



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :21.01.2021

Pronounced on :04.02.2021

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Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Appeal Suit No.83 of 2010

1.A.Venkatarangaraju

2.Vatsala Devi

..Appellants/Defendants 2 & 3

/versus/

1.Bank of Maharashtra,
Shenoy Nagar Branch,
No.17/1, Pulla Avenue,
Shenoy Nagar,
Chennai-30,
rep.by its Branch Manager,
S.Ravikumar

..1st Respondent/Plaintiff

2.M.Paulpandian,
Proprietor
M/s Sithi Vinayaga Exports
Kamarajar Salai,
Virugampakkam,
Chennai 600 092.

3.P.Siva

4.Unit Trust of India Investor Services Ltd.,
P.B.No.1685 No.15,
Justice Baheer Ahmed Buildings,
Second line Beach,
Chennai 600 001.

5.Arul Raj, Regional Manager,
Unit Trust of India. ..Respondents 2 to 5/Defendants 1,4,5 and 6
(5th respondent/6th defendant was given up since
the suit against him is dismissed)

Prayer:- Appeal Suit has been filed under Order 41, Rule 1 of
the Civil Procedure Code r/w Section 96 of the Civil Procedure
Code praying to set aside the decree and judgment passed in
O.S.No.1108 of 2005 dated 24.09.2007 by the VI Additional Judge,
City Civil Court, Chennai.



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For Appellants :Mr.D.Govinda Reddy

For Respondents:Mr.C.Prabakaran for
Mr.K.Aravintha Bharathi for R1
Not Ready in notice for R2 and R3
R4-No appearance
R5-Given up

JUDGMENT

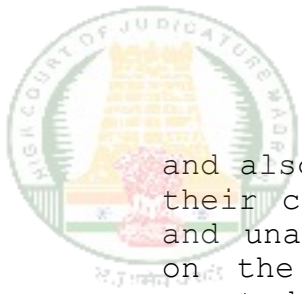
Appeal against the money decree passed against the appellants, who stood guarantee for the packing credit facility extended by the first respondent bank to the second respondent.

2.The plaint averment in short:

The plaintiff is a Nationalised Bank. The 1st defendant is the Proprietor of M/s Sithi Vinayagar Exports. During the month of May 2002, to process and execute the orders received for export of onions, the first defendant requested the plaintiff bank to extend the existing packing credit facility to the tune of Rs.5lakhs. Accordingly, the plaintiff-bank sanctioned two export packing credit facilities (P.C.No.22 and P.C.No.24) on 9/05/2002. Defendants 2 to 4 stood personal guarantee for the said loan facilities. Defendants 2 and 3 also jointly pledged their MIP 97 (II) Unit Certificate No.300971760032041 representing 50,600 units. The first defendant executed a pronote dated 09/05/2002 for Rs.5,00,000/- and undertook to repay the amount with 8% p.a., interest with quarterly rests. The first defendant has also created hypothecation of stocks of onions and packing materials. Defendants 2 to 4 who stood guarantee for the loan, executed a deed of guarantee dated 09/05/2002 for a sum of Rs.5,00,000/-. On intimation to the 5th defendant about the pledge of the units by defendants 2 and 3, the 5th defendant marked lien dated 08/07/2002 against the plaintiff bank in respect of Folio No.300030220000024.

3.While so, when the plaintiff, vide letter dated 28/07/2004, sought the 5th defendant to furnish the value of the lien marked units, to their shock and surprise it was informed that the said units were already repurchased by the 2nd defendant and settled in his favour. The 6th defendant through his letter dated 30/07/2004 admitted that due to inadvertence the lien marked in the system was not carried out, hence, they allowed the 2nd and 3rd defendants to repurchase the units. The 6th defendant knowingly allowed the 2nd and 3rd defendants to repurchase the lien marked units and paid them a sum of Rs.11,49,590/- through cheque dated 01/04/2004.

4.Notice issued to the 1st defendant the principle borrower and defendants 2 to 4 the guarantors to repay the loan amount



and also to the 5th and 6th defendants informing them that due to their carelessness and neglect, the plaintiff is made to suffer and unable to recover the loan due. Because of the lien marked on the units of the guarantors, packing facility loan was granted to the 1st defendant, without any primary security. Since they allowed defendants 2 and 3 to repurchase the lien marked units, they are liable along with the other defendants to repay the loan amount with agreed interest. Hence, the suit filed for recovery of Rs.5,52,276/- together with interest at the rate of 15.5% p.a., with quarterly rests as on 10/08/2004 payable by defendants 1 to 6 jointly and severally.

5.The reliefs sought in the suit are as under:-

(a) To direct all the defendants to pay a sum of Rs.7,55,065/- (Rupees seven lakhs and sixty five only) with future interest at the rate of 15.5% per annum with quarterly rest towards packing credit facility from the date of plaint till the date of realisation in full with cost within the stipulated time fixed by this Hon'ble Court.

(b) If they fails to make the payment as aforesaid to order of sale of Hypothecated stocks lying at No.12, Kamarajar Salai, Virukambakkam, Chennai 600 092 which is more fully described in the schedule given hereunder and for appropriation of sale proceeds towards the amount due and decreed against the two facilities.

(c) For a direction that in case of the sale proceeds of the schedule mentioned moveable properties are found to be insufficient for the payment of the decree amount in full the defendants may be directed to jointly and severally to pay to the plaintiff the amount of such deficiency with contractual rate of interest till the date of realization.

(d) to pay the costs of the suit.

6.Statements of the defendants in short:

In the written statement filed by the 1st and 4th defendants, it is admitted that the 1st defendant is the Proprietor of M/s Sithi Vinayagar Exports and availed loan from the plaintiff. The plaintiff bank sanctioned packing credit facility limit to the tune of Rs.5,00,000/- for processing and to execute onions export orders. The defendants 2 and 3 stood as guarantors and pledged their UTI certificates worth Rs.5,06,000/-. The credit limit was upto Rs.5,00,000/-, he did not avail the full loan but asked to execute pro-note dated 09/06/2002 for Rs.5,00,000/- in favour of the plaintiff bank. The plaintiff bank obtained



signatures in several documents, mostly in printed form. The UTI certificates of the 2nd and 3rd defendants were charged for the loan and lien was marked. The demand notice issued by the plaintiff is admitted. The averment that the plaintiff made to suffer and unable to recover the loan, due to the 5th and 6th defendants allowing the repurchase of units by the 2nd and 3rd defendants, despite marking lien, is denied. The fact that the 1st defendant had deposited his title deed of his property as security for the loan is suppressed by the plaintiff. Due to the loss in the onion export business, the 1st defendant was not able to pay the loan amount in time. Hence sought time to clear the dues. He has not availed loan of Rs.5,00,000/-. The unilateral claim of 15.5% interest p.a., with quarterly rests and 2% interest for default payment is contrary to the terms of agreement.

7. In the written statement filed on behalf of defendants 2 and 3, the plaintiff averment that, the 1st defendant is the principal borrower from the plaintiff and defendants 2 and 3 are the guarantors is admitted. However, the 5th and 6th defendants are not the necessary parties to the suit. The plaintiff and the 1st defendant had financial relationship even before defendants 2 and 3 stood guarantee for the 1st defendant. The loan under P.C.No.22 was sanctioned and paid to the 1st defendant prior to the execution of personal guarantee and the pledge of the unit. These defendants are not liable for the sum of Rs.1,53,000/- sanctioned to the 1st defendant between 22/02/2002 and 27/03/2002. The execution of deed of guarantee dated 09/06/2002 by defendants 2 to 4 for packing facility loan upto Rs.5,00,000/- sanctioned to the 1st defendant binding only for the future loan and not for the past loan.

8. In the written statement filed by the 5th and 6th defendants, it is averred that the suit is not maintainable against these defendants. They are not the parties to the suit transaction and no cause of action against them. The plaintiff sent a letter dated 20/05/2002 requesting the 5th defendant to mark lien in respect of MIP 97 II of 50,600 units dated 01/06/1997 standing in the name of the 2nd and 3rd defendants. Since the plaintiff sent only one certificate instead of all the certificates, the certificate was returned along with letter dated 31/05/2002 informing the plaintiff that the lien could be marked only if all the certificates are sent. When the units in question got matured on 30/06/2002, after ascertaining from the investors about their option to re-invest or to re-purchase the units, the money was re-invested in UTI Bond Fund, as per the instruction of the investors. While so, the plaintiff submitted all the Units under MIP 97 (II) and requested the 5th defendant to mark lien. The 5th defendant, by its letter dated 08.07.2002, informed the plaintiff that their lien has been marked and that



all the certificates must be kept under their custody and if the certificates were represented for transfer or re-purchase, the same would be dealt with by the 5th defendant. This letter was followed by letter dated 19.11.2002 bearing Reference UTI ISL/SALES/UBF/STOP wherein the plaintiff was put on notice that MIP 97 (II) lost its validity on 30.06.2002 on the date of maturity. As per the terms and conditions of the scheme, the 5th defendant is entitled to re-purchase/transfer such units. No valid contract was concluded, as the lien was marked after conversion and the same was done due to mistake of fact. There was no consensus, while issuing the letters dated 08.07.2002 and 19.11.2002. Therefore, the plaintiff cannot claim any amount from the defendants, based on these letters. Defendants 2 and 3 did not issue any authority letter for marking lien on UTI Bond Fund.

9. Having put on notice that the proceeds of MIP 97 (II) units were on maturity re-invested in UTI Bond Fund, the plaintiff failed to get the necessary consent from defendants 2 and 3 to pledge the same. Having failed to do so, the plaintiff cannot make any claim against defendants 5 and 6. The UTI Folio of the guarantors was not the prime security for the loan as alleged in the plaint. For the credit facility extended to the 1st defendant, who is the principal borrower, the stock in trade is hypothecated. The plaintiff has not explained, how the amount claimed is due and payable. The rate of interest claimed is excessive and not in consonance with the RBI guidelines. The suit being devoid of merits to be dismissed against these defendants.

10. Based on the above pleadings, the trial Court framed the following issues:-

1. Whether the plaintiff is entitled for the suit claim amount?
2. Whether the plaintiff is entitled for a money decree?
3. Whether the plaintiff is entitled to the sale of hypothecated stocks of the first defendant?
4. Whether the plaintiff is entitled for the sale of immovable properties are found to sufficient for the decree amount?
5. Whether the plaintiff is entitled for a decree and judgment against the defendants 2 to 6?
6. Whether the interest claimed by the plaintiff is excessive?
7. To what relief the plaintiff is entitled to?



11. On behalf of the plaintiff bank the evidence of PW-1 and Exs.A-1 to A-25 relied. On behalf of the defendants, the evidence of DW-1 to DW-3 and Ex.B-1 to Ex.B-3 were relied.

12. The trial Court held that the plaintiff is entitled to get decree against defendants 1 to 5. As far as the 6th defendant is concerned, it held that he is not liable to pay the amount in his individual capacity. Therefore, the suit against defendants 1 to 5 allowed as prayed for and dismissed against the 6th defendant.

13. The appeal is preferred by the 2nd and 3rd defendants assailing the trial Court judgment as contrary to law and material facts. It is contended that the trial Court erred in allowing the suit, when the suit claim of Rs.7,55,065/- not supported by proper statement of accounts. The Court erred in granting interest at the rate of 15.5% with quarterly rests, when the contractual rate of interest was only 8%. Two different loans were sanctioned to the principal borrower. The loan amount of Rs.1,53,000/- borrowed under P.C.No.22 prior to execution of guarantee deed (ie) 09/05/2002 will not bind defendants 2 and 3. The trial Court erred including two different money transactions into one transaction and made the guarantors also liable to the amount, which was sanctioned prior to execution of guarantee deed. Therefore, defendants 2 and 3 as guarantors are liable to pay only Rs.2,57,000/- the loan extended after 09/05/2002 with 8% interest and nothing more. The statement of account marked as Ex.A-24 indicates only Rs.1,87,862/- due under loan account P.C.No.22 and Rs.3,05,571/- under Loan account P.C.No.24, totally Rs.4,93,433/- inclusive of interest. Whereas, the suit claim is for Rs.7,55,065/- The trial Court erred in not considering the illegal and excessive claim made by the plaintiff Bank. The trial Court misconstrued Clause 8 of Ex.A-7 and erroneously held that the guarantee offered is for the previous borrowing also.

14. The learned counsel for the appellants specifically pleaded that, the suit claim against the appellants is contrary to the terms of the guarantee deed. Particularly, the principal amount and the rate of interest are not as per the statement of accounts Ex.A-24. It is contrary to the demand notice Ex.B-1 and the terms of agreement Ex.A-7. Also contended that the defendants in their reply notice Ex.A-20 never admitted the claim of the plaintiff bank, but the trial Court misconstrued that there is admission of liability by the defendants 2 and 3.

15. The learned counsel for the respondent bank defended the judgment and decree of the trial Court by submitting that the defendants in their respective written statements have admitted the transaction and execution of documents creating lien over



the units, they held with the 5th defendant. The deeds executed by the appellants/ 2nd and 3rd defendants guarantee the payment of the debt both past and future, payable by the principal borrower the first defendant. The suit claim is based on the terms of loan agreement. The interest rate at 15.5% p.a. with quarterly rests and additional interest of 2% for default is in tune with clause 3 of the agreement Ex.A4.

16.Arguments heard. Records perused.

17.The appellants herein are the guarantors to the principal borrower, who is none other than their son. They came forward to stand guarantee for the principal borrower on 09/05/2002. The personal guarantee deed executed by these appellants is marked as Ex.A-5. The declaration letter executed by them is Ex.A-6. The units of UTI held by them were pledged towards the packing credit facilities granted to the first defendant. The agreement and pledge of shares/securities is Ex.A-7. The defendants 1 to 4 have jointly given a letter Ex.A-8 to the plaintiff consenting to appropriate the money receivable from UTI towards the loan due without consent or intimation. Exs.A-5 to A-8 are dated 09/05/2002. The demand notice dated 10/08/2004 sent to the appellants/ 2nd and 3rd defendants is Ex.A-19. The reply notice of the appellants is Ex. A-21.

18.The plaintiff contention is that the 5th and 6th defendants failed to mark lien of the units and allowed the appellants to repurchase it. From the correspondence between the plaintiff and 5th defendant, it is due to the lapse on the part of the plaintiff. They failed to forward all the certificates to the 5th defendant for marking lien. By the time the plaintiff forwarded all the certificates, the defendants 2 and 3, had re invested the matured amount in a different scheme. Being an open ended scheme, the 5th defendant, vide the letter dated 30/07/2004 had informed the plaintiff bank that the UTI bond fund scheme is an open ended scheme and there is no provision for lien marking. However, on the part of the 5th defendant, they also erred by allowing the investors to re-invest the matured amount in the UTI bond fund scheme, without getting back the original unit certificates (Ex.A-13 series). Therefore, the trial Court has rightly fixed the liability on the 5th defendant jointly and severally along with the other defendants, who are the principal borrower and guarantors.

19.On scrutiny of the documents executed by defendants 1 to 4 jointly and defendants 2 and 3, who are the appellants herein, this Court finds nowhere they have restricted their guarantee for the second loan facility alone namely PC 24. In fact, as per clause 1 of Ex.A-5 the guarantee deed dated 09/05/2002, the appellants herein have agreed to stand guarantee for the payment by the borrower to the plaintiff bank all the amounts of the



principal and all interest, costs, charges and expenses chargeable by the bank to the borrowers in respect of the credit facilities extended to the principal borrower. The PC agreement between the plaintiff and the principal borrower is dated 09/05/2002 and credit limit granted for Rs.5,00,000/- does not indicate any particular PC. Therefore, the claim of the guarantors that they stood guarantee only for P.C.No.24 and not for P.C.No. 22 is unsustainable, contrary to the terms of agreement signed and executed by the appellants.

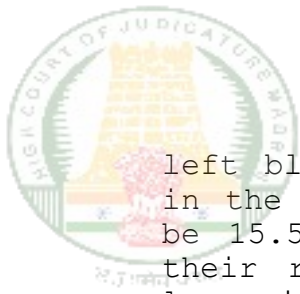
20.Regarding the suit claim of Rs.7,55,065/- in respect of the principal and 15.5%, this Court could not find that the borrower or the guarantors had agreed for 15.5% interest p.a. The rate of interest clause found in Ex.A-7 which is the pledge and cash credit agreement reads as below:-

"Rate of Interest 2(i): The borrower/s further covenant/s with the Bank to pay to the Bank interest on the amount due under loan/cash-credit account from time to time at the rate of% over the prevailing Bank Rate with a minimum 8% p.a., with quarterly rests to be taken and such interest to be paid on the 30th June, 30th September, 31st December and 31st March of each year till the entire loan and interest thereon/all money due under said cash-credit facility is repaid by the borrower/s. Such interest to be calculated on the daily debit balances.

Compounding of interest (ii): On default in payment of any interest as stated above the Bank shall be entitled to capitalise such interest by debiting it to the borrower's Loan/Cash-Credit account and charge interest thereon as if such amount was an additional loan/cash-Credit facility granted by the Bank to the Borrower/s carrying interest at the said rate.

Additional Interest(iii): The Borrower/s further covenant/s with the Bank that on default in payment of any one instalment of principal or the quarterly interest on the due dates, the Bank shall be entitled to charge additional interest (by way of liquidated damages) at the rate of 2% p.a., from the date of default to the date of payment.

21.Though there is a clause for compounding of interest and additional interest of 2% in case of default, the interest rate over and above the prevailing interest rate is not mentioned and



left blank. Except mention 8% p.a as minimum interest, nowhere in the agreement one could find that the rate of interest will be 15.5%. It is correct to say that the appellants herein in their reply notice Ex.A-20 given an undertaking to clear the loan within one year. It is not the acknowledgment to levy 15.5% interest p.a. Therefore the plaintiff bank is not entitled for interest more than 8% p.a plus 2% for default payment. Accordingly, the decretal amount has to be scaled down.

22.In the result, this Appeal Suit is partly allowed. The plaintiff bank is entitled only for Rs.1,53,000 + Rs.2,57,000/- = Rs.4,10,000/- towards to due as on 31/01/2005 (as per Ex.A-24) and interest at the rate of 8% with quarterly rests for the said amount and 2% default interest and proportionate costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:

1. The VI Additional Judge, City Civil Court,
Chennai.

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

+1 CC to Mr.D. Govindha Reddy, Advocate sr 6274
+1 CC to Mr.K. Subbu Ranga Bharathi, Advocate sr 6378

A.S.No.83 of 2010

SRI(CO)
SP(06/09/2021)