



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 28.04.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

SA(MD)No.566 of 2012

Syndicate Bank, Karaikudi Branch,
Karaikudi, Sivagangai District,
Rep.through its Branch Manager

... Appellant/Appellant/Plaintiff

Vs.

1.M.Alagappan

2.M.Sankar

...Respondents/Respondents/Defendants

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 30.09.2011 passed in A.S No.16 of 2011 on the file of the District Judge, Sivagangai confirming the judgment and decree dated 28.02.2008 in O.S No.77 of 2006 on the file of the Subordinate Judge, Devakottai.

For Appellant	: Mr.R.Pandivel
For Respondent	: Mr.R.Sundar Srinivasan for R1 Mr.K.Govindarajan for R2

JUDGEMENT

The plaintiff in O.S No.77 of 2006 on the file of the Sub Judge, Devakottai is the appellant in this second appeal. The appellant filed the said suit for recovering a sum of Rs.2,26,955/- from the defendants herein. The plaintiff is a Nationalised Bank. The case of the plaintiff is that the first defendant has availed over draft facility upto Rs.3.00 lacs and agreed to pay the said sum with subsequent interest. The second defendant stood as a guarantor. The defendants executed a renewal letter on 15.07.2003. The first defendant committed default. Therefore, to recover the same, the suit was filed on 14.07.2006. There can be no doubt that the suit was filed within the limitation period though literally on the last date. It appears that due to paucity of stamp papers, the suit was filed by affixing only a sum of Rs.100.00 as court fee. However, on the same day, an application was taken out seeking extension of time



to pay the deficit court fee and order obtained. The deficit court fee was duly paid within the extended time granted by the trial court. After the suit summons were issued to the defendants, they also entered appearance and filed I.A No.93 of 2007 seeking rejection of plaint. Vide order dated 28.02.2008, the application filed under Order 7 Rule 11 of CPC was allowed and the plaint was rejected. The ground on which the said order was passed was that the plaintiff did not pay the entire court fee within the limitation period. The learned trial Judge declined to take note of the fact that the deficit court fee eventually came to be paid. Questioning the same, the appellant herein filed A.S No.16 of 2011 before the District Court, Sivagangai. By the impugned judgment and decree dated 30.09.2011, the first appellate court came to the conclusion that the filing of the first appeal was not maintainable and that a Civil Revision Petition only will lie. Questioning the same, this Second Appeal came to be filed. The second appeal was admitted on the following substantial questions of law :

"1.Whether an order rejecting the plaint should be construed as a "decree" as provided under Section 2(2) of the Code of Civil Procedure ?

2.Whether the rejection of the plaint is proper under Order 7 Rule 11(C) even after paying the deficit court fees within a time fixed by the Court ?

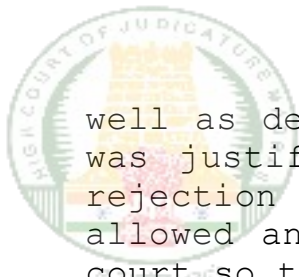
3.Whether the 1st appellate court's judgment is sustainable due to non-compliance of the provision under Order 41 Rule 31 of the Code of Civil Procedure ? and

4.Whether the first appellate court's judgment, without any discussion about the trial court's judgment is sustainable?".

2.Heard the learned counsel on either side.

3.It is well settled that an order rejecting plaint will amount to a decree and as such only an appeal under Section 96 (2) of CPC will lie. This is evident from the definition of the decree provided under Section 2(2) of CPC. The first appellate court had gone wrong in holding that only a CRP will lie and not an appeal under Section 96 of CPC. Therefore, the first substantial question of law is answered in favour of the appellant.

4.In normal course, since the first appeal had suffered dismissal only on the ground of maintainability, the second appeal need not be decided on merits by this Court and the matter can be remanded to the first appellate court. But then, the first appeal was only on a pure question of law. Therefore, the learned counsel for the appellant bank suggested that this Court can as



well as decide whether the rejection of plaint by the trial court was justified. If this Court comes to the conclusion that the rejection of plaint is not justified, the second appeal can be allowed and straightaway the matter can be remanded to the trial court so that the suit can be decided on merits.

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5. It is seen that the suit transaction is of the year 2002. Already 19 years have gone by. As already suggested by the appellant's counsel, I decided to test the correctness of the order passed by the trial court. There is no doubt that the suit was filed within the limitation period. Of course, the entire court fee was not paid. For paying the deficit court fee, extension of time was sought for. Within the extended time, the deficit court fee was also paid. The only question is as to whether the non-payment of the entire court fee within the limitation period can lead to the conclusion that the suit itself was not filed in time. The trial court has not taken note of the mandate set out in Section 149 of CPC. Section 149 of CPC reads as follows :

"Power to make up deficiency of court-fees.- Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance."

This Section had been interpreted in a catena of decisions. The learned counsel for the appellant draws my attention to one such decision reported in **2011 (3) MLJ 1037 (P.Kumar v. Sanjay Agarwal)**. The Hon'ble Judge in the said case had held as follows :

"29. Be that as it may, the terms "at any stage" in Section 149 of Civil Procedure Code adumbrates that the deficiencies can be made good even after the expiry of the limitation period in regard to the filing of the suit or Appeal and further, the discretion can be exercised even in the case of a plaint without any Court fee. In this connection, it is not out of place for this Court to point out that the discretion showered on a Court of law as per Section 149 of C.P.C. is over and above the application under Order 7, Rule 11 of C.P.C. To put it precisely Order 7, Rule 11 of



disabling one and the proper Section in and by which time may be granted for payment of Court fee is only Section 149."

6. Therefore, I have no hesitation to answer the second substantial question of law in favour of the appellant. It is answered in favour of the appellant. The judgment and decree passed by the courts below are set aside. The second appeal is allowed. The matter is remitted to the file of the trial court. Since the suit is of the year 2006, the trial Judge will ensure that the suit proceedings are decided on merits and in accordance with law within a period of six months from the date of receipt of copy of this order. Since the defendants have entered appearance through counsel before this Court, there is no need to issue any fresh suit summons to them. The defendants will enter appearance before the trial court on 25.06.2021. The defendants will file their written statements on 25.06.2021 itself. Registry is directed to return the records to the trial court. No costs.

Sd/-

Assistant Registrar ()

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/ /2021

Sub Assistant Registrar(CS)

skm

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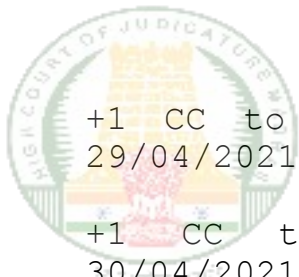
To

1.The District Judge, Sivagangai.

2.The Subordinate Judge, Devakottai.

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Madurai Bench of the Madras High Court, Madurai.
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SA(MD)No.566 of 2012

+1 CC to Mr.R.SUNDAR SRINIVASAN, Advocate (SR-17980[F] dated 29/04/2021)

+1 CC to Mr.K.GOVINDARAJAN, Advocate (SR-18106[F] dated 30/04/2021)

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