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A.S.No.492 of 2



THE HIGH COURT OF JUD ICATURE AT MADRAS

DATED: 02.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

A.S.No.492 of 2017
and
C.M.P.No.15624 of 2017

Boopathy

...Appellant

Vs.

V.Santhosh Kumar

...Respondent

Prayer: First Appeal filed under Section 96 of C.P.C., r/w. Order 41 Rule 1 of C.P.C., against the judgment and decree dated 21.12.2016 made in O.S.No.44 of 2015 on the file of the V-Additional District Judge, Coimbatore.

For Appellant : Mr.A.Jenasenan

For Respondent : Mr.G.Vigneshwar
for Mr.V.Nicholas



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J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The defendant is on appeal. Challenge is to the decree granting refund of the advance amount under an agreement dated 12.04.2012. According to the plaintiff, the defendant agreed to sell the property belonging to him measuring about 4 acres 24 cents at Rs.29,00,000/- per acre. An advance of Rs.25,00,000/- was paid on 12.04.2012 and a period of seven months was fixed for performance of contract, which would in normal course expires on 11.11.2012. A further sum of Rs.3,00,000/- was paid on 18.07.2012. Thus, the total advance paid was Rs.28,00,000/-.

2.Contending that the defendant did not perform his part of the contract, despite demands, the plaintiff sought for refund of advance. The suit was laid on 22.01.2015. The suit was resisted by the defendant contending that Clause 6 of the agreement between the parties provided that the plaintiff will have to forfeit 1/4th of the advance amount in the event of his failure to perform his part of the contract. The plaintiff has also claimed interest at 12% per annum on the sum of Rs.28,00,000/-. The defendant denied the liability to pay interest.



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3. On the above pleadings, the learned Trial Judge framed the following issues:-

- 1) Whether the plaintiff is entitled to recover Rs.37,22,499/- with subsequent interest at the rate of 12% on Rs.28,00,000/- as prayed for?*
- 2) Whether the interest claimed by the plaintiff is exorbitant?*
- 3) Whether the plaintiff is entitled to create the charge over the property as prayed for?*
- 4) Whether the amount of Rs.28,00,000/- is paid towards advance for the sale agreement dated 12.04.2012 is true?*
- 5) To what relief, plaintiff is entitled to?*

4. At trial, the plaintiff was examined as P.W.1 and one M.Easwaran was examined as P.W.2. Exs.A1 to A7 were marked on the side of the plaintiff. The sale agreement dated 12.04.2012 was marked as Ex.A1. The defendant was examined as D.W.1. Exs.B1 to B8 were marked on the side of the defendant.



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5.The learned Trial Judge, upon appreciation of the record and law relating to refund of advance concluded that Clause 6 of the agreement is penal in nature and therefore, it is not enforceable. Clause 6 of the agreement reads as follows:-

"மேற்படி கெடுவுக்குள் மீதிக் கிரயத்துகையை 1 இலக்கமிட்டவருக்கு செலுத்தி கிரையத்தை முடித்துக்கொள்ள 2 இலக்கமிட்டவர் தவறினால் மேற்படி அட்வான்ஸ் துகையில் 1/4 பங்கை 2 இலக்கமிட்டவர் இழந்து விட வேண்டியதோடு இந்த உடன்படிக்கையும் செல்லத்தக்கதல்ல. அதோடு மீதியுள்ள அட்வான்ஸ் துகையை 2 இலக்கமிட்டவருக்கு 1 இலக்கமிட்டவர் திரும்ப செலுத்தி ஆதரவு பெற்றக் கொள்ள வேண்டியது."

6.The learned Trial Judge relied upon the judgments of this Court in *Ramaswamy Gounder Vs.Kuppuswamy Gounder* reported in 1978 (2) *MLJ 313* and *Chinnasamy Pillai Vs. K.Marappan* reported in 1996 (1) *CTC 318* in support of its conclusion that Clause 6 is penal in nature and it is not enforceable. On the above findings, the learned Addl. District Judge granted a decree as prayed for with 12% interest from the date of the suit till date of decree and 6% thereafter. The suit claim included the interest at



12% on Rs.28,00,000/- from the date of the agreement till date of the suit.

Hence, this appeal.

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7.Heard Mr.A.Jinasenan, learned counsel for the appellant and Mr.G.Vigneswar, learned counsel for the respondent.

8.Mr.A.Jenasenan, learned counsel for the appellant would vehemently contend that in the light of Clause 6 of the contract, the Trial Court was not right in granting a decree as prayed for. He would also refer to Ex.A2, notice issued by the defendant on 29.11.2012, required the plaintiff to perform his part of the contract wherein, he had stated that he is ready and willing to return the 3/4th of the advance and called upon the plaintiff to specify the bank account to refund 3/4th of the advance amount. Therefore, according to Mr.A.Jenasenan, the award of interest at 12% is at least flawed.

9.Mr.G.Vigneswar, learned counsel for Mr.V.Nicholas, learned counsel for the respondent would submit that Clause 6 in the agreement is penal in nature. This Court has repeatedly held that a forfeiture clause



without any proof of damages is penal in nature and it cannot be enforced.

A reading of Clause 6, according to the learned counsel would show that it is a simple forfeiture clause without any proof of damages. Therefore, it being penal in nature, the Trial Court was justified in concluding that it is not enforceable and directing return of the entire advance. On the interest also, the learned counsel would submit that the defendant had the benefit of the money for nearly three years and therefore, the plaintiff is entitled to interest. We have considered the rival submissions.

10.From the submissions of the learned counsel appearing on either side, the following points arise for determination:-

i) Whether the Trial Court was right in concluding that Clause 6 of the agreement is penal in nature.

ii) Whether the Trial Court was right in granting pendente lite interest at 12% per annum and upholding the claim of the plaintiff for 12% interest from the date of the agreement till date of the suit, in the light of the offer made by the defendant in the notice issued as early as on 29.11.2012.

**11.Point No.1:-**

As regards the question whether the forfeiture Clause in Ex.A1 namely, Clause 6, which has been extracted supra, is penal in nature or not, we do not think, there is any scope for a different conclusion. This Court has repeatedly pointed out that forfeiture Clause, which does not depend on proof of damages is penal in nature and as such not enforceable.

12.The Trial Court has rightly placed reliance on the judgments in *Ramaswamy Gounder Vs.Kuppuswamy Gounder* and *Chinnasamy Pillai Vs. K.Marappan* referred to supra to conclude that Clause 6 being penal in nature, cannot be enforced. We are therefore, unable to fault the Trial Court for having arrived at such conclusion, which is based on settled principles of law.

13.We also do not find any evidence of damages having been caused to the plaintiff because of the failure on the part of the defendant, even if we are to assume failure on the part of the defendant to honour the commitment. Hence, Point No.1 is answered in favour of the respondent.

**14.Point No.2**

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This leaves us with a question of interest. As we had already stated even on 29.11.2012, the defendant has offered to pay back 75% of the advance amount, the plaintiff did not comply with the request of the defendant to furnish the bank details. Therefore, the defendant cannot be blamed for retaining the amount. It is also seen that this notice dated 29.11.2012 was replied to by the plaintiff, after two years on 20.08.2014 and has followed it up with the suit four months thereafter, in January, 2015. This delay of more than two years is attributable only to the plaintiff. Therefore, the defendant cannot be mulcted with the liability to pay interest for the above period i.e., between 12.04.2012 and 22.01.2015

15.The Trial Court has granted 12% interest for the period covered by the suit. Even that, in our opinion, is on the higher side, considering the bank interest that prevailed during the relevant period, we find that 9% interest will be reasonable for the period from 22.01.2015 till the date of decree i.e., 21.12.2016 and post decree, the defendant would be entitled to 6% interest.



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16.In view of the above, this Appeal is partly allowed. The decree of the Trial Court is modified as above. There will be a decree for payment of a sum of Rs.28,00,000/- with interest from 22.01.2015 till 21.12.2016 at 9% per annum and thereafter, at 6% per annum till the date of realization. No costs. Consequently, connected miscellaneous petition is closed.

17.It is stated that the amount of Rs.7,00,000/- has been paid pursuant to a interim order of this Court. The same will be given credit to as is done for payment of money under a money decree as directed by the Supreme Court in ***Gurpreet Singh Vs. Union of India*** reported in (2006) 8 ***SCC 457***. On full satisfaction of the decree, the charge created will stand automatically withdrawn.

(R.S.M.,J.) (N.S.,J.)
02.11.2023

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R.SUBRAMANIAN, J.
and
N.SENTHILKUMAR, J.

KKN

To:-

The V-Additional District Judge,
Coimbatore.

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