IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.04.2022

Coram:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

Second Appeal No.331 of 2012

Central Bank of India
Rep.by its Senior Manager
China Bazaar Branch
No.27, Bunder Street
Chennai 600 001. .. Appellant/Respondent/Plaintiff

.Vs.

Motilal Bhatad .. Respondent/Appellant/Defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 25.4.2011 made in A.S.No.443 of 2009 on the file of the IV Additional City Civil Judge, City Civil Court, Chennai, reversing the judgment and decree dated 6.9.2007 made in O.s.No.4369 of 2004 on the file of the IV Assistant City Civil Judge, City Civil Court, Chennai.

For Appellant : Mr.K.Rajasekaran

For Respondent : Mr.R.Sagadevan

JUDGMENT

The plaintiff is the appellant in this second appeal.

2.The plaintiff filed the suit seeking for the relief of recovery of amount along with interest against the defendant.

3.The trial Court decreed the suit through a judgment and decree dated 25.4.2011. Aggrieved by the same, the defendant filed an appeal in AS.No.443 of 2009 before the IV Additional City Civil Court, Chennai. The lower Appellate Court on considering the findings of the trial Court and on re-appreciation of the oral and documentary evidence, allowed the appeal through judgment and decree dated 25.4.2011. Thereby, the judgment and decree of the trial Court was set aside and the suit was dismissed. Aggrieved by the same, the plaintiff filed the present Second Appeal.

4.During the pendency of the Second Appeal, the plaintiff informed the defendant about a special “One Time Settlement Scheme” wherein, through letter dated 15.3.2018, the defendant was directed to deposit a sum of Rs.1,00,000/- as full and final settlement on or before 31.03.2018. The defendant also agreed for the “One Time Settlement” and the amount was deposited in the appellant Bank on 17.3.2018. The defendant also wrote a letter on 17.3.2018 to the appellant to withdraw the pending case and to release the documents which were taken as security.

5.The appellant through letter dated 6.9.2018, informed the defendant as follows:

> “We refer to the captioned account and wish to inform you that the above mentioned loan account in your name, Mr.Motilal Bhattad availed on 01/01/1994 for Rs.1,90,000/-(Rs.One Lakh Ninety Thousand Only) under the Scheme of “OD-General” is closed under “One Time Settlement Scheme” on 31/03/2018. As on date, we confirm we do not have any amount outstanding under the above mentioned loan account.
>
> “This 'No Dues Certificate' s issued without prejudice to any criminal cases initiated against the borrowers and/or guarantors and/or third parties irrespective of whether the offence is compoundable or not and Bank intends the law to take its own course till logical conclusion of such criminal cases as compromise is entertained as a commercial prudence to recover the money without prejudice to such criminal actions”.

6.When the came came up for hearing on 07.04.2022, this Court passed the following order:

> “When the matter was taken up for hearing, all the relevant documents showing the settlement of the entire amount to the appellant bank was placed before this Court. The learned counsel for the appellant bank expressed some difficulty in reporting settlement since he has not received any instructions from the appellant bank.
>
> 2. There shall be a direction to the Chief Manager of Central Bank of India, Sowcarpet Branch, Chennai to be present before this Court on 11.04.2022. The learned counsel for the appellant shall also send an appropriate communication to the appellant bank in this regard.

3. Post this case under the same caption on 11.04.2022”.

7.When the matter was taken up for hearing today, the learned counsel for the appellant filed a memo. The contents of the memo are extracted hereunder:

> 1.The second Appeal No.331 of 2012 came up before the Hon'ble Court on 07.04.2022.
>
> 2.The Hon'ble Court was pleased to direct the Chief Manager, Cenral Bank of India, Sowcarpet Branch, shall be appear in the person on 11.04.2022 and also directed the counsel for the Appellant to communicate the said direction of the Hon'ble Court to the Chief Manager, Central Ban of India, Sowcarpet Branch, in an appropriate mode.
>
> 3.We have taken notice to the Appellant Bank and the notice was duly served on them on 08.04.2022 and till now we have not received any instructions to proceed further.
>
> It is therefore Hon'ble Court may take this Memo on record and proceed further accordingly and thus render Justice.

8.The learned counsel for the appellant also filed affidavit of service, wherein a letter was sent to the appellant Bank informing them about the order passed by this Court on 07.04.2022. The learned counsel had made it clear to the appellant Bank that the Chief Manager of the Bank must be present at the time of hearing. This letter was also received and duly acknowledged by the Chief Manager of the appellant Bank on 08.04.2022.

9.When the matter was taken up for hearing today, the learned counsel for he appellant submitted that the Chief Manager of the Central Bank of India is not present in Court today and requested this Court to record the memo and pass such further orders in this Second Appeal.

10.In the considered view of this Court, the non-appearance of the Chief Manager of the Central Bank of India amounts to disobeyance of the orders passed by this Court on 07.04.2022. If the concerned officer is not in a position to attend the Court physically, he should have atleast informed the learned counsel for the appellant the reasons for his non-appearance and should have given proper instructions to the learned counsel for the appellant to report before this Court. There will be no difficulty for this Court to issue a non-bailable warrant and make the Chief Manager of the Central Bank of India to be present before this Court. However, this Court is not willing to escalate the issue any further and does not want to waste its contempt jurisdiction in a matter of this nature.

11.It is clear from the materials placed before this Court that the appellant Bank had offered for a "One Time Settlement" and it was accepted and the amount was paid by the respondent/defendant. Accordingly, the loan account of the respondent/defendant was also closed and no due certificate was issued on 6.09.2018. In view of the same, the cause of action does not survive and the Second Appeal is accordingly closed.

12.It is seen from records that during the pendency of the appeal in AS.No.443 of 2009, a conditional stay was granted in favour of the respondent/defendant, wherein he was directed to deposit a sum of Rs.1,77,000/-. Accordingly, the amount was also deposited and the same is substantiated through the deposit receipt that has been filed before this Court dated 26.11.2009. In view of the fact that the entire loan amount has been settled during the "One Time Settlement", the respondent/defendant is entitled to withdraw the amount that was deposited during the pendency of the appeal with accrued interest. Hence, it will be left open to the respondent/defendant to file an appropriate payment out petition before the IV Additional City Civil Court, Chennai and the lower Appellate Court shall pass appropriate orders permitting the respondent/defendant to withdraw the deposited amount along with accrued interest, if any.

13.Accordingly, this Second Appeal is closed. Considering the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

KP

To

1. The IVth Additional Judge,
   The IV Additional City Civil Court,
   City Civil Court, Chennai.

2. The IVth Assistant Judge,
The IV Additional City Civil Court,
City Civil Court, Chennai.

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

+1cc to Mr.R.Sagadevan, Advocate, S.R.No.25178

Second Appeal No.331 of 2012

VG - II(CO)
CT 27/05/2022