



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
S.A. (MD)No.763 of 2012

WEB COPY

T.Arumugam

... Appellant/Appellant/Plaintiff

-Vs-

N.Namperumal

... Respondent/Respondent/Defendant

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the Judgment and decree of the Principal District Judge, Dindigul, dated 01.03.2010 in A.S.No.33 of 2008 confirming the Judgment and decree passed by the Additional Sub Court, Dindigul, dated 02.06.2008 in O.S.No.86 of 2004.

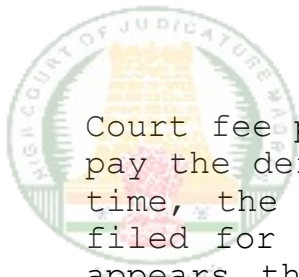
For Appellant : Mr.S.Anand Chandrasekar
for M/s.Sarvabhauman Associates
For Respondent : Mr.AL.Kannan
for Mr.D.Muruganantham

JUDGMENT

The plaintiff in O.S.No.86 of 2004 on the file of the Additional Sub Court, Dindigul, is the appellant in this second appeal.

2.The appellant filed the said suit on the strength of Ex.A1-pro-note dated 05.01.2001. According to the appellant, the defendant borrowed a sum of Rs.1,50,000/- from him and executed the pro-note. The appellant issued Ex.A2-suit notice dated 16.06.2003. Though the defendant received the same as evidenced by the acknowledgment card-Ex.A3 dated 19.06.2003, the defendant did not reply. Hence, the suit was filed for recovering a sum of Rs.1,76,925/- with interest. The defendant filed his written statement denying the plaint averments. The defendant submitted that he had dealings only with the son-in-law of the plaintiff. According to the defendant, when he borrowed a sum of Rs.20,000/-, he signed in a blank pro-note. He made a further claim that the said amount was returned. But then, the signed blank pro-note was not given back to him. He also claimed that after receiving the suit notice, he met the plaintiff in person who assured that he would not pursue the matter.

3.The plaint was filed on 02.01.2004. There is no doubt that it was filed within the limitation period. But then, the entire



Court fee payable was not paid. The trial Court had granted time to pay the deficit Court fee. It appears that even within the extended time, the Court fee was not paid. Thereafter, an application was filed for condoning the delay in paying the deficit Court fee. It appears that no formal order was passed on the said application. But the suit was numbered and taken on file on 24.03.2004. The trial Court had originally dismissed the suit only on the ground of limitation. The same was challenged by the plaintiff in appeal. The first Appellate Court had remanded the matter by directing the trial Court to answer all the issues. The first Appellate Court noted that the application for condoning the delay in paying the deficit Court fee was not numbered. The trial Court was directed to number the said IA and thereafter, answer the issue regarding limitation. The trial Court was called upon to answer the other issues also. Post remand, the trial Court dismissed the application for condonation of delay in paying the deficit Court fee for two reasons:-

(a) The petition was supported by an affidavit sworn to by the advocate-clerk and not by the party concerned.

(b) No specific petition under Section 149 of C.P.C., was filed.

The suit came to be dismissed by Judgment and decree dated 02.06.2008. Questioning the same, the plaintiff filed A.S.No.33 of 2008 before the Principal District Court, Dindigul. By the impugned Judgment and decree dated 01.03.2010, the first appellate court dismissed the appeal. Challenging the same, this second appeal came to be filed.

4.The second appeal was admitted on the following substantial question of law:-

"Whether the dismissal of the suit on the ground of limitation is legally sustainable?"

5.Heard the learned counsel on either side.

6.As rightly pointed out by the learned counsel appearing for the appellant, the substantial question of law arising for consideration in this second appeal is *no longer res integra* in view of the following decisions:-

"2009 (6) CTC 92 (Mahalingam Vs. K.Krishnasamy Naidu)
1926 (51) MLJ 90 (Koliseti Basavayya and others Vs.
Mittapalli Venkatappayya and another)
1994 AIR KERALA 405 (V.O.Devassy Vs. Periyar Credits)
2016 (4) CTC 880 (K.Dhanavelu Vs. K.S.M.Venugopal)
2003-3-L.W.803 (K.Natarajan Vs. P.K.Rajasekaran)
2015 (5) CTC 865 (V.P.Venkatachalam Vs.
N.Venkatachalam)"

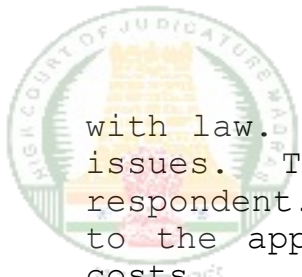


7.A mere look at the aforesaid decisions would yield the proposition that the Court has the power to permit the plaintiff to make up deficiency of Court fee. Even if the plaintiff fails to do so within the time granted, still the time-limit can subsequently be extended. It is not necessary that formal order should be passed indicating such enlargement of time. The numbering of the suit and taking the matter on file would indicate that the said power should be deemed to have been exercised. This is a matter that is between the Court and the plaintiff and there is no necessity to issue notice to the defendant. In the case on hand, by 24.03.2004, the entire Court fee has been paid. Though an application had been filed under Section 151 of C.P.C., without numbering the interlocutory application or passing formal orders thereon, the trial Court had numbered the suit. That indicates that the request for enlargement of time earlier granted under Section 149 of C.P.C., had been accepted in the first instance by the trial Court. There was no need for going back on the exercise of such discretion by the successor-in-office. Therefore, I hold that the Courts below went completely wrong in coming to the conclusion that the suit was time-barred. The substantial question of law is answered in favour of the appellant and the impugned Judgment and decree passed by the first Appellate Court is set aside.

8.The learned counsel appearing for the appellant would submit that on the merits of the matter, the execution of the pro-note had been admitted by the defendant. The defendant had also not responded to the suit notice-Ex.A2. The trial Court had found the issues in favour of the plaintiff in this regard. The defendant did not file any cross-objection assailing the correctness of those findings. Therefore, he called upon this Court to allow this second appeal and decree the suit as prayed for.

9.I am not able to agree with this contention urged by the learned counsel for the appellant. The first appeal is a continuation of the original proceedings. The first Appellate Court is obliged to re-appreciate the entire factual matrix. In the case on hand, the first Appellate Court after choosing to sustain the findings of the trial Court in the matter of limitation, had not dealt with the other issues. In fact, rightly so. Limitation is a threshold bar. If on that issue, finding is given in favour of the defendant, there is no need to travel into the merits of the matter. As I have held the issue of limitation in favour of the plaintiff, the matter has to be remanded to the file of the first Appellate Court. The first Appellate Court will deal with the merits of the matter alone as limitation has already been answered in favour of the plaintiff.

10.In this view of the matter, even while allowing the second appeal, the matter is remitted to the file of the first Appellate Court to dispose of A.S.No.33 of 2008 on merits and in accordance



with law. The first Appellate Court shall deal only with the other issues. The first Appellate Court shall issue fresh notice to the respondent. The Court fee paid by the appellant shall be refunded to the appellant. The second appeal is allowed accordingly. No costs.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1.The Principal District Judge, Dindigul.

2.The Additional Sub Judge, Dindigul.

Copy to

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

**Judgment made in
S.A. (MD) No. 763 of 2012**

28.06.2021

CN(16.07.2021) 4P 5C