IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2015

CORAM

THE HONOURABLE MS. JUSTICE R. MALA

A.S.No.989 of 2008

Murugan Modern Rice Mill
rep. by its Proprietor
Mr.C.Ayyanar, aged 53 years
S/o.Chidambara Naicker
running business at Chunambedu Road,
Mambakkam Village and Post,
Madurantakam Taluk.

2.Mr.C.Ayyanar

3.A.Malarvizhi .. Appellant/Defendants

Vs

State Bank of India,
Madurantakam
rep. by its Branch Manager,
Madurantakam Town,
Madurantakam Taluk,
Kancheepuram District. .. Respondent/Plaintiff

Prayer: First Appeal filed under Section 96 of the C.P.C., against the judgment and decree dated 18.03.2008 in O.S.No.255 of 2005 on the file of the Additional District Judge cum Fast Track Court No.1, Chengalpattu.

For Appellants : Mr.V.Bhiman
For Respondent : Mr.P.D.Audikesavalu

JUDGMENT

The First Appeal arises out of the judgment and decree dated 18.03.2008 made in O.S.No.255 of 2005 on the file of the Additional District Judge cum Fast Track Court No.1, Chengalpattu.

2.The averments made in the plaint are as follows:
The second defendant is the proprietor of first defendant. The defendants 1 and 2 under agreement for cash credit, two ancillary agreement dated 24.01.2000 availed from plaintiff a loan of

Rs.5,00,000/- as working capital loan agreeing to pay the same together with interest thereon at 13.77% quarterly rest. The rate of interest is not contrary to the Reserver Bank of India rates and directives. The third defendant under guarantee agreement dated 24.01.2000 is the guarantor to defendants 1 and 2. The second defendant on 04.02.1997 with intent to create security for due payment of debt due to the plaintiff deposited his title deeds with plaintiff and thereby created an equitable. He has also extended the security for the suit loan on 24.01.2000. The first defendant by her letter dated 05.02.2000 confirmed such deposit of title deeds and extension of security to suit loan on 24.01.2000 to the plaintiff. Hence the plaintiff entitled to proceed against the suit mortgaged properties for the realization of the suit debt. The defendants under revival letter dated 26.07.2002 acknowledged the suit debt. The amount due as per ledger extract as continued in the computer extract as on 30.03.2005 is Rs.6,11,779.03. The interest from 01.05.2004 to 31.05.2004 works out at Rs.88,154.00. The interest on Rs.6,99,933.03 at 12.00% from 01.06.2005 to 23.06.2005 works out at Rs.5,292.97. The total amount due is Rs.7,05,226.00 which the defendants are liable to pay to the plaintiff with subsequent interest till realisation. Inspite of repeated demands of the plaintiff, the defendant failed to pay the amount due. The plaintiff issued lawyer notice dated 03.03.2005 to the defendant. But the defendants neither issued any reply nor complied with the demand of the plaintiff. Hence, the plaintiff filed the suit.

3.The gist and essence of the written statement filed by the defendants 2 and 3 are as follows:

The suit is bad in the sense that the loan was procured on cash credit basis only and not on hypothecation of title deeds. The suit loan on cash credit basis was obtained on 24.01.2000 and the availability of the documents with the Bank three years earlier could no way be connected with the suit loan. The documents were with the Bank for a prolonged three years as security for an earlier loan towards purchase of a van and on due payments that loan was cleared and they were entitled to return of the documents which the Bank did not returned and took advantage and misused the same to connect those available documents of title deed with the suit loan. It is further stated that in the plaint itself the Bank has stated that the documents were available with them even during 1997 but the suit loan has been availed only during the year 2000. The availability of earlier documents were misused by the Bank. The loan availed by the defendants earlier for purchase of a Van was cleared. Even though the defendants made repeated demands for return of title deeds, the plaintiff has not returned the same. Since the defendants had no necessity to commit the properties elsewhere, there was not much of an attention shown in the matter to force the plaintiff to return of the documents. Thereafter, the defendants had applied for a fresh loan for Rs.5,00,000/- on cash credit basis. The amount was sanctioned without hesitation and the cash credit accounts commenced from the month of January 2000 itself. The 2nd defendant is an uneducated person and the documents available with the Bank were misused by the plaintiff as if an equitable mortgage was created by obtaining the signature of the defendants 2 and 3 by undue influence. It is further stated that unless a complete set of accounts are furnished it becomes difficult for those defendants to answer the amounts claimed in the plaint and to their correctness. Rights are reserved by the defendants to come forward with an additional written statement on obtaining all accounts from the plaintiff. In fact every equitable mortgage will be processed only after obtaining a letter of hypothecation from the borrowers furnishing along with title deeds in original to be considered by legal opinion also. But in these case, for a loan of Rs.5,00,000/- on cash credit basis, documents for the properties worth about a crore and more had been detained by the plaintiff Bank. Hence they prayed for dismissal of the suit.

4. The trial Court, after considering the averments both in the plaint and the written statements and arguments of both the counsels, framed five issues and considering the oral evidence of P.W.1 and D.W.1 and the documentary evidences viz., Exs.A.1 to A.21 and Exs.B.1 to B.43, passed a preliminary decree, against which the present first appeal has been preferred by the appellants/defendants.

5. The learned counsel for the appellants would only contend that the Trial Court has committed an error in granting 12% rate of interest and he seeks for reduction in the rate of interest. However, resisting the same, the learned counsel appearing for the respondent/Bank would submit that the loan had been obtained for construction of modern rice mill and hence, the appellants are liable to pay the contract rate of interest. He would further submit that in the agreement itself the appellants had agreed to repay the amount with interest at the rate of 12% monthly rest, however the Trial Court has granted only 12% Simple Interest from the date of plaint till the date of decree. Hence, the learned counsel for the respondent prayed for dismissal of the appeal.

6. Considered the rival submissions made by both sides and perused the typed set of papers.

7. On considering the facts and circumstances of the case, this Court is inclined to frame the following issues.

(1) Whether the decree of the Trial Court in directing the appellants to pay the amount due with 12% interest from the date of the plaint till the date of decree is sustainable?

(2) To what other relief, the appellant is entitled to?

8. It is an admitted fact that the appellants had sought for loan under Ex.A.9/Loan Application and cash credit has been given as per Ex.A.10. The agreements for the grant of small industrial advance was executed under Exs.A.11 and A.12 and the legal opinion was obtained under Ex.A.1. The appellants availed a loan of Rs.5,00,000/-

and created equitable mortgage by way of depositing the title deeds (Exs.A.3 to A.7) and the confirmation letter was issued under Ex.A.2. The guarantee agreement was executed by the 3rd appellant/3rd defendant under Ex.A.13 and the revival letter was issued under Exs.A.15 and A.16. Since the appellants/defendants are irregular in making payments, the respondent/plaintiff issued notice under Ex.A.17 and the acknowledgement card was marked as Exs.A.18 and A.19 and the Statement of Accounts were marked as Exs.A.20 and A.21.

9. Now the only point that has to be decided is whether the interest awarded by the Trial Court at the rate of 12% from the date of plaint till the date of decree is excessive?

It is submitted by the learned counsel for the respondent/Bank that since the appellant had availed the loan for commercial purposes, the respondent is entitled to contract rate of interest. Admittedly, as per the documents viz., Exs.A.11 and A.12, the appellants have availed loan for Small Scale Industries viz., Commercial purpose and not for agricultural purposes. In such circumstances, I am of the view that the appellants are liable to pay the contract rate of interest.

10. Further, it is true that though at the time of execution of the agreement, the appellants had agreed to repay the loan amount with interest at the rate of 13.77% quarterly rest, subsequently the rate of interest for the said loan has changed to 12% monthly rest. However, the Trial Court has awarded only 12% Simple Interest from the date of plaint till the date of decree viz., for a period of three years. In such circumstances, I do not find any reason to interfere with the finding of the Trial Court and consequently, the appeal is dismissed.

11. In fine,

1. The first appeal stands dismissed. No costs
2. Time granted for delivery is two months.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

pgp

To
1.Additional District Judge cum Fast Track Court No.1, Chengalpattu.
2.The Record Keeper, V.R.Section, High Court, Chennai.

3.The Branch Manager, SBI,
Maduranthakam
Taluk,Kancheepuram District

+2 cc Mr.P.D.Aadikesavalu, Advocate sr.38594

A.S.No.989 of 2008

aa03/08/2015