IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.984 of 2012
and M.P.Nos.1 of 2012 and 1 of 2013

1. Standard Chartered Bank
   Rep. by its Manager
   Having administrative Office
   At Rajarajeswari Towers
   29-30, Radhakrishnan Salai
   Mylapore
   Chennai-600 004.

2. Standard Chartered Bank
   Rep. by its Manager
   Madras Main Branch
   Armenian Street
   Chennai-600 001. ... Appellants/Defendants

Vs.

P.N.Swaminathan
S/o.P.V.Narayanan
No.18, Trust Square
Ramalingapuram
Chennai-600 012. ... Respondents/Plaintiffs

Prayer: This appeal is filed to set aside the decree and judgment dated 09.03.2011 made in O.S.No.11894 of 2011, on the file of the Additional District Judge/Fast Track Court No.1, City Civil Court, Chennai.

For Appellants : Ms.U.Aishwarya
for M/s. R and P Partners

For Respondent : Mr.V.Manohar

J U D G E M E N T

The defendants Bank has suffered a decree for a sum of Rs.2,04,281/- with interest at 12% per annum from the date of plaint till the date of realization has come forward with this appeal.

2.The facts leading to file the suit is as follows:

The plaintiff had availed overdraft facilities from the defendants' bank under a scheme which enabled the plaintiff to pledge his shares and avail overdraft facilities on the basis of the security of his shares. Originally, the plaintiff was sanctioned to a limit of Rs.94,000/- and subsequently on the basis of the value of shares, the limit was enhanced to Rs.3,00,000/-. The rate of interest was fixed at 19.6% simple interest per annum on the amount actually drawn. According to the plaintiff, the facility was renewed only up to August 1994 and thereafter, the plaintiff did not agree for renewal of the facilities. However, the defendants renewed the facilities again in September 1995 unilaterally on a simple interest of 18.5% p.a. despite the disapproval of the plaintiff. The plaintiff claimed that the value of the shares pledged by him as well as his guarantor with the defendants as on 03.09.1994 was Rs.7,13,547/-. Since, the valuation of the shares is done at the rate of 20 to 25% lower than the actual market value, according to the plaintiff, the value of the shares entrusted with the defendants would be above Rs.10,00,000/- to cover the overdraft facility of Rs.3,00,000/-. The plaintiff unable to pay the balance outstanding, requested the defendants' bank to sell the shares through his letters dated 05.08.1994 and 22.08.1994 and adjust the sale proceeds towards the amount overdue on the overdraft account and pay him the balance. However, the bank did not act upon the said letters and chose to send a notice on 09.11.1995 demanding a sum of Rs.3,82,353.72 with accrued interest. The defendants' bank also informed the plaintiff that they had canceled the overdraft facility and called upon the defendants to make the payment on or before 26.11.1995. It was also stated that in the event of failure on the part of the plaintiff to pay the said sum of Rs.3,82,353.72 with accrued interest, the defendants would sell the shares pledged by the plaintiff as well as the guarantor as security and appropriate the sale proceeds thereof to liquidate the liability. On 24.11.1995, the guarantor sent a letter to the bank protesting the action of the bank stating that the bank had failed to execute the request of the plaintiff as well as the guarantor made in September 1994 for sale of the shares. Thereafter, he had requested the bank not to sell the shares since the market was fluctuating and the share prices were very low at that point of time. The plaintiff wrote to the defendants bank on 29.11.1995, pointing out that he had infact insisted the bank to sell the shares as early as on 05.09.1994 and the failure of the bank to comply with the instructions and if the sale is to take place during November 1995, when the share prices have really come down, the plaintiff would put to considerable loss. Despite the above said letter, the defendants bank went ahead and sold the shares and adjusted the proceeds towards the outstanding balance in the overdraft account of the plaintiff. Claiming that this action of the defendants bank has resulted in a loss to plaintiff as come forward with the present suit.

3. The suit was resisted by the defendants' bank on various grounds contending that it was open to the plaintiff to have paid the amount outstanding to the bank in November 1995 and avoided sale of shares and therefore he cannot claim that sale of shares resulted in loss to him. It is also contended that the shares were sold sometime in November 1995 and the suit filed on 27.01.1999 is barred by limitation. On the above pleadings, the learned Trial Judge framed the following issues for consideration:

1. Whether the suit is barred by limitation?

2. Whether the transaction between the plaintiff and defendant was determined in August 1994 itself and the amount became payable then?

3. Whether the defendant had valid agreement, contract or authorization to transact or deduct any amount on and after August 1994?

4. Whether the unilateral renewal of agreement on and after August 1994 by the defendant is valid and binding on the plaintiff. If it is so, whether the defendant is empowered to transact the shares without the subsisting agreement?

5. Whether the defendant had valued the shares pledged with them properly and in accordance to the market value of the same?

6. Whether the defendants are duty bound to close the plaintiff's account to liquidate the dues due to non renewal of the Agreement and on the request of the plaintiff dated 22.8.1984 and 5.9.1994?

7. Whether the plaintiff suffered loss and damage due to the action of the defendant in continuing the Account beyond the period of August 1994 and due to ignoring the instructions dated 22.8.1994 and 5.9.1994 of the plaintiff?

8. Whether the defendant had acted in accordance to the law and in the interest of the Customer as promised in the prospectus of the FAST Scheme?

9. Whether the defendant is empowered to sell the shares of the plaintiff and his guarantor in the absence of the existing agreement?

10. Whether there is irregularity, commission and omission on the part of the defendant in dealing with the Shares of the plaintiff and his guarantor?

11. Whether the defendant had handled the account of the plaintiff in proper and fair manner? And

12. To what relief?

4. On the side of the plaintiff, plaintiff examined himself as P.W.1 and exhibits P.1 to P.15 were marked. On the side of the defendants, the Officer of the defendants' bank was examined as D.W.1 and exhibits B.1 to B.15 were marked.

5. The Trial Court on an analysis of oral and documentary evidence came to the conclusion that the plaintiff would be entitled to only the difference in the share price between 05.09.1994 and 09.11.1995. Taking into account the sale price and the value of the shares, the learned Trial Judge came to the conclusion that the plaintiff has suffered a loss of Rs.1,19,281.10 towards the difference in the share price between the said two dates. The Trial Court further found that the defendants' bank has charged interest at 20% with quarterly rests for a period of 15 months which is un-authorized and the said interest works out to Rs.85,000/-. Therefore, the Trial Court concluded that the plaintiff is entitled to a sum of Rs.2,04,281/- towards loss and excess interest charged by the defendants' bank. On such conclusion, the Trial Court decreed against defendants' bank directing to pay Rs.2,04,281/- with interest at 12% p.a. "Though the judgment concludes that the plaintiff is entitled to a interest at 12% p.a. from the date of realisation with proportionate costs, the decree issued by the Trial Court states that the plaintiff is entitled to 18% interest p.a. from the date of plaint till realisation. This is probably a mistake while drafting the decree." Aggrieved by the said judgment and decree, the defendants have come before this Court.

6.I have heard Ms.U.Aishwarya, learned counsel appearing on behalf of the appellants and Mr.V.Manohar, learned counsel appearing on behalf of the respondents.

7. The following points raised for determination in the appeal:

1) Whether the plaintiff has established that he had suffered a loss by a non-execution of his instructions by the defendant bank during August to September 1994.
2) Whether the defendant bank has charged excess interest?
3) Whether the suit is barred by limitation?

8. The fact that the plaintiff and his guarantor had instructed the bank to sell the shares on 22.08.1994 and 05.09.1994 and adjust the sale proceeds towards the amount outstanding in the account is not disputed. The same is evidenced by Exs.A.11 and A.13. It is also not in dispute that the defendants did not act upon the said instructions, instead chose to issue a notice after about one year on 11.09.1995 demanding payment of a sum of Rs.3,82,353.72/- apart from claiming that they will be forced to sell the shares and adjust the sale proceeds towards the amount due. Admittedly, the share prices have fallen down between August 1994 and November 1995. A comparative statement of share prices have also been produced as 'Valuation Report' under Ex.A.12. There is no explanation on the side of the defendant bank for not having complied with the instructions. The evidence of D.W.1 on this aspect demonstrates clear ignorance of the transactions and the instructions issued by the plaintiff.

9. No doubt, it is true that the defendants' bank has every right to sell the shares and adjust the sale proceeds but, as a Pawnee, it is to act responsibly also. When specific instructions were left by the plaintiff and his guarantor in August 1994 requesting the defendants' bank to sell the shares at the prices that were quoted in the market and adjust the dues, the defendants' bank did not chose to exercise the said powers at that point of time and chose to sell the shares more than a year later which resulted in share prices falling down and also resulted in heavy loss to the plaintiff. Apart from the said loss, the defendants' bank has also charged interest on the amount due for the period between August 1994 and November 1995. Therefore, the plaintiff has suffered another loss towards the amount of interest as charged by defendants' bank.

10. Taking into consideration these facts, the learned Trial Judge has arrived at a conclusion, that the loss to the

plaintiff because of the non-compliance of the instructions is Rs.1,19,281/-. The Trial Court had also considered the fact that the defendants' bank have also charged interest after having failed to carry out the instructions which amounted to Rs.85,000/- for a period of 15 months i.e., between August 1994 to December 1995. Thus interest has been worked out at Rs.85,000/- and thus the total damages has been fixed at Rs.2,14,281/- by the Trial Court. I do not find any reason to interfere with the said findings of the Trial Court as the same is based on documentary evidence. Hence, Points 1 and 2 are answered as against the appellant.

11. On the question of limitation, the learned counsel for the appellant would contend that the shares were sold during November 1995 and therefore the suit filed in January 1999 is hopelessly barred by limitation.

12. Mr.V.Manohar, learned counsel appearing on behalf of the respondents would rightly contend that the cause of action for the suit for damages would arise only when the sale of shares at a particular time became known to the plaintiff. It is not in dispute the fact that the shares were sold was informed to the plaintiff by the defendants by a letter dated 19.01.1996, which was registered on 25.01.1996 and marked as Ex.P7. The learned counsel would contend that the registered letter has been sent on 25.01.1996, so, it would have been received by the plaintiff on 26.01.1996 itself. Therefore, the suit filed on 27.01.1999 is barred by limitation. The cover in which Ex.P.7 was sent has been marked as Ex.P.8, which shows that the registered letter has been posted on 25.01.1996 at Royapuram Post Office and the same has reached the receiving Post Office namely, Ramalingapuram, Chennai-600 012 on 29.01.1996. Therefore, the letter would have been delivered to the plaintiff only on or after 29.01.1996. Thus, the plaintiff has got three years from the said date to file the suit. The suit has been filed before the Trial Court on 27.01.1999. Therefore, the suit has been filed within three years and the Trial Court has rightly concluded that the suit is not barred by limitation. Hence, point 3 is also answered as against the appellant.

13. In fine, the appeal is dismissed confirming the decree and judgment of the Trial Court. Considering the facts and circumstances, there will be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

14. It is made clear that the plaintiff is entitled for interest only at the rate of 12% from the date of plaint. It is submitted that pursuant to the interim order, the defendants had deposited a sum of Rs.2,04,281/- to the credit of the suit and

the plaintiff was not permitted to withdraw the said amount. Therefore, the plaintiff would be at liberty to withdraw the sum of Rs.2,04,281/- and the defendants would be liable to pay the interest at the rate of 12% from the date of suit till the date of payment to the plaintiff.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
Fast Track Court No.I,
City Civil Court,
Chennai.

2. The Section Officer,
VR Section,
Madras High Court.

+1cc to Mr.V.Manohar, Advocate, S.R.No.50310
+1cc to M/s. R and P Partners, Advocate, S.R.No.50385

A.S.No.984 of 2012
and M.P.Nos.1 of 2012 and 1 of 2013

CNR(CO)
CS/11/08/17