BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 20.04.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
SA(MD)No.599 of 2011

M/s.Dhanalakshmi Papers & Boards Company,
through its Partner Mrs.S.Visalakshi
... Plaintiff/Respondent/Appellant

Vs.

S.Sankaravel ...Defendant/Appellant/Respondent

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree made in A.S No.8 of 2008 dated 18.01.2010 on the file of the Sub Court, Sivakasi reversing the judgment and decree made in O.S No.151 of 2004 dated 25.10.2007 on the file of the District Musnif Court, Sivakasi.

For Appellant : Mr.R.Murali

For Respondent : Mr.R.R.Kannan
for Mr.Balagangatharan

JUDGEMENT

The plaintiff in O.S No.151 of 2004 on the file of the District Munsif Court, Sivakasi is the appellant in this second appeal. The case of the plaintiff is that they are a registered firm dealing in paper and boards. The defendant would purchase goods from the plaintiff firm on credit basis. Since 1995, the defendant had transactions with the plaintiff. The defendant would take the goods on condition that he would pay the value of the goods together with interest at the rate of 30%. As per the accounts maintained by the plaintiff as on 30.06.2003, the defendant owed to pay a sum of Rs.66,746/-. The plaintiff issued Ex.A14 notice calling upon the defendant to pay the said amount with interest. Since the defendant did not come forward to clear his liability, the plaintiff filed O.S No.206 of 2003 before the Sub Court, (later transferred to District Munsif Court, Sivakasi and renumbered as O.S No.151 of 2004).

2.The manager of the plaintiff firm himself examined as PW.1 and Exs.A1 to A42 were marked. The defendant examined himself as DW.1 and marked Exs.B1 to B4. The learned trial Judge by judgment and decree dated 25.10.2007, partly decreed the suit and directed the defendant to pay the suit claim of Rs.74,044/- with interest at the rate of 18% on the principal amount of Rs.66,746/- from the date of suit till the date of decree and at the rate of 6% on the principal amount from the date of decree till the date of payment. Aggrieved by the same, the defendant filed A.S No.8 of 2008 before the Sub Court, Sivakasi. The appellate Judge partly allowed the appeal and modified the trial court decree and directed the defendant to pay a sum of Rs.32,290/- to the plaintiff with interest at the rate of 30% per annum on the sum of Rs.18,663/- from the date of suit till the date of realization. Challenging the same, the plaintiff filed this Second Appeal. The Second Appeal was admitted on the following substantial questions of law.

> "*1.Whether the judgment and decree of the lower appellate court is sustainable in reversing the well considered judgment and decree of the trial court without reversing the findings of the trial court.*
>
> *2.Whether the judgment and decree of the lower appellate court in reversing the trial court judgment and decree is sustainable in view of Ex.A10 to A13 debit notes accepted by the defendant ? and*
>
> *3.Whether the judgment and decree of the lower appellate court in modifying the principal amount without any evidence is sustainable?*"

3.Heard the learned counsel on either side.

4.The learned counsel for the appellant would point out that Exs.B1 to B4 were the debit notes issued by the plaintiff. In fact, those very same notices have been marked on the side of the plaintiff also. The trade practice was to charge 30% on the deferred payment. In fact, the defendant had commercial transactions with the plaintiff right from the year 1995. The defendant had taken the goods by agreeing to pay 30% interest on such deferred payment on the goods purchased by him. It is true that at one point of time, the liability of the defendant was quantified at Rs.18,663/-. But, on account of the delay on his part, due to accumulation of interest, the liability mounted to Rs.58,102/- on 30.12.2002 as evident by Ex.B4. The suit came to be laid in the middle of 2003. By then, the liability of the defendant had mounted further to Rs.74,044/-. The counsel for the appellant pointed out that the lower appellate court erroneously came to the conclusion that the principal amount will have to remain static. The accumulation of interest on account of non-payment was not taken note of by the first appellate court. He therefore wanted this Court to answer the substantial questions of law in favour of the appellant and set aside the judgment of the first appellate court and restore the judgment of the trial court.

5.Per contra, the learned counsel for the respondent submitted that the impugned judgment passed by the first appellate court does not call for any interference. He also would point out that charging 30% interest would definitely shock the conscience of any person and it on the very face of it amounts to charging of exorbitant interest. In fact, he went to the extent of submitting that 30% interest awarded by the court below on the principal amount should also be interfered with even though he had not filed any cross appeal.

6.I carefully considered the rival contentions and went through the evidence on record. The issue on hand pertains to computation of the rate of interest. The basic facts are not in dispute. The respondent had purchased goods from the appellant firm by agreeing to pay 30% interest on the deferred payment on the value of the goods. Ex.B4 has been marked by none other than the respondent himself. Section 34 of Civil Procedure Code reads as follows :

> "(1)Where and in so far as a decree is for the payment of money, the Court, may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:
> Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions."

7.The court will have the power to fix reasonable rate of interest only from the date of decree. Otherwise, it will have to go by the contractual rate. In the case hand, though there is no express agreement between the parties from the evidence marked on either side, one can come the safe conclusion that the contractual rate was 30%. The first appellate court erred in proceeding on the premise that the principal amount would remain fixed and static. Therefore, the judgment of the first appellate court is set aside and the judgment of the trial court is restored.

8.The Second Appeal is allowed. No costs.

Sd/-
Assistant Registrar (AE)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

skm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Sub Judge, Sivakasi.

2.The District Musnif, Sivakasi.

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Madurai Bench of the Madras High Court, Madurai.

+1 CC to Mr.RR KANNAN, Advocate (SR-16804[F] dated 21/04/2021)

+1 CC to Mr.M.SURESH KUMAR, Advocate (SR-16882[F] dated 21/04/2021)

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