IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Second Appeal No.876 of 2013
and MP No.1 of 2013

Shirley Stanly ... Appellant

Vs.

P. Selvakumar ... Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 18.09.2012 made in AS No.10 of 2012 on the file of Principal District Judge, Namakkal confirming the decree and judgment dated 28.10.2011 made by the Subordinate Judge, Namakkal in OS No.386 of 2000.

For Appellant : Mr.S.Patrick

For Respondents: Mr.T.Dhanayakumar

JUDGMENT

The first defendant is the appellant in the Second Appeal

2. The respondent/plaintiff filed a suit claiming for the relief of recovery of money along with interest.

3. The case of the plaintiff is that the first defendant and her husband borrowed a sum of Rs.1,50,000/- from the plaintiff on 20.08.1997 and executed a promissory note which was marked as Ex.A1. The further case of the plaintiff is that they agreed to pay interest at the rate of 18% per annum. The grievance of the plaintiff is that the first defendant and her husband failed to repay any amount in spite of repeated demands and requests. The

husband of the first defendant died 2½ years before the institution of the suit and even thereafter, the defendants failed to repay back the amount that was borrowed for the purpose of meeting the family expenses. Hence the suit came to be filed after issuing a pre-suit notice, for recovery of money.

4. The first defendant filed a written statement and denied the very borrowal of money from the plaintiff. According to the first defendant, she and her husband were in contact with one Muthusami, who is into money lending business. The husband of the first defendant borrowed money from the said Muthusami and that point of time, he had put his signatures in certain documents and the same has been misused by the plaintiff. The first defendant also took a stand that the suit promissory note is a forged and fabricated document. Therefore, the defendants sought for the dismissal of the suit.

5. Both the Courts below after appreciating the oral and documentary evidence and on considering the facts and circumstances of the case, concurrently held in favour of the plaintiff and decreed the suit and directed the defendants to pay a sum of Rs.2,28,252/- along with interest at the rate of 18% on the principal amount of Rs.1,50,000/- up to the date of decree and thereafter at the rate of 6% till the date of actual payment of the amount to the plaintiff. Aggrieved by the same, the first defendant has filed the present Second Appeal before this Court.

6. This Court admitted the Second Appeal by framing the following substantial question of law:

> Whether both the Courts below were right in awarding an exorbitant interest of 18% interest on the principal amount when admittedly the transaction between the parties was not a commercial transaction?

7. Heard Mr.S.Patrick, learned counsel appearing for the appellant and Mr.T.Dhanyakumar, learned counsel appearing for the respondent. This Court also carefully perused the materials available on record and the findings of both the Courts below.

8. Both the Courts below have taken into consideration Exs.A1 to A7 and the oral evidence of P.W.1 and P.W.2. Both the Courts also took into consideration an Expert Opinion that was marked as Ex.C1, since the defendants had taken a plea that the promissory note was a forged and fabricated document. On assessing the evidence, both the Courts found that the plaintiff has made out a case and the defence that was taken by the defendants was not established. This Court does not find any perversity on such factual findings given by both the Courts below. Therefore, insofar as the liability and the promissory note is concerned, there is no ground to interfere with the judgments and decrees of both the Courts below.

9. The only issue that arises for consideration in the present case is with regard to the rate of interest that was granted by both the Courts below. Both the Courts below went by the terms of the Promissory Note marked as Ex.A1 and had granted 18% interest on the principal amount till the date of decree. It was contended that the interest that was awarded by both the Courts is exorbitant and the same requires the interference of this Court.

10. In the present case, even as per the case that was put forth by the plaintiff, the amount was borrowed to meet family expenses. Therefore, it is clear that the transaction in question is not a commercial transaction. Insofar as the payment of interest is concerned, Section 34 of the Code of Civil Procedure, specifically provides that the Court can order interest at such rate as the Court deems reasonable to be paid on the principal sum from the date of the suit till the date of the decree. The proviso to the said Section provides that while determining the interest, the Court should take into consideration as to whether the transaction in question is a non-commercial transaction or a commercial transaction. If in case the transaction is a commercial transaction, the Court can award interest exceeding 6% per annum, but shall not exceed the contractual rate of interest. If there is no contractual rate of interest, then the Court has to take into consideration the rate at which moneys are lent or advanced by the Nationalised Banks in relation to a commercial transaction.

11. In the considered view of this Court, both the Courts below should have taken into consideration this crucial aspect while awarding interest payable by the defendants on the principal amount. This Court is therefore inclined to interfere in the Second Appeal only insofar as the interest portion is concerned that is payable till the date of decree. The substantial question of law is answered accordingly.

12. In view of the above discussion, this Court is of the considered opinion that the interest that was awarded by the Trial Court at the rate of 18% from the date of filing of the suit till the date of decree, should be modified and the same is reduced to 9%.

13. In the result, the Second Appeal is partly allowed and the decree that was passed by the Trial Court and confirmed by the Appellate Court is modified to the extent that the defendant shall pay interest at the rate of 9% from the date of filing of the suit till the date of decree on the principal sum of Rs.1,50,000/- and shall pay further interest at the rate of 6% from the date of decree till the date of realisation of the amount. It is seen from the records that this Court passed an order of interim stay on 26.09.2013 with a condition that the petitioner should deposit a sum of Rs.2,50,000/- to the credit of the suit on or before 29.11.2013 and it is brought to the notice of this Court that the condition has been complied with and the amount was deposited before the Trial Court to the credit of the suit on 20.11.2013. This deposit shall be taken into consideration while arriving at the final amount that is due and payable by the defendants. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

jv
To

1.The Principal District Judge,
Namakkal.

2.The Subordinate Judge,
Namakkal.

+1cc to Mr.M.R.Gokul Krishnan, Advocate Sr.16152
+2cc to Mr.T.Dhanayakumar, Advocate Sr.16031 and 15606

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gmr[co]
srg 18/05/2022