

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 265 of 2014

G.Richard Henry Gnanadhas

..Appellant/Plaintiff

Vs.

The Citi Bank,
Mortgage Division,
Anna Salai Post,
Chennai - 600 002.

..Respondent/Defendant

Prayer: Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree of the Learned VII-Additional District Judge, Chennai made in A.S.No. 455 of 2012 dated 23.08.2013 confirming the judgment and decree of the Learned XVII Assistant City Civil Judge, Chennai made in O.S.No. 7929 of 2011 dated 28.09.2012.

For Appellant : Mr. V.Selvaraj

For Respondent : Mr.V.Balasubramaniam

J U D G M E N T

The plaintiff in O.S.No. 7929 of 2011 has come forward with this appeal challenging the dismissal of the suit by the Trial Court by its judgment and decree dated 28.09.2012 and its confirmation in A.S.No. 455 of 2012 on 23.08.2013.

2. The short facts which lead to the appeals are as follows:-

The plaintiff had borrowed a sum of Rs.7,00,000/- as housing loan from the defendant / bank on 01.09.2004. As per the terms of the loan agreement, which has been produced as Ex.B2, the interest is variable and is linked to the Citi Bank prime lending rate. As per the schedule of payment, the plaintiff was required to repay the entire amount in 84 monthly installments of Rs.12,545/- each. Claiming that he has paid the entire amount as per the schedule of repayments provided with

the sanction letter, which has been marked as Ex.A2, the plaintiff would contend that the entire loan was discharged with the last payment that was made on 02.09.2011. After making the last payment on 02.09.2011, the plaintiff sought for return of the documents by his letter dated 26.09.2011, which has been marked as Ex.A3. This letter was replied to by the defendant / Bank under Ex.A4 claiming that since there was a debit balance of Rs.1,53,545.50/- as on 29.09.2011, the documents cannot be returned.

3. Aggrieved, the plaintiff instituted the suit seeking a relief of declaration that the plaintiff is not liable to pay a sum of Rs. 1,53,545.50/- towards additional interest and for a mandatory injunction directing the defendant to return the documents.

4. The suit was resisted by the defendant contending that the plaintiff while borrowing the home loan had agreed for variable rate of interest. The sanction letter, which has been produced as Ex.A1 provides that rate of interest will be subject to review in accordance with the policy of the Bank and the rate prevailing at the time of disbursement will be charged on the loan. The loan agreement executed by the plaintiff would clearly show that the plaintiff has agreed for variable rate of interest and therefore, the Bank was entitled to levy higher interest or lesser interest, according to the policy of the bank in view of clause "2.2. (a)" of the loan agreement. Clause "2.2.(a)" of the agreement reads as follows:-

"2.2.(a)The borrower shall be charged interest at the rates mentioned in the schedule I. In case of variable interest rate loans, the interest charged will be linked to the applicable Citi Bank Mortgage Prime Rate as mentioned in schedule I. In such case, the applicable Citibank Mortgage Prime Rate shall be notified to the Borrower by the Bank only if the rate of interest is varied by the Bank, within 30 (thirty) days from the first day of each calendar financial quarter or of each financial calendar half-year or of each financial calendar year, as the case may be, and such rate notified by the Bank shall be binding on the Borrower."

Claiming that the conditions prescribed in Clause "2.2. (a)" were complied with by the Bank, it is claimed that the plaintiff is liable to pay a further sum of Rs.1,66,408/- as on February 2012, as due and payable under the loan agreement. Since the plaintiff had not come forward to pay the said amount, the defendant sought for dismissal of the suit.

5. The Courts below on the consideration of the evidence, concluded that the plaintiff having agreed for variable rate of interest cannot now go back on it and contend that the payment of 84 monthly instalments at 12.5% interest as provided in the loan agreement would amount to discharge of the entire mortgage debt. The Courts below concluded that the defendant / Bank is entitled to charge higher interest periodically. Therefore, the Courts below accepted the claim of the defendant and dismissed the suit. Aggrieved by the same, the plaintiff has come forward with this second appeal.

6. I have heard Mr.V.Selvaraj, learned counsel appearing appellant and Mr. Balasubramaniam, learned counsel appearing for the respondent / Bank.

7. The following questions of law were framed at the time of admission :-

"i) Whether the Courts below are right in dismissing the suit when the appellant had repaid the entire loan amount with interest as per the terms and conditions stipulated ?

ii) Whether the Courts below are right in dismissing the suit without considering the issue that the Respondent / Defendant witness admitted that the conditions contained in Ex.B2 in column No.24 is binding on the respondent bank?"

8. Elaborating on question of law No.2, Mr.V.Selvaraj, learned counsel appearing for the appellant would contend that Clause "2.2.(a)" of the loan agreement (extracted above) casts the duty on the defendant / Bank to inform the Borrower / Plaintiff about change in the interest rates. In the absence of any proof to show that such information as required under Clause "2.2.(a)" was provided to the plaintiff, the Bank cannot claim additional interest. He would also draw my attention to the cross-examination of D.W.1 (The Bank Manager), wherein he had deposed as follows:-

"பி.வா.சா.ஆ.2 முழு தொகையம் 84 தவணையில் செலுத்தப்பட வேண்டும் என்று உள்ளது என்றால் சரிதான். 84 தவணையம் வாதி செலுத்திவிட்டார் என்றால் சரிதான்."

During his further examination, he has deposed as follows:-

"பி.வா.சா.ஆ.2ல் உள்ள 2.2ஆம் பத்தி சரத்தின் படி வங்கி வட்டி விகிதத்தில் மாறுபாடு ஏற்படும் போது அது குறித்து கடன் பெறுபவருக்கு தெரிவிக்கப்பட வேண்டும் என்றால் சரிதான். அதன்படி ஒவ்வொரு 6 மாதத்திற்கும் வட்டி விகிதத்தில் மாறுபாடு ஏற்பட்டால் அதுகுறித்து கடன் பெறுபவருக்கு அறிவித்தீரா என்றால் அறிவித்தோம். அவ்வாறு செய்ததற்கு ஆவணம் தாக்கல் செய்தீரா என்றால் உள்ளது தாக்கல் செய்யவில்லை."

9. Relying upon the above said evidence, the learned counsel appearing for the appellant would submit that it was incumbent on the part of the defendant to have informed the plaintiff about the change in the interest rate, as per the clause "2.2.(a)" of the loan agreement. When it is the specific plea of the plaintiff that he had not received any such information or intimation from the Bank, the defendant ought to have produced necessary evidence to show that such information or intimation was actually given to him. Mr.V.Selvaraj would also point out that D.W.1 had admitted that he is in possession of documents to show that such intimation was given. Despite cross-examination, he has not chosen to produce it.

10. According to Mr.V.Selvaraj, the Courts below ought to have drawn adverse inference against the defendant / Bank for non-production of documents, which was admitted to be available with it by D.W.1. He would also contend that non-production of document would show that no such intimation was given to the plaintiff.

11. Contending contra, Mr.Balasubramanian, learned counsel appearing for the respondent / Bank would submit that there is no evidence to show that the plaintiff is unaware of the changes in the rate of interest. He would also draw my attention to the loan agreement (Ex.B2) to show that the plaintiff had in fact agreed for variable rate of interest. He would also submit that the Courts below had believed the evidence of D.W.1 and had concluded that he has been informed about the change in the rate of interest. Therefore, according to him, the conclusions of the Court below does not deserve interference at my hands.

12. I have considered the rival submissions. It is the case of both the parties that Ex.B2 governs contract between the parties. Clause "2.2.(a)" of the document shows that the plaintiff had agreed for variable rate of interest. Clause "2.2.(a)" of the document extracted above would show that in order to claim variable rate of interest, the respondent / Bank should have informed the plaintiff about the change in the rate of interest once in half yearly or quarterly or yearly, as the case may be. Unless it is shown that such information / intimation was provided to the borrower, the bank cannot claim additional interest and any such claim of additional interest will not be binding on the borrower.

13. As rightly pointed, D.W.1 in his evidence, categorically admitted that though he has document to show that such intimation or information about the revision of rate of interest had been given to the plaintiff, the same has not been produced. The Courts below erred in not drawing an adverse

inference against the defendant for non-production of these documents. I am therefore of the considered opinion that the question of law No.2 has to be answered as follows:-

Clause "2.2.(a)" of Ex.B2 agreement is binding on the plaintiff as well as the defendant and its non-compliance would definitely dis-entitle the defendant from claiming the additional interest which is quantified at Rs.1,66,408/- as on February 2012.

14. In view of the answer, the question of law No. 2 is inevitable conclusion is that the plaintiff has paid the entire amount in 84 monthly installments. The learned counsel appearing for the respondent / Bank would submit that some of the cheques issued by him were dishonoured and the charges payable for dishonour have not been paid. This contention is raised for the first time in the second appeal. Neither in the written statement nor in the proof affidavit before the Courts below, such a contention was sought to be raised by the respondent / Bank. Therefore, I am not inclined to go into the said question. Once it is found that the entire loan has been repaid, the defendant bank has no right to retain the documents contending that the additional interest has not been paid. Hence, I am forced to interfere with the findings of the Courts below, since I find that the findings are perverse are against the evidence on record.

15. Hence, this second appeal is allowed, the judgment and decree of the Courts below are set aside. The suit in O.S.No. 7929 of 2011 will stand decreed as prayed for with a direction to the respondent / Bank to return the documents within a period of 60 days from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

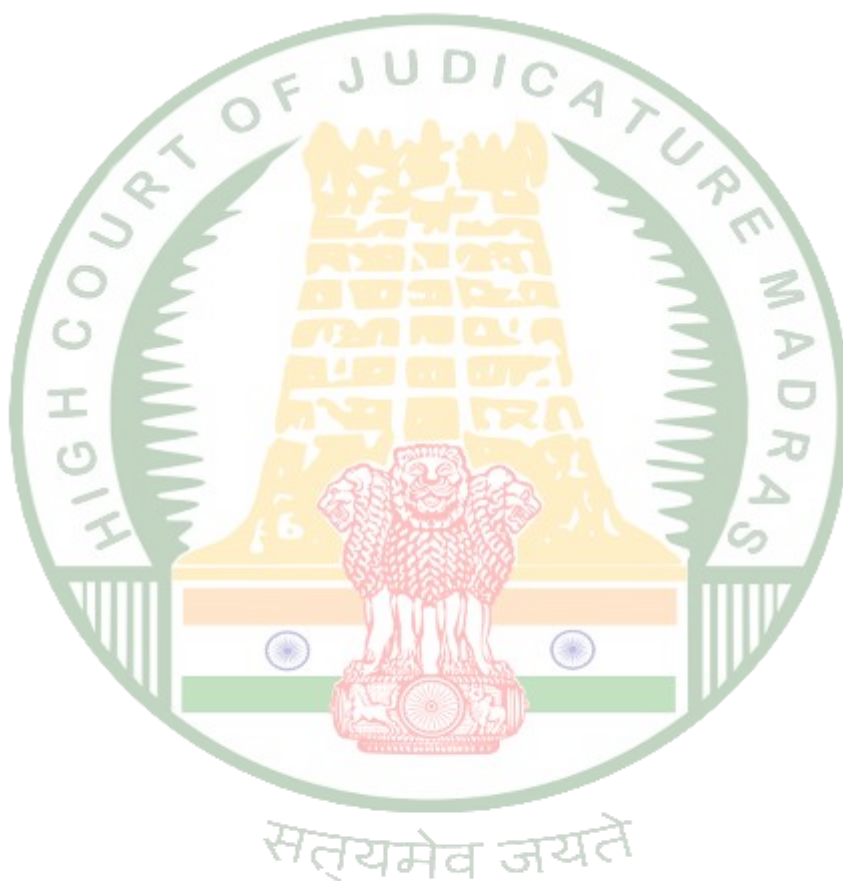
1. The VII Additional District Judge,
City Civil Court, Chennai.
2. The XVII Assistant Judge,
City Civil Court, Chennai.

Copy To
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.V.Selvaraj, Advocate SR.No.77876

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NMI (CO)
GMV (07/11/2019)



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