



S.A.No.178 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.No.178 of 2023

1.Sivabhushanam

2.Anisha

3.Srividya

... Appellants

Vs.

E.S.Nandagopal

... Respondent

PRAYER: Appeal filed under Section 100 of Civil Procedure Code, seeking to set aside the Decree and Judgment dated 04.09.2013 passed in O.S.No.24 of 2010 on the file of Sub-ordinate Court at Poonamallee, as confirmed by Decree and Judgment dated 29.03.2019, passed in A.S.No.3 of 2014 on the file of the learned Principal District Judge at Thiruvallur.

For appellants : Mr.G.Dilip Kumar

For respondent : Mrs.V.Srimathi



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JUDGMENT

The suit was laid for recovery of sum of Rs.3.64 lakhs with interest at 12% p.a. alleged to have advanced to the defendant under four promissory notes, all dated 10.12.2004. They are marked as Ex.A1 to Ex.A4.

2.The defendant does not dispute the promissory notes but pleads discharge. He would contend that he used to pay Rs.10,000/- every month, but in terms of the actual interest payable at 12% p.a., the interest payable per month would be only Rs.3,250/-. In other words he had paid Rs.6,750/- every month. The payment of Rs.10,000/- a month by the defendant has been found to be true on the basis of Ex.A8, bank statement.

3.Now, if the defendant had been paying Rs.6,750/- in excess every month, then necessarily this amount has to be adjusted against the principal and if it is so adjusted, the principal amount for the following month necessarily will be less by Rs.6,750/-. Since there is no actual clarity as to the suit claim, the trial court dismissed it on the ground of limitation, whose reasoning found favour with the first appellate Court. When the defendant is found to have



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paid the money in 2008 and the suit is laid in 2010, there cannot be any limitation as such, but the lack of clarity as to the amount payable still holds good. Even if limitation is crossed, this lack of clarity on the amount payable and absence of proof in aid of it will continue to remain.

4.Heard the learned counsel on either side and also perused the judgments of the Courts below.

5.This Court does not find that the approach of the Courts below is perverse enough to warrant an interference by this Court in the Second Appeal.

6.This second appeal stands dismissed accordingly. No costs.

14.03.2023

kas

Index : yes / no

Internet : yes / no

Speaking / Non Speaking order



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N.SESHASAYEE, J.

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To.

1.Sub-ordinate Court
Poonamallee

2.The Principal District Judge
Thiruvallur

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