

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.06.2018

PRONOUNCED ON : 18.07.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.2065 of 2004

Bank of Baroda ... Appellant/Respondent/Plaintiff
Coimbatore
Vs.

1. Kamala Balasubramaniam
2. P.Balasubramaniam Respondents/Appellants/Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the First Additional District Judge cum Chief Judicial Magistrate, Coimbatore in A.S.No.154 of 1999 and dated 18.12.2002 in setting aside the judgment and decree dated 16.10.1996 of the II Additional Subordinate Judge, Coimbatore in O.S. No.849 of 1990.

For Appellant : Mr.K.S.V.Prasad
For Respondent : Mr.S.Thangavel

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 18.12.2002, passed in A.S.No.154 of 1999, on the file of the First Additional District Judge cum Chief Judicial Magistrate, Coimbatore setting aside the judgment and decree dated 16.10.1996, passed in O.S. No.849 of 1990, on the file of the II Additional Subordinate Court, Coimbatore.

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 at the request of the defendants, the plaintiff granted to the first defendant, the wife of the second defendant, a cash credit advance of Rs.50,000/- in the year 1978, for the working capital requirements of her sole proprietary concern Karthik Pharmacy on

the personal guarantee of the second defendant and subsequently in 1980, the plaintiff granted another cash credit advance of Rs.50,000/- for the working capital requirements of her another sole proprietary concern Karthik Enterprises, also on the personal guarantee of the second defendant and the abovesaid advances were being availed of by the first defendant by operating an account with the plaintiff and the credit facilities were reviewed and renewed and enhanced/reduced subsequently in May 1980 and October 1981 and again on 10.08.1994, the first defendant executed two demand promissory notes in favour of the plaintiff, one for Rs.90,000/- in respect of the cash credit advance granted to Karthik Pharmacy and the other for Rs.75,000/- in respect of the advance granted to Karthik enterprises, agreed to pay the interest as recited therein and also on the same date, executed two agreement of hypothecation and two agreements of continuing security, while the second defendant, as guarantor, executed two separate agreements of guarantee in respect of the abovesaid two advances and the first defendant has been enjoying the credit facilities and however, failed to adhere to the terms of the grant of the advance and the activity in her two trade units was very little and eventually she closed the business and disposed of the hypotheca without the plaintiff's prior consent and without settling the plaintiff's dues and the plaintiff called upon the defendant to liquidate the dues in the two accounts and also issued a lawyer's notice demanding the amounts, but the amounts due in the first defendant's account remained unpaid and the plaintiff is in possession of the two term deposits in the name of the second defendant and the second defendant had agreed not to withdraw the said two deposits, one for Rs.39,700/- and another for Rs.1,05,900/- and undertook to adjust the maturity value thereof under the abovesaid two accounts and in exercise of the plaintiff's lien as a banker over the abovesaid two term deposits, which matured on 27.7.89, the plaintiff after giving due notice, adjusted the maturity value thereof against the two accounts of the first defendant, for which, the second defendant is jointly and severally liable with the first defendant as guarantor and the defendants were making repeated pleas for waiver of the entire overdue interest which the plaintiff was not willing to concede, though the plaintiff is willing to offer concession in interest, for which the defendants are not agreeable and interest had been charged in the two accounts as per law and agreed to and the defendants had also executed the letters of acknowledgement of liability on 15.07.1987 and hence, the suit for recovery of money.

5. The case of the defendants, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. The first defendant availed credit facilities for the business carried on in the name of M/s.Karthik Enterprises and

M/s.Karthik Pharmacy at Coimbatore and in 1979 and 1980, as averred in the plaint, a cash credit advance of Rs.50,000/- each have been availed for the abovesaid business and the agreed interest was only 17% and the defendants had never agreed for the payment of compound interest or enhancement of interest in future and the plaintiff bank had taken the signature of the defendants in several sets of loan papers which were not then filled up and the defendants were not given any statement of accounts furnishing the mode and particulars of interest charged in their accounts. The defendants were remitting the monies periodically. The business, however, were to be suspended as large outstanding were locked up with their customers. The second defendant guaranteed the due repayment of the loan secured. The plaintiff has not furnished any statement of accounts and the defendants had no occasion to verify the correctness of the amount debited by the plaintiff or the mode of calculation by the plaintiff. The interest charged is excessive and illegal and the defendants are not liable to pay any penal interest. The document dated 10.08.1984 was not filled up when the signature of the defendants were taken. The second defendant had two FDRs and they are independent transactions and the abovesaid two FDRs were not pledged with the bank neither given as security nor the the plaintiff bank has no right to unilaterally adjust the same and the plaintiff cannot adjust the FDRs with the loan accounts and hence, the plaintiff is liable to pay the interest at 18% per annum for the failure of honouring the maturity of the FDRs in favour of the second defendant. Adjustment of the FDRs with the loan account is unauthorised and illegal and not binding on the defendants and the interest calculated is on the higher side and the plaintiff has no cause of action and the suit is liable to be dismissed.

6. In support of the plaintiff's case, PW1 has been examined, Exs.A1 to A25 were marked. On the side of the defendants, DW1 was examined, Exs.B1 was marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit as prayed for. The first appellate Court, on an appreciation of the materials placed on record, was pleased to set-aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the defendants, dismissed 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:

"1. Whether the first appellate Court was correct in holding that the bank cannot raise cash credit facility to the level of which the amount had been withdrawn and get promissory note executed for such enhanced amount?

2. Whether the first appellate Court was right in dismissing the suit?"

9. The suit has been laid by the plaintiff for the recovery of amount due from the defendants as regards the availment of the cash credit facilities made by them from the plaintiff bank. It is found that the first defendant with reference to her business concerns, availed credit facilities from the plaintiff bank on two occasions and accordingly, executed necessary documents as put forth by the plaintiff by way of demand promissory notes, hypothecation agreements and agreements of continuing security and the second defendant, the husband of the first defendant stood guarantee for the abovesaid loan facilities availed by the first defendant and executed agreements of guarantee and evidencing the same, the plaintiff has filed all the documents in connection with the abovesaid transaction. Though the defendants would admit the availment of the cash credit facilities from the plaintiff bank, all that they would state is that the loan papers had been secured from them without being filled up and hence, they are not aware of the contents of the same. However, considering the fact that the defendants are not illiterate persons, but one who are engaged in business involving huge sums and accordingly, when it is noted that they had availed cash credit facilities from the bank and also undertaken to repay the same with interest as agreed to and in this connection had executed several loan papers as projected by the plaintiff without any demur or protest and further, the defendants had also been to some extent adjusting the credit facilities availed by them, their contention that they signed the documents without knowing the contents of the same, as such, cannot be rightly accepted. Be that as it may, it is found that the first defendant was unable to continue the business run by her and thereby, it is found that the loan accounts maintained with the plaintiff's bank had not been properly processed by the first defendant, particularly, in the repayment of the loan and accordingly, it is seen that the plaintiff had been necessitated to demand the loan availed by the defendants and in this connection, it is also found from the correspondences had been made between the parties and exhibited in the matter and the second defendant had assured to adjust the maturity value of the two FDRs he had with the bank towards the loan accounts and it is further seen that

in terms of the assurance given by the second defendant, he also being the guarantor of the loan availed by the first defendant, it is seen that the plaintiff bank had adjusted the two Maturity value of the FDRs to the loan account and even after the same, as the loan of the first defendant remained unsatisfied and despite demand and issuance of the notice, the defendants had failed to pay the amount, it is found that the plaintiff had been necessitated to institute the suit.

10. The main defence projected by the defendants is that they had not agreed for paying compound interest or penal interest as projected by the plaintiff and further, it is the case of the defendants that inasmuch as the plaintiff had not put them on notice as to the mode of the adjustment of the loan amount and the charging of the interest and as the defendants had not been furnished with the statements of accounts, it is their contention that the plaintiff's statements of account projected should not be taken into consideration and on that basis, the loan account cannot be held to be subsisting and therefore, it is stated that the plaintiff is not entitled to maintain the suit. Further, a plea has also been taken that the second defendant had not directed the plaintiff bank to adjust the maturity value of the FDRs he had with the bank, therefore, the adjustment of the FDRs with the loan account is illegal and accordingly, it is the contention of the defendants that the suit laid by the plaintiff is liable to be dismissed.

11. From the documents projected by the plaintiff, it is found that towards the cash credit facilities availed, the first defendant had also executed two promissory notes in favour of the plaintiff as well as hypothecation agreements and agreements of continuing security and all these documents had been marked in the suit and the second defendant had executed agreements of guarantee, which have also come to be exhibited. The plaintiff had also produced the letters of acknowledgement of liability given by the defendants on 16.5.87 and it is thus found that the plaintiff had established beyond any doubt, as to the availment of the cash credit facilities by the defendants and the liability of the defendants to repay the same with interest as agreed to. On a perusal of the loan documents, it is evident that the defendant had agreed to repay the loan with compound interest and penal interest as may be charged by the plaintiff from time to time as per the RBI guidelines. Accordingly, it is found that the plaintiff had also furnished the statements of accounts Exs.A11 to A14 plus Exs.A21 to A25 and on a cumulative analysis of the abovesaid documents, it is found that the plaintiff had properly adjusted the maturity value of the FDRs which the second defendant had been maintaining with the plaintiff bank towards the loan account and as per the statement of accounts produced by the plaintiff, it is seen that the

defendants are liable to pay the suit amount as projected by the plaintiff. Accordingly, it is noted that the trial Court, on an analysis of the materials placed on record in the right perspective, was pleased to accept the plaintiff's case in entirety.

12. The first appellate Court has rejected the plaintiff's case on the footing that the plaintiff has not shown the promissory note transactions in the statements of accounts by giving corresponding entries with reference to the same and on that premise, relying upon the decision reported in 1996-2-L.W.311 (Indian Bank having its Head Office at No.31, North Beach Road, Madras - 600 001 and its branch at Tennur, Trichy by Branch Manager Vs. Chokkalingam and another) holding that the statements of accounts projected by the plaintiff do not reflect the correct picture of the proper maintenance of the accounts, on that reasonings as well as failure of the plaintiff's bank in showing its entitlement to adjust the two FDRs towards the loan account, accepted the defence version and thereby, dismissed the plaintiff's suit.

13. However, as rightly put forth by the plaintiff's counsel, in the decision relied upon by the first appellate Court reported in 1996-2-L.W.311 (Indian Bank having its Head Office at No.31, North Beach Road, Madras - 600 001 and its branch at Tennur, Trichy by Branch Manager Vs. Chokkalingam and another), it is seen that the loan transaction with reference to the said case is based upon a promissory note and the suit in that case, had been laid on that basis. In such view of the matter, in that decision, it has been held that the failure to reflect the promissory note amount in the statement of account is fatal. However, in so far as this present case is concerned, the suit has not come to be laid on the basis of the promissory notes and on the other hand, only on the footing that the first defendant had availed cash credit facilities from the plaintiff's bank and with reference to the same, the first defendant had executed the promissory notes in question as security and had not repaid the loan availed. In such view of the matter, when it is seen that in such circumstances, the corresponding entries as regards the suit promissory notes need not be entered in the statements of accounts as it pertains to only with regard to the cash credit facilities availed by the first defendant, as rightly put forth by the plaintiff's counsel, the abovesaid decision relied upon by the first appellate Court for non suiting the plaintiff, on facts, would not apply to the present case. That apart, as above mentioned, considering the statements of accounts projected by the plaintiff bank in detail, it is found that after giving due credit to the payment made by the defendants and accordingly, it is seen that the plaintiff bank had maintained the statements of

accounts, calculated the interest as agreed to by the defendants and in such view of the matter, as per the terms of the loan transaction, the plaintiff bank is entitled to charge compound interest on quarterly basis. Accordingly, it is seen that the first appellate Court had erred in determining that the statements of accounts projected by the plaintiff are incorrect on the footing that the entries corresponding to the suit promissory notes are not entered therein.

14. Similarly, from the correspondence and the undertaken given by the second defendant, it is made evident that he had agreed to adjust the maturity value of the two FDRs, he had been having with the plaintiff's bank towards the loan transaction and accordingly, when it is found that the plaintiff bank had adjusted the abovesaid FDRs towards the loan amount and the same had been reflected in the statement of accounts duly, the determination of the first appellate Court that the same had not been duly appropriated as such cannot be accepted and accordingly, when it is found that the suit laid by the plaintiff is not based on the promissory notes marked in the case and on the other hand, only on the basis of the availment of the cash credit facilities by the first defendant for which the second defendant stood as a guarantor, the availment of which facility has not been disputed by the defendants as such, it is found that the statements of accounts projected by the plaintiff correctly reflect the amount due towards the accounts and the interest calculation made by the plaintiff with reference to the same is found to be done only as per the interest agreed to between the parties.

15. In such view of the matter I do not find acceptance in the reasonings and conclusion of the first appellate Court for non suiting the plaintiff on the footing that the amount corresponding to the promissory notes had not been entered in the statements of accounts. In this connection, the principles of law outlined in the decisions relied upon by the plaintiff's counsel reported in 2001 company cases 416 (Central Bank of India Vs. Ravindra and others), I (2003) BC 165 (State Bank of India Vs. Smt.Goutmi Devi Gupta), III (2003) BC 528 (The city union bank limited Vs. C.Thangarajan), 2002-1-LW 541 (M.Shanmugham Vs. S.Rangasamy Gounder), CDJ 1997 MHC 566 (P.Talamalai Chetty Vs. Rathinasamy), CDJ 1993 MHC 732 (Seshmal Bafna Vs. P.C.Subramanian & Others) and CDJ 1961 MHC 315 (Jugal Kishore Das Vs. Union of India & Ors) are taken into consideration and followed as applicable to the case at hand.

16. In the light of the above discussions, the first appellate Court had erred in holding that the plaintiff bank cannot raise cash credit facilities to the level of which the amount had been withdrawn and thereby get the promissory notes

executed for such enhanced amount as security documents and accordingly, it is found that the first appellate Court had erred in dismissing the plaintiff's suit. In such view of the matter, the substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the defendants.

17. In conclusion, the judgment and decree dated 18.12.2002, passed in A.S.No.154 of 1999, on the file of the First Additional District Judge cum Chief Judicial Magistrate, Coimbatore are set-aside and the judgment and decree dated 16.10.1996, passed in O.S. No.849 of 1990, on the file of the II Additional Subordinate Court, Coimbatore are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar

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To

1. The First Additional District Judge cum Chief Judicial Magistrate, Coimbatore.
2. The II Additional Subordinate Court, Coimbatore.

Copy To

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

+1cc to Mr.S.Thangavel, Advocate SR.No.47839

S. A.No.2065 of 2004

GJ(CO)
GN(23/08/2018)