IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Second Appeal No.92 of 2015

M/s.Bank of Barod
Namakkal Branch
Represented by its Senior Branch Manager
Door No.39/30, Paramathy Road,
Namakkal Town. ... Appellant/Defendant

Vs.

P.Mohan ... Respondent/Plaintiff

Prayer:- Second Appeal has been filed under Section 100 of C.P.C to set aside the judgment and decree of dismissal of the 1st appellate court passed in A.S.No.13 of 2008 dated 31.07.2014 on the file of the Principal District Judge, Namakkal, confirming the judgment and decree of the trial court, i.e. Sub Court, Namakkal in O.S.No.162 of 2000 dated 26.11.2007.

For Appellant : M/s.R.Umasuthan

For Respondent : Mr.C.Jagadish

J U D G M E N T

This Second Appeal has been filed to set aside the judgment and decree of dismissal of the 1st appellate court passsed in A.S.No.13 of 2008 dated 31.07.2014 on the file of the Principal District Judge, Namakkal, confirming the judgment and decree of the trial court, i.e.Sub Court, Namakkal in O.S.No.162 of 2000 dated 26.11.2007.

2.The appellant is the defendant and respondent is the plaintiff in O.S.No.162 of 2000 on the file of the Sub Court, Namakkal. The respondent filed the said suit for recovery of Rs.16,810/- being the matured amount on FDR No.507731 together with interest @ 12% from 08.05.1992 and Rs.16,952/- being the maturity amount of TDR No.95/T No.01031375 from 05.02.2000. According to the respondent, he is the proprietor of SBM Tyres and SBM Transports. He is having accounts with appellant Bank at Namakkal and Salem branches in his name as well as in the name of SBM Tyres and SBM Transports. He deposited a sum of Rs.1,30,000/- on 18.06.1997 in FDR No.0541445, Rs.12,500/- in FDR No.507731 and Rs.11,200/- in TDR No.95/T 0103175 in his personal account. In addition to that, he has also deposited a sum of Rs.10,000/- in FDR No.531805 and Rs.12,500/- in FDR No.507730 on behalf of SBM Transports. He has borrowed a sum of Rs.1,00,000/- in the appellant bank at Namakkal Branch as overdraft loan for the business of SBM Transports and had given FDR receipt Nos.0541445, 507731 standing in his name and 531805 & 507730 standing in the name of SBM Transports as security. The respondent repaid Rs.1,00,000/- borrowed on behalf of the SBM Transports however, the appellant did not pay the amounts on maturity of the FDR and term deposits.

2(a) The appellant issued notice dated 29.01.2000, stating that they are going to set off the amounts standing to the credit of FDR No.0541445 dated 18.06.1997 for Rs.1,30,000/- for the amount of Rs.1,60,000/- which was credited twice on 01.02.1994 and 03.02.1994 to Account No.1385 standing in the name of SBM Tyres. In the said circumstances, the respondent filed the said suit against the appellant before the Sub Court, Namakkal praying for a decree of declaration that the set off is not valid and for mandatory injunction. The appellant has not set off the FDR No.507731, TDR No.95/T 0103175 for Rs.12,500/- & Rs.11,200/- respectively and the same have been matured on 07.05.1997. In view of the same, the respondent filed suit for payment of maturity amount in respect of the said FDR and TDR together with interest which were not set off in respect of the alleged double credit to the Account No.1385 of SBM Tyres.

3. The appellant filed written statement and contended that by mistake, Account No.1385 maintained with their Salem Branch by SBM Tyres was credited twice with a sum of Rs.1,60,000/- and respondent, as a proprietor of SBM Tyres is liable to repay the said amount. The respondent has renewed the FDR mentioned in the plaint and therefore he is not entitled to payment of matured amounts covered by the said FDR. The appellant is having Bankers General Lien over all the amounts standing to the credit of respondent and prayed for dismissal of the suit.

4. Based on the pleadings, the learned Trial Judge framed necessary issues. Before the learned Judge, the respondent examined himself as P.W.1 and marked three documents as Exs.P1 to P3. The appellant examined one Mohan, Manager of Namakkal Branch of the appellant bank as D.W.1 and marked three documents as Exs.R1 to R3.

5. The learned Trial Judge, considering the pleadings, oral and documentary evidence, decreed the suit by the judgment and decree dated 26.11.2007 holding that the appellant has not proved the double entry to Account No.1385 of SBM Tyres maintained at Salem Branch. Against the said judgment and decree, the appellant filed A.S.No.13 of 2008 on the file of the Principal District Court, Namakkal. The learned First Appellate Judge framed necessary points for consideration. The learned First Appellate Judge, independently considering the pleadings, oral and documentary evidence and judgment of the Trial Court, dismissed the Appeal confirming the judgment and decree dated 26.11.2007 made in O.S.No.162 of 2000 on the file of the Sub Court, Namakkal.

6. Against the said judgment and decree dated 31.07.2014 made in A.S.No.13 of 2008, the appellant has come out with the present Second Appeal.

7. At the time of admission, this Court framed following Substantial Questions of Law:

> "1.Whether the Courts below were right in ignoring Section 72 of the Indian Contract Act, 1872 which gives right to the appellant to recover a sum of Rs.1,60,000/- which was paid to the respondent by mistake/inadvertence?
>
> 2.Whether the Courts below were right in decreeing the suit without properly appreciating the legal issue as to whether the appellant Bank has got lien over the fixed deposits of the respondent?"

8. The learned counsel for the appellant contended that both the Courts below erred in holding that the appellant failed to prove the double credit given to Account No.1385 of SBM Tyres maintained at Salem Branch. The appellant has marked Exs.B1 & B2 statement of accounts relating to SBM Tyres maintained at Namakkal and Salem Branches respectively. DW1 Sr.Manager of Appellant Bank, Namakkal Branch produced the said documents and proved the same. The said documents were admissible in evidence in view of Bankers Books Evidence Act. The appellant also filed Banker's Resolution Assessment with regard to doubtful entry report. The respondent admitted the correctness of statement of accounts filed by the appellant. As per Section 72 of the Indian Contract Act, the respondent is liable to repay Rs.1,60,000/- which was credited to the account of SBM Tyres twice. The Courts below failed to take into account Section 171

of Indian Contract Act whereby the appellant is having General Lien over the amounts standing to the credit of the respondent. The Courts below committed an error of law by not properly applying Sections 72 and 171 of Indian Contract Act and prayed for allowing the appeal.

9. Per contra, the learned counsel for the respondent contended that the respondent has not filed the present suit with regard to FDR No.0541445 dated 18.06.1997 for Rs.1,30,000/- set off by the appellant. The respondent has filed separate suit for declaration that the set off is invalid and for mandatory injunction. In the present suit, the respondent is claiming maturity amounts in respect of amounts due under the FDRs which were not set off by the appellant. The Courts below have rightly considered all the materials on record and has given a finding that the appellant has failed to prove the double entry. There is no question of law arises in the Second Appeal and prayed for dismissal of the same.

Substantial questions of law 1 & 2 :-

10. The appellant has not paid the amounts to the respondent in respect of FDR mentioned in the plaint and grounds. Firstly, according to the appellant, the respondent has renewed the FDR with accrued interest. Secondly, the appellant has Bankers General Lien over the amounts standing to the credit of respondent in respect of all the amounts due and payable by the respondent as proprietor of SBM Tyres. The contention of the learned counsel for the appellant that the respondent is not entitled to amounts covered by FDR in view of the General Lien is without merits. In the first place, considering the evidence let in by the appellant, courts below have concluded that the Bankers have failed to prove the double credit alleged to have been given to Account No.1385 maintained by SBM Tyres at Namakkal Branch.

11. Secondly, in respect of alleged double wrong credit, the appellant, by letter dated 29.01.2000 marked as Ex.A2, informed the respondent that they have set off the amounts payable to the appellant due under FDR mentioned therein. The appellant has not set off the amounts covered under FDR and TDR mentioned in the plaint or they have not exercised their Bankers Lien over the said FDR and TDR. When the appellant has not set off the FDR mentioned in the present plaint or exercised their Bankers Lien over the said FDR, the appellant is bound to pay the maturity amounts covered by the said FDR or TDS to the respondent. The Courts below have considered the evidence in proper perspective and decreed the suit and dismissed the Appeal filed by the Appellant.

12. For the above reason, the Substantial Question of Law are answered against the appellant and Second Appeal is dismissed. The Judgment and Decree dated 31.07.2014 passed by the learned Principal District Judge, Namakkal, in A.S.No.13 of 2008 is confirmed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rgr
To

1. The Principal District Judge,
Namakkal.

2. The Subordinate Judge,
Namakkal.

+1cc to Mr.R.Umasuthan, Advocate Sr.28389
+1cc to Mr.C.Jagadish, Advocate Sr.28298

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gj[co]
srg 31/05/2018