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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.12.2021

PRONOUNCED ON : 18.02.2022

CORAM

THE HONOURABLE Mrs.JUSTICE J.NISHA BANU

S.A.No.803 of 2005 and
CMP No.11251 of 2005

The State Bank of India
Anna University Branch
Chennai 600 025.

..Appellant/plaintiff

v.

1.Electronix Sales Ltd.,
No.2 1st Cross Street
Kasthuribai Nagar, Adyar
Chennai 600 020.

2.Thiruvengadathan
3.S.G.Kasthuri
4.L.S.Jayanthi
5.Arul Kalavathi
6.A.Jaganathan

..Respondents/Defendants

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 09.03.2004 passed in A.S.No.142 of 2002 on the file of the III Additional Judge (2nd Additional Judge In-Charge), City Civil Court, reversing the Judgment and Decree dated 12.02.2001 passed in O.S.No.9487 of 1995 on the file of the 18th Assistant Judge, City Civil Court, Madras.

For Appellant : Mr.K.Chandrasekaran
For Respondents : Mr.A.Amalraj for R2, R4 to R6

JUDGMENT

Challenge in this second appeal is to the Judgment and Decree dated 09.03.2004 passed in A.S.No.142 of 2002 on the file of the III Additional Judge(2nd Additional Judge In-Charge), City Civil Court, reversing the Judgment and Decree dated 12.02.2001



passed in O.S.No.9487 of 1995 on the file of the 18th Assistant Judge, City Civil Court, Madras.

2.For the sake of convenience, the parties are referred to as per the trial Court.

3.Suit is for recovery of money.

4.The case of the plaintiff, in brief, is that the 1st defendant is the dealer in electronic goods and is selling the same to his customers and the plaintiff being a bank lent money to the first defendant to the tune of Rs.1,62,678/-. The customers get the goods through instalments. It is the case of the plaintiff that the defendants 2 to 6 have repaid the instalments and the defendants 2 to 6 have stated that the electronic goods have some defects, which has been subsequently brought to the notice of the first defendant through their letter dated 14.07.1990 and the goods were also returned to the first defendant. Since the money was not returned back with interest, the plaintiff Bank filed the suit for recovery of money.

5. The first defendant resisted the claim by stating that there is no terms of agreement between the plaintiff and the first defendant. It is for the plaintiff to prove its case. The first defendant denied the fact that the TV sets have been sold through him and there were some defects pointed out. The letter dated 14.07.1990, which was signed by the Marketing Manager, was a fabricated one and hence, the Marketing Manager was dismissed. For these reasons, the suit filed by the plaintiff is not maintainable and liable to be dismissed, it is contended.

6.In support of the plaintiff's case, PW.1 was examined and Exs.A1 to A5 were marked. On the side of the defendant, neither a witness nor a document has been marked.

7.On consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to grant the relief in favour of the plaintiff and the first defendant was directed to pay the suit amount of Rs.1,62,678/- with interest at the rate of 6% from the date of petition till the date of realisation and costs. Impugning the same, the defendant has preferred the first appeal. The first appellate Court, on a consideration of the materials placed and the submissions made, was pleased to answer in favour of the first defendant thereby setting aside the judgment and decree of the trial Court. Impugning the same, the present second appeal has been preferred by the plaintiff.



8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

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"(a). When the contract of supply of goods is revoked should not the sale price paid by the appellant be repaid/refunded to the appellant?

(b). Whether the contract can be substituted by another contract?

(c). Whether Ex.A-4 is a fresh substituted contract in favour of the appellant?

(d) The 1st Appellate Court wrongly reversed the finding of facts on wrong assumptions."

9. Heard the learned counsel for the appellant and the learned counsel for the respondents 2, 4 to 6.

10. The learned counsel for the appellant would make the following submissions:

The first appellate Court failed to consider Ex.A.1 dated 14.07.1990 with regard to the contract entered into between the appellant/plaintiff and the first respondent. Like wise, the first appellate Court failed to consider Ex.A2 the receipt issued by the first respondent/first defendant. The first appellate Court wrongly set aside the finding rendered by the trial Court that Ex.A4, which is the letter issued by the first respondent to the plaintiff, cannot be relied upon. The first appellate Court came to the wrong conclusion that when a contract is cancelled, the party must have refunded the benefit to the party from whom such benefit was availed. For these reasons, the finding rendered by the first appellate Court need to be interfered with and the finding rendered by the trial Court has to be accepted.

11. There was no representation on behalf of the first respondent/first defendant, who is the contesting respondent.

12. I have considered the said submissions and perused the materials placed before this Court.



13. Certain admitted facts would narrow down the scope of discussion. The plaintiff bank had a scheme to grant loans to employees/institutions/ companies and organisations under the scheme called 'big buy scheme', the first defendant, who is a dealer in electrical gadgets and consumer articles, the bank sanctioned loan to the first defendant for the purchase of consumer goods. According to the procedure, the loan so sanctioned was disbursed by the plaintiff by remittance directly to the supplier, namely, the first defendant. According to the letter Ex.A1 dated 14.07.1990, defendants 2 to 6, the goods were purchased by them. The query raised by the first defendant is that how much is the amount to be paid by the defendants 2 to 6. This query raised an assurance that the first defendant would settle the dues. Undoubtedly when the loan amount has been paid to the first defendant by the bank and when the goods purchased had been returned to the first defendant by the defendants 2 to 5, admittedly it is the responsibility of the first defendant to repay the loan amount to the plaintiff bank.

14. The trial Court, on proper appreciation of factual aspect, has chosen to decree the suit as against the first defendant.

15. The first appellate Court has accepted the contention of the first defendant that there was no direct contract between the plaintiff and the first defendant. The contention of the first defendant is not supported by any evidence. The first defendant has not chosen to enter into the box and he was not ready to subject himself for cross examination. Moreover this contention is falsified by the letter written by the first defendant, which is marked as Ex.A1, wherein the first defendant has undertaken the responsibility of paying the amount to the plaintiff bank on behalf of the defendants 2 to 6. This document remained as impeached. There is no explanation for Ex.A1. Transaction between the plaintiff and the first defendant need not be by express contract. It can be by implied contract also. The nature of transaction between the plaintiff and the first defendant is expressly stated under Exs.A1 and A2. The defence taken by the first defendant that there is no transaction between the plaintiff and the first defendant is patently false and falsified by the documents filed on the side of the plaintiff.

16. From the arguments advanced and perusal of the records would reveal that a well considered judgment of the trial Court has been reversed by the first appellate Court without any basis.



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17. In the result, the second appeal is allowed. The judgment and decree of the first appellate Court is set aside and the judgment and Decree of the trial Court is restored. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

RR

To

1.The III Additional Judge, (2nd Additional Judge-In-Charge),
City Civil Court, Chennai.

2.The 18th Assistant Judge,
City Civil Court, Madras.

+1cc to Mr.A.Amalraj, Advocate SR.No.10908

S.A.No.803 of 2005

SV(CO)
CB(28/04/2022)