IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON :10.07.2019
PRONOUNCED ON: 13.08.2019
CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

A.S.No.489 of 2010
and
M.P.No.1 of 2010

S.Durairaj ... Appellant/ Defendant

Vs.

Life Insurance Corporation of India,
rep. By its Manager Legal &
H.P.f. Department,
Chennai - 2. ... Respondent/Plaintiffs

Prayer: First Appeal filed under Order XLI Rule 1 C.P.C r/w 96 of C.P.C., against the judgment and Decree dated 04.07.2008 made in O.S.No.4168 of 2003 on the file of II Additional City Civil Judge at Chenni.

For Appellant : Mr.P.Ravishankar Rao
for M/s.K.Rajasekaran

For Respondent : Mr.M.B.Gopalan

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J U D G M E N T

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Aggrieved over the judgment and decree dated 04.07.2008 passed in O.S.No.4168 of 2003 on the file of the II Additional Judge, City Civil Court, Chennai, the defendant has come forward with the first appeal.

2.Suit for recovery of money on mortgage.

3. Briefly stated, according to the plaintiff, the defendant approached the plaintiff for a loan of Rs.3,00,000/- to construct the first floor house in the suit property described in the plaint schedule and the plaintiff had agreed to offer the loan of Rs.3,00,000/- to the defendant on terms and conditions as set out in the plaint and the defendant having accepted the said offer, accordingly, it is putforth by

the plaintiff that the abovesaid loan of Rs.3,00,000/- had been disbursed by the plaintiff in the manner as putforth in the plaint and the same has been acknowledged by the defendant and further it is pleaded that on 09.11.1990, the defendant by way of additional security to the loan secured by him had deposited his original title deeds with intention to create an equitable mortgage for the due payments of loan amount availed by him respect of the plaint schedule property and executed a memorandum of deposit of title deeds, an agreement confirming the deposit and equitable mortgage and accordingly the mortgage has been created on 19.09.1999 by the defendant with the plaintiff for the loan amount. But the defendant had failed to pay the loan amount as per terms and conditions as setout in the loan offer and committed default and thereby became liable to pay the interest as well as the penal interest and despite the notice issued by the plaintiff calling upon him to pay the amount, as the defendant has failed to pay the amount as promised, hence according to the plaintiff, he has been necessitated to institute the suit against the defendant for appropriate reliefs.

4.The defendant resisted the plaintiff's suit contending that he had availed the loan from the plaintiff as putforth in the plaint, but would state that he had paid the sum of Rs.4,10,204/- on various dates to the plaintiff and despite the abovesaid position, the plaintiff had been sending periodic letters to him for the repayment of the loan amount without giving any particulars of the loan due and also failed to give the statement of accounts depicting the outstanding amount still liable to be paid and even in the legal notice, the plaintiff has not come forward with the clear particulars as to the amount due to be paid on the part of the defendant and further according to the defendant, the plaintiff is not clear in its stand and it is putforth that the defendant also sent a reply to the plaintiff calling upon the plaintiff to furnish the statement of accounts with correct particulars of payment due till date and the plaintiff has not come forward with the statement of accounts and further it is putforth that the plaintiff has claimed excessive interest which is unlawful and unjustified and not in accordance with the decision of the Apex court and hence according to the defendant, the suit laid by the plaintiff is liable to be dismissed.

5. On the basis of the above pleas, the following issues were framed by the trial court for consideration:

i. Whether the plea of the defendant that the plaintiff has not furnished the statement of accounts pertaining to the suit debt properly is true?

ii. Whether the interest claimed by the plaintiff in the plaint is excessive?

iii. Whether the suit is barred by limitation?

iv. Whether the defendant is liable to pay the suit amount to the plaintiff as claimed in the plaint?

v. To what relief, the plaintiff is entitled to ?

6. In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A33 were marked. On the side of the defendant, D.W.1 was examined. Exs.B1 to B5 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Court below has held that the plaintiff is entitled to recover the suit amount from the defendant with interest at 6% per annum from the date of the plaint till the date of realisation and accordingly granted the preliminary decree in favour of the plaintiff as prayed for. Impugning the same, the present first appeal has been preferred by the defendant.

8. The following points arise for determination of the first appeal:

i. Whether the plaintiff is entitled to recover the suit amount from the defendant as prayed for?

ii. Whether the plea of the defendant that he has discharged the suit debt as putforth in the written statement is true?

iii. To what relief the plaintiff is entitled to?

iv. To what relief the defendant/appellant is entitled to?

Point Nos.1 and 2

9. The borrowal of the suit debt from the plaintiff is not disputed by the defendant. Thus, it is found that as furnished in the particulars of the suit loan and the terms and conditions setout by the plaintiff while disbursing the said loan to the defendant, it is seen that the defendant is liable to repay the borrowed sum with interest in installments and in case of the failure of the defendant to pay the installments in time, the defendant is also liable to pay the penal interest as setout in the loan sanction and according to the plaintiff, the defendant has been a chronic defaulter in the payment of the loan despite several notices and accordingly come forward with the suit for the recovery of the amount.

10. Furthermore, it is seen that the defendant has mortgaged the suit property by way of deposit of title deeds with the plaintiff as a security to the loan amount and in such view of the matter, the suit has come to be laid by the plaintiff based on the mortgage effected in its favour by the defendant as abovestated.

11.The execution of the mortgage deed by way of deposit of title deeds has not been disputed by the defendant. As abovenoted, the defendant has also not disputed the borrowal of the loan amount from the plaintiff and the terms and conditions setout in the loan offer. Therefore, it is found that if the defendant fails to pay the amount as promised, he is liable to pay the interest plus penal interest. The plaintiff has come forward with the various documents with reference to the loan particulars and also furnished the statement of account marked as Ex.A33. On a perusal of Ex.A33, it is seen that the plaintiff has given due credit to the amount repaid by the plaintiff and as the defendant had failed to repay the borrowed sum as promised and by way of proper instalments, it is found that the loan amount had carried the interest to be paid by the defendant as promised and in such view of the mater, it is found that the statement of account furnished by the plaintiff with reference to the loan amount is correct as determined by the trial court.

12. The defendant has also not disputed the creation of mortgage qua the loan amount in favour of the plaintiff as putforth in the plaint. In such view of the matter, the plea putforth by the defendants' counsel that the suit is barred by limitation, particularly, when the suit has come to be laid by the plaintiff on the basis of the mortgage transaction, in such view of the matter, it is seen that considering the date of mortgage, the suit laid by the plaintiff is found to be not barred by limitation and the abovesaid issue has been rightly determined by the trial court. The defendant also putforth the plea that he has paid a sum of Rs.4,10,204/- on various dates and thereby would contend that though he had discharged the amount, the plaintiff had been repeatedly demanding him to repay the borrowed sum by sending various letters one after other. As above noted, with reference to the amount repaid by the defendant, the same had been duly given credit by the plaintiff in the statement of accounts produced and as the defendant has failed to repay the borrowed sum as promised and in instalments, the loan amount had carried with it the interest and penal interest and in such view of the matter, it is seen that the suit claim putforth by the plaintiff against the defendant is correct and when it is found that the defendant has not paid any other amount than the amount depicted in the receipts and further admitted that he had not paid the amount in instalments, accordingly the trial court is justified in holding that the defendant is liable to pay the

borrowed sum with interest as agreed to.

13. The only point that has been raised by the defendant's counsel is that the interest claimed by the plaintiff is excessive and in this connection placed reliance upon the decision reported in 2002 (1) SCC 367[Central Bank of India Vs. Ravindra and others] The abovesaid decision has also been placed for consideration before the trial court. However, considering the nature of the loan amount and the liability of the defendant to pay the interest with reference to the same, in case of his failure to repay the sum promptly and in correct instalments and when as abovenoted, the defendant has failed to establish that he has repaid the sum regularly and promptly, in such view of the mater when the plaintiff has calculated the interest only as per the terms of the loan and the same has also been apprised by the defendant, in such view of the matter, the contention of the defendant that the plaintiff has claimed excessive interest cannot be at all be sustained in the eyes law and found to be rightly turned down by the trial court.

14. It appears that the defendant has also the endeavoured to place reliance upon the alleged slip said to have been given on the behalf of the plaintiff by one Hari Narayanan marked Ex.B2. When the defendant has failed to establish that the so called Hari Narayanan is an employee under the plaintiff and also authorised to issue such a slip, on the basis of the abovesaid slip, the defendant cannot be allowed to contend that he is liable to only pay the amount mentioned in the said slip. Therefore the abovesaid slip has been rightly considered and appreciated by the trial court. When the amounts paid by the defendant, as abovenoted, had been given due credit to by the plaintiff, in such view of the matter, on the whole, it is found that the trial court has assessed and analysed the materials placed on record in the right perspective and correctly determined that the defendant is liable to pay the suit amount with subsequent interest at 6% per annum till the date of realization and accordingly granted the preliminary decree in favour of the plaintiff. No reason is warranted to interfere with the same.

15. It is found that at one stage of the matter, the suit laid by the plaintiff has come to be dismissed for default and on application with the delay, the dismissal order had been setaside and the suit has been restored to file and thereafter the suit has been proceeded further and the same could be gathered from the order passed by the trial court in I.A.No.20058 of 2006. While passing the said order, the trial court had held that the plaintiff is not entitled to claim interest for the default period i.e., from 10.09.2004 to till the disposal of the application i.e., 10.04.2007. According to

the defendant's counsel, the abovesaid order has not been considered by the trial court and on the other hand, had granted the relief as prayed for by the plaintiff in toto. The plaintiff's counsel has also acceded to the same and submitted that the plaintiff is not entitled to claim interest from 10.09.2004 to 10.04.2007.

16. In the light of the abovesaid factors, the plaintiff is found to be entitled to recover the suit amount as prayed for from the defendant and that the interest claimed by the plaintiff is also found to be not excessive. The defendant having failed to establish that he has discharged the suit debt as claimed and on the other hand, as per the statement of accounts furnished by the plaintiff, the defendant is still found to be liable to pay the suit amount, in all, the point No.1 and 2 are accordingly answered in favour of the plaintiff and against the defendant.

Point No.3 and 4

17. The judgment and decree of the trial court stand confirmed excepting the modification that the plaintiff is not entitled to claim interest for the period from 10.09.2004 to 10.04.2007 and accordingly, the First Appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mfa
To

The II Additional Judge.
II Additional City Civil Court,Chennai.

Copy to
The Section Officer,
VR Section,
High Court,Chennai.

+1cc to Mr.K.Rajasekaran , Advocate SR.No. 69303
+1cc to Mr.M.B.Gopalan , Advocate SR.No. 69486

A.S.No.489 of 2010
and
M.P.No.1 of 2010

A.SK(19/02/2020)