



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.02.2018
Pronounced on : 28.03.2018

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CORAM :
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P (MD) Nos.517 and 518 of 2011 (NPD)
and M.P (MD) No.1 of 2011

1.N.Vijayadoss
2.R.Arunagiri

... Petitioners/Petitioners/Defendants
in both petitions

Vs.

P.Senthurapandiyan ... Respondent/Respondent/Plaintiff
in both petitions

PRAYER in C.R.P (MD) No.517 of 2011: This Civil Revision Petition filed under Article 227 Constitution of India, to set aside the order dated 02.12.2010 passed in I.A.No.375 of 2010 in O.S.No.96 of 2006 on the file of I Additional District Court, Madurai.

PRAYER in C.R.P (MD) No.518 of 2011: This Civil Revision Petition filed under Article 227 Constitution of India, to set aside the order dated 15.10.2009 passed in I.A.No.223 of 2008 in O.S.No.96 of 2006 on the file of I Additional District Court, Madurai.

For Petitioners : Mr.V.Balaji

For Respondent : Mr.R.Vijayakumar

C O M M O N O R D E R

The Civil Revision Petitions have been preferred against the order dated 02.12.2010 passed in I.A.No.375 of 2010 in O.S.No.96 of 2006 and the order dated 15.10.2009 passed in I.A.No.223 of 2008 in O.S. 96 of 2006.

2. The brief facts of the case are as follows:

The suit in O.S.No. 96 of 2006 was filed for recovery of amount. Before the trial court, on the side of the plaintiff, P.W. 1 and P.W.2 were examined and Ex.A.1 to Ex.A.3 were marked. On the side of the defendants, D.W.1 to D.W.3 were examined and Ex.B.1 to Ex.B.8 were marked. The trial court, after perusing the oral and documentary evidence, has decreed the suit directing the defendants to pay a sum of Rs.14,07,600/- within 3 months with subsequent interest at the rate of 12% per annum on Rs.13,50,000/- from the date of plaint till the date of realization. Thereafter, I.A.223 of 2008 was filed by the petitioners/defendants seeking an amendment in the decree and judgment passed on 25.02.2008. I.A.No.375 of 2010 was filed under Section 152 C.P.C to correct/rectify the mistake in Clause No.1 and 2 of the decree. The



defendants filed a counter stating that on 18.07.2006 the defendants have paid Rs.3,50,000/- and the same was conveniently suppressed by the plaintiff. The trial court has dismissed the said applications. Aggrieved against the said orders, the defendants are before this Court.

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3. The learned counsel for the petitioners/defendants submitted that the defendants had deposited a sum of Rs.10 lakhs pursuant to the direction of the trial court and the said fact has been ignored in the operative portion of the judgment by mistake and therefore, the defendants have filed amendment application and the trial court ought to have allowed the amendment application as the facts are not in dispute and the mistake can be rectified by invoking the power under Section 152 C.P.C.

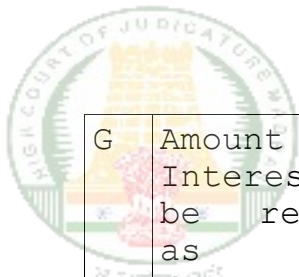
4. The learned counsel for the respondent/plaintiff submitted that the trial court has rightly dismissed the applications since there is no error in the decree and judgment of the trial court and he prays for dismissal of the Civil Revision Petitions.

5. Heard the learned counsel for the petitioners and the learned counsel for the respondent and perused the materials available on record.

6. As regards the averment in the counter statement filed by the defendants that they have paid Rs.3,50,000/- on 18.07.2006. The trial court has observed that there is no proof for the same and therefore, held that the plaintiff is entitled to recover Rs.13,50,000/- as mentioned in Ex.A.2. Since the defendants have not produced any proof that after the agreement, which was marked as Ex.A.2, they have given interest to the Principal and therefore, the plaintiff is entitled to decree as prayed for.

7. The trial court has clearly held that admitted liability of Rs.10 lakhs was deposited into the court and the defendants have to pay Rs.3,50,000/- towards principal amount. As regards interest is concerned, from the date of Ex.A.2 till the date of filing the suit the plaintiff is entitled to interest at the rate of 24% per annum as agreed in Ex.A.2 and since the borrowal is for the commercial purpose, the plaintiff is entitled to get interest at the rate of 12% per annum from the date of the suit till the date of realization, after deducting Rs.10,00,000/-.

8. After passing of decree and judgment, Execution Petition in E.P.No.17 of 2010 was filed by the plaintiff. It is useful to extract the Column - G in the Execution Petition, which reads as follows:



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G	Amount and Interest to be recovery as per decree	Amount decreed	Rs.14,07,600.00
		Interest on RS.13,50,000/-	
		at the rate of 12% per annum	
		From 3.87.206 to 15.10.2009	
		for 38 months 13 days	Rs. 5,18,850.00

		Total	Rs.19,26,450.00

		Amount received	
		from court deposit on 15.10.09	Rs.10,00,000.00
		Balance	
		Rs.9,26,450.00	
		Interest on Rs.9,26,450/0	
		at the rate of 12% per annum	
		from 15.10.2009 to 6.7.2010	Rs. 80,909.00

		Total	Rs.10,07,359.00
		NB: Subsequent interest has to be included from 7.7.2010.	

9. On reading the above, it is clear that the deposited amount of Rs.10 lakhs has been deducted. Hence, there is no error or mistake committed in the trial court and execution petition has been filed only for the balance amount of Rs.9,26,450/-. The trial court has rightly dismissed the abovesaid applications and there is no error in the orders of the trial court.

10.In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar (CS-1)

/True Copy/

Sub Assistant Registrar

To

1.The VI Additional District Court,
Madurai.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (Two Copies)



+1cc To Mr.R.Vijayakumar, Advocate Sr no. 58639

+1cc To Mr.R.Niranjan s.kumar, Advocate Sr no. 58845

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C.R.P (MD) Nos.517 and 518 of 2011 (NPD)
and
M.P (MD) No.1 of 2011
28.03.2018

CM
NM/SV MMS/SAR 1/21.05.2018/4P/6C/