IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 13.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.139 of 2020 &
C.M.P.No.3147 of 2020

Natarajan .. Appellant/ Defendant

Versus

Thachinamoorthy .. Respondent/Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree, dated 11.12.2018 made in A.S.N.34 of 2016, on the file of the Additional District & Sessions Judge at Ariyalur, confirming the Judgment and Decree, dated 30.03.2016 made in O.S.No.55 of 2010, on the file of Sub Court, Ariyalur.

For Appellant : Mr.T.Chandrasekaran

JUDGMENT

This appeal is directed against the Judgment and Decree of the Additional District and Sessions Court, Ariyalur passed in A.S.No.34 of 2016, confirming the Judgment and Decree made in O.S.No.55 of 2010 by the Sub Court, Ariyalur. The suit in O.S.No.55 of 2010 was filed for recovery of money based on a promissory note.

2. It is the case of the plaintiff that on 16.05.2007, the defendant borrowed Rs.1,46,400/- on executing Ex.A1-promissory note. But, subsequently, he failed to pay the principal as well as interest, despite repeated demands. It is the case of defendant that Ex.A1-promissory note is a forged one and fabricated document and on the date of execution of pronote, he was not in India as on 15.05.2007 itself, he had gone into a foreign country.

3. The parties have adduced oral and documentary evidence in support of their case. The trial Court, on appreciation of evidence, came to the conclusion that the plaintiff is

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entitled for the suit claim. The appellate Court, confirmed the finding of the trial Court. Aggrieved over the same, the present appeal has been filed.

4. Mr.T.Chandrasekaran, learned counsel for the appellant submitted that the first appellate Court as well as the trial Court failed to consider the pleading of the appellant and deposition of the evidence in its proper perspective, but erroneously rejected the case of the defendant. It is the submission of the learned counsel that on the date of pronote, i.e. 16.05.2007, the defendant was in Abroad and it was also proved through Exs.B1 and B3. In the promissory note, the Tamil month is mentioned as 2nd day of 'Chithirai', but actually, it was 3rd day of 'Chithirai'. It is also contended that the interest 9% was wrongly awarded by the trial Court.

5. In the case on hand, the suit was instituted for recovery of money on the plea that the defendant borrowed money on 16.05.2007 and executed promissory note marked as Ex.A1. According to the defendant, on 15.05.2007 itself, he went to Sharjah by Air Arabia Airlines. Exs.B1 and B2 are the old and new passports issued in favour of the defendant. Ex.B3 is the flight ticket. D.W.2 is the Manager, working in a Travel Agent. The endorsement in Ex.B1 shows that the defendant reached Dubhai on 18.05.2007. It is an admitted fact that for travelling from Chennai to Sharjah, it would take only three hours journey. The defendant has not produced the boarding pass to establish that he left India on 15.05.2007 as per the flight ticket marked as Ex.B3.

6. During trial, it was contended by the defendant that he used to signed only in English, but in the cross-examination D.W.1 admitted that he also signs in Tamil. Both the Courts have held that the plaintiff has proved the execution of Ex.A1-promissory note and disbelieved the case of the defendant that he was not in India on 16.05.2007.

7. Indisputably, under Ex.A1, the defendant agreed to pay interest at 1% per month. The Hon'ble Apex Court in Manalal Prabhudayal v. Oriental Insurance Co. Ltd., [AIR 2006 SC 3026], has observed that awarding of interest is the discretion of the the Court. The relevant paragraph would run thus:-

> "10. Having considered the rival contentions of the parties, in our opinion, the appeal deserves to be allowed by granting relief to the appellant-firm. It is well settled that award of interest is in the discretion of court. Normally, when interest is granted, appellate, revisional or writ court would not interfere with exercise of discretion unless the discretion has been exercised arbitrarily or capriciously. It is equally well settled that like grant of interest, rate of interest is also in the

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discretion of the court and in the absence of any agreement between the parties, usually, the court would not interfere with rate of interest unless it is convinced that the direction of the lower court was ex facie bad in law."

In the matter on hand, the trial Court by exercising the discretion, awarded 9% interest from the date of suit till the date of realization. No material is available on record to show that the discretion is exercised arbitrarily, warranting interference in this Appeal and I find no valid ground to interfere with the concurrent finding of the Courts below.

8. In fine, The Second Appeal fails and the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AD I MDU)

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Sub Assistant Registrar

r n s

To

1. The Additional District & Sessions Judge,
   Ariyalur.

2. The Subordinate Judge, Sub Court,
   Ariyalur.

+1cc to Mr.Vijay Anand , Advocate SR.No. 13142

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