

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2017

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.640 of 2016

and

C.M.P.No.11850 of 2016

R.Arif ... Appellant/Defendant

Vs

M/s.Karvy Stock Broking Limited
rep. By its Vice President and duly
constituted Power of Attorney
S.Ramachandran ... Respondent/Plaintiff

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 21.12.2015 passed in A.S.No.17 of 2015 on the file of the Principal District Judge, Salem, confirming the judgment and decree dated 26.03.2014 passed in O.S.No.202 of 2009 before the I Additional Subordinate Judge, Salem.

For Appellant ... Mr.J.Sudhakaran

JUDGMENT

The unsuccessful defendant, who has suffered a a decree before the Courts below in a suit filed for recovery of money, is the appellant herein and he has filed the present appeal by raising the following substantial questions of law:

(i)Whether in law the Courts below are right in decreeing the suit when Exs.A1 to A11 and Exs.X1 and X2 prove the appellant's case that he was not liable to make payment as contended by the respondent?

(ii)Whether in law the lower appellate Court erred grievously by merely repeating the judgment of the trial Court, without a fresh application of mind as contemplated under Order 41 Rule 31 C.P.C.?

2.The respondent/plaintiff is the company incorporated under the Companies Act, apart from being a member of National Stock Exchange of India Limited, carrying on business in stock

broking. On the application of the appellant/defendant dated 06.03.2004, pursuant to the agreement signed by him on the same day, he was given a membership bearing Client Code No.246SA0845. According to the respondent/plaintiff, in the account maintained by it qua the appellant/defendant, a sum of Rs.1,79,673.93 is due and after issuance of legal notice followed by the reply given, the suit has been laid. A defence has been taken by the appellant/defendant inter alia contending that his signature has been used in the documents created for the aforesaid purpose. The trial Court, placing reliance upon Ex.A5, which is a letter signed by the appellant/defendant, acknowledging the factum of payment, decreed the suit. Before the lower appellate Court, the appellant/defendant has raised a doubt on the discrepancies qua the dates mentioned in Exs.A2 and A3. Ex.A2 is the notarised copy of the power of attorney. Ex.A3 is the agreement inter se parties.

3.The lower appellate Court rejected the abovesaid contention on the ground that there is no discrepancy in Ex.A2. It has been attested by a notary. The alleged discrepancy has been explained by the respondent/plaintiff. Therefore, Ex.A2 is the pre-existing power of attorney in the name of the same person. Similarly, Ex.A3 has been accepted, as even without the same, the appellant/defendant has admitted doing business in stock and shares through the respondent/plaintiff. Incidentally, reliance has been made on Exs.A4 and A5.

4.Learned counsel appearing for the appellant/defendant reiterated the same, who submitted that these discrepancies are very fatal and there cannot be any oral evidence contrary to the documents filed. Reliance has been made on the judgment in Sundaram R.M. @ Meenakshi Sundaram Vs. Correspondent, National Elementary School (1998(I) CTC 195).

5.This Court does not find any merit in this appeal. There is neither any substantial question of law nor any question of law involved. The appellant/defendant has not disputed his signature in Ex.A5 and in specific terms, he has acknowledged the liability. Thus the appellant/defendant has not discharged the presumption qua Ex.A5. The evidence of P.W.1 has not been dislodged by the appellant/defendant insofar as Ex.A5 is concerned by way of cross-examination. The handwriting of the text in Ex.A5 is not specifically challenged. Similarly, the reasoning given by the lower appellate Court insofar as Exs.A2 and A3 are concerned, does not involve any perversity though the said issue itself may not be required in the teeth of Ex.A5 having been proved.

6.Accordingly, this Court does not find any question of law, warranting interference. Similarly, the decision relied upon by the learned counsel for the appellant/defendant does not have

any application to the case on hand as we are not dealing with the documentary evidence under Sections 91 and 92 of the Indian evidence act, more so, coupled with the fact that the facts are different.

7.In the result, the Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
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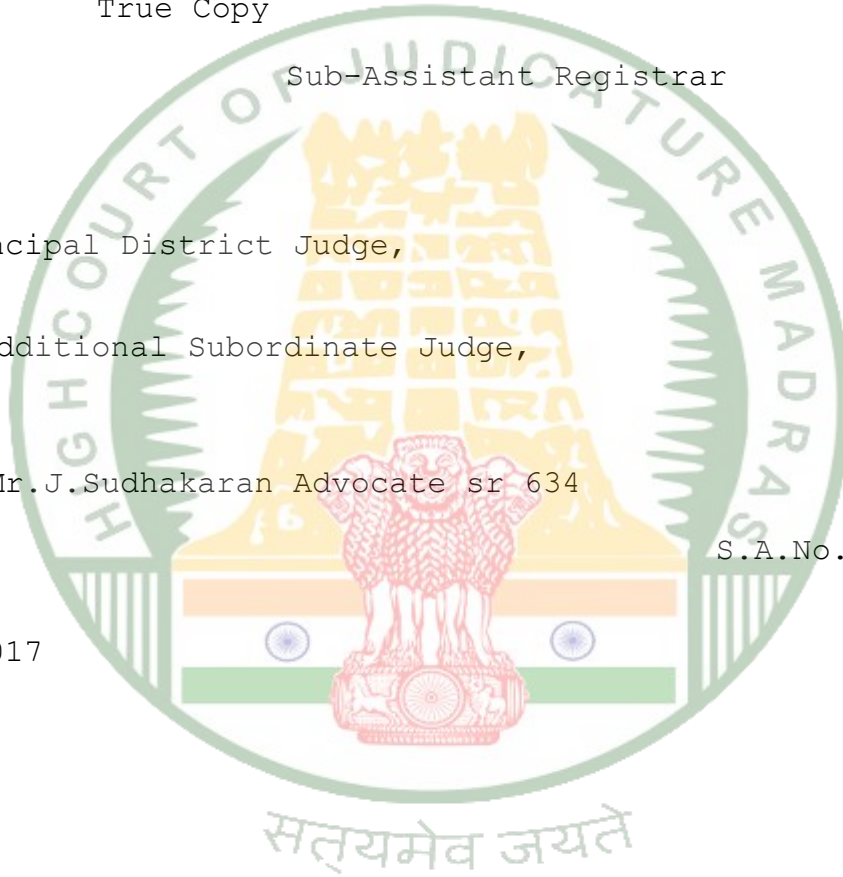
1.The Principal District Judge,
Salem.

2. The I Additional Subordinate Judge,
Salem.

+1 cc to Mr.J.Sudhakaran Advocate sr 634

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