THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

APPEAL SUIT No.171 of 2003

JUDGMENT:

This appeal is filed against the Judgment and Decree of the trial Court in O.S.No.410 of 1984 dated 04.10.2002.

2. The State Bank of India (hereinafter referred as 'S.B.H') filed suit for recovery of Rs.89,454.89ps against Vinoba Finishers represented by its Proprietor N.Rangaiah. The S.B.H stated that defendant got sanctioned loan of Rs.25,000/- for the purpose of business on 22.12.1979 and executed certain documents in favour of the Bank. The defendant availed the said facility and withdrew the amount through the current account bearing No.1199, but he failed to repay the said amount. So, notice was issued on 25.10.1984 by the S.B.H and later filed suit for recovery of amount. The defendant contended that plaint is not signed by the proper person and he never availed the credit facility nor withdraw the amount. The current account number relates to only supply of bills regarding account No.1199. The defendant submitted bills to the plaintiff bank for the recovery of the same from the concerned customers, as such the claim of the plaintiff is not

maintainable. The statement of account pertained to supply bill transactions. There is no cause of action in the suit as mis-conceived and is liable to be dismissed.

3. The trial Court examined P.W.1 & P.W.2 on behalf of the plaintiff and marked Exs.A1 to A5, D.W.1 was examined on behalf of the defendant and marked Ex.B1. After considering the entire evidence on record, the trial Court decreed the suit with costs for Rs.89,454.89ps with future interest at the rate of 10% per annum simple from the date of the suit till the date of decree and thereafter at the rate of 6% per annum till realization. Aggrieved by the said Judgment, the present appeal is preferred by the defendant and mainly contended that no amount was paid under the D.P note dated 22.12.1979 by the plaintiff's bank and defendant never availed the cash credit loan, as the D.P note is not supported by any consideration plaintiff's bank is not entitled to recover the amount. He stated that current account No.1199/CC has nothing to do with credit loan facility. It was only account for adjusting the supply accounts from customers. He further stated that cash credit loan facility and supply bills accounts are two distinct transactions and have nothing to do with each other. The

plaintiff even though claiming the amount basing on D.P note, mixed the amounts under supply bills accounts and filed a single suit for recovery of amount, as such suit itself is not maintainable. He also stated that if the bank fails to realize any amounts from the customers, it will not allow the appellant from utilizing the supply bills system and will not pay any amount to him, as the bank never complained any irregularities, he is not liable to pay the amount.

4. He mainly contended that the D.P note agreement for cash credit and delivery letter dated 22.12.1979 are not supported by any consideration, but it was not appreciated properly. Later when it was remanded by this Court in A.S.No.1172 of 1991 dated 04.02.2000, the plaintiff bank did not place any fresh material either oral or documentary evidence to substantiate their claim and the trial Court decreed the suit based on the very same earlier evidence without any reasons. As Ex.A1 is not supported by any consideration, even according to the statement of account there is no evidence to show the withdrawal of Rs.25,000/- by the appellant/defendant. As the appellant/defendant failed to prove realization of any amount by the bank from his customers, the

order of the trial Court is without any basis. The trial Court also extracted the deposition of certain portion of P.W.1 and stated Ex.A4 is vague in the absence of a specific claim and the plaintiff is not entitled for the relief. He further stated that P.W.1 is the field officer, he cannot say about the loan amount availed by defendant on 22.12.1979, even before the sanction of loan by the plaintiff's bank under Ex.B1 dated 30.12.1979. P.W.1 admitted that bank has not filed any Cheques and Vouchers pertaining to suit loan amount. The plaintiff filed suit for recovery of Rs.89,454.89ps as outstanding amount, while the sanctioned amount was only Rs.25,000/-. Therefore, requested the Court to allow the appeal by setting aside the Judgment and Decree of the trial Court in O.S.No.410 of 1984 dated 04.10.2002.

5. Heard arguments of both sides and perused the record.

6. P.W.1 is the Field Officer. He stated that defendant has applied for loan of Rs.25,000/- from the plaintiff bank against the pledge of machines and also executed demand promissory note on the same day i.e, on 22.12.1979 in favour of bank. Ex.A.1 is the promissory note. Ex.A2 is the agreement for pledge

of goods and machinery executed by the defendant. When he failed to repay the said amount, notice was issued on 25.10.1984 under Ex.A3. He also filed Ex.A4 statement of account and Ex.A5 revival letter. He stated that rate of interest was 13% per annum. He also stated that no amount was paid after filing of the suit. Ex.B1 dated 30.12.1979 is the loan sanctioned letter issued by the bank and it was marked through him. He also stated that defendant had opened current account No.1199 on 22.12.1979 prior to that, he was having account No.456 OD SB (Supply Bills) account and it was closed on 22.12.1979. The statement of account for the account No.1085 is not filed as per Ex.A4, there was withdrawal of Rs.10,000/- on 24.12.1979. He stated that Ex.A4 contains account of other loan O.D.B.C.C on M.T.L, O.D.B.C.C means Over Draft against Bills in the Course of Collection. He also stated that defendant is liable to pay Rs.60702.25ps as on 30.121980 and it includes Rs.25,000/-.

7. P.W.2 is the Manager of the Bank from September, 2000. He has no personal knowledge about the loan amount. The Ex.B1 dated 30.12.1979 is the sanctioned order. The cash limit

sanctioned to the defendant was Rs.25,000/-. Originally it was Rs.10,000/-.

8. D.W.1 is the proprietor of the defendant firm. He stated that he was having account in plaintiff bank since 1970 onwards and he used to operate supply bills discount through account No.1199/cc. He applied for loan of Rs.50,000/- and bank agreed to avail sanction of Rs.25,000/-, but it was not released. He executed Exs.A1 to A3 for a loan amount of Rs.25,000/- only. He received a sanctioned letter under Ex.B1. He also executed Ex.A5 along with Exs.A1 to A3 on the same day. He has not withdrawn the amount under Ex.A4 on 22.12.1979 and also on 24.12.1979.

9. Based on the above documents filed before the Court, the trial Court observed that Branch Manager has signed the plaint and he is the proper person, therefore the argument of the defendant that suit is not filed by the proper person is not tenable. The main contention of the appellant herein is that no consideration was passed under Ex.A1 and A2, he has not disputed his signature on Ex.A1 and A2 and it is not his case that his signature was forged on the said documents, he simply

pleaded that they are not supported by consideration. But the trial Court raised the presumption under Section 118 of the Negotiable Instrument Act and observed as the defendant failed to produce any positive evidence on the admission of P.Ws. 1 & 2 presumption can be raised. He also filed Ex.A4, which shows facility was availed on 22.12.1979. Ex.A3 is the office copy of the legal notice dated 25.10.1984. The argument of learned Counsel for the defendant is that the sanctioned letter was dated 30.12.1979, subsequent to Exs.A1 & A2 and it clearly shows that Ex.A1 & A2 are not supported by consideration. The trial Court observed that Ex.A6 is the letter dated 05.05.1978, addressed by the defendant to the bank stating that he requires particulars of the Mundy type account as per the sanction. Ex.A7 is another letter dated 16.06.1980, in which he stated that due to the short power supply he did not meet the demands of his customers. He was also given Cheque for Rs.10,000/-. He acknowledged the liability under Ex.A8 dated 30.09.1982 towards the loan account No.1199. Considering the oral and documentary evidence, it was held that defendant availed the cash credit facility. The defendant also contended that he has discharged the amount due by recovering the amount from the customers, as such he need not pay the amount. The trial Court also held that account was opened on 22.12.1979 and debt was acknowledged under Ex.A8 on 22.07.1982, as such suit is within time and it is not barred by limitation. Basing on the statement of account, it was held that defendant obtained loan from the plaintiff bank and directed to pay the same along with interest. The appellant herein, obtained amount from the S.B.H for business purpose. Though, he admitted his signatures on Ex.A1 & A2 basing on the sanctioned letter, he stated that he is not liable to pay the loan amount of Rs.25,000/-. Perusal of the sanctioned letter under Ex.B1shows that there was sanction of Rs.25,000/- under cash credit/Mundy type, Rs.25,000/- under composite bill limits, Rs.8,000/- under medium term loan. Admittedly, Ex.B1 is the sanction of credit facility and the amount sanctioned, amount actually availed by the defendant is Rs.25,000/-. When once the amount is sanctioned, the argument of petitioner Counsel that he never availed loan cannot be accepted. The trial Court considering all the factors rightly granted decree with interest. As there is no infirmity or illegality in the Judgment of the trial Court, this Court finds no reason to interfere with the Judgment of the trial Court.

In the result, the appeal is dismissed confirming the Judgment and Decree of the trial Court in O.S.No.410 of 1984 dated 04.10.2002. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE P.SREE SUDHA

DATED: 06 .01.2023

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