IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 949 of 2019
and
C.M.P.No. 20145 of 2019

P.M.Subramanian ..Appellant/Defendant

Vs.

Canara Bank,
A Body Corporate Constituted
under the Banking companies
(Acquisitions and Transfer of Undertakings
Act, of 1970) having its Head Office at
Bangalore and one of its branches at
Nasiyanur in Erode Taluk, Erode District,
Rep. By its Chief Manager. ..Respondent/Plaintiff

Prayer: Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree dated 15.04.2019 made in A.S.No. 140 of 2018 on the file of II - Additional District Court, Erode confirming the judgment and decree dated 04.08.2018 made in O.S.No. 150 of 2016 on the file of II - Additional Sub-Court, Erode.

For Appellant : Mr. Kaithamalai Kumaran .S

J U D G M E N T

The defendant in O.S.No. 150 of 2016, who had suffered a decree for payment of money on it its being confirmed in A.S.No. 140 of 2018 has come forward with this second appeal.

2. The suit was filed by the plaintiff / Bank seeking recovery of a sum of Rs.1,52,264/- due and payable under the agricultural loan granted to the defendant. According to the plaintiff, the defendant had borrowed a sum of Rs.1,00,000/- on 08.09.2010 and had executed a acknowledgment of debt on 03.09.2013, evidencing the said borrowing. The defendant had

agreed to pay interest at 9% per annum and penal interest at 2% per annum in case of default. Since the defendant failed and neglected to pay the amount due despite the acknowledgement, the plaintiff had come forward with the suit.

3. The suit was resisted by the defendant contending that he had not executed the acknowledgement of debt dated 03.09.2013. It is also contended that the defendant had repaid the loan borrowed by him and therefore, there is no cause of action for the suit. The Trial Court had found that the claim of repayment / discharge made by the defendant was not proved and decreed the suit based on Ex.A5 i.e., the statement of accounts and Ex.A2 i.e., acknowledgement of debt.

4. Aggrieved, the defendant filed an appeal in A.S.No. 140 of 2018 on the file of the Principal District Judge, Erode. The learned Principal District Judge found that the defendant has not established repayment of the entire loan. The lower Appellate Court found that the loan was advanced under a scheme which provided that if the entire loan is repaid by a particular date, the loanee would be entitled to a further loan. The lower Appellate Court had also found from the statement of accounts i.e., Ex.A5 that the defendant had repaid a sum of Rs.64,500/- on 06.07.2011 and a further sum of Rs.40,000/- on 02.08.2011. Subsequently, on 15.10.2011 a sum of Rs.96,500/- was credited to the account of the defendant and the defendant had withdrawn the said amount. In the absence of any explanation as to how the credit came into account on 15.10.2011, the lower Appellate Court concluded that it should be presumed that it was a further loan borrowed by the defendant, as per the scheme. The lower Appellate Court had also found that the acknowledgement of debt dated 03.09.2013 was in fact executed by the defendant. On the above findings, the lower Appellate Court dismissed the appeal confirming judgment and decree of the Trial Court. Aggrieved, the defendant has come forward with this second appeal.

5. I have heard Mr. S.Kaithamalai Kumaran, learned counsel appearing for the appellant.

6. It is the contention of the learned counsel appearing for the appellant that once he repaid the borrowing and in the absence of any averment in the plaint with reference to subsequent credit of Rs.96,500/- and its withdrawal, the Courts below were not right in decreeing the suit.

7. No doubt true, the plaint is silent about the subsequent credit and its withdrawal but the plaint itself shows that the advance was made under a scheme which provided for

renewal of the loan, if the loan amount is repaid within a specific period. The agreement dated 08.09.2010 entered into between the parties provided for such renewal of the loan. The Courts below have also found that the acknowledgement of debt dated 03.09.2013 is true and valid. The defendant is unable to explain as to how a sum of Rs.96,500/- has been credited to his account and withdrawal of the same. Therefore, it is clear that the defendant had after discharging the loan of Rs.1,00,000/- borrowed on 08.09.2010, withdrawn a sum of Rs.95,000/- from the Bank, which was credited into the same loan account and he was fully aware that it was a further loan taken by him. The Courts below have rightly appreciated the evidence and have come to the conclusion that the plaintiff is entitled to a decree. I do not see any question of law much less a substantial question of law, in order to enable this Court to entertain this second appeal hence, the second appeal is dismissed without being admitted. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkn

To

1.The II Additional District Judge,
Erode.

2.The II Additional Subordinate Judge,
Erode.

+1cc to M/s.S.Kaithamalai Kumaran, Advocate SR.79569

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and
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SAI(CO)
CB(17/02/2020)