C.M.P. NO. 344 OF 2014
IN
A.S.No.857 OF 1998

R.SUBRAMANIAN,J.

The prayer in the above application runs as follows:

> " ... to amend the judgment dated 27.07.2011 made in A.S.No.857 of 1998 by substituting Rs.3,82,000/- in the place of Rs.2,82,000/- and Rs.4,82,000/- in the place of Rs.3,82,000/- occurring in paras 18 and 25 of the judgment and also consequently amend the clause-I of the decree by substituting Rs.4,82,000/- in the place of Rs.3,82,000/- .... "

2. This application has been filed under Section 152 C.P.C. seeking amendment of the judgment and decree of this Court. The power to amend the judgment and decree is very narrow and it can be invoked, only, if there is any accidental slip or omission or clerical or Arthematic error in the judgment and decree.

3. According to Mr.T.Dhanyakumar, learned counsel appearing for the appellants, the conclusion of this court in paragraph-25 of the judgment leads to inference that this court has come to the conclusion that three promissory notes Ex.A1, A5 and A7 dated 19.02.1994,16.06.1994 and 19.09.1994 are supported by full consideration. The learned counsel would also rely upon the observations at paragraph-18 of the judgement dated 27.07.2011, wherein it has been observed as follows:

> " 18. Anyhow, insofar as the interest aspect is concerned, it has to be taken that atleast one promissory note amount of Rs.1 lakh must have been supported by consideration towards the interest for the pre-suit period. No document is forthcoming from the appellants to show that interest has been paid by the first appellant. Therefore, I am of the view that in three promissory notes viz. 19.02.1994, 16.06.1994 and 19.09.1994, there is due for a total amount of Rs.2,82,000/-. Regarding the payment of interest is concerned, for all these three promissory notes, interest has to be paid, for which, one promissory note amount of Rs.1,00,000/- can be included towards of the pre-suit period. Therefore, the plaintiff is entitled to get a sum of Rs.2,82,000/- + Rs.1,00,000/- =

> Rs.3,82,000/- along with interest at the rate of 18% per annum from the date of plaint till the date of realization."

4. On the strength of the above observation, learned counsel would contend that the decree should have been passed for Rs.4,82,000/- with subsequent interest and not for Rs.3,82,000/- as concluded by this Hon'ble Court.

5. On the other hand, Mr.T.Sathiyamurthi, learned counsel appearing for the respondent would draw my attention to paragraphs 10 and 15 of the judgement dated 27.07.2011 and contend that this Court has specifically come to the conclusion that the amount borrowed under three promissory notes dated 19.02.1994, 16.06.1994 and 19.09.1994 marked as Exs.A1,A4 and A5 respectively is only Rs.2,82,000/- and nothing more. He would rely upon the following observations made in the judgement which is sought to be amened. Paragraphs 10 and 15 reads as follows:

> " 10. On a perusal of the documents, it could be seen that Exs.A1 to A7, are the pro-notes said to have been executed by the defendants on various dates. As pointed out by the learned Senior Counsel appearing for the defendants,

first pro-note was executed on 19.02.1994; second pro-note was executed on 16.06.1994; third pro-note was executed on 19.09.1994. It is seen from all these three pro-notes that they have obtained loan on three occasions approximately at the interval of once in 100 days, which is repayable in 100 instalments (at the rate of Rs.1000/- per day) in 100 days.

15. It is the case of the defendants also that they have received the consideration in three promissory notes, viz, executed by them on 19.02.1994, 16.06.1994 and 19.09.1994. Since the defendants themselves have admitted that the three promissory notes have been supported by consideration and therefore, I have no hesitation to hold that that three promissory notes are supported by consideration. But, the defendants plead discharge of two of the promissory notes executed by them on 19.02.1994 and 16.06.1994, for which, no document has been produced before the Court. If really the payment has been effected, on completion of 100th payment, if the documents have to be surrendered to the plaintiff, then the first defendant as a business man and educated man, certainly, the last day of

> the loan he would have taken a xerox copy of the same and then, he would have surrendered the original by keeping the xerox copy with him, but it was not done so. Since, in this case, for discharge of the two promissory notes executed by them on 19.02.1994 and 16.06.1994, no document has been produced before the Court, I am of the view that discharge of these two promissory notes has not been proved by the defendants. "

6. In the light of the very limited power conferred upon to amend the judgement and decree of this Court, I do not think that the amendment sought for in this application could be allowed treating it as clerical or arthematic error or accidental slip or omission.

7. A perusal of the entire judgment leads to the irresistable conclusion that the learned judge considered all the facts and came to the conclusion that though promissory note Ex.A1 was executed for a consideration of Rs.2,00,000/-, it was supported by consideration only to an extent of Rs.1,00,000/-. Hence, I am unable to agree with the contention of the learned counsel for the petitioner for a direction to amend the judgment.

8. For the above reasons, the application stands dismissed. However, there will be no order as to costs.

17.10.2016

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