

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

A.S No. 1041 of 2007

N.Saravanaperumal ... Appellant/Defendant

.Vs.

1.M/s.Indian Bank.,
A body corporate constituted
under Banking Companies (Acquisition
and Transfer of Undertakings) Act 1970
31, Rajaji Salai,
Chennai - 600 001.

2.M/s.Ind Bank Housing Ltd.,
a Public Limited Company and
incorporated under the Companies
Act 1956., which is a subsidiary of
the 1st Respondent Bank with
registered office at
31, Rajaji Salai,
Chennai - 600 001.
with branches among other places
at Mylapore,
Chennai - 600 004

... Respondents/Plaintiffs

Prayer: Appeal filed under Section 96 r/w Order XLI Rule 1
of C.P.C against the judgment and decree dated 29.04.2003 made
in O.S.No.143 of 2002, on the file of Additional District Court
Cum Fast Track Court I, Coimbatore.

For Appellant : Ms.R.Gowri

For Respondents : Mr.R.Jagadeesan for
Mr.K.V.Subramanian
Associates

J U D G M E N T

(Delivered by M.M.Sundresh,J.)

The suit has been laid by the respondents/plaintiffs on two counts - one is with respect to non-payment of loan amount and the other is misappropriation of amount.

2. The appellant was working as a Manager of the respondents. In that capacity, he is stated to have misappropriated huge sums of money. He has also not paid the loan amount obtained. A criminal complaint was also given. After conducting the crime as aforesaid, the appellant executed several documents, including two promissory notes and one letter of undertaking. Incidentally, he has also deposited the title deeds of the documents over which he was having the title.

3. Before the trial Court, the appellant took a plea that suit itself is not maintainable. According to the appellant, the documents have been obtained by force and coercion and not voluntarily. For the reasons known to him the appellant did not go into the box to depose. The respondents marked Exs.A1 to A49 and examined PW1 to PW7. The appellant marked Exs.P1 to P12 but did not go into the box to depose. The trial Court framed nine issues. These issues involve the question of pecuniary jurisdiction, issue pertaining to misappropriation, execution of documents by the appellant and the documents having been obtained by force and coercion.

4. The trial Court, insofar as the amount payable on the loan by the appellant is concerned, was pleased to hold that the respondents can satisfy themselves from the fixed deposit made by the appellant. Therefore, that part of the judgment passed by the trial Court is not before us by way of appeal. However, the question that remains to be considered is with regard to the direction to the appellant to pay the amount misappropriation along with interest coupled with the validity of the documents executed by him.

5. Before proceeding further, it would be appropriate to reproduce Ex.A20, confirmation letter dated 12.1.1997, written by the appellant in favour of the respondents. The same is extracted hereunder:-

"Dear Sir,

I hereby acknowledge and confirm having deposited with you at Coimbatore on 23.12.92 the title deeds of my property-
House property in SF.No.231, Door No.1C/1, Brindavan Colony, Uppilipalayam, Coimbatore-

641 015, measuring 2079 sq.ft. Including pathway rights and common rights in Coimbatore Corporation limit.

As security for the Housing loan already availed by me on and further confirm your continuing to hold the title deeds of the above property also as additional security for further liabilities unauthorizedly drawn by me from the Bank while in service for personal use together with interest, costs and other charges payable by me/us to the Bank."

6. As per Ex.A23, dated 12.01.1997, the appellant has agreed to pay a sum of Rs.58,50,000/- in favour of the respondents. For the sake of convenience, the aforesaid communication is also placed on record:-

"Sir,

I was functioning as Branch Manager in Indian Bank at Palladam. While operating in the Stock Market through Ace Financial Services Ltd, I lost about Rs.60 lakhs and to settle that liability, I issued demand drafts to Ace Financial Services Ltd and their sub-broker one Mr.M.Shankar and I debited the Bills Purchased account, Loan on Deposits, and Savings Bank accounts. I fraudulently misappropriated Rs.58,50,000/- recently which was admitted by me at the time of investigation of the Branch and I have also executed a letter on 04.01.1997 admitting the above fraudulent act committed by me.

I hereby undertake to pay the bank the said sum of Rs.58,50,000/- from which I have executed a DPN today. I will also offer my immovable assets to the Bank to secure payment of the said liability. My mother and other sisters have also agreed to offer their share in ancestral property to secure payment of the above liability due to the bank. I also undertake to execute a Power of Attorney to empower the bank to dispose of the properties offered as security and adjust the sale proceeds towards the above liability. The said Power of Attorney shall be Irrevocable. If there is any short fall the same shall also be paid by me."

7. As per Ex.A47, the appellant in his letter to the respondents tacitly acknowledged unauthorized and fraudulent drawing of the amounts by him in his capacity as Manager. The

said communication also states that he would meet the loss along with the interest accrued upon. It is apposite to refer the aforesaid document hereunder:-

"I am enclosing herewith two D P N s on account of amounts unauthorizedly and fraudulently drawn my tenure as Manager at Indian Bank, Palladam Branch.

DPN Date	AMOUNT Rs	Remarks
12.01.1997	17,50,000	amount drawn by me upto 31.3.96 (approx. Amount)
12.01.1997	41,00,000	amount drawn since 31.03.96 (balance amount)

I further undertake that if on completion of investigation, the amount increases I will make good that loss also with interest thereon applicable from time to time and execute D P N and necessary documents required by the Bank. I further undertake that any costs and expenses incurred in connection with creation of mortgage, registration of Power of Attorney/s etc. will also be borne by me."

8. Therefore, from the aforesaid three documents, it is clear that the appellant has executed them in favour of the respondents. It is the appellant who deposited the title deeds by way of mortgage recognizing and acknowledging the amount payable by him with the interest accrued upon.

9. Learned counsel appearing for the appellant submits that the suit is barred by limitation. If an equitable mortgage is created, then the amount payable will have to be treated as loan and in that case the respondents have to go before the Debts Recovery Tribunal. The documents have been obtained by force and coercion. The interest charged at 20.25%, though agreed upon, is exorbitant and is not in consonance with the Banking Rules and Regulations and Section 34 of the Code of Civil Procedure.

10. Learned counsel appearing for the respondents would submit that the appellant has agreed to make the said payment. Inasmuch as there is no dispute with respect to the fact that the payment is liable to be made by the appellant, as he voluntarily misappropriated the amount, it cannot be termed as loan obtained. The subsequent mortgage deeds have been executed in acknowledgment of his liability to pay the misappropriated amount and, therefore, Debts Recovery Tribunal may not have jurisdiction. The appellant has not come into the box to depose. The question of claiming exorbitant interest and its impermissibility in law has not been raised in the grounds, though raised in the written statement. In any case, the said

amount has been sought for as per the Banking Regulations as can be seen from paragraph 12 of the plaint. The appellant has also agreed that the aforesaid amount would be paid. To buttress his submission learned counsel relied upon the judgment of Gujarat High Court in Bank of India v. Vijay Ramniklal Kapadia reported in CDJ 1996 GHC 258

11. There are three issues before us. The first is with respect to the jurisdiction. On this issue, we do not find any merit. The documents filed are not in dispute and would clearly show that the appellant has pleaded guilty. When the amount sought to be recovered in addition to the misappropriation made, the Debt Recovery Tribunal will not have jurisdiction. Recovery of amount payable due to the illegal act cannot be given the status of a debt. While it can be stated that it is a liability on the part of the appellant, certainly it cannot become a debt. In this connection a useful reference can be made to the decision of the learned Single Judge in Bank of India v. Vijay Ramniklal Kapadia(supra) wherein the following paragraph would be apposite:-

"..on the plain reading of the above definition it is clear that any liability which is alleged and due from any person by a bank during the course of any business activity undertaken by it in cash or otherwise, whether secured or unsecured, or whether payable under a decree or an order of any Civil Court or otherwise, and subsisting on and legally recoverable on the date of the application is "debt". Thus, any liability due from any person by a bank during the course of any business activity undertaken by the bank will constitute a "debt". Therefore, fraud committed by an employee of the bank cannot or should not be construed a "debt". In the instant case, it is the allegation of the appellant-bank in the plaint that respondent No. 1 being an employee of the appellant-bank has committed fraud with the bank to the extent of Rs. 13,86,000. 00 and the suit is filed to recover the said amount. By no stretch of imagination the said misappropriation of the amount of the bank by its employee can be construed as a "debt". The learned trial Judge, in the instant case, unfortunately has referred to and reproduced only a limited part of the definition of the word "debt" and has committed an error in holding that the debt is a liability which is alleged as due from any person by a bank. The later part of the definition of the word "debt"

is clear which states that it is the liability due from any person during the course of any business activity undertaken by the bank which can be said to be a "debt", meaning thereby that any transaction between a bank and its customer with respect to the business activity undertaken by the bank, i. e. , granting of loan etc. Misappropriation of the amount of the bank by its employee and recovery thereof by way of suit can never be construed as a "debt". In view of this, the appeal is required to be allowed."

Accordingly, the contention raised on the first issue stands rejected.

12. The second issue is with respect to the documents having been obtained by force and coercion. When a party alleges force or coercion it is for the party to substantiate the same before the Court. Though a contention has been raised in the written statement by the appellant, for the reasons known, he did not go into the box before the trial Court. The Court below rightly drew adverse inference against the appellant, particularly when the executant of the documents was not in a position to dispute. In such view of the matter, the second issue is also against the appellant.

13. The issue pertaining to the interest also cannot be answered in favour of the appellant. Once the documents are held to be true and genuine, consequences will have to follow. The appellant agreed that he would pay the amount with interest at 4.75% over prime lending rate with minimum 20.25% per annum. Therefore, it is too late in the day for him to contend to the contrary. Once we hold that the documents are executed voluntarily, the appellant cannot be permitted to wriggle out of the contract. We are also satisfied that such a claim has been made as per law. Therefore, the above said contention also stands rejected.

In the result, the appeal stands dismissed. No costs. Consequently, connected C.M.P.No.3001 of 2007 is closed.

ssm

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

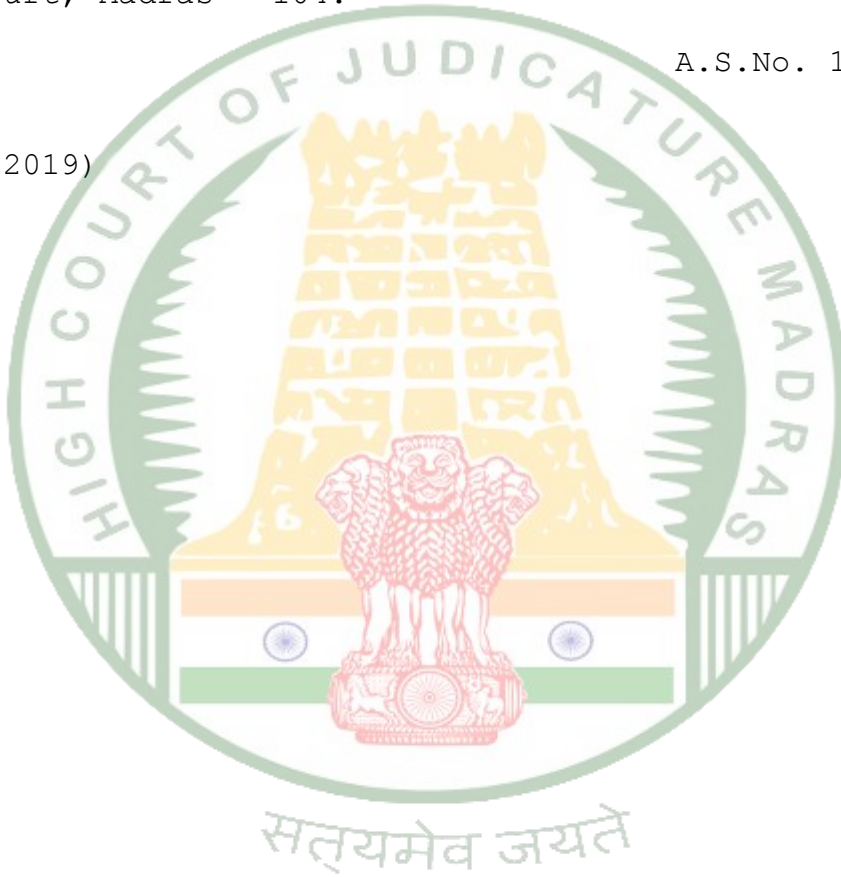
The Judge,
Additional District Court Cum
Fast Track Court, I,
Coimbatore.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

A.S.No. 1041 of 2007

Kak(18/07/2019)



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