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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **20.01.2022**

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.760 of 2011

M.Surendran ... Appellant/Appellant/Defendant

Vs.

The Branch Manager,
Indian Bank,
Having its Head Office at
Rajaji Salai, Chennai - 66),
Ramamoorthy Road,
Virudhunagar. ... Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 26.11.2010 passed in A.S.No.35 of 2010, on the file of the Sub-Court, Virudhunagar, confirming the judgment and decree dated 29.10.2008 passed in O.S.No.90 of 2008, on the file of the District Munsif Court, Virudhunagar.

For Appellant : Mr.M.Ramu
for Ms.K.Elil Selvi

For Respondent : Mr.A.Manoharan

JUDGMENT

The concurrent Judgments and decrees passed in O.S.No.90 of 2008, by the District Munsif Court, Virudhunagar and in A.S.No.35 of 2010, by the Sub-Court, Virudhunagar, are being challenged in the present Second Appeal.

2. The respondent/plaintiff has instituted a suit in O.S.No.90 of 2008, on the file of the trial Court directing the defendant to pay a sum of Rs.76,688.37 as on 20.02.2008 together with further interest calculated at 23.88% per annum on the outstanding amount as above with compounded monthly rests from the date of plaint till the date of realisation, wherein, the present appellant has been shown as defendant.

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3. The case of the plaintiff is that the plaintiff, as part of their Banking activities, have started a Credit Card Facility Scheme and are issuing Indian Bank Global Credit Cards to their customers on certain terms and conditions. Under the scheme formulated a Credit Card Holder will be entitled to credit facilities upto the sanctioned limit as notified "Member (Merchant) Establishments"which honours the VIST Credit Card on production of the said Credit Card. The card member can also use the card to withdraw cash from Automated Teller Machines of selected Indian Bank locations or correspondent Banks / other locations as notified periodically by the Bank. Upon such credit being granted to the Credit Card Holder for the credit availed, the Member (Merchant) Establishment sends the charge slip/memo/voucher/to the Bank duly signed by the Card Holder to the plaintiff Bank and the Member (Merchant) Establishment is paid by the plaintiff Bank through payment and settlement network provided by VISA to the debit of the card holders credit card account. The cash withdrawals through usage of the card as above are debited to the card holder's credit account and the repayment can be made at any branches of the plaintiff.

4. The plaintiff states that on 25.02.2006, the defendant submitted application for issuance of a Credit Card showing his Madurai address, when he worked in Palakkad. The defendant in the said application confirmed that he has read the terms and conditions for issuance of the Credit Card to the plaintiff and has agreed to abide by the same and the plaintiff accordingly issued Credit Card to the defendant. The plaintiff states that the defendant was utilizing the Credit Card and he subsequently repaid the payments on various dates in the plaintiff's Branch at Virudhunagar. The defendant lastly made repayment on 21.01.2008 at Virudhunagar and he did not pay the amounts due thereafter. The plaintiff submits that the Credit Card was blocked from circulation after delinquency was exceeded. Even for the legal notice, dated 26.12.2007, issued to the defendant, he sent reply, in which, he has admitted his job at present is at Virudhunagar.

5. The plaintiff states that they have forwarded the statement of account to the defendant and the defendant has not disputed the amounts mentioned in the statement at any time. The plaintiff states that they have also debited interest at 1.99% p.m., on purchases in the Member (Merchant) Establishments and 2.25% p.m., on cash withdrawals from Automated Teller Machines of notified Banks with monthly rests as per the directives of the Reserve Bank of India and other charges payable by the defendant, as per the terms and conditions on which the Credit Card was issued. The plaintiff states that the total amount due is Rs.76,688.37 as on 20.02.2008. The plaintiff further submits that the present rate of interest on the outstanding is 23.88% per annum on the outstanding with monthly rests as per the directives of the Reserve Bank of India. Since the defendant has not paid the amount, the plaintiff has filed the suit for the above stated relief.

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6. The defendant has filed a written statement, in which, it is stated that the plaintiff has to prove the averments found in the plaint. It is further stated that he had obtained a credit card from the plaintiff Bank on 25.02.2006 by filing necessary application. He had also used the same several times and remitted the said amount to the Bank. In the credit card statement, purchase interest number was added each and every month and it was also added when he purchased no things in a month, however, there is no agreement to that affect. It was also agreed to pay interest only for the amount used for purchase of things. The plaintiff Bank has also claimed late fees, service tax over limit fees, cash advance interest and purchase interest every month, however, the same was not payable. Moreover, the amount remitted by the defendant was not accounted every month. Further, the amount remitted by him on 07.04.2006, 03.07.2006, 31.05.2007, 21.08.2007, 13.10.2007, 18.10.2007 and 29.11.2007 to the tune of Rs.39,393/- was not accounted. Further, the cheque that was sent on 15.11.2007 for a sum of Rs.13,000/- was not accounted. Further, proper credit-debit statements were not furnished to the defendant. The legal notice sent by the plaintiff Bank was properly answered by way of reply notice. Further, the defendant has no amount to pay to the plaintiff Bank and hence, the suit filed by the plaintiff for re-payment of amount through debit card has to be dismissed.

7. Before the trial Court, on the side of the plaintiff, one Thangavelu was examined as P.W.1 and Exs.A1 to A11 were marked. On the side of the defendant, one Surendran was examined as D.W.1 and Exs.B.1 to B.4 were marked.

8. On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit directing the defendant to pay a sum of Rs.76,688.37/- to the plaintiff along with interest at the rate of 12% per annum from the date of plaint till the date of decree and 6% subsequent interest till the date of payment.

9. Aggrieved by the Judgment and decree passed by the trial Court, the defendant, as appellant, had filed an Appeal Suit in A.S.No.35 of 2010. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, has dismissed the appeal and confirmed the Judgment and decree passed by the trial Court.

10. Challenging the said concurrent Judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the defendant, as appellant.

11. At the time of admitting the present second appeal, this Court had framed the following substantial questions of law for consideration:

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"1) Whether the Courts below are right in law in decreeing the suit in its entirety when it is clearly admitted by P.W.1, that the Bank has calculated exorbitant interest at the rate of 23.88% without any agreement to that effect?

2) When it is admitted by PW.1 that the appellant's money transactions with the Bank does not attract compound interest and the Bank has calculated compound interest on the appellants liability, is it legally sustainable on the part of the Courts below in decreeing the suit in its entirety? and

3) Are not the Courts below right in law in decreeing the entire suit for recovery of money calculating interest at the rate 23.88% while coming to a conclusion that the respondent Bank is entitled to interest only at the rate of 12%?""

12. The learned counsel appearing for the appellant/defendant would submit that the first Appellate Court ought not to have confirmed the Judgment and Decree of the trial Court. The Assistant Manager of the plaintiff was examined as P.W.1 and in his evidence, he has admitted that the Bank is entitled to only simple interest on the amount payable by the defendant and he has also admitted that the Bank has calculated compound interest on the appellant liability. Taking note of such admission of P.W.1, the Courts below ought to have dismissed the same. The Courts below have failed to consider the conditions on which credit card facility had been issued to the defendant. Under condition No.C, the Bank cannot levy any charge that was not explicitly indicated to the credit card holder at the time of issue of the credit card and getting his consent. The trial Court ought to have dismissed the suit holding that the Bank has levied late fees, service tax charges, service tax of interest, cash advance interest, government fee interest, purchase interest, which had not been indicated to the defendant while issuing credit card facility and prayed for allowing the Second Appeal.

13. The learned counsel appearing for the respondent/plaintiff would submit that both the Courts below have correctly dismissed the suit and prayed for dismissing the Second Appeal.

14. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the defendant and also perused the records carefully.

15. A perusal of the records would show that the defendant had obtained credit card from the plaintiff Bank and had used the same for purchase of things and to obtain money through ATM and has also repaid the amount till 21.01.2008 and thereafter, as the defendant has failed to repay the amount properly, a legal notice came to be issued on 26.12.2007, for which, the defendant has sent a reply

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statement with false averments. The defendant as on 20.02.2008 has to pay a sum of Rs.76,688.37/- towards repayment together with interest at 23.88% compound interest. In support of these transactions, the application of the defendant is marked as Ex.A.1, legal notice sent by the plaintiff as Ex.A.2, reply notice of the defendant as Ex.A.3. The plaintiff has also marked Ex.A.4 to Ex.A.11 to substantiate his averments. However, the above said facts were denied by the defendant stating that the defendant has remitted the amount to the plaintiff Bank on several occasions and that payments were not accounted properly and in particular, the interest as claimed by the plaintiff Bank is exorbitant and prayed to dismiss the suit.

16. However, from the documents submitted by the plaintiff Bank would show that the amount remitted by the defendant was properly accounted on several dates. Further, the defendant is employed as an Assistant Manager in the United India Insurance Limited and as per the averments of the plaintiff, the defendant was employed in a public limited company with higher qualification and as such, he know about the guidelines issued by the Reserve Bank of India related to issuance of credit card and knowing fully well of the same only, the defendant has entered into an agreement with the plaintiff Bank. Further, the defendant is also aware of the conditions mentioned in the monthly statements issued by the plaintiff Bank. Further, it is also seen that the cheque issued by the defendant was returned back and thereafter, the defendant has sent a fresh cheque to the plaintiff Bank. Further, the plaintiff has proved his case through document and hence, the plaintiff Bank is entitled to get the money as sought for in the plaint.

17. Insofar as the rate of interest is concerned, the plaintiff Bank claimed interest at the rate of 23.88% and in this regard, the parties have relied on a decision rendered in ***Five Ports Development Authority of Tamil Nadu, Chennai Vs. Tarapore and Company, Chennai*** reported in ***2006 (3) MLJ 1114*** and as per which, the trial Court has held that the plaintiff Bank is entitled only for interest at 12% per annum from the date of plaint till the date of decree and 6% subsequent interest till the date of payment, which was also confirmed by the first Appellate Court.

18. From the above, this Court is of the view that the concurrent Judgment and Decree of the Courts below are accompanied with sufficient reasons, in which, this Court does not want to make any interference. Accordingly, the substantial questions of law framed are ordered as against the appellant/defendant and in favour of the respondent/plaintiff Bank.

19. In the result, the Second Appeal is dismissed. The defendant is directed to pay the said amount with interest aforesaid within three months, failing which, the plaintiff is at liberty to

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execute the same by separate proceedings from the date of receipt of a copy of this Judgment. No costs.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Subordinate Judge,
Virudhunagar.

2.The District Munsif,
Virudhunagar.

3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (1 soft copy)

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