

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 01.02.2018****PRONOUNCED ON : 14.02.2018****CORAM****THE HONOURABLE MR. JUSTICE T.RAVINDRAN****S. A.No.1022 of 2003**

M/s Kranchy Food Products
No.41 Udayar Street,
Pakkamdayam pet,
Pondicherry
rep.by its Prop.R.K.Nadaraj

...

Appellant

Vs.

The Pondicherry Industrial Promoiion
Development and Investment Corporation
repd by its M.D., No.38 Romalin Roland
street, Pondicherry.

...

Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 09.07.1996 passed in A.S.No.70 of 1996 on the file of the First Additional Sub Court, Pondicherry, confirming the judgment and decree dated 29.06.1993 passed in O.S.No.425 of 1992 on the file of the II Additional District Munsif Court, Pondicherry.

For Appellant

: Ms.Roshini Parakh
for Mr.V.Raghavachari

For Respondent

: Mr.T.M.Naveen
for Ms.D.Kamatchi

JUDGMENT

This second appeal is directed against the Judgment and decree dated 09.07.1996 passed in A.S.No.70 of 1996 on the file of the First Additional Sub Court, Pondicherry, confirming the judgment and decree dated 29.06.1993 passed in O.S.No.425 of 1992 on the file of the II Additional District Munsif Court, Pondicherry.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for recovery of money.

4. The case of the plaintiff, in brief, is that he has borrowed a sum of Rs.1,66,159.91 as loan from the defendant under the Loans Scheme for Small Scale Industries and accordingly, the plaintiff has taken all the attempts to restore the Industry, but had suffered heavy loss due to machinery failure and however, unable to restore the business and the same had been duly intimated to the defendant and requested the defendant to consider his case sympathetically and declare his industry as a sick unit and also the plaintiff had requested the defendant to give concession in the rate of interest and as per the

decision of the defendant, the defendant has charged 6% compound interest instead of charging 14.5% compound interest and as per the letter dated 16.07.1990, the defendant has requested the plaintiff to pay a sum of Rs.90,000/- on or before 31.07.1990 and the entire balance on or before 31.08.1990 and accordingly, the plaintiff remitted a sum of Rs.1,00,000/- on 31.07.1990 and requested the defendant to furnish the correct balance amount, but the defendant failed to furnish the same and accordingly, the plaintiff was constrained to prepare a statement of account in hurry and remitted the entire balance as per the said statement of account dated 31.08.1990 to the defendant and after the remittance of the same, the plaintiff came to understand that due to arithmetical error in the statement of account prepared by him, he has paid an excessive amount of Rs.4,360.66 to the defendant and immediately, requested the defendant to repay the excess amount but the defendant is passing evasive orders and also issued a letter dated 14.10.1991 calling upon the plaintiff to remit the balance amount without intimating the actual balance amount due according to them and hence, the plaintiff has been constrained to lay the suit for recovery of the excess sum of Rs.4,360.66 paid by him.

5. The case of the defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. It is true that the defendant had sanctioned a term loan of Rs.1,80,000/- to the plaintiff on certain terms and conditions and the same had also been accepted by the plaintiff and the plaintiff having accepted the terms and conditions at the time of availment of the loan, he has no right to vary the same at his whims and fancies and inasmuch as the plaintiff has been very irregular in meeting the term loan obligations in spite of the repeated demands made by the defendant, the defendant was compelled to initiate action under Section 29 of the State Financial Corporation Act, 1951 on 30.08.1988 against the plaintiff for recovery of the outstanding term loan and the plaintiff has violated his undertaking given in his letter dated 08.11.1989 and accordingly, the defendant was compelled to foreclose the term by his letter dated 02.03.1990 and the plaintiff did not respond, even after the above said foreclosure notice, another notice under Section 29 of the State Financial Corporation Act was issued by the defendant on 08.05.1990 and only after the receipt of the same, the plaintiff by his letter dated 21.06.1990 requested that he will settle the entire principal amount with an interest of Rs.50,000/-, the defendant board sympathetically

considered the request of the plaintiff and approved to extend a concession of Rs.1,07,073-62 in interest to the plaintiff subject to the condition that the plaintiff/loanee should remit a sum of Rs.90,000/- by 31.07.1990 and the balance amount should be paid on or before 31.08.1990 and the plaintiff has accepted to the said conditions and as per the same, the plaintiff has paid only a sum of Rs.1,00,000/- on 31.07.1990 and instead of contacting the account section of the defendant Corporation, as per the normal procedure to know the correct outstanding in time and settle the same, the plaintiff had chosen to file a letter on 31.08.1990 requesting the defendant to delete the credit guarantee charges of Rs.9,318/- and that, fresh request was made by the plaintiff without settling the outstanding in time and the plaintiff has violated the agreed conditions with an ulterior motive and it is false to state that the defendant has failed to furnish the statement of account as put forth in the plaint and the plaintiff never requested the defendant to delete C.G.C. amount of Rs.9,318/- and the case of the plaintiff that he has paid an excessive sum to the defendant is false and the plaintiff has to pay the entire outstanding term loan of Rs.1,78,757.43 as on 30.06.1992 and as the plaintiff failed to avail the concession offered by the defendant and acted against the same and having come forward with the false suit,

according to the defendant, the plaintiff's action should fail and the suit laid by the plaintiff is liable to be dismissed.

6. In support of the plaintiff's case, PW1 was examined and Exs.A1 to A6 were marked. On the side of the defendant, DW1 was examined and Exs.B1 to B22 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, both the Courts were pleased to dismiss the suit laid by the plaintiff. Impugning the same, the present second appeal has been laid.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

" (i) Whether the Courts below are right in dismissing the suit and in holding that only a suit for accounts will lie and the suit as framed is not maintainable?

(ii) Whether the Courts below are right in discussing the case on merits after having held that the suit is not maintainable?"

9. It is not in dispute that the plaintiff has availed a term loan from the defendant and on account of the loss sustained by the plaintiff in running the industry with regard to which the loan had been incurred and from the materials placed, it is seen that on the request of the plaintiff to reduce the quantum of interest in respect of the loan, the defendant had informed the plaintiff that it would extend a concession of Rs.1,07,073.62 in enabling the plaintiff to settle the loan account in full subject to the condition that he remits not less than a sum of Rs.90,000/- or on before 31.07.1990 and the balance amount on or before 31.08.1990. The above facts are not in issue. It is further found that the plaintiff has paid a sum of Rs.1,00,000/- by 31.07.1990 and however, it is seen that the plaintiff has not paid the outstanding amount as stipulated by the defendant while extending the above said concession and on the other hand, the plaintiff has claimed to have settled the loan amount and it is the case of the plaintiff that he has paid an excess sum to the defendant in a sum of Rs.4,360.66 on the basis of the statement of account prepared by him and only later, the plaintiff came to understand due to arithmetical mistake in the preparation of the statement of account, he has paid the above said excess amount to the defendant and hence, had come forward with the suit for the recovery of the same.

10. Per contra, it is seen that the defendant has disputed the claim of the plaintiff that he had been granted concession in the rate of interest and according to the defendant, only concession was extended for a sum of Rs.1,07,073.62 and not more than that subject to the conditions above stated and according to the defendant, the plaintiff has failed to comply with the conditions and not remitted the amount of the loan account and further, the defendant has disputed the claim of the plaintiff that he has paid an excess sum of R.4,360.64 as claimed and according to the defendant, in order to avoid the action initiated by the defendant under the State Financial Corporation Act, the plaintiff has come forward with the false suit and hence, the suit is liable to be dismissed.

11. As rightly determined by the Courts below, from the materials placed, the defendant has not given any concession in the rate of interest as claimed by the plaintiff and therefore, the plaintiff cannot presume that he had been granted concession in the quantum of interest from 14.5% to 6% as put forth in the plaint. On the other hand, as above seen, vide Ex.A5, the defendant has extended concession of a sum of Rs.1,07,073.62 only for enabling the plaintiff to

settle the loan amount subject to the condition stipulated above. Such being the position, the plaintiff cannot claim that it had settled the loan amount based on the statement of account prepared by it by putting blame on the defendant, as if the defendant had failed to furnish the statement of account as regards the loan transaction. Even as per the admitted case of the plaintiff, the statement of account prepared by it is not correct and mistakes had crept in the same. It is thus found that the claim of the plaintiff that he had settled the loan amount based on his erroneous statement of account as such cannot be accepted in any manner. That apart, when the plaintiff has agreed to the concession offered by the defendant as above stated, it is for the plaintiff to comply with the conditions in letter and spirit and it is found that the plaintiff, without complying the same, had requested the defendant to waive C.G.C amount as if the defendant had offered the said concession also. On the other hand, when it is found that the defendant has not offered any concession in the quantum of interest and also not offered any concession as regards the waiver of C.G.C amount, it is found that the plaintiff, without any basis, has assumed that the defendant has extended the concession in the rate of interest as put forth in the plaint and based upon the wrong premise, prepared the inaccurate statement of account and thereby, claim to

have paid excess sum to the defendant. On the other hand, it is found that the plaintiff has not settled the loan amount within the time stipulated by the defendant while extending the concession and in such view of the matter, the plaintiff cannot shift the blame on the defendant as if only due to the failure of the defendant in furnishing the statement of account, he had paid the excess sum to the defendant. Not a scrap of paper has been placed by the plaintiff to evidence that the defendant has acknowledged any sum having been paid in excess by the plaintiff at any point of time and on the other hand, it is found that all along the defendant has been insisting the plaintiff to settle the account as promised and as per the terms of concession extended by it and despite the same, the plaintiff having failed to comply with the same, it is found that as determined by the Courts below, only with a view to avoid the action initiated by the defendant for the recovery based upon the loan account, the plaintiff has come forward with a false suit as if he has paid an excess sum to the defendant while settling the loan account. On the other hand, as rightly put forth by the defendant's counsel, no iota of evidence has been produced by the plaintiff to show that he has paid an excess sum while settling the loan transaction or that the defendant has acknowledged any excess payment made by the plaintiff at any point of time. In such view of

the matter, I do not find any interference or infirmity in the appreciation of the materials placed on record by the Courts below for dismissing the plaintiff's action.

12. In the light of the above discussions, the Courts below have rightly held that the plaintiff has failed to establish that he has paid an excess sum to the defendant and I further hold that as rightly determined by the Courts below, the plaintiff has not settled the account as promised and hence, the suit laid by the plaintiff as such cannot be accepted. The substantial questions of law formulated in this second appeal are accordingly answered.

13. The plaintiff's counsel, in supports of her contentions, placed reliance upon the decisions reported in **1996 NRC 10 (M/s.Tribol Engineering Private Limited, Bangalore Vs. M/s.Indian Oild Corporation Limited Madras) and (1983) 3 Supreme Court Cases 379 (Gujarat State Financial Corporation Vs. M/s.Lotus Hotels Pvt. Ltd.)**. The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

In conclusion, the second appeal fails and accordingly, is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

14.02.2018

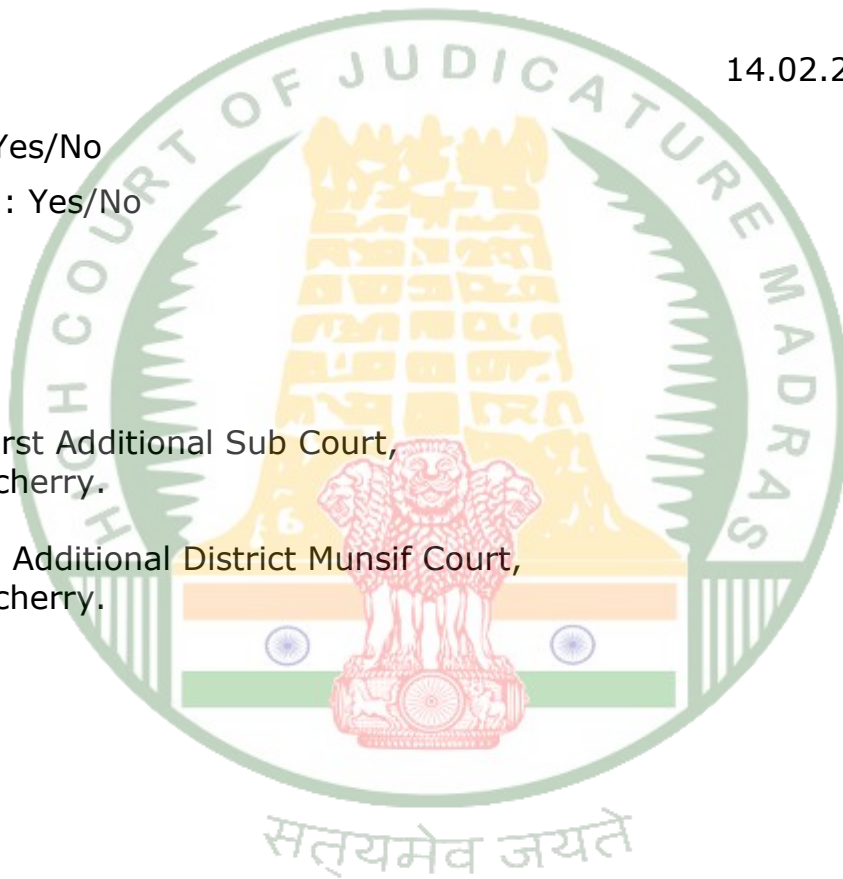
Index : Yes/No

Internet : Yes/No

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To

1. The First Additional Sub Court,
Pondicherry.
2. The II Additional District Munsif Court,
Pondicherry.



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T.RAVINDRAN,J.

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**Pre-delivery Judgment made
in S. A.No.1022 of 2003**

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14.02.2018