



A.S.(MD) No.133 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.08.2022

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S.(MD).No.133 of 2013

and

M.P.(MD).No.2 of 2013

M.Sheik Dawood

...Appellant

-Vs-

RM.Kandasamy (died)

1.K.Shantha

2.K.Ganesh

3.R.Meenakshi Veerappan

4.Manimegalai Gandhi

5.K.Uma Maheswari

6.Central Bank of India,
represented by its Branch Manager,
Tallakulam Branch,
Tallakulam,
Madurai.

The respondents 1 to 5 are represented through their
power agent T.Sabapathy.

... Respondents



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PRAYER: Appeal Suit is filed under Section 96 of the Civil Procedure Code, against the judgment and decree dated 14.02.2013 made in O.S.No.27 of 2009 on the file of the VI Additional District Judge, Madurai District.

For Appellant : Mr.T.Lajapathi Roy
For R1 to R5 : Mr.N.Vallinayagam
For R6 : No appearance

J U D G M E N T

The respondents 1 to 5 filed a suit in O.S.No.27 of 2009 before the VI Additional District Court, Madurai, seeking the relief of declaration that the plaintiffs alone entitled to a sum of Rs.12,00,000/- lying in the hands of the second defendant Bank in FDR No.32/4, Account No.21-A No. 0650433 and also direction to the first defendant / the appellant herein to surrender the original fixed deposit receipt with the second respondent Bank duly signed and give effect to discharge the debts within two months from the date of the judgment and payment of interest and costs.



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2. After trial, the said suit was decreed. Now, challenging the judgment and decree passed by the trial Court, the first defendant has filed the present appeal before this Court.

3. The brief facts of the plaint reads as follows:

3(i) The plaintiff along with nine other members carried on partnership business under the name and style of 'Sundaram Theatre Air Condintion'. The partnership owned the land and the building at Door No. 144, Deputy Collector Colony, Madurai, where Sundarm Theatre was located. In the year 1997, the said theatre was leased out to one Mr.Rajan @ Rajendran. During the period of lease, the lessee Mr.Rajan @ Rajendran was accused by Tamil Nadu Electricity Board for theft of energy. For such theft, the TNEB called upon to pay a sum of Rs.18,52,552/-. Unfortunately, the plaintiff was implicated in the penal proceedings. Though the then lessee Mr.Rajan was liable for the theft of energy, this plaintiff and another partner Saravanan were implicated in the said criminal case. Subsequently, he was



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discharged from all the criminal charges framed against him by this Court in CrI.R.C.No.585 of 2003, on 07.02.2004. The first defendant approached the plaintiff and revealed his intention of purchasing the theatre. Pursuant to the same, an agreement was entered into between the plaintiff and the first defendant on 12.08.2002 under the name of 'Varthamana Oppantha Letter'. As per the said agreement, the plaintiff agreed to substantiate the 1st defendant for any claim by the TNEB, in pursuance of the alleged theft and levying penalty to the extent of Rs.18,52,552/- in its order dated 18.12.1999. As agreed, the plaintiff has deposited a sum of Rs.12,00,000/- in the second defendant Bank on 13.08.2002. Subsequently, the plaintiff and the other partners executed a registered sale deed in favour of the first defendant on 14.08.2002.

3(ii) The plaintiff and the lessee filed a suit in O.S.No.5 of 2000 before Madurai Town District Munsif Court against TNEB. The said suit was partially allowed and the plaintiff was directed to pay 1/3rd on the levied amount with TNEB within one month period. The lessee filed an appeal before the Sub Court, Madurai in A.S.No.153 of 2003 and the same was



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allowed. Hence, the plaintiff is entitled to get the amount of Rs.12,00,000/-.

In the mean while, the TNEB filed a suit in O.S.No.12 of 2005 before the District Court, Madurai. The said suit was not pressed as settled out of Court. As per the said agreement, the plaintiff is entitled to withdraw the accruing interest periodically. The second defendant failed to credit the interest amount in favour of the plaintiff. The second defendant is keeping the money of Rs.12,00,000/- from the date of maturity ie., on 14.08.2003 till date without paying any interest. The accrued interest for the amount of Rs. 12,00,000/- from the date of deposit ie., 14.08.2003 to 30.01.2009 is Rs. 4,58,500/-. Therefore, the plaintiffs have filed the present suit for declaration and mandatory injunction and also direction to the second defendant to pay a sum of Rs.4,58,500/- towards accrued interest for a sum of Rs.12,00,000/- deposited in the Bank,

4. The written statement filed by the first defendant reads as follows:



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The plaint is liable to be dismissed or rejected on the ground of suppression of material facts. It is true that the theatre called 'Sundaram Theatre Air Condition' was run by partnership firm consists of nine partners. In respect of the theatre's electricity theft, there has been number of litigations took place and all these proceedings have not been mentioned in the plaint. The plaintiff himself admitted that there has been an agreement entered in between the plaintiff and the first defendant on 12.08.2000, prior to the date of sale with regard to the theft matters, in which the plaintiff categorically admitted and agreed to pay the entire payment to the Electricity Department. It has been clearly agreed that except the electricity dues, all the other dues, liabilities are to be paid by the partners and it was also accepted by them. It is admitted that the fixed deposit receipt namely FDR A/C.No.216 was made between the plaintiff and the first defendant on 13.08.2002 is correct. It is admitted by the plaintiff that the electricity theft transaction have to be finalised within a year. As the plaintiff has not finalised the entire transaction within a year, he is not at all entitled to claim this amount. He has taken a stand that he is not liable to pay electricity theft



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amount as he was not having any interest, title and right over the property. It is also meaningless to contend that the second defendant failed to credit the interest amount in favour of the plaintiff. Therefore, the plaint itself is not maintainable.

5. The written statement filed by the second defendant reads as follows:

The suit as against this second defendant is not maintainable. The plaintiff and the first defendant jointly deposited a sum of Rs.12,00,000/- on 14.08.2002. On their instructions, a fixed deposit account has been opened in their joint names for a period of 12 months from 14.08.2002. It carries interest 7% per annum. As per the terms and conditions printed on the reverse of the deposit receipt and also accepted by the plaintiff and the first defendant, no interest shall be allowed on the fixed deposit certificate after the due date as indicated in the certificate. The second defendant being a Nationalised Bank followed the Reserve Bank of India Rules and Regulations. As such, the plaintiff or the first defendant is not entitled to



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claim any interest after the maturity date. The remedy sought as against this second defendant and the implications of the second defendant in the suit is not at all necessary and unwarranted. This defendant is not legally bound to pay any interest for the amount of Rs.12,00,000/- after the date of maturity and the interest claimed at the rate of 7% by the plaintiffs is also incorrect. Therefore, the suit is liable to be dismissed.

6. The reply statement filed by the plaintiff reads as follows:

The dispute between the plaintiffs and the first defendant does not relates to the sale, but it relates to an agreement whereby the plaintiffs agreed to indemnify the first defendant from any claim by Tamil Nadu Electricity Board. It is admitted that an agreement was entered into between the plaintiffs and the first defendant on 12.08.2002, not as mentioned in the written statement. It is submitted that as per the agreement dated 12.08.2002, a sum of Rs.12,00,000/- was deposited by the plaintiffs in the joint names of the plaintiffs and the first defendant under the fixed deposit receipt (A/c.No.216) dated 14.08.2002 and the same got matured on



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14.08.2003. The proceeding in respect of alleged energy theft has to be concluded within a year, as per agreement. Further, there is a clause for extension of the said period. Therefore, the plaintiffs are not responsible for completing the said proceeding. The plaintiffss filed the suit in O.S.No.149 of 2006 for not recovery of Rs.12,00,000/- from second defendant, but for mandatory injunction directing the first defendant to renew the F.D.R. Therefore, the plaintiffs and the other partners are not at all anyway liable to pay any amount towards energy theft. Hence, the plaintiffs have filed the suit for appropriate relief.

7. On the basis of the above pleadings, the learned trial Judge framed the following issues for consideration:

(i) Whether the plaintiff is entitled to a sum of Rs.12,00,000/- in the hands of the second defendant's Bank?

(ii) Whether the plaintiff is entitled to mandatory injunction to direct the first defendant to



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surrender the FD receipt for Rs.12,00,000/-?

(iii) Whether the plaintiff is entitled to accrued interest of Rs.4,58,500/- on fixed deposit of Rs. 12,00,000/-?

(iv) Whether the second defendant can be issued mandatory injunction?

(v) To what other relief the plaintiff is entitled to?

8. In order to substantiate the case, on the side of the plaintiffs, one witness was examined as P.W.1 and documents were marked as Exs.A1 to A14. On the side of the defendants, one witnesses was examined as D.W. 1 and documents were marked as Exs.B1 to B10.

9. After completing the trial and on hearing of arguments advanced on either side, the learned trial Judge, considered the evidence available on record, decreed the suit in favour of the plaintiffs. Against



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which, the first defendant has filed the present appeal.

10. The learned counsel for the appellant/first defendant would submit that he has purchased a theatre from the first respondent. At the time of purchasing, there was a due to the Electricity Department. In order to get the clearance from the Electricity Department, the plaintiffs and the first defendant deposited Rs.12,00,000/- before the Electricity Department and also they have entered into a joint Varthamana Letter. Subsequently, he filed a writ petition before this Court, challenging the order passed by the Electricity Department. The said writ petition was dismissed. Against which, he preferred an *intra* Court appeal before this Court. When the writ appeal was pending, the matter was referred to the Lok Adalat. Subsequently, the matter was settled. As per the Lok Adalat Award, the appellant deposited the money to the Electricity Department. In the mean while, the first respondent filed the suit before the trial Court to declare the amount lying with the Electricity Department, which is mentioned in the Varthamana Letter belong to him and he is entitled to recover the same.



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Since the appellant is in possession of the original deposit receipt, he has to surrender the same before the Bank. He would further submit that the appellant has paid the entire amount out of his own pocket. As per the award passed by the Lok Adalat, he has paid the amount. Therefore, the amount mentioned in the Varthamana Letter belongs to the appellant and he is entitled to the same. The trial Court failed to consider the fact that the money belongs to the appellant and he only deposited the amount. Since the appellant has cleared the dues to the Electricity Department, he is entitled to withdraw the said amount and the respondents are not entitled to the same.

11. The learned counsel for the respondents would submit that already the respondents and the lessee filed a suit O.S.No.5 of 2000 before the District Munsif Court, Madurai against the Electricity Department. The suit was already decreed and also the Court directed the first respondent to deposit 1/3rd of the amount claimed by the Electricity Department. Challenging the said judgment and decree passed by the Principal District Munsif, Madurai in O.S.No.5 of 2000, the lessee filed an appeal before the



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Sub Court, Madurai in A.S.No.153 of 2003. The Sub Court, Madurai allowed the appeal and set aside the judgment and decree passed by the District Munsif Court, Madurai in O.S.No.5 of 2000. Therefore, there is no liability on the part of the first respondent to pay any amount to the Electricity Department. Further, as per the Varthamana Letter, the first respondent is entitled to receive the money and the trial Court, after considering the pleadings, oral and documentary evidence, rightly decreed the suit and there is no merit in the appeal and the appeal is liable to be dismissed.

12. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 5 and perused the materials available on record.

13. Admittedly, the first respondent has filed the suit in O.S.No.27 of 2009 before the VI Additional District Court, Madurai and the said suit was disposed by the VI Additional District Judge, Madurai. Challenging the



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same, the first defendant in the suit has filed the present appeal.

14. Though the learned counsel for the appellant contended that the amount deposited only to clear the dues to the Electricity Department, the demand made by the Electricity Department is for electricity theft. But however, a reading of Exs.A1 to A4 clearly shows that the first respondent filed the suit before the competent Court against the Electricity Department and the demand made by the Electricity Department was set aside and as per the judgment and decree passed by the Sub Court, Madurai in A.S.No.153 of 2003, there is no liability on the part of the first respondent. Therefore, the contention raised by the learned counsel for the appellant that the amount has been deposited only for the dues to the electricity theft is not acceptable. Even the appellant has not filed any sale deed as to whether this amount has been deposited out of the sale consideration or not and once it is proved that there is no due to the Electricity Department for the electricity theft, the first respondent is not liable to pay any amount to the Electricity Department. Therefore, the amount deposited in the Bank is the amount of



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the first respondent and the appellant has failed to prove that the amount is belonged to the appellant and he paid the amount only for the electricity theft. Under such circumstances, the appellant has no merit in the appeal and the same is liable to be dismissed.

15. In the result, the Appeal Suit is dismissed and the judgment and decree passed by the VI Additional District Judge, Madurai in O.S.No. 27 of 2009, dated 14.02.2013 are confirmed. No costs. Consequently, the connected Miscellaneous Petition is closed.

03.08.2022

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To

1. The VI Additional District Judge,
Madurai.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN,J.

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