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AS No.241 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-02-2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AS No.241 of 2022

M/s.Jeevan Indane Gas Agency,
Represented by its Proprietor,
Shop No.6, Door No.32,
Reddy Street,
Villivakkam,
Chennai-600 049.

.. Appellant

VS.

RM Associates, Represented by its
Proprietrix Mrs.Sarika Jain
No.16/2, Narayana Mudali Street,
Chennai-600 079.

.. Respondent

PRAYER : This Appeal Suit is filed under Section 96 read with Order XLI, Rule 1 of the Civil Procedure Code against the judgment and decree dated 07.08.2021 passed by the learned VII Additional Judge, City Civil Court at



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Chennai in OS No.188 of 2021.

For Appellant : Mr.A.G.Abhishek for
Ms.SA.Kanmani

For Respondent : Mr.Srenik S.Jain

J U D G M E N T

The present Appeal Suit has been instituted against the judgment and decree dated 07.08.2021 passed by the learned VII Additional Judge, City Civil Court at Chennai in OS No.188 of 2021.

2. The appellant is the defendant and the respondent is the plaintiff in the suit.

3. The respondent/plaintiff instituted a suit for recovery of money to the tune of Rs.16,86,000/- along with future interest at the rate of 18% per annum under Order XXXVII, Rules 1 and 2 of the Code of Civil Procedure.



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4. The plaintiff stated that the defendant had approached the plaintiff on 12.02.2018 and obtained loan amount of Rs.20,00,000/- for his business commitments and assured the plaintiff to repay the same along with interest at the rate of 18% per annum within a period of six months (i.e., by 11.08.2018) and the defendant had also executed a Promissory Note in favour of the plaintiff. Initially, the defendant had made payment periodically and paid a sum of Rs.9,50,000/-. The total amount payable as on date inclusive of interest at the rate of 18% per annum and after adjusting the amount already paid accumulates to Rs.16,86,000/-. In spite of several demands and repeated reminders to settle the dues, the defendant had willfully neglected to repay the amount. Thus, the plaintiff issued legal notice dated 24.08.2019 and the defendant had not replied for the said notice nor repaid the amount borrowed. Thus, the plaintiff instituted the suit for recovery.

5. The Trial Court framed the issue “Whether the suit is to be



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decreed as prayed for ?”.

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6. On the side the plaintiff, no witnesses were examined and Exs.A-1 to A-5 were marked as documents. No witnesses were examined and no documents were marked on the side of the defendant.

7. The summary suit was filed by the plaintiff for recovery of the loan amount of Rs.16,86,000/- with future interest at the rate of 18% per annum from the defendant. The loan amount was evidenced by the Promissory Note, which was executed by the defendant. Since the defendant had willfully neglected to repay the loan amount, the plaintiff filed the summary suit under Order XXXVII, Rules 1 and 2 of the Code of Civil Procedure.

8. The defendant entered appearance through their Lawyer. On such notice of appearance, the plaintiff served summons for judgment on the defendant. On service of summons for judgment, the defendant filed the



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petition seeking leave to defend the suit, which was returned for compliance of certain defects. But, the defendant failed to re-present the leave to defend petition.

9. Therefore the Trial Court has proceed with the case and the documents marked as Exs.A-1 to A-5 were considered. Ex.A-1 document is the original Promissory Note executed by the defendant in favour of the plaintiff for Rs.20 lakhs. Ex.A-2 document is the copy of the legal notice issued by the plaintiff to the defendant. Ex.A-3 document is the Acknowledgement Card. Ex.A-4 document is the Statement of Accounts. Ex.A-5 document is the web copy of Encumbrance Certificate.

10. Based on the abovesaid documents, the Trial Court found that the defendant had committed default in repayment of dues and therefore, the plaintiff is entitled for the relief as such sought for in the plaint. Accordingly, the suit is decreed in favour of the plaintiff and consequently, the defendant is directed to pay a sum of Rs.16,86,000/- to the



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plaintiff with subsequent interest at the rate of 9% per annum on the principal amount of Rs.19 lakhs from the date of plaint till the date of relaisation.

11. The learned counsel for the appellant mainly contended that the defendant had filed an application for leave to defend the suit, which was returned for compliance of certain defects. Therefore, the Trial Court ought not to have decreed the suit. Except the said ground, there is no other ground raised in the present Appeal Suit on merits.

12. In this context, the Trial Court has considered the said application in the judgment impugned. Admittedly, the defendant filed an application seeking leave to defend the suit. Further, the said application was returned for compliance of certain defects. However, the defendant failed to re-present the said petition seeking leave to defend the suit and therefore, the appellant is not entitled to succeed merely on the ground that their application seeking leave to defend the suit was not numbered. When the



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application was returned by the Trial Court and was not even re-presented by the appellant, there is no reason whatsoever to consider the said ground at this length of time and more-so, the suit instituted by the plaintiff was under Order XXXVII, Rules 1 and 2 of the Code of Civil Procedure. Thus, there is no infirmity or perversity in respect of the judgment and decree passed by the Trial Court.

13. Accordingly, the judgment and decree dated 07.08.2021 passed by the learned VII Additional Judge, City Civil Court at Chennai in OS No.188 of 2021 stands confirmed and consequently, the present Appeal Suit is dismissed. However, there shall be no order as to costs.

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Speaking Order/Non-Speaking Order.
Neutral Citation : Yes/No.
Internet : Yes/No.
Index: Yes/No.
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S.M.SUBRAMANIAM, J.



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To

The VII Additional Judge,
City Civil Court,
Chennai.

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