

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :12.03.2018
PRONOUNCED ON:21.03.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.2240 of 2003
and
C.M.P.No.21094 of 2003

1.V.Arumugam
2.A.Saraswathi

...

Appellants/Defendants

Vs.

State Bank of India,
Chidambaram Branch,
Rep by its Branch Manager. ... Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 26.02.2002 and made in A.S.No.5 of 2002 on the file of Additional District Court, Chidambaram partly confirming the judgment and decree dated 17.11.2000 and made in O.S.No.330 of 1996 on the file of the Court of District Munsif, Chidamabaram.

For Appellants : Mr.Srinath Sridevan

For Respondent : Mr.R.T.Duraisamy

J U D G M E N T

This second appeal is directed against the judgment and decree dated 26.02.2002 passed in A.S.No.5 of 2002, on the file of Additional District Court, Chidambaram, partly confirming the judgment and decree dated 17.11.2000 passed in O.S.No.330 of 1996 on the file of the District Munsif Court, Chidamabaram.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for recovery of money.

4.The case of the plaintiff in brief is that the first defendant is a contractor and the second defendant is his wife and the defendants approached the plaintiff's Bank on 13.09.1978

for sanction of an overdraft limit of Rs.18,750/- for contract work against the two special term deposit receipts dated 31.08.1978 for Rs.15,000/- and dated 19.09.1977 for Rs.10,000/- and accordingly, the overdraft limit of Rs.18,750/- was sanctioned by the plaintiff's Bank to the defendants. Further overdraft limit of Rs.35,000/- on 12.04.1982 and Rs.41,600/- on 27.10.1984 were also sanctioned and the interest was charged at 13% per annum to the sanctioned limit and outstandings beyond the sanctioned limit was charged at clean overdraft rate prevailing at various points of time ranging from 16.5% per annum to 19.5% per annum. The defendants did not bother to liquidate the outstandings in the overdraft and after crediting the maturity value of the special term deposit receipts above stated as on 19.09.1987, a sum of Rs.14,344.80/- remind unadjusted and the defendants had failed to the repay the said amount and defendants have acknowledged their liability, by a letter dated 03.03.1988 and the suit laid within three years from that date is in time. The plaintiff issued a registered notice dated 11.09.1990 to the defendants. The defendants though had received the notice, neither cared to send any reply nor settle the amount due and as per the books of accounts maintained by the plaintiffs, a sum of Rs.29,873.90/- is due and payable by the defendants with the subsequent interest and costs and hence the suit.

5.The case of the defendants put together in brief is that the suit is not maintainable either in law or on facts. Though the defendants have admitted that the overdraft facility had been granted to the first defendant, according to them, the first defendant utilized the overdraft facility twice and received the sum within the sanctioned limit and therefore the defendant is liable to pay only interest at 11% per annum and it is false to state that the overdraft limit is beyond the sanctioned limit and is chargeable at interest from 16.5% to 19.5% per annum and the special term deposits were credited to the overdraft account without being informed to the defendants and the defendants have paid the amount through Singapore draft towards the overdraft account and the same had not been duly credited in the account and the plaintiff has no authority or right to levy interest at the rate of 19.5% per annum. The suit is barred by limitation as the defendants have not acknowledged the debt or their liability by the letter dated 03.03.1988 as claimed in the plaint and hence the suit is liable to be dismissed.

6.In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A6 were marked. On the side of the defendant, D.W.1 was examined. No document 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 in favour of the plaintiff for Rs.29873.90/- with 11% compound interest and subsequent interest at 6% per annum with costs. On appeal, the first appellate court, on an appreciation of the materials placed on record, and the submissions made, was pleased to modify the judgment and decree of the trial court and granted the relief in favour of the plaintiff for Rs.14,344.80/- with interest at 11% quarterly rests and subsequent interest at 5% and accordingly disposed of the appeal. Aggrieved over the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal the following substantial question of law was formulated for consideration.

"Whether the premise to pay time barred debts under section 25(3) of Contract Act will not be the basis for the suit and if so whether the plaintiff can claim interest not mentioned in the premise to pay?"

9. Claiming the overdraft facility extended to the defendants as detailed in the plaint i.e., Rs.18,750/- on 13.09.1978, Rs.35,000/- on 12.04.1982 and Rs.41,600/- on 27.10.1984 and after crediting the overdraft account with the maturity value of the special term deposit receipts of the defendants for an aggregate value of Rs.25,000/- according to the plaintiff, a sum of Rs.14,344.80/- remained unadjusted and accordingly, it is the case of the plaintiff that despite several demands and the issuance of the notices, the defendants have failed to settle the due and further according to the plaintiff, by a letter acknowledgment dated 03.03.1988, the defendants have admitted their liability and hence according to the plaintiff, the suit is not barred by time and inasmuch as the defendants failed to settle the amount due, it is stated that the plaintiff has been constrained to levy the suit.

10. The defendants had not disputed the availment of the overdraft facility from the plaintiff's bank as detailed in the plaint as such and all that they would contend is that they had not acknowledged their liability, by the letter dated 03.03.1988 as put forth in plaint and hence according to them the suit laid by the plaintiff is barred by limitation. Further, according to them, the plaintiff has claimed in-excessive interest and the defendants are liable to pay interest only at 11% per annum and not beyond that and therefore, it is contended that the interest rate should be reduced. Further, according to the defendants, they have also sent some amount through Singapore draft towards the over draft account and the plaintiff has failed to give credit to the same. For the reasons afore stated, according to the defendants, the suit is liable to be dismissed.

11. Even in this second appeal, it is contended by the defendants' counsel that the suit is barred by limitation. However, as rightly argued by the plaintiff's counsel, when it is found that the defendants through the evidence of D.W.1 had admitted the acknowledgment of their liability by the letter marked as Ex.A3 dated 03.03.1988, it is thus found that the suit laid within three years period of time from the said letter of acknowledgment is in time and not barred by limitation. Hence, as rightly determined by the Courts below, the defence version that the suit is barred by time cannot be accepted in any manner.

12. As regards the claim of the defendants that they had settled the overdraft account by remitting the accounts through Singapur drafts, as rightly determined by the Courts below, when there is no material pointing to the same, the above said version of the defendants cannot be countenanced in any manner and therefore, it is found that the above said defence version has been rightly rejected by the Courts below.

13. Thirdly, the defendants had put for the defence that the interest charged by the plaintiff is on the higher side and they would be liable to pay the interest only at 11% per annum. From the evidence of the Bank Manager examined as P.W.1, though, he has claimed that they are entitled to charge interest for the overdraft facility extended beyond the sanctioned limit, at the interest rate prescribed by the RBI now and then, from the evidence, it is seen that the interest up to the sanction limit can be charged only at 11%. There is no material placed to show that the interest even if it is within the sanctioned limit could be charged at a higher rate. Further, it is seen that the statement of account placed by the plaintiff pertains to the period ending on 01.01.1983, the statement of accounts of previous period as well the subsequent period have not been filed. As above seen, P.W.1 is unable to substantiate as to how the Bank has charged interest as claimed in the plaint i.e., 19.5% per annum. Accordingly, it is found the first appellate court noting that the amount remaining unpaid as on 19.09.1987 being Rs.14,344.80/-, accordingly fixed the rate at 11 % at quarterly rests considering the commercial nature of the transaction and fixed the subsequent interest at 5% per annum and thereby modified the judgment and decree of the trial court. The trial court, as seen above had granted at interest at 11% compound interest with subsequent interest at 6% per annum on the suit amount. The suit amount had been arrived as per the statement of account maintained by the plaintiff. In such view of the matter, it is thus found that the same having been arrived at, with interest charged by the plaintiff's Bank till the date of the levy of the suit and accordingly it is noted that the first appellate court had rightly finding that the amount ,which remain unpaid as on 19.09.1987 being only

Rs.14,344.80/- decreed the suit for the said amount with interest at 11% quarterly rests and subsequent interest at 5% and it is found that the above said determination of the first appellate court on the quantum of interest is not capricious or unjustifiable considering the facts and circumstances of the case at hand.

14.In the light of the above position, the argument put forth by the defendants' counsel that the acknowledgment letter of liability marked as Ex.A3 would not be the basis for the institution of the suit and therefore the plaintiff cannot claim interest on the premise of the same as such cannot be accepted and the substantial question of law formulated in the second appeal is accordingly answered against the defendants.

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

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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To

1. The Additional District Judge,
Additional District Court,
Chidambaram.
2. The District Munsif,
The District Munsif Court,
Chidamabaram.
3. The Section Officer, सत्यमेव जयते
VR Section,
High Court.

+1 CC to Mr.R.T. Doraisamy Advocate sr 21355

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VSN(CO)
SP(13/04/2018)