

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.08.2017**

CORAM:

THE HONOURABLE **MR.JUSTICE R.SUBRAMANIAN**

A.S.No.48 of 2002
and
C.M.P.No.4288 of 2002

Syndicate Bank,
Kodambakkam Branch,
Represented by its Manager.

... Appellant

..Vs..

1.M/s.Inland Traders,
Represented by its Proprietor
Mr.A.K.Peer Mohamed,
No.34, Post Office Street,
Chennai – 600 001.

2.S.K.Buhari
3.V.Lakshminarayanan

.. Respondents

Prayer: Appeal Suit is filed under Section 96 of C.P.C., to set aside the Judgement and Decree dated 18.08.1997 made in O.S.No.4447 of 1996 on the file of the Learned VII Additional Judge, City Civil Court, Chennai.

For Appellant : Mr.P.Sreenivasulu

For Respondents : No Appearance

JUDGEMENT

This appeal is filed by the plaintiff-Bank challenging the dismissal of the suit filed by it for recovery of a sum of Rs.3,16,995.14/- [Rupees Three Lakhs Sixteen Thousand Nine Hundred and Ninety Five and fourteen Paise Only] together with further interest at 19.5% per annum from the date of plaint till the date of realization.

2. According to the plaintiff-Bank the first defendant represented by its Proprietor availed over draft facility in its current account to a tune of Rs.1,50,000/- [Rupees One Lakh Fifty Thousand Only] by hypothecation of stock-in-trade with the business. The facility was sanctioned on 12.11.1981, and it was availed on 27.01.1982. The documents required for the said facility were also executed by the first defendant represented by its proprietor. The money lying in the Adarsh Deposit Account with the plaintiff-Bank was also offered as security. According to the plaintiff-Bank, the first defendant acknowledged the liability, by executing an acknowledgement of debt on 25.01.1985 which has been produced as EX.A12. The suit was filed on 25.01.1988.

3.The defendants resisted the suit contending that the acknowledgement of debt dated 25.01.1985 was not signed by the proprietor of the first defendant. It was also contended that despite several letters, the plaintiff-Bank did not adjust the outstanding amount with the money that was payable to the defendant in the Adarsh Account. It only the plaintiff-Bank had adjusted the monies lying in credit in the Adarsh Account of the first defendant the amount of the overdraft facility would have been reduced. It was also contended that the suit was barred by limitation, in view of the fact that EX.A-12 was not executed by the proprietor of the first defendant.

4.On the above pleadings, the learned trial Judge framed the following issues:-

1. Whether the suit is barred by limitation?
2. Whether the defendant did not acknowledge the liability on 25.01.1985?
3. Whether there was hypothecation of goods by the first defendant?
4. Whether the amounts due under the Over Draft Account was secured by the first

defendant with the balance available in the
Adarsh Deposit Account?

5. Whether the plaintiff was entitled to the suit
claim?

6. To what other relief, the plaintiff is entitled
to?

5. On a consideration of the oral and documentary evidence on record, the learned trial Judge came to the conclusion that the acknowledgement of debt namely; Ex.A-12 could not have been executed by the proprietor of the first defendant on 25.01.1985. Therefore, the learned trial Judge concluded that the suit is barred by limitation. He also further held that despite specific instructions, the plaintiff Bank has not adjusted the amounts lying in credit in the Adarsh Account of the first defendant against the amount due under the over draft account. Therefore, the learned trial Judge concluded that the plaintiff was not entitled to the decree as prayed for. Aggrieved by the same, the plaintiff is on appeal.

6. Though notice was served the first respondent either appears in person or through counsel. Notice to the respondents 2

and 3 was dispensed with, in view of the fact that they are remained ex-parte before the trial Court.

7.Mr.P.Sreenivasulu, learned counsel appearing for the appellant Bank would contend that the specific admission made by D.W-1 in his evidence that the signature in Ex.B-12 is his signature and that he has signed the same sometime in 1987 as a blank form is sufficient to conclude that EX.A-12 was executed by the first defendant acknowledging the debt on 25.01.1985. Therefore, the suit filed within three years from the said date is within the time and hence, the Trial Court was not right in dismissing the suit as barred by limitation. He would further contend that in the absence of specific instruction, the plaintiff Bank need not adjust the proceeds in the Adarsh Account against the dues under the over draft account of the first defendant.

8.In the light of the above submissions, the following issues were framed for determination in the appeal:-

1. Whether the failure on the part of the plaintiff-Bank to adjust the monies in the Adarsh Account against the dues of the over draft account is justified?

2. Whether the plaintiff has established that Ex.A-12 acknowledgement of debt was signed by the proprietor of the first defendant as claimed by the plaintiff-Bank on 25.01.1985?

3. Whether the suit is not barred by limitation?

POINT NO.1:- The case of the defendants is that despite several instructions, the plaintiff-Bank has not adjusted the amount available to the credit of Adarsh Account with the amount due under the current account. Even in the letter dated 02.02.1985, the proprietor of the first defendant had made it clear that despite several requests, the plaintiff-Bank has not adjusted the amount lying to the credit of the Adarsh Account with the debit balance in the overdraft account and the receipt of the said letter is not denied. There is no reply to the said letter dated 02.02.1985 on the part of the plaintiff Bank. The said letter also refers to the earlier letter dated 04.02.1984, wherein, the similar request was made. If the plaintiff-Bank had ignored the same and continued to charge interest on the debit balance of the over draft account, despite request made by the defendants, the same cannot be accepted as normal banking practice. Therefore, the claim of the

defendants that despite repeated requests, the plaintiff-Bank had not adjusted the amount lying in the Adarsh Deposit Account with the amount due in the over draft limit sanctioned by the plaintiff Bank stands established. The findings of the trial Court cannot be faulted in the absence of any reply to the letter dated 02.02.1985 i.e., EX.B-3.

POINT NO.2 :- The plaintiff's case is that Ex.A-12 is an acknowledgement of debt signed by the proprietor of the first defendant on 25.01.1985. A cursory look at Ex.A-12 would show that it is not a complete document. It does not even give the names of the persons who are acknowledging the debt. The column relating to the authors of the letter is left blank. The claim that the proprietor of the first defendant executed EX.A-12 on 25.01.1985 is belied by Ex.B-3. In Ex.B-3, the proprietor of the first defendant has very clearly stated as follows:

"Further inspite of our several requests, you have not given us any details regarding Adarsh Deposit Account as to how you have made our deposits with you and for how much period. If a true and proper account is taken, we are not liable to pay

the said amount of Rs.2,32,782.54/- as claimed by you. Therefore, we are not in a position to sign the said printed forms of acknowledgement of Debt sent by you to us."

There is no reply by the plaintiff-Bank to Ex.B-3 dated 02.02.1985, which has been received by the plaintiff-Bank on 06.02.1985. This by itself would clearly show that the proprietor of the first defendant has not signed the acknowledgement of debt on 25.01.1985 as alleged by the plaintiff Bank. The learned counsel for the appellant would further contend that the proprietor of the first defendant as D.W-1, has admitted that he has signed Ex.A-12 sometime in January 1987. Having admitted the signature in EX.A-12, he cannot be allowed to escape the liability. The learned counsel also relied upon the Judgement of this Court in ***Chokkammal and 3 others -vs- K.Balraj reported in 2008(5) CTC 690***. On the facts, it is very clear that Ex.A-12 was not signed by the proprietor of the first defendant on the date it bears. No doubt, that certain admissions have been extracted from D.W-1 in his cross examination wherein, he has accepted that the signature in Ex.A-12 is his signature and that he signed it sometime in January 1987. This by itself, in my considered

opinion, will not be sufficient to presume that Ex.A-12 was signed on 25.01.1985 as claimed by the plaintiff-Bank. The plaintiff-Bank has relied upon Ex.A-12 to show that the suit is in time. Therefore, it is for the plaintiff-Bank to establish that Ex.A-12 was executed on the date which it bears. In Chokhmal's case, cited supra, the suit was filed for specific performance, where the defendants had taken the plea that the agreement has been prepared with, the aid of the signatures obtained in blank papers. While considering such a situation Hon'ble Justice Mr.K.Kannan had held that a person of full age of understanding having subscribed their signature to a document cannot be heard to contend that the signature was affixed on blank papers or that they signed without apprising themselves about the recitals. In the case on hand a cursory glance of Ex.A-12 would show that it is not a complete document, even the name and address of the promissory is left blank. Merely because, the proprietor of the first defendant had admitted his signature in the said document that the contents of the documents cannot be presumed to be correct. Therefore, I do not see any reason to interfere with the findings of the trial Court wherein, it concluded that Ex.A-12 was not executed by the proprietor of the first defendant on 25.01.1985 as claimed by the plaintiff-Bank.

POINT NO.3:- If Ex.A-12 is excluded, the suit is clearly barred by limitation. Therefore, the trial Court was right in holding that the suit is barred by limitation and the plaintiff is not entitled to a decree as prayed for.

9.I do not see any merit in this appeal, hence, the appeal is dismissed, confirming the judgement and decree of the trial Court. Since, the respondents have not appeared either in person or through counsel, there shall be no order as to costs in this appeal. Consequently, the connected miscellaneous petition is closed.

08.08.2017

Index: No
Internet: Yes

KP

WEB COPY

To

1.The Learned VII Additional Judge,
City Civil Court,
Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras.



WEB COPY

R.SUBRAMANIAM.J,

KP



A.S.No.48 of 2002

WEB COPY

08.08.2017