IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.11.2021
PRONOUNCED ON : 02.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.987 of 2014
and M.P.No.1 of 2014

The State Bank of India,
Represented by its Chief Manager,
Nagapattinam Branch,
Nagapattinam. ... Appellant/Respondent/Plaintiff

Vs.

Mr.R.Krishnakumar ... Respondent/Appellant/Defendant

Prayer: This Criminal Revision Case has been filed under Section 100 of C.P.C., against the judgment and decree passed by the learned Subordinate Judge, Nagapattinam, in A.S.No.8 of 2012, dated 25.06.2014 reversing the judgment and decree passed in O.S.No.323 of 2005, by the learned District Munsif Court, Nagapattinam, dated 10.08.2011.

For Petitioner : Mr.M.L.Ganesh

For Respondent : No appearance

O R D E R

The plaintiff/State Bank of India is the appellant herein.

2.This Second Appeal filed against the judgment and decree passed by the learned Subordinate Judge, Nagapattinam, in A.S.No.8 of 2012, dated 25.06.2014, wherein, the learned Judge has reversed the judgment and decree passed in O.S.No.323 of 2005, by the learned District Munsif Court, Nagapattinam, dated 10.08.2011.

3.Brief facts of the case:

(a)The appellant/Bank has filed a suit in O.S.No.323 of 2005, before the District Munsif Court, Nagapattinam for recovery of money due from the respondent/defendant in respect of agricultural loan of Rs.60,000/- availed by the respondent/defendant on 30.08.1995 and agreeing for the same, the respondent/defendant has executed a mortgage deed by depositing the title deeds and the loan has been acknowledged and renewed in the year 1996, 1997, 1998, 2000, 2003 & 2005 and hence, the balance amount of Rs.52,989/- has to be paid by the defendant.

(b).In the written statement filed by the respondent/defendant, he has pleaded that in view of the waiver Scheme issued by the Government under the Agricultural Debt Waiver and Debt Relief Scheme 2008, he is entitled for waiver, besides he made excess payment of amount of Rs.28,000/-.

(c).Before the Trial Court, on behalf of the plaintiff/Bank PW1 was examined and Exs.A1 to A17 were marked and on behalf of the defendants DW1 to DW3 were examined and Exs.B1 to B18 were marked and also marked the judgment copy passed by this Court in CRP(PD) No. 4486 of 2010.

(d).After perusing the records, the Trial Court has decreed the suit. Aggrieved against the same, the defendant has preferred an appeal suit in A.S.No.8 of 2012, before the learned Subordinate Judge, Nagapattinam and by an order dated 25.06.2014, the learned Judge has allowed the appeal on the ground that the defendant is entitled for 25% waiver under the Agricultural Debt Waiver and Debt Relief Scheme 2008 and directed the respondent/defendant to pay the balance amount of Rs.28,000/- within a period of two months from 25.04.2014 to the Bank as against the outstanding loan amount of Rs.52,989/- together with interest at 8.5% per annum from the date of filing of the suit till the date of realization. The said finding is under challenge by the appellant/plaintiff's Bank by way of Second Appeal.

4.Heard the learned counsel for the appellant and perused the materials placed on record.

5.After hearing the learned counsel for the appellant following substantial questions of law are framed:

"1.Whether the First Appellate Court is right in overruling the provision of the Agricultural Debt Waiver and Debt Relief Scheme, 2008 announced by the Government.

2.Whether the First Appellate Court is justified in reversing the judgement and decree of the Lower Court just because the respondent had expressed and made a statement that he is ready and willing to pay the balance amount after the Appellant Bank given waiver amount in terms of the said scheme?"

6.The learned counsel for the appellant would contend that in order to avail benefit of the said scheme viz., Agricultural Debt Waiver and Debt Relief Scheme, 2008, the respondent/defendant ought to have paid 75% of the loan amount and further he would contend that under Ex.B10/the letter sent by the appellant/plaintiff's Bank to the respondent /defendant, the entitlement of the respondent/defendant was admitted subject to the condition that he must pay 75% of the loan amount for the grant the waiver of 25% and under the said document viz., Ex.B10 there is no whisper regarding the entitlement of a person, who is willing to pay 75% of the loan amount.

7.Further, it is seen from the records, that initially there was an ex-parte decree and consequently, the defendant has filed a petition in I.A.No.485 of 2010, for condoning the delay of 1032 days in CRP and this Court by an order dated 14.02.2011 has ordered to deposit a sum of Rs.35,000/-, to give an opportunity of payment of the amount and the suit was again posted for trial.

8(a).On a perusal of the recital under Ex.B10, it is observed that the respondent/defendant is entitle for the relief if he has paid 75% of the loan. After going through Ex.B10, the nature of the loan availed by the respondent/defendant is entitled for waiver subject to the condition that he has to pay 75% of the loan availed. In the written statement, the respondent/defendant has expressed his willingness for such a waiver but he has not deposited 75% of the loan amount. On a proper interpretation of Ex.B10, this Court finds that a farmer will be given waiver 25% of eligible amount subject to the condition that the former has made payment of 75% of the outstanding amount. In other words, the nature of the loan of the respondent/defendant, who eligible for the scheme to avail the benefit, he could have paid 75% of the outstanding due and mere readiness expressed by the respondent/defendant to pay the amount is not sufficient enough to claim the benefits under the said scheme.

8(b).On a perusal of the documentary evidence filed before the Trial Court, as per Ex.A1/lease agreement given by the respondent/defendant to the Bank/plaintiff, the property of the respondent/defendant has been mortgaged and there is a revival of loan as per Exs.A11, A12, A13, A14 and A15. Mere willingness expressed by the respondent/defendant in the written statement cannot amount to payment. As per the evidence of DW1/Bank Manager coupled with the documentary evidence of Ex.A17/Bank account details of the respondent/defenant in respect of the loan, the Trial Court has rightly ordered that the respondent/defendant is liable to pay the said amount and hence, finding rendered by the Trial Court is restored and accordingly, judgment and decree passed by the Trial Court is confirmed and the Judgment passed by the Lower Appellate Court is set aside. Hence, I find that both the substantial questions of law framed above are in favour of the appellant/plaintiff.

9.Accordingly, the Second Appeal is allowed and the judgment and decree passed in O.S.No.323 of 2005, by the learned District Munsif Court, Nagapattinam, dated 10.08.2011, as to the preliminary decree is hereby confirmed by setting aside the judgment and decree passed the Lower Appellate Court made in A.S.No. 8 of 2012, by the learned Subordinate Judge, Nagapattinam, dated 25.06.2014. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

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To:

1.The Subordinate Judge,
Nagapattinam.

2.The District Munsif Court,
Nagapattinam.

3.The Section Officer,
V.R.Section,
High Court, Madras-104.

SPD(CO)
CB(28/12/2021)