IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.140 of 2012
and
M.P.No.1 of 2012

K.Sundar ...Appellant/Defendant

Vs.

Indian Bank,
Egmore Branch,
Rep. by its Asst. General Manager,
Somayajee,
No.8, Sait Colony,
Egmore,
Chennai - 600008. ...Respondent/Plaintiff

Prayer: Appeal Suit filed under Section 96 of CPC to set aside the Decree and Judgment dated 31.08.2009 made in O.S.No.8127/1996 on the file of Additional District and Sessions Judge, II Fast Tract Court, Chennai and allow the Appeal herein.

For Appellant : Mr.K.Umesh Rao

For Respondent : Mr.K.Chandu Suranjan

JUDGEMENT

The Appeal Suit is filed against the Judgement and Decree dated 31.08.2009 passed in O.S.No.8127 of 1996. The defendant is the appellant in the Appeal Suit and the respondent/plaintiff instituted a suit for recovery for a sum of Rs.5,35,797/- together with interest at 17.5% p.a. from the date of plaint till the date of realisation with quarterly rests and for costs.

2.The facts in nutshell in the plaint are that the defendant had approached the plaintiff's Bank and borrowed a sum of Rs.3,40,774/- on 22.05.1990 as vehicle loan for the purchase of two Ambassador tourist Taxis and executed Sanction Ticket, agreeing to repay the same with 48 monthly installments with interest at 8% p.a. He also executed an agreement of Hypothecation, hypothecating the 2 tourist cars bearing Reg.Nos.TN-01-A-9739 and TN-01-A-9741 and made endorsements on the R.C. books to and in favour of the plaintiff on 13.06.1990. The defendant has acknowledged his liability on 31.03.1993 by execution of acknowledgment of debts for Rs.3,03,517.92/- indebtedness as on 31.12.1992. The defendant was a defaulter and was irregular in repayment of monthly dues. Thus, the respondent/plaintiff instituted a suit for recovery of the loan amount.

3.The respondent filed a written statement denying the allegations set out in the plaint, by stating that the plaintiff did not produce a copy of the statement of account, in respect of the amount alleged to have been due by the defendant and the plaintiff did not give credit to all the payments made by the defendant. Hence, the contended that the suit claim itself is barred by limitation.

4.An additional written statement was filed by the respondent stating that the loan sanctioned to the defendant was not pleaded in the plaint and the plaint proceeds only on the basis that the defendant availed loan in his individual capacity for the purchase of two tourist cars. The defendant has availed loan under TADCO scheme implemented by the State of Tamil Nadu. The purpose of the said scheme is to benefit the down trodden schedule caste people. As per TADCO scheme, the Government also contributed Rs.1 lakh for the purchase of the 2 tourist cars. The plaintiff Bank sanctioned Rs.3,40,774/- on 22.05.1990 under vehicle loan is absolutely a false statement. It is contended that the TADCO loan was obtained by the defendant and the TADCO subsequently waived the loan and in this regard, the Government also issued G.O.(Ms)No.41, dated 09.04.2010 Adi Dravidar & Tribal Welfare (SCP) Department. When the Government issued waiver of loan sanctioned through Tamil Nadu Adi Dravidar Housing Development Corporation Limited under non-farm sector enterprises amounting to Rs.83 Crores, the respondent Indian Bank cannot institute a suit to recover the entire loan amount.

5.The Trial Court framed the issues as to whether the plaintiff is entitled to the suit claim, whether the plaintiff is entitled to interest at 17.5% p.a., whether the suit is barred by limitation, whether the suit claim is correct, whether the plaintiff is entitled to seize the vehicles and sell it and to what other relief.

6.The Trial Court basically proceeded on the pretext that the entire loan was sanctioned to the defendant by the plaintiff/Indian Bank. Thus, the very adjudication in the suit for recovery of money is erroneous, as the defendant in his additional written statement has pleaded that the loan was under a special scheme and TADCO also contributed a portion of the loan amount for a meager interest at 4% p.a. and the entire loan amount under the scheme implemented by the TADCO was waived by the Government in G.O.(Ms)No.41, dated 09.04.2010. Thus, the plaintiff/Indian Bank would be entitled to recover their portion of the loan amount and certainly not the entire loan amount. However, the Trial Court has failed to consider the nature of the loan sanctioned in favour of the defendant.

7.It is brought to the notice of this Court that the Government issued G.O.(Ms)No.41, dated 09.04.2010, after passing of the decree. However, the nature of the loan transaction was not considered by the Trial Court.

8.Ex.A1 Sanction Ticket issued by the Indian Bank Manager reveals that the loan was sanctioned under a special scheme and the TADCO also contributed to the said loan in order to rehabilitate the down trodden people and such a contribution was given for a meager interest at 4% p.a. The term for the loan amount under the TADCO scheme was 10 years and citing the said conditions, it is contended on behalf of the appellant that the suit itself is pre-mature and should not have been entertained by the Trial Court.

9.Admittedly, the Government waived the principle and interest amount, with reference to the implementation of Economic Development Scheme for SC and ST in G.O.(Ms)No.41. After passing of the decree, the Trial Court ought not to have decreed the entire principle with interest including the portion of the loan amount contributed by the TADCO. Thus, the very adjudication done by the Trial Court is erroneous and the decree passed is a nullity. The decree in respect of the entire loan is null and void, as part of the loan amount was paid by the TADCO under the Economic Development Scheme for SC and ST and the Government subsequently waived the entire loan amount as well as the interest in G.O.(Ms)No.41, dated 09.04.2010.

10.This apart, the learned counsel appearing for the appellant brought to the notice of this Court that the respondent/Indian Bank closed the loan account of the appellant and they have admitted the fact regarding the closure of the loan through Ex.A21 document. The said account details were also transferred and therefore, they have impliedly made their claim for recovery of money.

11.When the Appeal Suit was taken up for hearing by this Court, this Court directed the Branch Manager to be present, but he was not present. Thereafter, the Zonal Manager, Indian Bank, Chennai North, was present during next hearing and in a subsequent hearing, the Branch Manager was present, who in turn informed this Court, no records are available with reference to the loan sanctioned in favour of the appellant.

12.The learned counsel appearing for the respondent Bank is also unable to make any submissions regarding the loan transactions and also stated that the files are not available with the Bank.

13.The Appeal Suit was adjourned on three occasions. Inspite of the opportunities provided, the Bank is unable to secure any files regarding loans and therefore, they have not assisted the Court for effective disposal of the case.

14.In view of the fact that the Trial Court has committed an error in not considering the nature of the loan sanctioned in favour of the appellant and further, the respondent Indian Bank is not entitled to recover the loan granted through TADCO under the special scheme and the subsequent waiver of the entire loan with interest by the Government in G.O.(Ms)No.41, dated 09.04.2010, this Court is of the considered opinion that the appeal is a fit case for remand.

15.Accordingly, the Judgement and Decree dated 31.08.2009 passed in O.S.No.8127 of 1996 is quashed and the matter is remanded back to the Trial Court for fresh enquiry. The parties to the original suit are at liberty to file additional pleadings or documents establishing their case. The Trial Court is directed to conduct a fresh enquiry by providing an opportunity to all the parties and dispose of the suit, as expeditiously as possible.

16.In the result, the Appeal Suit stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-III MDU)

//True copy//

Sub Assistant Registrar

hvk

To

The Additional District and Sessions Judge,
II Fast Tract Court,
Chennai.

+1cc to Mr.K.Chandu Suranjan, Advocate SR.No.15025

+1cc to Mr.K.Jaganathan Rao, Advocate SR.No.15016

A.S.No.140 of 2012
and
M.P.No.1 of 2012

CNR(CO)
GMY(23/11/2020)