IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.02.2017

Pronounced on : 24.02.2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.781 of 2013

M/s.Sri Ramachandran Steel,
Rep. by its Managing Partner
P.K.C.Ramesh,
New No.6, Old No.14, 6th Cross Street,
C.I.T. Colony, Mylapore, Chennai – 4. .. Plaintiff

vs.

The Chairman cum Managing Director,
YES Bank Limited,
Having registered Office at
Nehru Centre, 9th Floor,
Discovery of India, Dr.A.B.Road,
Worli, Mumbai – 400 018.

Having Branch Office at
YES Bank Limited,
143/1, Nungambakkam High Road,
Chennai – 600 034. .. Defendant

Civil Suit filed under Order IV Rule 1 of Original Side Rules 1956 read with Order VII Rule 1 CPC praying for the following judgment and decree against the defendant.

a) Directing the defendants to pay a sum of Rs.33,24,000/- together with interest at 18% p.a. On the principal sum of Rs.30,00,000/- from the date of plaint till the date of payment to the plaintiff by the defendant.

b) Further direct the defendant to pay a sum of Rs.20,00,000/- to the plaintiff herein as damages for mental agony and financial difficulties suffered by the plaintiff.

c) costs of the suit.

For plaintiff	: Mr.T.N.Baskaran
For Defendant	: No appearance

J U D G M E N T

The suit for recovery of a um of Rs.33,24,000/- and for a sum of Rs.20,00,000/- as a damages for mental agony and financial difficulties suffered by the plaintiff.

2. Brief facts of the plaintiff case is as follows :

The plaintiff is a registered partnership firm carrying on the business in supply of Iron and Steel. Their annual turn over is more than Rs.78 crores during he year 2011-2012. The defendant bank approached the plaintiff for various credit facilities at competitive rate during January 2012. Finding that the terms of loan facilities offered by the defendant were more beneficiary to the plaintiff, they agreed to utilize the facilities offered by the defendant bank. Accordingly, an offer letter dated 03.02.2012 was issued by the defendant to the plaintiff. In the offer letter dated 03.02.2012, the defendant has given the details of various credit facilities and other terms of the conditions of repayment of the loan. The plaintiff had accepted the offer made by the defendant bank but had requested to delete the pre-closure penalty clause. This was principally agreed by the members of the official of the defendant namely Mr.Sanjay Agarwal, Country Head and Rajesh Srinivas, Southern Region Head as it was for the very reason the plaintiff decided to change over of the defendant bank. As per the defendant's offer letter dated 03.02.2012, the availability period for the facilities provided was only for twelve months. Further facilities will have to be reviewed by 05.01.2013. During October 2012, the defendant enhanced credit facilities to Rs.1500 crores as they were very much impressed by the performance of the plaintiff. Accordingly, an amendment to the Facility letter dated 03.02.2012 was issued on 11.10.2012. In the said letter, it was clearly stated that it was the amendment to the facilities dated 03.02.2012 and other terms and condition of the facility letter dated 03.03.2012 and in all other respects, the terms and conditions of the facility letter dated 03.02.2012 will continue to bind the parties.

3. The contractual period for the credit facility was about to expire on 03.02.2013 and the review date was fixed as 05.01.2013 and the same was not modified or altered by the defendant. When the contractual period of the credit facility was about to expire, the plaintiff had sent a letter dated 03.01.2013 for renewal of the credit facilities on condition that the limits has to be enhanced to Rs.2,100 lakhs and rate of interest to be reduced to 12% p.a. and also prayed for substitution of the property. The defendant failed to respond. Therefore, the plaintiff has sent a reminder on 20.01.2013 and also sought to delete the penalty clause for preclosure of the credit facility. By a letter dated 23.01.2013, the defendant while calling upon the plaintiff to come for a discussion on the enhancement of limits, asserted that details of substitute security was not furnished and that the Head Office alone can decide with regard to waiver of penalty clauses. As per the suggestion of the defendant bank, the plaintiff had gone for a discussion on 11.02.2013 but it failed to yield any result compelling the plaintiff to search for better avenues to meet their business requirements. In the process, the plaintiff was able to secure better financial facility with Karur Vysya Bank. The plaintiff also informed the defendant about their intention to shift his account with another Bank.

5. On 15.02.2013, the plaintiff had informed the defendant bank in writing about take over by Karur Vysya Bank and solicited smooth take over. In response to the letters, the defendant bank by their letter dated 20.02.2013 agreed to abide by RBI norms and facilitate a smooth take over. The defendant had also demanded pre closure penalty interest at the rate of 3% of the penalty amount to extinguish the account of the plaintiff in their books. Even though Karur Vysya Bank has settled the entire dues in the account of the plaintiff with the defendant by remitting 1500 crores by RTGS to plaintiff's CCC account on 27.03.2013, in view of the plaintiff's letters demanding pre-closure charges, plaintiff had remitted a sum of Rs.30 lakhs on 28.03.2013 as a separate transaction to the CCC account without prejudice to the plaintiff right to question the correctness of the defendant's demand for pre-closure charges as evidenced by his letter dated 28.03.2013. Inspite of the full settlement having made by Karur Vysya Bank on 27.03.2013, the defendant had failed to deliver the documents, issue NOC to KVB and provide CIR in IBA format, etc to effectively transfer the account of Karur Vysya Bank. It was only after protracted correspondence, the defendant had by their letter dated 15.05.2013 agreed to hand over the documents of title in deposit. In the letter dated 15.05.2013, the defendant had claimed to have exercised a right of lien over the sum of Rs.30 lakhs standing to the credit of plaintiff's CCC account in satisfaction of the defendant's claim for pre-closure penalty charges.

5. Therefore, it is the contention of the plaintiff that the contractual terms and conditions governing the parties except to the extent of repayment of the amount outstanding in the plaintiff's account. The defendant's letter dated 03.02.2012 or the amendment letter dated 11.10.2012 had not provided for the automatic renewal of the facility and even after one year there was no new letter of sanction by the defendant. In such circumstances, the plaintiff is not liable to pre-closure penal charges since the period of sanction had already expired and there was no term remaining to be pre-closed. Therefore, the plaintiff is entitled for the refund of the amount of Rs.30,00,000/- with interest at 18% p.a. Similarly, the plaintiff also claim damages for mental agony and financial difficulties suffered by the plaintiff.

6. As the defendant has not filed the written statement, they were set e*x parte* by this Court *on 09.12.2015.*

7. On the side of the plaintiff, Managing Parter of the plaintiff concern was examined as P.W.1 and Ex.P.1 to Ex.P.20 were marked.

Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Date	Description
1.	P-1	01.12.2004	Copy of registration certificate of plaintiff company
2.	P-2	01.12.2004	Copy of deed of partnership
3.	P-3	03.02.2012	Offer letter given by the defendant to the plaintiff
4.	P-4	11.10.2012	Offer letter given by the defendant enhancing the credit facilities to the plaintiff
5.	P-5	03.01.2013	Copy of the letter sent by the plaintiff to the defendant seeking renewal of credit facilities with enhancement
6.	P-6	20.01.2013	Copy of remainder sent by the plaintiff to the defendant
7.	P-7	23.01.2013	Reply sent by the defendant to the plaintiff
8.	P-8	15.02.2013	Copy of the letter sent by the plaintiff to the defendant
9.	P-9	20.02.2013	Letter sent by the defendant to the plaintiff
10.	P-10	28.03.2013	Copy of the letter sent by the plaintiff to the defendant with postal acknowledgment
11.	P-11	02.04.2013	Copy of the letter sent by the plaintiff to the defendant with postal acknowledgment
12.	P-12	04.04.2013	Letter sent by the defendant to the plaintiff
13.	P-13	08.04.2013	Copy of the letter sent by the plaintiff to the defendant
14.	P-14	09.04.2013	Copy of the complaint given by the plaintiff to the Banking Ombudsman
15.	P-15	16.04.2013	Letter sent by the defendant to the plaintiff
16.	P-16	24.04.2013	Copy of the letter sent by the plaintiff

S.No.	Exhibits	Date	Description
			to the defendant
17.	P-17	26.04.2013	Letter sent by the Reserve Bank of India to the plaintiff
18.	P-18	15.05.2013	Copy of the letter sent by the plaintiff to the defendant
19.	P-19	12.08.2013	Copy of legal notice sent by the plaintiff to the defendant
20.	P-20	06.09.2013	Reply notice sent by the defendant along with annexures

Witnesses examined on the side of the plaintiff:

P.W.1. - P.K.C.Ramesh

8. Heard the learned counsel for the plaintiff and perused the records.

9. P.W.1 in his evidence has spoken about the credit facilities extended by the defendant bank by their offer letter dated 03.02.2012. Though the plaintiff accepted the offer, requested for deletion of pre-closure penalty clause and it was agreed principally by the bank officials. Therefore, the plaintiff has decided to change over to the defendant bank. It is also spoken by P.W.1 that the defendant bank in the offer letter dated 03.02.2012 mentioned that the validity period for the credit facilities of clause 17 is only for twelve months. Thereafter, it has to be renewed by 05.01.2013. In between 03.02.2012 and

05.01.2013, the defendant has enhanced the credit facility to 1500 lakhs as they were much impressed by the performance of the plaintiff. Therefore the amendment of the facility letter dated 03.02.2012 was issued by the defendant on 11.02.2012. It is also spoken that the amendment to facilities is only in respect of the enhancement of the credit facilities and the other terms will not be changed. Therefore, the condition in the facility letter will continue to bind the parties.

10. Further, it is stated by P.W.1 that the original contract period as was to expire on 03.02.2013, before the expiry of the above period, when the plaintiff claimed further enhancement facilities, the same has not been worked out. Therefore, the plaintiff had to switch over to some other bank, namely Karur Vysya Bank and they paid the entire dues to the defendant's bank. However, the defendant insisted the plaintiff's to pay a sum of Rs.30 lakhs for closure of the accounts. Accordingly, the plaintiff has paid that amount. Further, it is stated by the plaintiff, that the defendants have no right to claim Rs.30 lakhs as pre-closure penalty charges beyond the period of the contract. Hence, it is the evidence of P.W.1 that they are entitled to get back that amount paid under protest. Besides the delay in handing over documents by the defendant, also created serious mental agony and also lead to loss to the plaintiff and hence, the

plaintiff claims damages to the tune of Rs.20,00,000/-.

11. On the side of the plaintiff Ex.P.1 is the copy of the firm registration certificate. Ex.P.2 is the Partnership Deed. Ex.P.3 is the offer letter dated 03.02.2012 given by the defendant bank. The same clearly indicate that the defendant has offered to extend various credit facilities for the value of Rs.1300 crores on certain conditions and interest rates also mentioned in Ex.P.3. Further, It is also specifically stated in their condition that the above credit facilities agreed to be provided to the plaintiff for a period of 12 months from 03.02.2012. It is also specifically stated that the above facilities will be available only for 12 months. It is also specifically stated in the condition that any payment and pre-closure of any of the credit facilities will attract pre-closure charges of 2% of the sanctioned limit. These aspects are not at all disputed. The conditions clearly stipulates that any prepayment or preclosure of any of the facilities provided by the bank will attract preclosure charges of 2%. From the conditions, it can be seen that such a preclosure penalty can be imposed only when the facilities are closed within one year and the letter also clearly show that other terms and conditions stand mutatis mutandi.

12. Ex.P.4 is the amendment to facility letter dated 03.02.2012 wherein the credit facility has been increased from Rs.13 crores to Rs.15 crores. The

said letter also clearly show that other terms and conditions will continue to bind the parties. Ex.P.4 is issued within the original contract period where the facilities were granted for a period of one year. Ex.P.5 is the letter sent by the plaintiff for renewal of credit facilities granted on 03.02.2012. For which again under Ex.P.6 a similar request made by the plaintiff for which the officials of the bank has made the following terms.

> "a. Enhancement proposal being submitted to head office. However, we will get back to you on any query in the financials.
>
> b. On prepayment charges, we have not committed in writing at the time of take over, however, we shall represent the case positively."

13. Ex.P.7 is the letter sent by the defendant calling the plaintiff for a meeting. There also the defendant has stated that they shall represent the plaintiff case to waive the penalty clause. Ex.P.9 is the reply sent by the bank officials wherein they have agreed to proceed in terms of take over of facilities by the Karur Vysya Bank. Ex.P.8 is the request again made by the plaintiff to permit the bank officials of Karur Vysya Bank to inspect the documents

deposited in the defendant's bank. Ex.P.10 shows that the plaintiff has deposited a sum of Rs.30,00,000/- under protest and without prejudice to their claim towards pre-closure penalty charges. Again they sent a letter in April 2013 requesting the defendant bank to hand over the documents to the Karur Vysya Bank wherein the plaintiff gave authorising letter to them to attach of Rs.30,00,000/- towards pre-closure charges for releasing the mortgaged property.

14. Ex.P.11 is the notice sent by the plaintiff to the defendant to release the collateral securities. Similarly under Ex.P.14, he made repeated requests to the defendant bank for which the defendant issued reply requiring the plaintiff to give authorisation to attach pre-closure penal charges which was also received by the defendant bank. Again on 24.04.2013, similar request was made by the plaintiff to the defendant Bank. Ex.P.17 shows that the plaintiff has also sent a letter to the Reserve Bank of India and the same has been referred to the Controlling Office of Yes Bank Ltd for necessary action. Thereafter, the defendant bank sent a letter to the plaintiff and the same clearly shows that the renewal authorisation letter issued by the bank is not accepted by the plaintiff. Ex.P.19 is the legal notice issued to the bank for return of the amount and also claiming compensation. Ex.P.20 is the reply sent by the bank wherein it has been stated that since the plaintiff continued to enjoy the credit facilities after

the expiry of the availability of period amounts to deemed acceptance of the terms and conditions of the renewal facility letter and hence, the plaintiff is liable to pay prepayment charges as per agreed terms.

15. From the above documents, it can be clearly seen that originally waiver of preclosure penalty charges was agreed between the parties as seen in Ex.P.1. Though the facilities was granted for a period of twelve months and the same expired on 02.03.2012, terms and conditions in the original offer letter dated 03.02.2011 were remained in force. Ex.P.20 clearly indicate that the renewal facilities letter of the defendant is not binding on the plaintiff. The plaintiff and the Karur Vysya Bank also paid the entire dues payable to the defendant's Bank. Therefore, when the entire amount has been paid towards the dues, the bank cannot insist preclosure penalty charges, that too after expiry of the period agreed between them and the same cannot be sustained in law. Hence, this Court is of the view that the plaintiff has made out a case for recovery of a sum of Rs.30,00,000/-, which was paid under protest and without prejudicing his right to collect the same with interest at the rate of 12% per annum.

16. As far as the damages is concerned, the plaintiff has not established the special damages suffered by them due to delay in closing the

account by the defendant bank and also in handing over the documents. The defendant have not challenged the documents and remained exparte. Hence the plaintiff has proved a case for recovery of a sum of Rs.33,24,000/- with interest.

17. In the result, the suit is decreed for a sum of Rs.30,24,000/- with interest at the rate of 6% on principal amount of Rs.30,00,000/- from the date of suit till the date realisation with costs. So far as damages is concerned, this suit is dismissed.

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Index : Yes
Internet: Yes

N.SATHISH KUMAR, J

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Judgment in

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