply even though he received the same; Nor did he pay the amount as claimed by the first respondent. Hence the first respondent was constrained to file the suit praying for a degree against the appellants/defendants 1 to 3 directing them to pay a sum of Rs.12,31,981/- being the total amount including interest as on the date of filing of the suit together with future interest at the rate of 12% per annum.

3. The suit was resisted by the appellants herein/defendants 1 to 3 based on the written statement filed by the first appellant, which was adopted by the other two appellants, namely appellants 2 and 3. In the said written statement, they have admitted the plaint averment that a sum of Rs.7,20,000/- was debited from the account of the first respondent and credited to the account of the first appellant on 31.03.1999. However, they denied the alleged agreement to pay interest at the rate of 16.75% per annum. They also disputed their liability to pay a sum of Rs.13,53,901/- to the first respondent as on 28.02.2006. In addition to the said averments, the following averments were also made.

i) The second respondent/4th defendant colluded with the first respondent/plaintiff and the suit itself has been filed at the instigation of the second respondent/4th defendant. The alleged agreement dated 04.03.2006 is false and fabricated and the first defendant never agreed to pay Rs.13,53,901/- to the plaintiff. The

signature of the first appellant was obtained by force by the respondents 1 and 2 after causing a threat of dire consequences. The appellants 2 and 3 did not agree to settle the amounts due from the first appellant to the first respondent either on 01.04.2006 or at any other time. They did not voluntarily pay a sum of Rs.2,00,000/-. On the other hand, their signatures were obtained by force and they did not agree to be sureties for the first appellant at any point of time. The signatures of the appellants 2 and 3 were obtained in blank papers by force and a document has been created using their signatures obtained in the unstamped blank papers.

ii) Immediately after the receipt of the notice from the first respondent, the first appellant met the first respondent in person and furnished him with true facts and the first respondent assured that he would not take any action and the same was the reason why the first appellant did not give any reply to the notice dated 19.04.2006. At no point of time, the first appellant agreed to pay interest at the rate of 16.75% per annum. Several payments were made between 28.03.2001 to 01.04.2006 and the total amount thus paid by the first appellant to the plaintiff was Rs.7,50,000/-. If proper credits shall be given to the payments made between 28.03.2001 and the direct payment of Rs.2,00,000/- made on 01.04.2006, no amount would lie outstanding due to the first respondent from the first appellant.

iii) The respondents 1 and 2 by force and after causing threat obtained the signature of the first appellant in plaint document No.1 dated 04.03.2006. The Manager had no authority to transfer Rs.7,20,000/- from the account of the first respondent to the account of the first appellant. Hence he assured that no action would be taken against the first appellant on the basis of the plaint document No.1. Since the said document was created, it cannot be enforced against the appellants 1 to 3. As the appellants 2 and 3 are not sureties, they are unnecessary parties to the suit. As no claim is made against the second respondent/4th defendant, he was also an unnecessary party. Cause of action alleged in the plaint was false. The plaintiff had come to the court with unclean hands and hence the suit should be dismissed with exemplary cost.

4. The second respondent/4th defendant filed a separate written statement supporting the case of the first respondent/plaintiff and against the appellants/defendants 1 to 3 and contending that the suit as against the second respondent/4th respondent was liable to be dismissed, as no claim was made against him.

5. Based on the above said averments, the following issues were framed by the trial court:

1. Whether the plaintiff is entitled to recover the amount claimed in the suit?

2. Whether the first defendant has executed a separate deed of undertaking for the recovery of the amount?

3. Whether the defendants 2 and 3 stood as guarantors for the recovery of the amount claimed in the suit?

4. To what other reliefs the plaintiff is entitled?

6. The parties went for trial and in the trial, two witnesses were examined as PWs.1 and 2 and six documents were marked as Exs.A1 to A6 on the side of the first respondent herein/plaintiff. On the side of the appellants herein/defendants 1 to 3, two witnesses were examined as DWs.1 and 2 and ten documents were marked as Exs.B1 to B10.

7. The learned trial judge, upon considering the pleadings and evidence, answered all the issues in the affirmative in favour of the first respondent herein/plaintiff and granted a decree in favour of the first respondent/plaintiff directing the appellants/defendants 1 to 3 to pay a sum of Rs.12,31,981/- together with an interest on Rs.11,53,901/- from the date of plaint till realisation and also the cost. The above said decree drawn based on the judgment of the trial court dated 23.06.2008 is under challenge in the present appeal on various grounds set out in the grounds of first appeal.

8. The points that arise for consideration in this appeal are:

1. Whether Ex.A1-Agreement dated 04.03.2006 is a document created using the signature of the first appellant obtained in blank stamp papers using threat and coercion?

2. Whether Ex.A2 is the xerox copy of the document created using the signatures obtained from the appellants 2 and 3 in unstamped blank papers?

3. Whether the first appellant/first defendant is liable to pay the amount claimed in the suit as principal debtor?

4. Whether the appellants 2 and 3/defendants 2 and 3 are liable to pay the suit claim as guarantors of the first appellant/first defendant?

5. To what other reliefs the parties are entitled?

9. The admitted facts are as follows:

The first respondent/plaintiff A.N.Suresh Babu, is running a proprietorship export business in the name and style of Orbit Overseas. He was maintaining an account with Central Bank of India, Sevvapet, Salem-636002. The first appellant/first defendant is also running a proprietary concern in the name and style of Raghavendra Granites at Attur. The first appellant/first defendant was also

having a business account in the very same bank. A sum of Rs.7,20,000/- was transferred from the account of the first respondent/plaintiff to the account of the first appellant/first defendant on 31.03.1999. Towards the said amount transferred to the account of the first appellant/first defendant from the account of the first respondent/plaintiff, piecemeal payments were made either by transfer of funds from the account of the first appellant/first defendant to the account of the first respondent/plaintiff or by way of demand draft/pay order/cheque on seven occasions, in all totalling to a sum of Rs.5,50,000/-. In addition to the said amount of Rs.5,50,000/-, a sum of Rs.2,00,000/- was paid by the appellants 2 and 3/defendants 2 and 3 on behalf of the first appellant/first defendant on 01.04.2006. Thus the total amount admittedly paid by the first defendant and by the defendants 2 and 3 on behalf of the first defendant till 01.04.2006 was Rs.7,50,000/-. Thereafter no amount was paid by the first appellant/first defendant or by the appellants 2 and 3/defendants 2 and 3 till the filing of the suit.

Point No.1:

10. The first respondent/plaintiff has filed the suit on the basis of his contention that the sum of Rs.7,20,000/- transferred from his account to the account of the first appellant was done at the request of the first appellant/first defendant through the tehn Manager of the Central Bank of India, with an understanding that the amount would be repaid with interest charged by the bank for the loan availed by the first appellant/first defendant with the Central Bank of India. According to the case of the first respondent/plaintiff, though payments were made either by transfer of funds from the account of the first appellant/first defendant to the account of the first respondent/plaintiff or by demand draft/pay order/cheque, all those amounts were not even sufficient for the interest ant that hence the principal amount remained unpaid. According to the further plea of the first respondent/plaintiff, when accounts were taken on 04.03.2006 calculating the interest at the rate of 16.75% per annum, the total amount due was found to be Rs.13,53,901/- and that the first appellant/first defendant acknowledging his liability to the said amount together with interest, executed Ex.A1-Loan agreement undertaking to pay the balance amount of Rs.13,53,901/- in the following manner: i) within seven days from the date of Ex.A1 : Rs.5,00,000/- and ii) the balance amount with accrued interest will the date of payment within two months from the date of Ex.A1-loan agreement. The case of the first respondent/plaintiff is that by executing the said Loan Agreement marked as Ex.A1, the first appellant/first defendant admitted and acknowledged his liability. Based on such plea alone, the suit as against the first appellant/first defendant has been laid.

11. The defence plea of the first appellant/first defendant is that there was no privity of contract between the first respondent/plaintiff and the first appellant/first defendant has never had any contact with the first respondent/plaintiff prior to the transfer of funds from the account of the first respondent/plaintiff to the account of the first appellant/first

defendant. Even though he would have admitted that a sum of Rs.7,20,000/- was transferred from the account of the first respondent/plaintiff to his account, the first appellant/first defendant contended that the suit transfer was not made based on his request and that there was no agreement or understanding to pay interest for the said amount. In short, the contention of the first appellant/first defendant seems to be that though he was liable to repay the amount transferred to his account from the account of the first respondent/plaintiff, no liability was cast on him to pay interest, as there was no agreement to that effect. In this regard, it is worth mentioning that the claim of the first appellant/first defendant is that the total amount paid by him in repayment of the amount transferred to his account from the account of the first respondent/plaintiff was Rs.7,50,000/- as against the admitted amount transferred, namely Rs.7,20,000/-. The details of repayment made are provided as under:

Date	Mode of Payment	Amount	Remarks
28.03.2001	By transfer of funds from the account of the defendant to the account of the plaintiff	Rs.1,00,000/-	Evidenced by Ex.B6 voucher
25.04.2002	Demand draft	Rs.50,000/-	Evidenced by Ex.B7-xerox copy of the demand draft
29.07.2002	2 x Demand drafts bearing Nos.203576 and 203577, each one for a sum of Rs.50,000/-	Rs.1,00,000/-	Evidenced by Exs.B8 and B9 - xerox copies of the DDs
02.11.2002	Pay Order	Rs.50,000/-	Evidenced by Ex.B1-Receipt and Ex.B2-Counterfoil
10.02.2004	Pay Order	Rs.1,00,000/-	Evidenced by Ex.B3-Counterfoil
06.01.2005	Cheque	Rs.50,000/-	Evidenced by Ex.B5-Accounts Statement
23.02.2005	Pay Order	Rs.1,00,000/-	Evidenced by Ex.B4-Counterfoil

Date	Mode of Payment	Amount	Remarks
01.04.2006	Amount received by the plaintiff and the persons who accompanied him from defendants 2 and 3 by cash	Rs.2,00,000/-	Evidenced by Ex.A2
	TOTAL	Rs.7,50,000/-	

A glance at the said figures will make it clear that even as per the admission of the first appellant/first defendant, more amount than the amount transferred to his account from the account of the first respondent/plaintiff came to be repaid by the first appellant/first defendant. The very fact that the amount admittedly paid by the first defendant as per the particulars cited supra, exceeds the amount transferred to his account from the account of the first respondent/plaintiff, will make the claim of the first appellant/first defendant that there was no agreement for payment of interest, untenable and improper. The very fact that more amount than the amount transferred to his account was paid, shall probablise the case of the first respondent/plaintiff that there was an agreement to pay bank interest, which worked out at the rate of 16.75% per annum.

12. Admittedly, the loan transaction took place on 31.03.1999. The first payment towards repayment on the loan amount was made on 28.03.2001. If simple interest for two years is calculated at the rate of 16.75% on Rs.7,20,000/-, the interest will come to Rs.2,40,200/-. Similarly, the other payments made would not have been more than or equal to the balance amount of accrued interest on the dates of payments. Hence, as rightly contended by the learned counsel for the respondent/plaintiff all the payments made by the first appellant/first defendant up to 23.02.2005 were adjusted towards interest alone. The contention of the first respondent/plaintiff that when accounts were taken as on 28.02.2006, the total amount due towards principal and interest was found to be Rs.13,53,901/- is also found to be correct.

13. Besides making periodical payments and thereby acknowledging the liability till 23.02.2005, at last, on 04.03.2006, according to the first respondent/plaintiff, the first appellant/first defendant executed Ex.A1-Loan agreement acknowledging the total amount due as on 28.02.2006 to be Rs.13,53,901/- and promising to repay the amount in two intallments as indicated supra. Based on Ex.A1, the claim against the first appellant/first defendant has been made after giving credit to Rs.2,00,000/- paid by the appellants 2 and 3/defendants 2 and 3 on 01.04.2006 on behalf of the first appellant/first defendant. Though the first appellant/first defendant has not denied his liability to repay the amount transferred from the account of the first respondent/plaintiff to the account of the first appellant/first

defendant, he disputed his liability to pay interest. We have seen supra that the payments made by him would give a clear indication that there was an understanding that the first appellant/first defendant was liable to pay interest and he was also paying interest. In addition, there is a clear undertaking in Ex.A1-Loan Agreement for payment of interest at the rate of 16.75%.

14. Of course, the first appellant/first defendant disputed the genuineness and validity of Ex.A1-loan agreement (undertaking) dated 04.03.2006. The grounds assigned by the first appellant/first defendant to assail the validity of Ex.A1-loan agreement (undertaking) is that his signature was obtained by the first respondent/plaintiff at the Manager of the Central Bank of India, Sevvapet Branch by using force and after causing threat with dire consequences. Though a bald defence plea was taken in the written statement to the said effect, there is a clear admission on his part that after the said occurrence, he did not lodge any complaint with the police or with the higher officials of the Central Bank of India and that he did not issue any legal notice narrating the manner in which his signature was obtained in Ex.A1 and contending that no right and obligation would flow from the said document. Of course it is true that there are certain discrepancies in the evidence adduced on the side of the first respondent herein/plaintiff and the following are the discrepancies. The plaintiff, while deposing as PW1, erroneously stated that he also signed Ex.A1-Agreement, whereas it does not contain his signature. One Murugan, who figured as one of the attestors for A1 deposed as PW2. In his evidence, he has stated that two persons by names Chandran and Manoharan attested Ex.A1 along with him. The name of the first attestor as found in Ex.A1 is Chandran son of Ramasamy. Name of the second attestor is not clear. Chandran figured as the first attestor, whereas PW2-Murugan figured as the third attestor. If properly considered, the above said discrepancies shall be neglected as minor discrepancies not affecting the case of the first respondent/plaintiff, especially when considered in the light of the defence plea taken by the appellants/defendants and the evidence adduced by them in this regard. The first appellant/first defendant, who figured as DW1, made an attempt to project Ex.A1 to be a document in which his signature was obtained by threat and coercion. Ex.A1 is dated 04.03.2006. The date of the document has not been disputed. One who admits execution and pleads that the document was obtained by threat and coercion has to prove the same by reliable evidence. In this regard, except the interested testimony of first appellant/first defendant, who figured as DW1, there is no other piece of evidence worth mentioning to support the above said contention of the first appellant/first defendant. Even the third appellant, who deposed as DW2, did not say anything about the execution of Ex.A1-Agreement/undertaking.

15. It is also pertinent to note that the first respondent/plaintiff caused issuance of a notice dated 19.04.2006 through his advocate, copy of which has been produced as Ex.A3

setting-forth the particulars found in the plaint and also Ex.A1-loan agreement/undertaking. In the said notice, the payment of Rs.2,00,000/- made on 01.04.2006 by the appellants 2 and 3 on behalf of appellant No.1 has also been referred to. The said notice was served on the first appellant/first defendant as evidenced by the postal acknowledgment card marked as Ex.A4. Even after the receipt of the said notice, first appellant/first defendant did not issue any reply setting out the plea of defence now he has made in his written statement regarding the circumstances under which he signed Ex.A1-Loan Agreement/Undertaking. He also failed to lodge any complaint after the receipt of the said notice under Ex.A3, till he received summons in the suit and submitted his written statement. He did not take any effective steps against the first respondent/plaintiff for his alleged act of getting signature in Ex.A1-document using threat and coercion. All these factors will make the defence theory of the first appellant/first defendant regarding the execution of Ex.A1 and consequently regarding the genuineness and validity of the said document, improbable and untenable. On the other hand, they make the plea of the plaintiff regarding the execution of Ex.A1-agreement and its validity probable and sustainable. The learned trial judge, on proper appreciation of evidence, arrived at a correct conclusion that Ex.A1-agreement was true and genuine and it was executed by the first appellant herein/first defendant undertaking to repay the amount due from him, which was quantified at Rs.13,53,901/-, with interest at the rate of 16.75% as per the payment schedule provided therein. This court also, on re-appreciation of evidence, arrives at the very same conclusion and it finds no reason to differ from the finding recorded by the trial court in this regard. Point No.1 is answered holding that Ex.A1-Agreement acknowledging the liability and undertaking to pay the amount quantified therein with interest was executed by the first appellant/first defendant on 04.03.2006 and that the same is valid and binding on the first appellant/first defendant.

Point No.3:

16. The first respondent/plaintiff has chosen to file the suit claiming the relief of recovery of money not only against the first appellant/first defendant, but also against the appellants 2 and 3/ defendants 2 and 3. Such a claim against the appellants 2 and 3/defendants 2 and 3 has been made on the strength of his plea that when the last payment was made on 01.04.2006, the appellants 2 and 3/defendants 2 and 3, besides making payment of a sum of Rs.2,00,000/- in discharge of part of the claim made by the first respondent/plaintiff against the first appellant/first defendant, undertook to pay the balance amount due on behalf of the first appellant/first defendant and thus, they agreed to be guarantors for the repayment of the amount due from the first appellant/first defendant in respect of the suit transaction. In short, the contention of the first respondent/plaintiff is that the appellants 2 and 3/defendants 2 and 3 are the guarantors for the repayment of the balance amount due to the first respondent/plaintiff from the first appellant/first defendant. In this regard, clear plea has been taken by the appellants/defendants in the written statement

filed by the first appellant/first defendant and adopted by the other two defendants to the effect that the appellants 2 and 3/defendants 2 and 3 had nothing to do with the loan transaction between the first respondent/plaintiff and the first appellant/first defendant that the appellants 2 and 3/defendants 2 and 3, at no point of time, agreed to be the guarantors; that they did not execute any deed of guarantee or indemnity and hence the suit incorporating a prayer for recovery of the amount claimed in the suit from the appellants 2 and 3/defendants 2 and 3 and also is based on a misconception, cannot be sustained and that in fact, the appellants 2 and 3/defendants 2 and 3 also is based on a misconception, cannot be sustained and that in fact, the appellants 2 and 3/defendants 2 and 3, were unnecessary parties and the suit was bad for misjoinder of parties.

17. The contention of the first respondent/plaintiff is that the appellants 2 and 3/defendants 2 and 3 agreed to be guarantors for the repayment of the amount due from the first appellant/first defendant. In support of his contention, the first respondent/plaintiff relies on Ex.A2, xerox copy of a receipt issued by the first respondent/plaintiff himself in favour of appellants 2 and 3/defendants 2 and 3 in which the appellants 2 and 3/defendants 2 and 3 also affixed their signatures. The testimonies of PW1 and PW2 are to the effect that, after making several visits to the place of the first appellant/first defendant for collecting the amount due to the first respondent/plaintiff, at last, they visited his place on 01.04.2006 to find that the first appellant/first defendant was not there; that therefore, they warned the appellants 2 and 3/defendants 2 and 3, who are respectively the mother-in-law and brother-in-law of the first appellant/first defendant, that he was going to take action against the properties of the first appellant/first defendant; that thereafter all the appellants/defendants 1 to 3 paid a sum of Rs.2,00,000/- and obtained a receipt in the name of the appellants 2 and 3/defendants 2 and 3; that after getting it xeroxed, the appellants/defendants keeping the original receipt with them handed over the xerox copy to the first respondent/plaintiff and that at that point of time, the appellants 2 and 3/defendants 2 and 3 are also promised to settle the claim of the first respondent/plaintiff in three installments of Rs.5,00,000/-, Rs.2,00,000/- and the entire balance on or before 01.07.2006.

18. It is quite obvious that apart from the signatures of the appellants 2 and 3/defendants 2 and 3 obtained in the receipt dated 01.04.2006 issued by the first respondent/plaintiff in their favour, there is no other document to show that appellants 2 and 3/defendants 2 and 3 agreed to be the guarantors for the repayment of the amount due from the first appellant/first defendant. Though the appellants would have taken a different stand regarding the circumstances under which the receipt dated 01.04.2006 was brought into existence, there is a clear admission by DW2 that the receipt was written and their signatures were obtained on 01.04.2006 when a

sum of Rs.2,00,000/- was paid to the first respondent/plaintiff. The initial attempt made by the defendants in this regard is that besides making them part with a sum of Rs.2,00,000/- by putting them in fear of death, the first respondent and the persons accompanying him obtained the signatures of the appellants 2 and 3/defendants 2 and 3 in blank papers; that no receipt as projected by the first respondent/plaintiff was given to them and that with the help of their signatures, a receipt was created and its xerox copy was produced as Ex.A2. During cross-examination, DW2 admitted in clear terms that the signatures found in Ex.A2-receipt are that of himself and his mother Chellammal; that the said document was written on 01.04.2006 and they affixed their signatures on the same day and that the amount (Rs.2,00,000/-) mentioned in Ex.A2 was paid by them to the respondent/plaintiff. For better appreciation, the said part of the evidence in vernacular is reproduced herein.

" வா.சா.ஆ.2 ஆவணத்தில் என்னுடைய கையெழுத்து இருக்கிறது. மற்றொன்று என்னுடைய தாயார் செல்லம்மாளின் கையெழுத்து. அது 1.4.2006 அன்று எழுதப்பட்டது. நான் 1.4.2006 அன்றுதான் கையெழுத்து போட்டேன். வா.சா.ஆ.2 ஆவணத்தில் வாதிக்கு ரூ.2 லட்சத்தினை 1.4.2006 அன்று நாங்கள் கொடுத்ததாக சொல்லப்பட்டுள்ளது சரிதான். நாங்கள் பணம் கொடுத்தோம். நான் ரூ.2 லட்சத்தினை சுரேஷ் பாபுவிடம்தான் கொடுத்தேன்."

In the light of the above said clear admission made by DW2, the contention of the appellants/defendants that signatures of the appellants 2 and 3/defendants 2 and 3 were obtained in blank papers after causing threat and coercion falls flat and the said contention deserves rejection as untenable.

19. Though Ex.A2 is proved to be the xerox copy of the receipt issued by the first respondent/plaintiff for the receipt of Rs.2,00,000/- paid by the appellants 2 and 3/defendants 2 and 3 and it has also been proved that their signatures were obtained in the said receipt, "whether such a document shall be enough to prove the case of the first respondent/plaintiff that the appellants 2 and 3/defendants 2 and 3 agreed to be guarantors for the repayment of the amount due from the first appellant/first defendant?" is the next question to be considered. If at all the first respondent/plaintiff wanted to give time, provided the appellants 2 and 3/defendants 2 and 3 agreed to be guarantors for the repayment of the balance amount due from the first appellant/first defendant, nothing prevented him from getting a Deed of Guarantee. No such document came to be obtained from the appellants 2 and 3/defendants 2 and 3. Ex.A2 is written as Receipt titled as "xg;ge;j urPJ". If it was intended to be a receipt it should have been affixed with necessary Revenue stamp. It is not the case of the first respondent/plaintiff that the original of Ex.A2 bears a Revenue Stamp. Furthermore, the said document has been written as the unilateral document (Receipt) issued by the first respondent/plaintiff. No doubt the signatures of the appellants 2 and 3/defendants 2 and 3 have been taken in the said document. But

it has not been written as a bilateral or multilateral agreement. The recitals show that it is a unilateral receipt containing a recital that the appellants 2 and 3/defendants 2 and 3 paid a sum of Rs.2,00,000/- and agreed to pay the balance in three installments within 01.07.2006. However, there is nothing in the said document to show that the appellants 2 and 3/defendants 2 and 3 agreed to shoulder the obligations on themselves as guarantors for the repayment of the amount due to the first respondent/plaintiff from the first appellant/first defendant. In addition, there is absence of clear plea and evidence on the part of the first respondent/plaintiff to the effect that the appellants 2 and 3/defendants 2 and 3 agreed to be the guarantors.

20. It is the plea made by the first respondent/plaintiff in the plaint that all the three defendants paid a sum of Rs.2,00,000/- on 01.04.2006 and obtained a receipt in the name of the defendants 2 and 3 from plaintiff. Though there is an averment that they also promised to pay the balance amount, there is absence of clear plea that appellants 2 and 3/defendants 2 and 3 agreed to be the guarantors for the repayment of the amount due from the first appellant/first defendant. If at all they agreed to be the guarantors, then the first respondent/plaintiff would have chosen to send the pre-suit notice to the appellants 2 and 3/defendants 2 and 3 also. Curiously Ex.A3-Notice dated 19.04.2006 was addressed to the first appellant/first defendant and to the second respondent/4th defendant, namely the Manager of the Central Bank of India. There was also absence of any separate notice to the appellants 2 and 3/defendants 2 and 3. Even in Ex.A3-Notice, there is absence of clear averment that the appellants 2 and 3/defendants 2 and 3 also undertook to pay the balance amount due from the first appellant/first defendant as guarantors. The relevant paragraph in the notice reads as follows"

"(4) From out of the loan amount of Rs.13,53,901/- (Rupees Thirteen Lakhs Fifty Three Thousand and Nine Hundred and one) Srimati.Sellammal, wife of Kandasami and her son Loganathan, who are the mother-in-law and brother-in-law of No.1 of you have paid only Rs.2,00,000/- (Rupees Two Lakhs) for which a receipt was also given on 01-04-2006 and the balance still remains unpaid and is due to my client."

Nowhere in the said notice it was stated that the appellants 2 and 3/defendants 2 and 3 agreed to be guarantors. The contents of Ex.A3 and also the fact that Ex.A2 is not prepared as a bilateral or multilateral agreement and on the other hand, it is only a receipt issued by the first respondent/plaintiff, will impossible the contentions of the first respondent/plaintiff that the appellants 2 and 3/defendants 2 and 3 are liable to discharge the amount due from the first appellant/first defendant as guarantors.

21. The learned trial judge, on an improper appreciation of evidence and on erroneous application of principles of law, came to the conclusion that the appellants 2 and 3/defendants 2 and 3 were

also liable as guarantors for the repayment of the amount due from the first appellant/first defendant. For the reasons stated supra, the said finding of the trial court cannot be sustained and the same deserves to be interfered with. Accordingly the finding of the trial court in respect of Issue No.3 framed in the original suit is set aside and reversed holding that the appellants 2 and 3/defendants 2 and 3 have not been proved to be liable to discharge the debt due to the first respondent/plaintiff from the first appellant/first defendant as guarantors. Point No.3 is answered accordingly.

Point No.2:-

22. In view of the answers to point Nos.1 and 3, this court holds that the finding of the trial court that the first respondent herein/plaintiff was entitled to a decree against the first appellant/first defendant for recovery of a sum of Rs.12,31,981/- together with an interest on Rs.11,53,901/- at the rate of 6% per annum from the date of filing of the plaint till realisation is on sound principles of law. Though the admitted principal debt was Rs.7,20,000/- by the execution of Ex.A1-loan agreement, the total amount was crystallised into a particular figure, namely Rs.13,53,901/-. Out of the said amount a sum of Rs.2,00,000/- was paid on 01.04.2006 and the balance amount due was Rs.11,53,901/-. For the said amount 12% interest alone was claimed even though as per Ex.A1-agreement, the agreed rate of interest was 16.75%. The first respondent/plaintiff claimed a sum of Rs.78,080/- as interest up to the date of filing of the suit at the rate of 12% per annum. The said claim is quite reasonable and the learned trial judge has not committed any error or mistake in holding the first respondent/plaintiff entitled to recover Rs.12,31,981/- (Rs.11,53,901/- towards principal + Rs.78,080/- towards interest). Though there is a possibility of awarding pendente lite and post decree interest at a rate more than 6% per annum as per Section 34 of the Code of Civil Procedure in view of the admitted fact that the liability has arisen in the course of a commercial transaction, the learned trial judge adopted a conservative approach and allowed pendente lite and post decree interest on the principal component of the decree amount, namely Rs.11,53,901/- @ 6% per annum alone. This court does not find any ground or reason to interfere with the same at the instance of the appellants/defendants 1 to 3 to reduce the same. Point No.2 is answered accordingly.

Point Nos.4 and 5:

23. In view of the findings recorded in respect of Point Nos.1 to 3 this court comes to the conclusion that the decree of the trial court granted as against the first appellant/first defendant alone shall be sustained and the same as against the appellants 2 and 3/defendants 2 and 3 deserves to be set aside.

In the result, the Appeal suit is allowed in part without cost and the decree of the trial court dated 23.06.2008 is set aside in respect of appellants 2 and 3/defendants 2 and 3 alone, leaving the decree as against the first appellant/first defendant in tact. The resultant position shall be that there shall be a

decree directing the first appellant/first defendant alone to pay a sum of Rs.12,31,981/- together with an interest on Rs.11,53,901/- calculated from the date of plaint till realisation at the rate of 6% per annum simple interest and also the cost of the first respondent/plaintiff in the suit.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

asr

To
The Additional District Judge (FTC No.1), Salem

+ 2 ccs to M/s. S. Kalyanaraman, Advocate SR.2407
+ 1 cc to M/s. P. Jagadeesan, Advocate SR.2406

UG(CO)
EU 16.04.2015

A.S.No.916 of 2009



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