IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.06.2019

PRONOUNCED ON: 11.06.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

A.S. No.567 of 2003

Tamil Nadu Mercantile Bank Limited,
Vellore, represented by its
Branch Manager. ... Appellant/Plaintiff

Vs.

1. M/s. B.T.Rajan & Co.,
Arcot,
Partnership firm, rep. by
Partner Suresh Kumar.

2. Suresh Kumar
3. Jayakumar
4. Bala Thyagarajan
5. V.C.Balakrishna Mudaliar ... Respondents/Defendants

Prayer: Appeal Suit filed under section 96 and under Order 41 Rule 1 of Civil Procedure Code to set aside the judgment and decree of the Sub Court, Ranipet made in O.S. No. 550/91, dated 17.02.94.

For Appellant : Mr.T.Karunakaran

For R1 to R3 : No appearance, Set ex-parte vide order dated 07.06.2019.

For R4 : V.K.Sethukumar

J U D G M E N T

Aggrieved over the judgment and decree dated 17.02.1994, passed in O.S. No.550 of 1991, on the file of the Subordinate Court, Ranipet, the plaintiff has come forward with the present first appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. Suit for recovery of money based on mortgage.

4. Shorn of unnecessary details, according to the plaintiff, the defendants availed loan facilities from the plaintiff's bank for establishing a new Auto Service Station and accordingly, mortgaged their properties in favour of the plaintiff's bank by way of depositing the title deeds and as per the terms of the loan sanctioned, it is stated that the plaintiff had disbursed a total sum of Rs.1,00,250/- as loan to the defendants for the abovesaid business venture and the defendants agreed to repay the borrowed sum in easy installments as agreed to and accordingly, it is the case of the plaintiff that in respect of the loan availed, the defendants executed a mortgage deed dated 22.03.84 for the principal sum of Rs.1,00,250/- and further, according to the plaintiff, the defendants had agreed to repay the sum with interest at 13.5% per annum subject to variations as fixed by the Reserve Bank of India now and then, hence, according to the plaintiff, as per the prevailing rate of interest, the defendants are liable to pay the borrowed sum at 16% per annum and further, according to the plaintiff, inasmuch as the defendants had failed to repay the borrowed sum in installments as promised and undertaken, as per the circular of the Reserve Bank of India, the defendants are also liable to pay penal interest at 2% and accordingly, it is the case of the plaintiff that the defendants are liable to pay a total sum of Rs.2,94,024.59 and accordingly, putforth the case that inasmuch as the defendants had failed to pay the abovesaid borrowed sum, despite the issuance of the legal notice, according to the plaintiff, it has been necessitated to levy the suit against the defendants for the recovery of abovesaid amount with future interest at 18% and the costs of the suit.

5. The defendants 1,2,4 and 5 resisted the plaintiff's suit contending that they are not, in particular, liable to pay the borrowed sum with interest at 16% per annum as put forth in the plaint and also disputed the entitlement of the plaintiff to claim penal interest at 2% and the defendants had admitted the availment of the loan of Rs.1,00,250/- from the plaintiff towards the business venture and according to them, the abovesaid sum was disbursed to them by the plaintiff's bank in three installments, namely, a sum of Rs.50,000/- was disbursed on 22.03.1984, a sum of Rs.25,000/- was disbursed on 25.06.1984 and a sum of Rs.25,250/- was disbursed on 18.01.1985 and according to the defendants, inasmuch as the plaintiff's bank had failed to extend the loan facilities as promised and also not extended the loan in time, according to the defendants they

had been put to irreparable loss and hardship in commencing the business venture and after experiencing great difficulties, they were able to commence the work only from 13.04.1991 and accordingly, due to the abovesaid unforeseen circumstances and the non cooperation of the allied departments as well as the plaintiff's bank, they were unable to repay the borrowed sum in time and accordingly, challenged the case of the plaintiff that it is entitled to claim interest at 16% per annum and as well as its claim for penal interest and accordingly contended that the plaintiff is entitled only to get back the principal amount with proportionate costs and accordingly, prayed the Court to dismiss the suit laid by the plaintiff.

6. Based on the abovesaid pleas putforth by the respective parties, the following issues were framed by the trial Court for determination.

i) Whether the claim of the defendants that the plaintiff is entitled to recover the principal amount alone is correct?

ii) Whether the plaintiff is entitled to claim interest as put forth in the plaint?

iii) To what relief, the plaintiff is entitled to?

7. In support of the plaintiff's case, PW1 was examined, Exs.A1 to A42 were marked. On the side of the defendants, DW1 was examined and Ex.B1 was marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dispose of the plaintiff's suit by granting the decree in favour of the plaintiff holding that the plaintiff is entitled to receive the principal amount of Rs.1,00,250/- from the defendants with interest at 15 ½% from the date of the plaint till repayment with proportionate costs and accordingly, impugning the same, the present first appeal has been preferred by the plaintiff.

9. The following points arise for determination in this first appeal:

i) Whether the plaintiff is entitled to claim interest at the rate of 16% per annum plus 2% penal interest towards the principal sum of Rs.1,00,250/- as put forth in the plaint?

ii) To what relief, the plaintiff/appellant is entitled to?

Point No.1:

10. The defendants have not disputed the availment of the loan sum of Rs.1,00,250/- from the plaintiff's bank for commencing their Auto Service Station. As could be seen from the materials placed on record, it is found that, of the abovesaid loan availed by the defendants, the plaintiff had disbursed a sum of Rs. of Rs.50,000/- on 22.03.1984, a sum of

Rs.25,000/- was disbursed on 25.06.1984 and the balance sum of Rs.25,250/- was disbursed on 18.01.1985. In respect of the abovesaid amounts borrowed, it is found that the defendants have executed a deed of mortgage by depositing the title deeds in favour of the plaintiff's bank and according to the plaintiff, inasmuch as the defendants had failed to pay the borrowed sum in time as promised, they are liable to repay the suit amount with future interest at 18% per annum.

11. The defendants would only plead in the written statement that the plaintiff is not entitled to claim interest at the rate of 16% per annum plus penal interest at the rate of 2%. As above noted, the defendants have not disputed the availment of the loan from the plaintiff's bank for their business venture. It is thus found that the loan had been availed by the defendants for commercial purpose.

12. On a reading of the plaint, it is found that, as per the case of the plaintiff, the defendants are liable to repay the borrowed sum commencing from 08.05.1984. Even the defendants have admitted that the plaintiff had been demanding the repayment of loan with interest starting from 08.05.1984. It is admitted by the defendants that they were irregular in the payment of the borrowed sum as promised by them. The defendants would adduce various reasons for their failure to repay the borrowed sum as promised by them. But, the fact remains that inasmuch as the defendants had borrowed the loan from the plaintiff's bank, they are liable to repay the sum within the time as undertaken and promised by them. In such view of the matter, the reasons adduced by the defendants for their failure to repay the borrowed sum in time, as such, cannot be countenanced straight away.

13. Considering the promissory note marked as Ex.A1, the agreement entered into between the plaintiff's bank and the defendants on 22.03.1984, marked as Ex.A2 plus the deed of mortgage marked as Exs.A4 and A5 in all, it is found that the defendants had agreed to repay the borrowed sum with interest thereon at 13.5% per annum. In none of the documents projected by the plaintiff, there is any stipulation as regards the liability of the defendants to pay the borrowed sum at 16% per annum. Even in the pre-suit notice, marked as Ex.A12, it is found that the plaintiff has claimed interest only at the rate of 13.5% per annum and not at the rate of 16% per annum. Now, according to the plaintiff, the defendants are liable to pay the interest as determined by the Reserve Bank of India now and then and accordingly, they are entitled to claim interest at the rate of 16% per annum. However, as regards the abovesaid claim of the plaintiff, as to when from the Reserve Bank of India had fixed the rate at 16% and in particular, whether there is any direction by the Reserve Bank of India to fix the interest rate

at 16% for the suit loan etc., with reference to the same, the necessary particulars and materials on the side of the plaintiff are lacking. On the other hand, PW1 examined on behalf of the plaintiff has admitted that the interest for the loan availed by the defendants is only 13.5% simple interest. In such view of the matter, when there is no acceptable and reliable material projected by the plaintiff's bank as regards the rate of interest prescribed by the Reserve Bank of India now and then, particularly, as to what is the nature of interest for the suit transaction from 22.03.1994 as fixed by the Reserve bank, when with reference to the same, there is no acceptable and convincing materials put forth on the part of the plaintiff, merely on the vague claim of the plaintiff that it is entitled to fix the rate of interest as fixed by the Reserve Bank of India, as such, cannot be accepted. Particularly, as PW1 has admitted that the rate of interest is only 13.5% per annum simple interest and when the plaintiff's bank has not projected any other convincing materials that it is entitled to claim interest at the rate of 16% per annum other than their bald claim of fluctuating rate of interest as fixed by the Reserve Bank of India, particularly, when there is no material pointing to the same and in particular, when the documents projected by the plaintiff do not point out that the defendants are liable to pay the borrowed sum with interest at 16% per annum, in such view of the matter, the trial Court is fully justified in fixing the rate of interest liable to be paid on the borrowed sum at 13.5%

14. Considering the claim of penal interest at 2%, considering the circular issued by the Reserve Bank of India projected by the plaintiff's bank and inasmuch as the defendants had been in default and also not adhering to repay the borrowed sum as promised and undertaken by them, it is found that the defendants are liable to pay the penal interest as claimed by the plaintiff's bank.

15. The first installment of loan was disbursed to the defendants on 22.03.1984 itself. As above noted, according to the plaintiff, the defendants are liable to repay the borrowed sum commencing from 08.05.1984. The second installment was disbursed on 25.06.1984 and the third installment was advanced on 18.01.1985. In such view of the matter, in my considered opinion, the defendants are liable to pay the interest on the abovesaid borrowed sum at the agreed rate of interest i.e. 13.5% per annum from 18.01.1985 itself. Inasmuch as the defendants had not been regular in the repayment of the borrowed sum as undertaken, in the light of the circular issued by the Reserve Bank of India, in addition to the abovesaid rate of 13.5% interest, they are also liable to pay the penal interest at the rate of 2% and in such view of the matter, it is found that the

defendants, in toto, are liable to pay interest on the borrowed sum at 15.5% commencing from 18.01.85, if not from 08.05.1984 as claimed by the plaintiff. The abovesaid date of 18.01.1985 has been taken into consideration by considering the fact that entire loan amount had been fully availed by the defendants only on that date and accordingly, they become liable to pay the said loan with interest as agreed to be repaid by them. In such view of the matter, the trial court is found to be not correct and justified in granting the levy of interest on the borrowed sum from the date of the plaint and on the other hand, as rightly contended by the counsel appearing for the plaintiff's bank, as the defendants had availed the loan for their business venture, they are liable to pay the borrowed sum with agreed interest and in such view of the matter, considering the facts and circumstances of the case, it has to be held that the defendants are liable to pay the borrowed sum of Rs.1,00,250/- with interest at 15.5% from 18.01.1985 onwards till repayment and accordingly, the point no.1 is answered in favour of the plaintiff's bank and against the defendants.

Point no:2

16. For the reasons aforestated, the judgment and decree of the trial Court are modified and the plaintiff's bank is entitled to recover the principal sum of Rs.1,00,250/- with interest at 15.5% from 18.01.1985 till repayment with proportionate costs. Accordingly, the first appeal is allowed. Considering the facts of the case, there is no order as to costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge, Ranipet.

2. The Section Officer,
VR Section, High Court, Madras.

+2cc to Mr.T.Karunakaran, Advocate SR.No.47305
+2cc to MrV.K.Sethukumar, Advocate SR.No.46566

A.S. No.567 of 2003

SV(CO)
GMY(31/01/2020)