

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.12.2019
Delivered on : 07.01.2020

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

SA.No.1723 of 1995
and
CMP.No.811 of 2009

Indian Finance and Factors Ltd.,
47, South Boag Road,
T.Nagar, Madras-17.

...Appellant/Plaintiff

vs.

1.T.R.Anusuya Ammal
2.S.Saravanan
3.K.Vasantha
4.The Headmistress,
Corporation Primary School,
Kanniyappa Nagar, Chennai-83.

... Respondents/Defendants

(cause title amended as per orders
in CMP.No.8139 of 2003
in SA.No.1723 of 1995, dated 21.08.2003)

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and Judgment dated 30.06.1994 passed in AS.No.346 of 1993 on the file of the VIII Additional Judge, Civil Civil Court, Chennai reversing the Judgment and decree dated 30.08.1993 passed in OS.No.7005 of 1991 on the file of the XIV Assistant Judge, Civil Civil Court, Chennai.

For Appellant : Mr.T.M.Hariharan
For Respondents: No appearance

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J U D G M E N T

The appellant is the plaintiff in OS.No.7005 of 1991 on the file of the XIV Assistant Judge, Civil Civil Court, Chennai. The appellant / plaintiff filed the above suit against the respondents / defendants for recovery of a sum of Rs.18,621/- together with interest at the rate of 24% per annum from the date of the plaint till the date of realisation.

2. The case of the plaintiff in brief is as follows:

The respondents 1 and 2 entered into a Hire Purchase Agreement (Ex.A1) with the appellant / plaintiff for purchase of BPL colour television for a sum of Rs.16,288/-. The said loan was disbursed on 30.10.1990 to be repaid in 30 monthly instalments of Rs.543/- each. Both the first and second respondents executed a demand promissory note (Ex.A2) on 31.10.1990 promising to repay the principal amount of Rs.16,288/- together with interest at the rate of 24% per annum on demand by the appellant / plaintiff. The third respondent stood as a guarantor (Ex.A3). As the monthly instalments did not come regularly, a demand notice dated 18.02.1990 (Ex.A4) was issued by the appellant / plaintiff. Since the said notice did not evoke any response from the respondents, the appellant / plaintiff filed the suit for recovery of the principal amount with interest at the rate of 24% per annum.

3. The first respondent in her written statement had contended that both she and the second respondent went to a television shop namely, 'M/s.Saravana and Co.' at Arya Gowda road, West Mambalam to buy a Colour television in which one Sankar directed them to sign certain documents which included a promissory note (Ex.A2) and delivery challans (Ex.A6). Her further contention is that the colour television was not delivered to them and subsequently it was learnt that many others also were cheated by the said Sankar and the vendor M/s.Saravana and Co. The first respondent further contended that she lodged a complaint with the police and the same was registered in Crime No.288 of 1991 of K.K.Nagar Police Station against M/s.Saravana and Co. and others. The first respondent's further contention is that she had no direct financial connection with the appellant / plaintiff and therefore is not liable to repay any amount to the appellant / plaintiff. It was also contended by the first respondent that neither she nor his husband (second respondent) visited the office of the appellant / plaintiff.

4. The other respondents remained absent before the XIV Assistant Judge, Civil Civil Court, Chennai and therefore they were set exparte. The learned XIV Assistant Judge framed the following issues:

- i) Whether the plaintiff is entitled to recover the suit amount from the respondents?
- ii) To what relief is the plaintiff entitled?

In the trial court, two witnesses were examined on the side of the plaintiff and Ex.A1 to Ex.A6 were marked. The first defendant / first respondent examined herself and marked Ex.B1 to Ex.B3. Two court witnesses were examined as CW1 and CW2 and

Ex.C1 was marked through them. The learned XIV Assistant Judge, Civil Civil Court, Chennai after analysing the oral and documentary evidence adduced on both sides decreed the suit filed by the appellant / plaintiff as prayed for by them.

5. Aggrieved over the decree and Judgment dated 30.08.1993, the respondents / defendants filed an appeal before the VIII Additional Judge, Civil Civil Court, Chennai. The learned VIII Additional Judge vide his decree and Judgment dated 30.06.1994 reversed the findings recorded by the trial court and dismissed the suit filed by the plaintiff.

6. Now the present second appeal is filed by the plaintiff. The following substantial questions of law were framed by this court on 12.01.1996:

i) Whether the dismissal of the suit by the lower Appellate Court on the ground that the Hire Purchase Article was not delivered to the borrowers, is legally sustainable, when the borrowers have admitted in their written statement that the delivery challan was handed over to the appellant?

ii) Whether the dealer is a necessary party to the suit and the dismissal of the suit on the ground of non-joinder is legally sustainable?

7. Heard Mr.T.M.Hariharan, learned counsel appearing for the appellant / plaintiff. No appearance for the respondents / defendants.

8. It can be easily seen that both the respondents 1 and 2 were in need of funds for purchase of BPL colour television and they had approached the vendor of the television namely, M/s.Saravana and Co. It is not the case of the respondents that they did not sign the Hire Purchase Agreement (Ex.A1), demand promissory note (Ex.A2) and delivery challans (Ex.A6) for having received the television set from the vendor. Moreover, even if it is assumed that the television set was not supplied to the respondents, though signatures were obtained in the delivery challan, the first respondent has not adduced any evidence to show that she had informed the financier namely, the appellant / plaintiff. In the police complaint no allegations were made against the financier which clearly shows that the first respondent was aggrieved over the reported non - supply of the television set by the vendor M/s.Saravana and Co. In such circumstances, when the first respondent not having denied the signature in the Hire Purchase Agreement (Ex.A1) and demand promissory note (Ex.A2), the first appellate court's observation that the bills and receipts of the vendor did not mention the Serial Number of the television sold / delivered does not hold good. The trial court has rightly observed that the first

respondent having signed the Hire Purchase Agreement (Ex.A1) and demand promissory note (Ex.A2) was fully aware of the terms and conditions of the agreement and also the quantum of loan and repayment schedule. It is also substantiated satisfactorily by the appellant / plaintiff that the first and second respondents visited their office and executed Ex.A1 and Ex.A2. The first respondent had also made a contention that the payment of the loan process was directly made to the vendor M/s.Saravana and Co. and therefore they did not receive the loan. However, the appellant / plaintiff had justifiable explanation for the same. According to the appellant / plaintiff all loans for consumer durables are only disbursed to the supplier of the consumer durables in order to ensure the end use of the same. Therefore in the opinion of this court, the first appellate court has clearly gone beyond its purview and conducted a probe equivalent to an investigation as to whether the respondents 1 and 2 received the television set or not. This was totally unwarranted as there was clear documentary evidence for the loan as well as for the supply of the television set. Therefore I find the observations of the first appellate court as perverse. The first substantial question of law is answered accordingly. As far as the second substantial question of law is concerned, the appellant / plaintiff filed the suit for recovery of the loan amount from the respondents and in the facts and circumstances, the dealer namely M/s.Saravana and Co. cannot be said to be a proper and necessary party.

9. In the result,

i) The Second Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

ii) The decree and Judgment dated 30.06.1994 passed in AS.No.346 of 1993 on the file of the VIII Additional Judge, Civil Civil Court, Chennai is set aside.

iii) The decree and Judgment dated 30.08.1993 passed in OS.No.7005 of 1991 on the file of the XIV Assistant Judge, Civil Civil Court, Chennai is restored to file. The suit filed by the appellant / plaintiff is decreed with costs as prayed for by them.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The III Additional Judge
Civil Civil Court, Chennai.

2.The XIV Assistant Judge,
Civil Civil Court, Chennai.

Copy to
The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.T.M.Hariharan, Advocate sr 1387.

SA.No.1723 of 1995
and
CMP.No.811 of 2009

MP(CO)
SP(10/11/2020)



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