



S.A.(MD).No.128 of 2017

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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.12.2023**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.128 of 2017

and

C.M.P.(MD)No.95 of 2019

1.P.Rajkumar
2.P.Sri Anand

... Appellants

/Vs./

T.Paramasivam

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Decree and Judgment, dated 04.02.2014, made in Cross Appeal No.32 of 2013 in A.S.No.28 of 2013 and A.S.No.28 of 2013 by the I Additional District Judge, Madurai, modifying the Decree and Judgment, dated 24.01.2013, made in O.S.No.946 of 2010 by the I Additional Subordinate Judge, Madurai.

For Appellants : Mr.G.Aravinthan

For Respondent : Mr.K.Karnan

JUDGMENT

The plaintiffs had filed a suit for recovery of money to the tune of Rs.9,27,737/- with a subsequent interest at 18% per annum on the



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principal sum of Rs.6,50,000/- till the date of realization. The defendant had borrowed Rs.1,25,000/- on 13.12.1993 and Rs.2,25,000/- on 19.12.1994 and Rs.3,00,000/- on 22.03.1995, totally had borrowed Rs. 6,50,000/-. After considering the rival claims, the Trial Court has allowed the suit directing the defendant to pay Rs.1,25,000/- at 18% interest from 13.12.1993 and Rs.2,25,000/- at 18% interest from 19.12.1994 and Rs.3,00,000/- at 18% interest from 22.03.1995 until the date of judgment. Subsequently, the defendant was directed to pay 6% rate of interest until the date of realization. Aggrieved over the said judgment, both the plaintiffs and the defendant had preferred appeal in A.S.No.28 of 2013 and Cross Appeal No.32 of 2013.

2. In A.S.No.28 of 2013, the First Appellate Court has allowed it partly, the decree and judgment of the Lower Court was modified, wherein the clause 1 of the decree alone was modified and the effect is that the suit is decreed directing the defendant to pay a sum of Rs. 6,50,000/- at 12% interest from the date of plaint i.e., 23.03.1998 till the date of decree, i.e., 24.01.2013 and subsequently, from the date of decree



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till the date of realization at 6% interest. In the result, the Cross Appeal No.32 of 2013 was dismissed and the A.S.No.28 of 2013 was partly allowed modifying the rate of interest with date. Aggrieved over the same, the plaintiffs have filed the present second appeal. The defendant has not filed any appeal.

3. Pending second appeal, the plaintiffs have also filed E.P.No.126 of 2013. The defendant has already deposited Rs.10,00,000/- in the decree in O.S.No.946 of 2010 and has also paid Rs.8,97,032/- which the defendant has paid through demand draft in E.A.52 of 2022 in E.P.No. 126 of 2013. The defendant has also given no objection to withdraw Rs. 10,00,000/- in I.A.No.508 of 2023.

4. The second appeal is filed aggrieved over the judgment rendered in A.S.No.28 of 2013, wherein the rate of interest was reduced from 18% to 12%.



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5. Fixing the rate of interest is a discretionary power of the Court.

Moreover, the appellants herein have raised substantial questions of law.

On bare perusal of the same, the substantial question of law cannot even be considered as question of law, much less substantial question of law. It is absolutely factual issues.

6. Therefore, this Court is not inclined to entertain this second appeal. Therefore, the second appeal is dismissed confirming the judgment and decree rendered by the First Appellate Court. No costs. Consequently, connected miscellaneous petition is closed.

11.12.2023

Index : Yes / No

NCC : Yes / No

Tmg



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TO:

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



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.128 of 2017

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