IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

A.S.No.17 of 2011

1.Smt.P.Jayammal
2.Sri.J.K.Palanisamy ... Appellants

Vs

The Federal Bank Limited,
Rep. by the Principal/Chief Manager,
Tirupur Branch,
Mangalam Road,
Tirupur-641 604. ... Respondent

This appeal is filed under Order 41 Rule 1 and 2 r/w Section 96 of C.P.C. against the judgement and decree dated 23.11.2009 made in O.S.No.556 of 2006 on the file of the Court of the Additional District Judge/Fast Track Judge No.V, Coimbatore at Tirupur.

For Appellants : Mr.S.Thangavel
For Respondent : Mr.R.Narayanan
for Sampath Kumar & Associates

J U D G E M E N T

The defendants who suffered a decree for payment of money to the tune of Rs.9,03,398.45 with subsequent interest accrued thereon are the appellants. The suit was laid by the plaintiff on the strength of a promissory note dated

24.11.2001 and an equitable mortgage created by the defendants over the properties as security for repayment of the loan.

2. According to the plaintiff the defendants had availed packing credit loan which was sanctioned in the year 1998 by the plaintiff. There were certain export transactions under the packing credit limit. Since they could not export the textile goods during the year 2001, the 1st defendant had sought for conversion of packing credit into Over Draft/Cash Credit facility. This request was acceded to by the bank and a total sum of Rs.7,00,000/- was sactioned as cash credit limit under Ex.A3 dated 24.11.2001. An equitable mortgage was also created on 11.06.1998 for the cash credit limit that was sanctioned on 24.11.2001. Rs.6,15,533/- from the packing credit account was transferred to the cash credit account on 24.11.2001. The Cash credit facilities were enhanced to Rs.7,50,000/- and the same was renewed on 29.09.2004. Since the defendants defaulted in making payments for the loan, the plaintiff issued a notice dated 04.09.2006 demanding repayment.

3. The defendants claimed that all the export bills were paid by them to the plaintiff bank during 1998. According to the defendants the plaintiff bank had misrouted two foreign bills. They were sent to the Paris Branch of American Express Bank instead of New York Branch. The two bill bearing No.PA/03/98-99 & PA/04/09-99 were shown as unpaid due to the mistake committed by the plaintiff bank. It was further contended that the plaintiff bank had unilaterally

converted the alleged balance in the packing credit account as open cash credit. The negligence of the bank in handling the bills had resulted in the bill amount not being credited. The defendants sought for dismissal of the suit on the above pleadings.

4. The learned Additional District Judge/Fast Track Judge No.V, Coimbatore at Tirupur, who tried the suit framed the following issues:

> 1.Whether the plaintiff bank is entitled to realise the suit claim as prayed for?
>
> 2) To what other relief, is the plaintiff entitled to?

The learned Trial Judge also framed the following Additional issues:

> 1.Whether the Packing Credit bills have been adjusted towards the account of the defendants?
>
> 2.Whether the O.D./Cash credit loan is a fresh loan or the renewed earlier loan?

5. The Chief Manager of the plaintiff was examined as PW1 and Exs.A1 to A52 were marked. The 2nd defendant was examined as DW1 and one Muthalagu was examined as DW2 and Exs.B1 to B16 were marked.

6. Upon a consideration of the evidence on record the learned Trial Judge concluded that the overdraft and cash credit facilities were new facilities

and therefore, it is not the renewal of loan by the bank. Packing credit facility was converted into Over Draft/Cash Credit account and therefore, the defendants had executed an undertaking letter, pronote, agreement of Cash Credit, hypothecation of goods etc. under Exs.A1 to A18. The defendants contended that the amounts were deposited in the cash credit account. The learned Trial Judge, went into the question of non-payment of bills also and found that the defendants have not established that the amounts due under the bill dated 22.12.1998 PA/04/98-99 marked as Ex.B2 was not paid. On the above conclusion, the learned Trial Judge decreed the suit as prayed for.

7. Aggrieved by the judgement and decree dated 23.11.2009 made in O.S.No.556 of 2006, the defendants have filed the above appeal.

8. I have heard Mr.S.Thangavel, learned counsel appearing for the appellants and Mr.R.Narayanan appearing for M/s.Sampathkumar Associates, the learned counsel for the respondent Bank.

9. The only contention that was urged by the learned counsel for the appellants is relating to the reversal credit entry dated 23.04.1999 by the plaintiff bank. According to the learned counsel for the appellants, when the plaintiff bank would admit that the amount due under Ex.B2 has been received

by them in different currencies and the same was credited to the defendant's account on the same day, it was the duty of the plaintiff-bank to have collected money under the said invoice. He would contend that their buyers had paid money through their bankers. A mistake has occurred only when the amount was transferred in different currencies and therefore, the defendants cannot be held liable for the non-credited amount. The defendants, however have not produced any statement of accounts of the packing credit facilities beyond 23.04.1999.

10. When the plaintiff took action under SARFAESI Act for recovery of the above loan amount, a dispute regarding realisation of the bill amount under Ex.B2 was raised by the defendants. The plaintiff-bank under Ex.B9 had clarified that the bill under Ex.B2 was also adjusted. After a long correspondence with the bank, it is also made clear from the said document namely, Ex.B9, M/s Pluto Apparels, the 1st defendant was sanctioned the package credit loan of Rs.5,10,000/- on 20.10.2000 against the export orders. Since the related exports did not materialise, it was at their request, Packing Credit Limit was converted into Cash Credit limit and the amount outstanding under the Packing Credit limit along with accrued interest was adjusted.

11. The defendants acknowledged the liability on 24.11.2001 when the conversion took place and they also obtained enhancement of the limit from

Rs.7,00,000/- to Rs.7,50,000/- on 03.06.2003 and the said Cash Credit loan was renewed on 29.09.2004 under Ex.A17. The suit came to be filed on 06.12.2006. Therefore, the defendants cannot now raise the issue of reversal of the credit entry on 23.04.1999 at this belated stage. In my considered opinion, they have acknowledged their liability to the tune of Rs.7,00,000/- on 24.11.2001 and they have got the limit enhanced to Rs.7,50,000/- on 03.06.2003. They also reaffirmed their liability in the Cash Credit account by renewal. It is also seen from the records that the defendants have executed the documents acknowledging their liability under the Cash Credit Account on 31.08.2005 under Ex.A24. They have also executed an agreement for Over Draft-cum-Cash Credit loan under ExA.23 dated 31.08.2005, apart from executing the promissory note under Ex.A28 on the said date. It is also seen from the records that the defendants have also executed a confirmation letter on 29.09.2004 under Ex.A19.

12. In my considered opinion, in the light of the above documentary evidence, I do not think that the defendants had challenged the reversal of the Credit Entry till the suit was filed. Apart from the above, Ex.B9 clearly shows that the bill namely Ex.B2 was also received even during 1999. In view of the above, I do not find any merits in the appeal. The appeal is dismissed confirming the judgement and decree dated 23.11.2009 made in O.S.No.536 of 2006 on the file of the Court of the Additional District Judge/Fast Track Judge No.V,

Coimbatore at Tirupur. However, there will be no order as to cost in this appeal. The amount that has been deposited pursuant to the interim order may be given credit to in the execution proceedings.

10.02.2017

Index : Yes/No
Internet: Yes/No
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To
The Additional District Judge/Fast Track Judge No.V, Coimbatore at Tirupur

R.SUBRAMANIAN,J

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