IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.Nos.87 of 2006

1.Mrs.Raja Ratna
Proprietrix
M/s.Sree Saptagiri Financing Company
C/o.Mohan Appa Rao @ M.V.G.G. Appa Rao
No.C1-105, R.M.V.Glusters Lottegolahalli,
Bangalore 560 094.

2.Mr.Mohan Appa Rao @ M.V.G.G.Appa Rao

3.M.Ram Babu ... Appellants

Vs

M/s.Praveen Art Pictures
rep. by Ch.Venkateswara Rao
Managing Partner,
No.20/2, Thiruvalluvar Street,
Gandhi Nagar, Saligramam,
Chennai 600 093 ... Respondent

Prayer :- This appeal is filed against the judgment and decree in O.S.No.3793 of 2001, on the file of the learned V Assistant Judge, City Civil Court, Chennai dated 12.04.2005.

For Appellants : Mr.G.Ethirajulu
For Respondents : Mr.J.Srinivasan

J U D G M E N T

The defendants in O.S.No.3793 of 2001 are the appellants in this appeal. The suit was filed for recovery of a sum of Rs.4,70,080/- together with interest at 36% p.a on Rs.2,26,000/- from the date of plaint till the date of realisation and for costs.

2. The plaintiff, is a partnership firm. The defendants had a running account and had borrowed monies from plaintiff on various occasions and an account was struck on 01.05.1989. It was found that the defendant owed a sum of Rs.2,26,000/- to the plaintiff. When the plaintiff demanded the first defendant to pay the said sum, the first defendant expressed her inability to pay the said sum immediately agreeing to execute a promissory note for the said sum and accordingly, on 01.05.1995 the first defendant, as the borrower and the defendants 2 & 3 as the co-obligants, had executed a demand promissory note for the said sum of Rs.2,26,000/- in favour of the plaintiff, undertaking to repay the same together with interest at 36% p.a. Since the amount remained unpaid despite legal notice dated 25.04.1998, the plaintiff has filed the above suit for recovery of money.

3. The defendants resisted the suit contending that the first defendant is the proprietrix of the firm by name M/s.Sri Sapthagiri Financing Company and there were running transactions between the plaintiff and the said M/s.Sri Sapthagiri Financing Company. According to the first defendant, the third defendant is liable to pay a sum of Rs.3 lakhs to the first defendant and he had agreed to pay the said money to the plaintiff on behalf of the first defendant. On that promise, the plaintiff had agreed for transfer of accounts in favour of the third defendant. Accordingly, a promissory note was executed on 01.05.1995 by the third defendant. Therefore, according to the first defendant, the defendant 1 & 2 are not liable for suit claim, and only the third defendant is liable for the suit claim.

4. The written statement was filed by the second defendant. The plaintiff had examined C.S.Venkateswara Rao, Managing Partner as P.W.1 and Ex.A.1 to Ex.A.6 have been marked. The second defendant was examined as DW1. Ex.B.1 to Ex.B.3 were marked. Upon consideration of the pleadings the learned V Assistant Judge, City Civil Court, Chennai had framed the following issues:-

1. Whether the suit is barred by limitation?
2. Whether the plaintiff is entitled to the suit claim? and
3. To what relief is the plaintiff entitled to?

5. The learned V Assistant Judge, City Civil Court, Chennai, after considering the pleadings and evidence on record came to the conclusion that the defendants have not proved the circumstances under which, according to them, the promissory note Ex.A2 has come into existence. The learned V Assistant Judge, City Civil Court, Chennai also found that the suit is not barred by limitation. On the above findings, the learned V Assistant Judge, City Civil Court, Chennai granted a decree for the suit claim with interest at 18% p.a. from the date of the suit till the date of the decree and at 6% p.a. thereafter. Though no issue was framed regarding registration of the plaintiff-firm, the learned V Assistant Judge, City Civil Court, Chennai rejected the said claim of the defendants on the ground that the same has not been specifically pleaded. In fact, the defendants wanted to take advantage of the non-production of the firm registration certificate before the trial Court. The learned V Assistant Judge, City Civil Court, Chennai took into account the production of Ex.A.6, which is form-A relating to the plaintiff firm and rejected the said defence also.

6. Aggrieved by the said judgment and decree the defendants have preferred the above appeal.

7. I have heard Mr.G.Ethirajulu, learned counsel appearing for the appellants and Mr.J.Srinivasan, learned counsel appearing for the respondents. The following points arise for determination in this appeal.

1. Whether the claim of the defendants ie., suit promissory note dated 01.05.1995 marked as Ex.A.2 came into existence under the circumstances alleged by them has been established?
2. Whether the suit is barred by limitation? and
3. Whether the interest granted by the trial Court should be reduced?

8. Mr.G.Ethirajulu, learned counsel for the appellant would invite my attention to Ex.A1 statement of account and Ex.A2 promissory note and contend that Ex.A.1 would show that it is strictly not a statement of accounts, but it is only an attempt made by the plaintiff to renew a debt, which is barred by limitation. But a perusal of Ex.A.1 would show that the first defendant had signed the same and it is stated to be the accounts of a firm, by name M/s.Sri Sapthagiri Financing Company. Learned counsel for the appellant would further contend that in the promissory note, the first defendant has not signed on the Revenue stamp and therefore no liability can be fastened on her. She claimed that her signature has been forged in the promissory note and inspite of specific denial made by her in the written statement, the plaintiff has not taken any steps to prove her signature. It

should be pointed that the first defendant did not take specific plea of denial of signature in the written statement. She had only claimed that it is third defendant who alone executed the promissory note. It is be pointed out that the first defendant did not get into the box. Only the second defendant was examined. The second defendant however admitted his signature in the cross examination, but he would deny the signature of the first defendant. The learned V Assistant Judge, City Civil Court, Chennai has compared the signature of the first defendant in Ex.A.1, Ex.A.2 and Ex.C.1. Ex.C.1 is the acknowledgment card for receipt of the notice issued by the Court. The learned V Assistant Judge, City Civil Court, Chennai, after comparing the signatures of the first defendant, found in the documents available which are contemprenous documents has found that they are similar and I don't see any extraordinary reason to interfere with the said conclusion of the trial Judge. Of course Mr.G.Ethirajulu, learned counsel for the appellant would vehemently contend that the Court should not embark upon the duty of the expert and should have sought for an expert's opinion, when once the signature is denied. Of course, there is some force in the said contention, but I don't think that such a contention has been very seriously projected before the trial Court. The first defendant did not even enter the box. She was satisfied with the examination of her husband as DW1 and on a perusal of the signatures found in the documents, I find that the disputed signature does not vary from the admitted signatures so as to require an expert opinion to decide as to whether it is the same person's or not. Therefore, I don't see any irregularity in the manner in which the learned Judge has exercised power u/s.73 of the Evidence Act to decide on the genuineness of the signatures of the first defendant in the promissory note. Therefore the first point is answered against the appellants and the finding of the trial Court with regard to execution and passing consideration under Ex.A.2 promissory note deserves acceptance.

9. Mr.G.Ethirajulu, learned counsel for the appellant would contend that as per Ex.A1 statement of accounts, the original borrowing was on 26.10.1989 and Ex.A.1 statement of accounts shows credit entries on 24.04.1992, showing all payments towards interest and there are two other credit entries on 01.04.1999 ie., showing receipt towards interest made on 01.04.1999. The learned counsel would submit such entries were made only to keep the account alive. The question of limitation does not arise in this case, because the promissory note has been executed on 01.05.1995 and the suit has been filed on 08.04.1998 within a period of three years. The promissory note would definitely amount to an acknowledgment in writing

under the Limitation Act, so as to provide for fresh period of limitation from the date on which it was executed. Therefore I don't see any merit in the contention of the learned counsel that the suit is barred by limitation. The findings of the trial Court on this issue, are also bound to be confirmed.

10. On the question of interest, the trial Court had given a relief to the defendants inasmuch as it has reduced the future interest payable at 18% from 01.05.1995 till the date of decree and 6% thereafter. Learned counsel Mr.Ethirajulu would plead that 36% interest, that too compounded on yearly basis, is very much on the higher side and it has to be reduced.

11. From a perusal of the pleadings and evidence, it is clear that the transaction between the parties is a commercial transaction and that there was an agreement to pay interest of 36% p.a. Mr.Ethirajulu would take objection to the interest having been compounded by the plaintiff. From the document, it is seen as to what has been done is yearly compounding of interest and in the absence of any prohibition in the contract and suit transaction being a commercial transaction, I am unable countenance the arguments of the learned counsel on the issue of interest prior to suit. But insofar as the interest after suit is concerned, I am of the opinion that 18%

interest after suit is slightly on the higher side . Therefore, I am inclined to hold that the plaintiff would be entitled to simple interest at 12% p.a. on the principal sum of Rs.2,26,000/- from the date of plaint till the date of recovery. Except for the above modification, the judgment and decree of the trail Court are liable to be confirmed and accordingly they are confirmed.

12. In fine, this appeal is partly allowed and the interest for the period from 08.04.1998 ie., date of filing of the suit till 12.04.2005 being the date of decree, the plaintiff will be entitled to 12% interest (instead of 18%) on the sum of Rs.2,26,000/-. There will be no order as to costs.

15.**11.2016**

Index : Yes/No
Internet: Yes/No
dpq

To
1. The V Assistant Judge, City Civil Court, Chennai
2. The Record Keeper, V.R. Section, High Court, Madras.

R.SUBRAMANIAN,J

dpq

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