IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

S.A.No. 1695 of 2002

1.M.N.Swaminathan
2.P.Sanjeevi ..Appellants/Defendant

Vs

M/s.Friends Finance Corporation
Rep.by Managing Partner,
Mrs.Rukmani and Partner,
Evlin Glanda,
No.4, Alandur Road,
Saidapet,
Chennai - 600 015. ..Respondent/Respondent/Plaintiff

PRAYER:Second Appeal filed under Section 100 of C.P.C, against the Decree and Judgment passed on 31.01.2002 in A.S.No.155 of 1999, on the file of the III Additional City Civil Court, Chennai, confirming the decree and judgment passed on 12.11.1998 in O.S.No.6426 of 1992 on the file of the XV Asst.City Civil Court, Chennai.

For Appellants : Mr.P.B.Balaji
For Respondent : Mr.N.Baskaran

JUDGMENT

This Second Appeal has been filed by the defendants against the Judgment and decree passed by the III Additional Judge City Civil Court, Chennai in A.S.No.155 of 1999 dated 31.01.2002 confirming the judgment and decree passed by the XV Assistant Judge City Civil Court, Chennai in O.S.No.6426 of 1992 dated 12.11.1998.

2.The respondent herein has filed a suit in O.S.No.6426 of 1992 on the file of the XV Assistant Judge City Civil Court, Chennai for recovery of Rs.16,707/- with future interest @18%p.a for the principal amount of Rs. 9550/- from the date of the suit till the date of realization and for costs. The learned Assistant Judge by the judgment dated 12.11.1998 has decreed the suit as prayed for with costs. Aggrieved by the same, the defendants herein have filed an appeal in A.S.No.155 of 1999 on the file of III Additional Judge City Civil Court, Chennai. The learned Additional Judge by the Judgment dated 31.01.2002 has dismissed the said appeal confirming the judgment and decree passed by the trial Court. Feeling aggrieved, the defendants have preferred the present second appeal. For the sake of convenience, the parties are referred to as described before the trial Court.

3.The averments made in the plaint are, in brief, as follows:-

The plaintiff is a registered partnership firm. On 24.09.1987, the defendants 1 & 2 borrowed a sum of Rs.9,550/- from the Plaintiff Finance and executed a promissory note, agreeing to repay the same on demand with interest @18%p.a. Inspite of repeated oral demands, the defendants have not paid the amount. Hence the plaintiff had sent a lawyer's notice dated 18.07.1990 calling upon the defendants to pay the amount due on the said promissory note. After receipt of the said notice, the defendants did not come forward to pay the amount. Hence, the suit.

4.The averments made in the Written Statement filed by the first defendant and adopted by the second defendant are, in brief, as follows:-

The allegations that on 24.09.1987, the defendants borrowed a sum of Rs.9550/- from the Plaintiff Finance and executed the suit promissory note are all false. The first defendant was in need of Rs.5,000/- and hence he approached the plaintiff seeking a loan of Rs.5,000/-. The plaintiff gave a sum of Rs.5,000/- on 24.09.1987 and insisted the defendants to execute the promissory note for Rs.9,550/-. Since the defendants were in immense need of money, they have filled up the promissory note as instructed by the plaintiff. Further, the first defendant entrusted RC Book relating to his Scooter bearing Registration No.TMR 8316 and executed an Hypothecation agreement and the aforesaid promissory note. Actually, the plaintiff has paid only Rs.5000/- and obtained signatures in the promissory note as if the defendants have borrowed a sum of Rs.9550/-. Subsequently, the defendants have re-paid the loan of Rs.5000/- with interest and hence, the defendants are not liable to pay any amount. Therefore, the defendants prayed for dismissal of the above suit.

5.Based on the aforesaid pleadings, the learned Assistant Judge has framed necessary issues and tried the suit. During trial on the side of the plaintiff, one witness was examined as P.W.1 and Exhibits A1 to A4 were marked. On the side of the defendants, the first defendant examined himself as D.W.1, but they have not marked any exhibits on their side.

6.The learned Assistant Judge, after considering the materials placed before him decreed the suit as prayed for. As against the same, the defendants have filed an appeal in A.S.No.155 of 1999 on the file of the III Additional Judge, City Civil Court, Chennai. The learned Additional Judge has dismissed the said appeal confirming the Judgment and decree passed by the trial Court. Feeling aggrieved, the defendants have preferred the present second appeal.

7.At the time of admitting this second appeal, this Court has formulated the following substantial questions of law:-

> "1.Whether the Appellants have shifted the burden of proof that Section 118 of the Negotiable Instruments Act, prima facie, precipitates on them?
> 2. Whether an adverse presumption ought to be inferred against the respondent for its failure to produce books of accounts?"

8. Heard Mr.P.B.Balaji, learned counsel for the appellants /defendants and M/s.N. Baskaran, C.N.Gopinath and K.Chandrakala learned counsel for the respondent/plaintiff.

9.Question Nos.1 & 2:-

According to the plaintiff, the defendants borrowed a sum of Rs.9550/- from the plaintiff and executed the suit promissory note agreeing to repay the same on demand with interest at the rate of 18%p.a. Their further case is that, inspite of repeated demands and lawyer's notice dated 18.07.1990, the defendants did not come forward to pay the amount due on the said promissory note. In order to substantiate their claim, the plaintiff examined their manager as P.W.1 and marked Exhibits A1 to A4.

10.The case of the defendants is that the first defendant has borrowed only a sum of Rs.5000/- from the plaintiff Finance and since the plaintiff forced them, to fill up the promissory note for Rs.9,550/-, they have filled up the Promissory note as instructed by the plaintiff. Their, further case is that they have repaid the amount of Rs.5,000/- with interest and hence they are not liable to pay any more amount.

11.It is not the case of the defendants that they have not at all borrowed any amount and executed the suit promissory note in favour of the plaintiff. Their case is that, they borrowed only a sum of Rs.5,000/- from the plaintiff, but, since the plaintiff insisted them to fill up the Promissory note for Rs.9550/-, they have filled up the suit promissory note for the said amount.

12.As per Section 118 of the Negotiable Instruments Act, until the contrary is proved, it shall be presumed that every negotiable instrument was made or drawn for consideration. Therefore, the burden is upon the defendants to rebut the presumption that the suit Promissory note is supported by the consideration of Rs.5000/- only, and not Rs.9550/-. In this case except the interested testimony of the D.W.1 no other evidence is produced to show that suit promissory note was not supported by partial consideration. Therefore this Court of the view that the Courts below have rightly come to the conclusion that the suit promissory note is supported by the consideration of Rs.9,550/-

13.The defendants putforth another defence that they have discharged the loan which was obtained from the plaintiff. For that also the defendants have not produced any documentary evidence. So the Courts below have rightly decided the issue that the defendants failed to discharge the burden that they have repaid the loan amount and in the said factual findings this Court cannot interfere.

14.The next question that arises for consideration is what is the rate of interest, the plaintiff is entitled to from the date of the suit till the date of decree and further interest from the date of decree. As per the Section 34 of C.P.C., the Court may order interest at such rate as the Court deems reasonable to be paid on the Principal sum adjudged, from the date of the suit to the date of the decree, with further interest at such rate not exceeding 6% per annum. As per the proviso attached to the said Section, where the liability had arisen out of the commercial transaction, further interest may exceed 6% per annum. In this case, the trial Court has awarded interest at the rate of 18% per annum from the date of suit till the date of realization for the principal sum of Rs.9,500/-. As already pointed out that during the pendency of the suit, the Court may award interest as it deems reasonable to be paid on the principal sum so adjudged. In this case, the contract rate of interest is 18% per annum. But the further interest awarded at the same rate is not in accordance with law.

15. In this case in the suit promissory note, it is not stated that the defendants have borrowed the loan for any commercial purpose. In the plaint also the plaintiff has not stated that the loan was given for any commercial purpose. Therefore, the plaintiff is entitled to get further interest from the date of decree till the date of realization only at the rate of 6% per annum for the principal amount. To that extent, the judgments and decrees passed by the Courts below have to be modified. Accordingly these substantial questions of law are answered.

16.In the result, the judgment and decree passed by the Courts below are modified as follows:-

a)That the defendant is directed to pay a sum of Rs.16,707/- with interest at the rate of 18% per annum for the principal sum of Rs.9,550/- from the date of suit till the date of decree and thereafter at the rate of 6% per annum till the date of realization; and b)that the defendants are directed to pay cost of the plaintiff throughout.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To
1. The III Additional Judge, City Civil Court,
   Chennai,
2. The XV Assistant Judge, City Civil Court,
   Chennai.

Copy to: The Section Officer, VR Section, High Court, Madras.

+ 1 cc to Mr. P.B. Ramanujam, Advocate Sr.46070
+ 1 cc to Mr. N. Baskaran, Advocate Sr.45904

S.A.No. of 1695 of 2002

RSY(CO)
EU(16/10/2018)