

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 02.08.2019
PRONOUNCED ON : 16.09.2019
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S. No.419 of 2008

Central bank of India,
A body corporate constituted under
the Banking Companies Act IV of 1970
and having its Head office at Chandarmukhi,
Nariman point, Mumbai and a branch
inter alia at Coonoor, Nilgiris,
Rep by its Senior Manager. ... Appellant/Plaintiff

Vs.

1. Shanthi Rajkumar
2. J.Lingaraj
3. J.Nanjundan
4. Minor Sudhashkumar
S/o. Late Rajkumar
(rep by his mother and guardian
Shanthi Rajkumar, the 1st respondent)

5. Janaki ... Respondents/ Defendants 3 to 6

Prayer: Appeal Suit filed under Section 96 of Civil Procedure Code as against the judgment and decree of the learned District Judge, Nilgiris at Udthagamandalam dated 17.06.2005 in O.S. No.4 of 2004.

For Appellant : Mr. B.Thilak Narayanan
for M/s. T.M.Hariharan

For R3 : Mr. S.L.Sudarsanam

For R5 : No representation/No appearance
set exparte vide order dated 02.08.2019

For R1 & R2 : No representation/No appearance
set exparte vide order dated 02.08.2019

A.S. No.420 of 2008

Central bank of India,
A body corporate constituted under
the Banking Companies Act IV of 1970
and having its Head office at Chandarmukhi,

Nariman point, Mumbai and a branch
inter alia at Coonoor, Nilgiris,
Rep by its Senior Manager.

... Appellant/Plaintiff

Vs.

1. Messrs. Shakthi Stores,
a partnership firm,
rep. by its partner Shanthi Rajkumar,
Staff Quarters, No.31,
Pasteur Institute of India
Coonoor.

2. Shanthi Rajkumar

3. L.Senthil Kumar

4. J.Lingaraj

5. J.Nanjundan

6. Minor Sudhashkumar,
S/o. Late Rajkumar,
(rep by his mother and guardian
Shanthi Rajkumar, the 2nd respondent)

7. Janaki ... Respondents/ Defendants 1 to 3, 5 to 8
8.

Prayer: Appeal Suit filed under Section 96 of Civil Procedure
Code as against the judgment and decree of the learned District
Judge, Nilgiris at Udhagamandalam dated 17.06.2005 in O.S.
No.117 of 2004.

For Appellant : Mr. B.Thilak Narayanan
for M/s. T.M.Hariharan

For R5 : Mr. S.L.Sudarsanam

For R3, R7, R1 : No representation/No appearance
R2 & R4 set exparte vide order dated 02.08.2019

COMMON JUDGMENT

Aggrieved over the judgment and decree dated 17.06.2005,
passed in O.S. Nos. 04 of 2004 & 117 of 2004, on the file of the
District Judge, Nilgiris at Udhagamandalam, the plaintiff has
come forward with the appeals.

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

3. O.S. No.04 of 2004 has been laid for recovery of money.
Briefly stated, according to the plaintiff, on 08.10.1992, at
the request of the defendants 1, 3 and 4, cash credit facility
was granted to the first defendant upto Rs.5,00,000/- and the
defendants 3 and 4 stood as co-obligants and guarantors for the

abovesaid facility and necessary documents were executed in favour of the plaintiff's bank and subsequently, the plaintiff had sanctioned the regular loan facility of Rs.4,50,000/- to the first defendant i.e., by reducing the limit from Rs.5,00,000/- with effect from 06.01.1993 and all the defendants have executed necessary loan documents as detailed in the plaint in respect of the abovesaid reduced loan facility in favour of the plaintiff bank and furthermore, the defendants 3 and 4, in order to secure the repayment of the loan advanced to the first defendant and with an intent to create a mortgage by deposit of title deeds, had deposited their title deeds of the property described in the plaint and inasmuch as, despite repeated demands and requests and issuance of notice, the defendants had failed to settle the loan amount and hence, according to the plaintiff bank, it has been necessitated to institute the abovesaid suit against the defendants for appropriate reliefs.

4. O.S. No.117 of 2004 has been laid for recovery of money. Briefly stated, according to the plaintiff, the defendants 2 and 3 are the partners of the first defendant firm and the plaintiff bank had granted the defendants 1 to 3 a cash credit open facility upto Rs.50,000/- on 06.01.1993 and the defendants 2 to 6 are the co-obligants and guarantors for the due repayment of the abovesaid loan amount and necessary documents such as demand promissory note and letter of acknowledgement dated 06.01.1993 were executed by the defendants 2 and 3 at the time of the availment of the loan and the defendants 4 to 6 executed guarantee agreement and the defendants 5 and 6, who had already deposited the title deeds of the suit property as collateral security on 03.08.1992 for the loan advanced to the second defendant, had called on the bank on 07.01.1993 and orally declared that the title deeds already deposited by them would also be a security for the due repayment of the loan advanced to the defendants 1 to 3 and inasmuch as the defendants have failed to settle the loan amount despite repeated demands and requests, the need for the suit for appropriate reliefs.

5. In both matters, though the defendants had filed separate written statements, however, considering the position that the suits laid by the plaintiff having been disposed of in favour of the plaintiff as prayed for against all the defendants except the defendant namely, J.Nanjundan, who is arrayed as the fourth defendant in O.S. No.4 of 2004 and sixth defendant in O.S. No.117 of 2004 and it is seen that as against the judgment and decree passed in favour of the plaintiff as against the other defendants, having not been put to any challenge, in such view of the matter, the pleas put forth by them in the written statement need not be adverted to in the present appeals.

6. In both the suits, the defendant J.Nanjundan had resisted the plaintiff's suit contending that he is not aware of the loan transactions alleged to have been entered into between the

plaintiff bank and the other defendants as put forth in the plaint and according to him, he has not stood as guarantor along with the other defendants nor executed any agreement and nor given any oral assent for the loan taken from the plaintiff bank and his signature has been forged in the loan documents projected by the plaintiff and he has not signed the same and furthermore, according to him, he has not pledged his property by way of title deeds in favour of the plaintiff bank along with his brother and according to him, the title deeds had been in the possession of his elder brother and the same had been utilised without his knowledge for the loan involved in the matters and therefore, inasmuch as he has not stood as co-obligant and guarantor and not executed the loan documents as put forth by the plaintiff in both the suits, he is not liable to pay the suit amount as prayed for by the plaintiff and accordingly contended that the suit laid by the plaintiff is liable to be dismissed as against him.

7. The trial Court has framed the following issues for consideration:

O.S. No. 04 of 2004:

1. Whether the plaintiff is entitled for personal decree as prayed for?

2. Whether the plaintiff is entitled for preliminary decree as prayed for?

3. Whether the 1st defendant has not signed in the letter of acknowledgement dated 31.03.1995?

4. Whether the suit loan is barred by limitation?

5. To what relief?

Additional issues:

Whether the 4th defendant is liable to pay the suit amount along with the other defendants?

O.S. No. 117 of 2004:

1. Whether the 6th defendant stood as guarantor for the suit loan?

2. The claim of the 6th defendant that he was not called on the plaintiff bank on 07.01.1993 and had orally declared that the title deeds already deposited by him by way of mortgage by deposit of title deeds will also be a security for the repayment of loan advanced to defendants 1 to 3 is equally false?

3. The allegation of the plaintiff bank

that the oral assent of the 6th defendant was registered in its documents is true?

4. Whether the suit is barred by limitation against the defendants 1 and 2 ?

5. Whether the plaintiff is entitled for personal decree as against the defendants 1 and 2?

6. Whether the defendants 1 and 2 executed revival letters on 31.03.95?

7. Whether the plaintiff is entitled for the suit claim as prayed for?

8. To what relief?

8. In O.S No.04 of 2004, in support of the plaintiff's case, PWs 1 and 2 were examined, Exs.A1 and A32 were marked. On the side of the defendants, DWs 1 to 4 were examined, Exs.B1 to B8 were marked.

9. In O.S No.117 of 2004, in support of the plaintiff's case, PWs 1 and 2 were examined, Exs.A1 and A10 were marked. On the side of the defendants, DWs 1 to 4 examined, Exs.B1 to B8 were marked.

10. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Court below was pleased to decree the suit in favour of the plaintiff as prayed for as against all the defendants and dismissed both the suits as against the defendant J.Nanjundan who had been arrayed as the fourth defendant and sixth defendant in the abovesaid suits respectively. Impugning the dismissal of the plaintiff's suits as against the defendant J.Nanjundan alone in both the suits, the plaintiff bank has preferred the present appeals.

11. The following points arise for determination in the abovesaid appeals:

1. Whether the defendant J.Nanjundan is liable to pay the suit amount along with the other defendants as put forth by the plaintiff in both suits?

2. To what relief the plaintiff/appellant is entitled to in A.S.No.419 of 2008?

3. To what relief the plaintiff/appellant is entitled to in A.S.No.420 of 2008?

Point No:1:

12. As above pointed out, the plaintiff has laid the

abovesaid suits against the defendants for recovery of money. As regards the plaintiff's case that the defendants had secured loan from it and failed to repay the same and thereby, the plaintiff is entitled to recover the amount from the defendant as prayed for, the trial Court has accepted the plaintiff's case insofar as all the defendants in both the matters excepting the defendant J.Nanjundan.

13. The defendant J.Nanjundan in both suits had taken the plea that he is not aware of the loan transaction entered into between the plaintiff bank and the other defendants in both the matters and he has not stood as guarantor or given any agreement or consent for the availment of the loan by the other defendants from the plaintiff bank as put forth by the plaintiff and he had not mortgaged his property in favour of the plaintiff bank by way of title deeds and also not given any oral assent with reference to the same as put forth by the plaintiff and not visited the plaintiff bank in connection with the loan transaction and in toto, denied the signature said to have been obtained from him in the loan documents and put forth the case that the abovesaid signature had been obtained by way of impersonation and forgery and therefore, according to him, he is not at all liable to pay the suit amount to the plaintiff and the suits laid by the plaintiff should be dismissed as against him.

14. Considering the materials available on record, it is found that prior to the institution of the suits, the plaintiff has sent a pre-suit notice claiming the amount. It is found that the contesting defendant J.Nanjundan had repudiated the claim of the plaintiff by way of the reply notice and contended that he had, at no point of time, stood as guarantor for the loans in question and had not signed any loan documents as put forth and projected by the plaintiff and accordingly, even in the reply notice, put forth the case that his signature had been obtained by committing impersonation and forgery and even requested the plaintiff bank to prefer necessary complaint with the police to found out the truth as to who has committed the impersonation and forgery qua the obtainment of his signature in the loan documents and also disputed the case of the plaintiff that he has deposited his title deeds with an intention to create mortgage as put forth by the plaintiff and in all, disputed his liability to pay the loan amount.

15. As found by the trial Court, it is found that the plaintiff bank had not taken any steps by way of filing police complaint with reference to the case of impersonation and forgery of his signature in the loan documents as put forth by the contesting defendant J.Nanjundan prior to the institution of the suit. On the other hand, the plaintiff had proceeded with the suit after the exchange of notices contending that the contesting defendant also is liable to pay the suit amount as prayed for along with the other defendants.

16. In the light of the abovesaid position, the plaintiff, being the suitor, should establish by clear and reliable materials that the contesting defendant, in particular, had taken part in the loan transaction and stood as guarantor and executed the various loan documents as put forth by the plaintiff and also had given his oral assent with reference to the mortgage by way of depositing the title deeds and other allied transactions and considering the evidence adduced by the plaintiff through PWs 1 and 2, it is found that as rightly determined by the trial Court, they are unable to identify the contesting defendant J.Nanjundan and in such view of the matter, when there is no clear and convincing proof on the part of the plaintiff that the contesting defendant had at any point of time visited the plaintiff bank and given assent for the loan transaction by executing guarantee agreement and other loan documents and accepted for the mortgage of his property by depositing his title deeds etc., in such view of the matter, the trial Court is found to be justified in not placing reliance upon PWs 1 and 2 for upholding the plaintiff's case insofar as the contesting defendant is concerned.

17. To sustain his defence version, the contesting defendant had initiated steps to compare his admitted signature with the signature available in the loan documents projected by the plaintiff said to have been containing his signature and the handwriting expert, after comparing the same, had given his report exhibited in the matter and also tendered evidence that the contesting defendant had not put the disputed signature in the loan documents and despite cross examination, nothing has been culled out from him to disbelieve his version. As above pointed out, the plaintiff has not placed any acceptable materials that the contesting defendant had involved himself in the loan transaction at any point of time and given his assent either by way of a letter of guarantee or agreement or confirmation letter etc., qua the loan transaction and in such view of the matter, it is found that the trial Court had also accordingly placed reliance upon the expert's opinion and evidence and found that as there is no material at all connecting the contesting defendant with the loan transaction, on that footing, proceeded to uphold the plaintiff's case only as against the other defendants and thereby, dismissed the plaintiff's suit as against the contesting defendant in respect of both loan transactions.

18. It is mainly contended by the plaintiff's counsel that the expert opinion is a weak piece of evidence and the trial Court has erred in placing reliance upon the same for rejecting the plaintiff's case as against the contesting defendant and therefore, according to him, the trial Court has erred in not appreciating the materials projected by the plaintiff that the

contesting defendant had also taken part in the loan transaction and given his assent and therefore, the plaintiff suit should have been decreed in toto even as against the contesting defendant.

19. On the other hand, the counsel appearing for the contesting defendant contended that when there is no material on the part of the plaintiff to link the contesting defendant with the loan transaction involved in the matter in any manner and when the plaintiff's witnesses are unable to identify the contesting defendant and accordingly, from the loan documents projected by the plaintiff without any corroborative material to sustain that the contesting defendant had put his signature in the same by visiting the bank one way or the other and also agreed for the mortgage by way of deposit of title deeds, in all, according to him, the judgment and decree of the trial Court, dismissing the plaintiff's suit as against the contesting defendant needs no interference and therefore, prayed for the dismissal of the first appeal.

20. Though the plaintiff's counsel would argue that the clinching oral and documentary evidence are available on the part of the plaintiff to rope in the contesting defendant as also liable to the loan transaction involved, however, considering the oral evidence adduced on the part of the plaintiff and as rightly determined by the trial Court, when they are unable to place any evidence connecting the contesting defendant with the loan transaction and furthermore, the plaintiff, as the suitor, has failed to establish that the contesting defendant had visited the plaintiff bank at any point of time and got himself involved in the loan transaction by subscribing his signature in the various documents as put forth by the plaintiff and when the contesting defendant's elder brother has no authority to submit the title deeds to the plaintiff with an intention to create mortgage without the consent of the contesting defendant and when the plaintiff has failed to establish that the elder brother of the contesting defendant had the authority to deposit the title deeds with the plaintiff bank for creating mortgage and when as above noted, when the evidence of the handwriting expert and his opinion are not shown to be untrustworthy and unreliable and though there is no rule of law that without corroboration, the expert's opinion and evidence cannot be accepted but the only restraint is that due caution and care should be exercised before its acceptance and when the plaintiff has miserably failed to establish that the contesting defendant had given his approval and consent in any manner to the loan transaction by visiting the plaintiff bank at any point of time, in such view of the matter, when the plaintiff has also miserably failed to establish that the signature of the contesting defendant is available in the loan documents as projected by it and furthermore, as above noted, the plaintiff has not placed any material for not accepting the expert's opinion and his evidence adduced in the matter, in all,

it is found that the trial Court is justified in rejecting the plaintiff's suit as against the contesting defendant. When particularly the contesting defendant has disowned his liability in paying the loan amount even by way of the reply notice, in such view of the matter, the plaintiff, being the suitor, should establish his case by placing acceptable and reliable materials and the plaintiff cannot expect the contesting defendant to establish its case by lodging police complaint against the case of impersonation and forgery projected by him. When the case of impersonation and forgery is taken by the contesting defendant, it is for the plaintiff to establish that the contesting defendant had also associated himself in the loan transaction by giving consent in the form of agreement of guarantee, consent letter etc., and when with reference to the same, there is no reliable material on the part of the plaintiff, I do not find any error in the conclusion of the trial Court for rejecting the plaintiff's case as against the contesting defendant.

21. The counsel for the plaintiff also contended that the Court should have endeavoured to compare the signature of the contesting defendant with the admitted signature on its own and come to the conclusion that it is he who had subscribed to the loan documents as put forth by the plaintiff. However, as rightly contended by the contesting defendant, as a matter of prudence, the Court should not take the role of an expert and venture into the comparison of the signature as the same is left to the domain of an expert and in such view of the matter, the plaintiff cannot be allowed to put forth the contention that the trial Court should compulsorily embark upon the comparison of the disputed signature with the admitted signature on its own before rendering a decision in the matter. In my considered opinion, it is left to the discretion of the concerned Court and when as above noted, when the expert report and his opinion are not shown to be unreliable in any aspect and as above noted, when there is no material on the part of the plaintiff connecting the contesting defendant with the loan transaction in any manner, in all, the trial Court is correct in holding that the plaintiff is not entitled to recover the amount from the contesting defendant and right in dismissing the plaintiff's suit as against the contesting defendant.

22. In support of his contentions, the plaintiff's counsel placed reliance upon the decisions reported in (1977) 2 SCC 210 (Magan Bihari Lal Vs. The State of Punjab), (2003) 1 SCC 21 (Alamgir Vs. State (NCT, Delhi)). In support of his contentions, the counsel for the contesting defendant placed reliance upon the decision of this Court reported in S.A.Nos.741 to 744 of 2006 (M.Kaliamoorthy Vs. Dhanuskodi). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

23. For the reasons aforesaid, the first point formulated in the appeals is answered in favour of the contesting defendant and against the plaintiff bank.

Point Nos. 2 & 3:

24. In the light of the abovesaid discussions, the judgment and decree dated 17.06.2005, passed in O.S. Nos.4 of 2004, on the file of the District Judge, Nilgiris, Udhagamandalam are confirmed and resultantly, A.S.No.419 of 2008 is dismissed with costs and the judgment and decree dated 17.06.2005, passed in O.S. Nos. 117 of 2004, on the file of the District Judge, Nilgiris, Udhagamandalam are confirmed and resultantly, A.S.No.420 of 2008 is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(Ccc)

//True Copy//

Sub Assistant Registrar

sli

To:

The District Judge, Nilgiris, Udhagamandalam.

Copy to:

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

+1cc to Mr.S.L.Shanmugasundaram , Advocate SR.No. 79107

+1cc to Mr.T.M.Hariharan , Advocate SR.No. 79947

A.S. Nos.419 & 420 of 2008

A.SK(23/01/2020)