BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated: 18.11.2016

C O R A M

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

Second Appeal (MD) No.546 of 2011 & M.P(MD)No.2 of 2011

A.N.H.6, Annai Sathya Weavers Co-Operative
Production and Sale Society Ltd.,
Through its Special Officer,
Handloom Inspector M.Kavitha,
Kannimarpalayam,
Lanthakottai Post,
Vedasanthur Taluk,
Dindigul District. : Appellant/Appellant/Defendant

Vs.

R.Harikrishnan : Respondent/Respondent/Plaintiff

Prayer: - Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, against the Judgment and Decree dated 21.06.2010 in A.S.No.19 of 2009 on the file of the Fast Track Court, Dindigul, confirming the Judgment and Decree dated 17.09.2008 in O.S.No.15 of 2002 on the file of the Additional sub-Court, Dindigul.

For Appellant : Mr.H.Lakshmi Shankar

For Respondent : Mr.T.R.Subramanian

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J U D G M E N T

The defendant is the appellant in the Second Appeal. The respondent herein has filed a suit in O.S.No. 15 of 2002 on the file of the Additional Sub-Court, Dindigul, for recovery of a sum of of Rs.1,00,000/- (Rupees One Lakh only) which was advanced to the appellant Society on various occasions. The details of the amount that was paid by the plaintiff/respondent and received by the appellant Society was given in the plaint along with receipt.

2. The case of the plaintiff/respondent is that the plaintiff is a Weaver and is carrying on the business in Weaving. Since the plaintiff is a member of the appellant Society, he has been engaged by the appellant Society to produce Yarn. It is a specific case of the plaintiff that on several occasions, the appellant's Society used to get money from the plaintiff as a loan

for the purpose of payment of wages to the Weavers. These amounts which are received from plaintiff or from other members would be repaid to them after selling the Yarn after sometime. It was also contended by the plaintiff that the Society used to give 12% interest to the members for the loan advanced by them. The plaint contains the details of payment of money to the Society on various occasions and receipts acknowledging the payment.

3. The suit was contested by the appellant Society totally denying the case of the plaintiff. The receipts alleged to have been issued by the Society was also seriously disputed in the written statement. It was the specific case of the defendant Society that the plaintiff has joined hands with one Selvaraj to create forged receipts and the plaintiff has come forward with the present suit only with such fabricated receipts which were signed by one Selvaraj who was never authorised to issue them on behalf of the Society. Since the said Selvaraj was neither the Manager nor an Officer authorised to receive any money on behalf of the Society, the suit filed with the convenience of the said Selvaraj is not maintainable. The appellant also raised the plea that the suit is not maintainable without impleading the said Selvaraj as a party.

4. The trial Court considered the defence that was raised by the appellant and framed necessary issues and found that the receipts relied upon by the plaintiff would prove that they have been issued by one Selvaraj who was authorised to issue receipts on earlier occasions. Since some of the payments which were admittedly paid by the plaintiff were acknowledged by the Society for having received the money and such payments were also credited in the Day-Book as well as connected records, the trial Court accepted the case of plaintiff.

5. The trial Court has specifically found that the appellant who had accepted the payments that were made by Selvaraj, as the payments made to the Society on earlier occasions cannot be permitted contend that the payments acknowledged by the said Selvaraj by issuing receipts cannot be taken as payment that was made to the Society. Since the Society has accepted the payments that were made to the said Selvaraj by crediting the amounts paid to Selvaraj as the amount received by the Society as per the records of the Society, the lower Court has further observed that the suit filed without impleading the said Selvaraj is not bad and that on proof of payment, the suit can be decreed.

6. The case of the plaintiff regarding the practise of Society to accept the payments from members as loan at the time of paying wages to the Weavers was accepted by the trial Court as borne out from the records. The contention of the Society is that when the payments were received from the members as loan, acknowledgement could only be made by the President or the Manager of the Society by giving signed vouchers. It was further

contended that without signature of the authorised person of the Society, the case of the plaintiff is not proved as to the real nature of transaction and that the collusion between the plaintiff and the employee of the Society by name Selvaraj is probable.

7. The trial Court considered the aspect of collusion on the basis of available materials, apart from the oral evidence of parties. After considering the evidence of the plaintiff as PW.1, the trial Court considered the evidence of Manager as well as Special Officer of the Society. From the admission of DW.1 and DW.2, the trial Court has specifically found that the contention of the Society with regard to the absence of the signature either by the Manager or Special Officer would not render the receipts invalid. The finding of the trial Court on this factual aspect are supported by the evidence of defendant's witnesses.

8. The appellant filed an appeal in A.S.No.19 of 2009 before the Fast Track Court, Dindigul, as against the Judgment and Decree of the trial Court. The appellate Court also after independently considering the evidence on record confirmed the findings of the trial Court.

9. Aggrieved by the concurrent findings of the Courts below, the present Second Appeal has been filed.

10. In the present second appeal, the appellant has raised the following questions of law in the memorandum of Appeal:

> "a) Are the Judgments and Decrees of the Courts below, holding the appellant Society vicariously liable for the money received by its servant acting beyond his authority and illegal and without crediting the same in the society, is sustainable in law more so when that person has not been added as a party defendant and no relief is sought for against him jointly or severally?
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> b)Whether the Judgment and decree of the first appellate Court mechanically confirming the judgment and decree of the trial Court without independent evaluation of the oral and documentary evidence and without independent reasoning and by ignoring the detailed written submissions is sustainable in law?
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> c) Are the courts below right and justified in granting a decree by picking holes in the case of the defendant Society without considering whether the plaintiff has discharged his burden?"

11. From the admitted facts, it can be seen that the Society was in the habit of receiving money from its own members at the

time of disbursement of the wages to the Weavers and repay such amount after selling the Yarn manufactured by them through the Weavers. It is a fact born out from records that the amounts paid to the Selvaraj were acknowledged by the Society earlier. Since the receipts issued by the said Selvaraj on earlier occasions were acknowledged as seen from corresponding credit entries in the accounts of the Society, the case of the defendants that the receipts are un-authorised can not be accepted.

12. The case of the plaintiff is probable from the records of the appellant-Society. The plaintiff is a third party and by allowing the practice the defendant Society is estopped from contending differently in order to defend the suit filed by an innocent third party. It is not in dispute that the name of the said Selvaraj who has issued receipts, was in the Pay Roll of the Society and the fact that he had been authorised earlier to receive money from members, is not in dispute.

13. It is also not in dispute that the Society had not proceeded against the said Selvaraj for making the Society liable either for recovery of money from him or for taking disciplinary proceedings against him. In such circumstances, the case of the appellant's Society that the plaintiff was in collusion with the said Selvaraj for creating records cannot be easily believed. The Courts below based on materials have arrived at a finding after considering of the documents on the issues raised by the defendant/appellant.

14. The lower appellate Court has independently considered the issues and dismissed the appeal for valid reasons. In such circumstances, the questions of law raised by the appellant in the memorandum of grounds do not hold water and there is no legal infirmity in the judgments of the Courts below and I find no merit in this second appeal to interfere with the findings of the Courts below.

15. In the result, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous petition is also dismissed.

Sd/-
Deputy Registrar

/True Copy/

Sub-Assistant Registrar

To
1.The Fast Track Court, Dindigul.
2.The Additional Subordinate Judge, Dindigul.
+One cc to M/s.H.Lakshmi Shankar, Advocate, SR.No.70438
+One cc to Mr.T.R.Subramanian, Advocate, SR.No.70210

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