IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.297 of 2016
and
C.M.P.No.9672 of 2021

1. Babu Surendra Nath
2. Indira Surendra Nath …Appellants

Vs

1. M/s.Happy Granites India (P) Ltd.,
   Rep by its Managing Director,
   Mr.K.Onodera,
   City Centre Complex,
   No.39/66, I Floor, Thirumalai Road,
   (Near Vani Mahal),
   T.Nagar, Chennai 600 017.

2. K.Onedera,
   Managing Director,
   M/s.Happy Granites India (P) Ltd.,
   No.10, Alluvilla Apartments,
   Ramakrishna Street, Usman Road,

T.Nagar, Chennai 600 017.

3. J.B.Franklin Mills,
Director, M/s.Happy Granites India (P) Ltd.,
City Centre Complex,
No.39/66, I Floor, Thirumalai Road,
(Near Vani Mahal),
T.Nagar, Chennai 600 017. ...Respondents

Prayer: Appeal Suit is filed under Section 96 of C.P.C against the judgment and decree dated 08.10.2015 made in O.S.No.10126 of 2010 by the XVI Additional City Civil Court, Chennai partly dismissing the suit in respect of pre-suit interest of a sum of Rs.5,92,390 claimed in the above suit in O.S.No.10126 of 2010.

For Appellants : Mr.R.Munuswamy

For Respondents : Served-No appearance

JUDGMENT

The only limited ground on which the above first appeal has been filed is on the ground that the trial Court has not granted interest from the date of respective cheques till the date of filing of the suit.

2.The facts are briefly set out herein below, and the parties are referred to in the same litigative status as before the trial Court.

3. The plaintiffs, who are the appellants herein, had filed a suit O.S.No.10126 of 2010 on the file of the XVI Additional Judge, City Civil Court, Chennai, for recovery of a sum of Rs.14,67,390/- together with interest at the rate of 24% per annum on the principal amount of Rs.8,75,000/- from the date of plaint till the date of realization in full.

4. The plaintiffs, who are husband and wife, would submit that they were introduced to the second defendant through one Sivaiah, who informed them that the defendants were running the first defendant's Company and were in urgent need of financial assistance to carry on their business activities. The defendant had approached

the plaintiffs and sought financial assistance to the tune of Rs.8,00,000/-. Thereafter, the plaintiffs had agreed to extend the financial assistance upto the limit of Rs.8,00,000/- and the parties had entered into a Memorandum of Understanding dated 04.11.2004 (Ex.A1). Pursuant to this Memorandum of Understanding, on the very same day, the first defendant had also executed a letter of undertaking agreeing to pay interest on the loan amount to be received by them at 60% per annum for every month without fail. It is also agreed that the interest would be paid by cash. (Ex.A2). Thereafter, the plaintiffs extended a loan of a sum of Rs.3,00,000/- on 06.11.2004, for which the first defendant had executed a promissory note, on the same date. Towards this loan, the defendants had paid interest from 06.11.2004 to 05.12.2004 and 06.12.2004 to 06.01.2005. (Ex.A3) Thereafter, the defendants once again borrowed a sum of Rs.3,00,000/- on 18.11.2004 and executed a promissory note for the said sum. Under this promissory note also, interest has been paid for the period 08.11.2004 to 18.12.2005 and 18.12.2004 to 18.12.2005 (Ex.A4). The defendants had further borrowed a sum of Rs.2,00,000/- on 18.03.2005 and executed a promissory note on the same day.(Ex.A5). Towards this promissory note, no interest has been paid. Meanwhile, the defendants had also issued three cheques (i) dated 21.03.2005 for Rs.4,00,000/- (Ex.A6), (ii) dated 28.03.2005 for Rs.4,30,000/- (Ex.A7) and (iii) dated 08.04.2005 for Rs.45,000/- (Ex.A8). The plaintiffs had promised to discharge the entire dues under the aforesaid cheques totalling a sum of Rs.8,75,000/- within a year together with interest @ 24% per annum, from the date of the respective cheques till the date of payment. The plaintiffs would submit that except for the interest paid under Exs.A3 and A4, no further interest was paid. The plaintiffs had therefore issued a legal notice dated 11.01.2008 calling upon the defendants to repay the sum of Rs.8,75,000/- together with interest @ 24% per annum.

5. Despite the notice, the defendants had neither paid the amounts nor sent a reply to the legal notice. Therefore, the plaintiff had come forward with the suit for recovery of a sum of 14,67,390/- as detailed below:

Amount covered in cheque, dated 21.03.2005 ***Interest @ 24% per annum from 21.03.2005 to 20.01.2008***	*Rs.4,00,000.00* *Rs.2,72,000.00*
Amount covered in cheque, dated 28.03.2005 ***Interest @ 24% per annum from 28.03.2005 to 20.01.2008***	Rs. 4,30,000.00 Rs. 2,90,390.00
Amount covered in cheque, dated 08.04.2005 ***Interest @ 24% per annum from 08.04.2005 to 20.01.2008***	Rs. 45,000.00 Rs. 30,000.00
Total	**Rs.14,67,390.00**

6. The defendants, who had received notice and who had initially entered an appearance through counsel had not filed their

written statement and have not contested the case.

7. The first plaintiff had examined himself as P.W1 and marked Exs.A1 to A9. The learned Judge ultimately decreed the suit in part by passing a judgment directing the defendants to pay a sum of Rs.8,75,000/-to the plaintiffs together with interest 12% per annum from the date of the plaint till the date of decree and thereafter, 6% per annum. The learned Judge had not granted any interest prior to the institution of the suit. Therefore, the appeal is filed for this disallowed portion.

8. The only point for consideration that arises in the above first appeal is *"Whether the plaintiff is entitled to interest prior to the institution of the case"*.

9. Heard the learned counsel for the appellants/plaintiffs and perused the materials available on record.

10. A perusal of the judgment under appeal would indicate that the learned Judge has not given any reason as to why interest has not been granted from the date on which the defendants had issued cheques in favour of the plaintiff till the date of the suit. The evidence would indicate that the defendants have infact given an undertaking agreeing to pay interest as described in Ex.A2. No doubt the interest claimed therein is usurious but it remains that the defendants had agreed to pay interest from the date of borrowal. The plaintiff has only claimed interest @ 24% per annum. The defendants who had received money had admitted that they have not repaid the dues, and except for paying interest for two periods towards the promissory notes (Exs.A3 and A4), no further interest has been paid.

The defendants have undertaken to pay interest, which is evident from the letter of undertaking (Ex.A2) and promissory notes (Exs.A3, A4 and A5). In these documents, the defendants have clearly and categorically admitted that they would pay interest on the outstanding amounts. Therefore, considering the fact that the plaintiffs have undertaken to pay interest, the learned Judge had erred in rejecting the claim for interest prior to the filing of the suit. The cheques had been issued on 21.03.2005, 28.03.2005 and 08.04.2005 covering Rs.4,00,000/-, Rs.4,30,000/- and Rs.45,000/- respectively. Therefore, considering Exs.A2 to A5, the defendants shall pay interest from the date of the respective cheques till the date of the suit @ 12% per annum as tabulated hereunder.

Amount covered in cheque, dated 21.03.2005 ***Interest @ 12% per annum from 21.03.2005 to 20.01.2008***	*Rs.4,00,000.00* *Rs.1,36,000.00*
Amount covered in cheque, dated 28.03.2005 ***Interest @ 12% per annum from***	Rs. 4,30,000.00 Rs. 1,45,195.00

Amount covered in cheque, dated 21.03.2005 ***Interest @ 12% per annum from 21.03.2005 to 20.01.2008***	*Rs.4,00,000.00* *Rs.1,36,000.00*
28.03.2005 to 20.01.2008	
Amount covered in cheque, dated 08.04.2005 ***Interest @ 12% per annum from 08.04.2005 to 20.01.2008***	Rs. 45,000.00 Rs. 15,000.00
Total	**Rs.11,71,195.0** **0**

11. The Appeal Suit is allowed and the decree of the trial Court is modified to the above extent. The defendants shall pay a sum of Rs.2,96,195/- towards interest @ 12% per annum from the date of the respective cheques till 20.01.2008 as set out by the plaintiffs in their pleading. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

16.04.2024

Index: Yes/No
Speaking order/non-speaking order

srn

To

1. The II Additional District and Sessions Judge, Salem.

2. The Section Officer, V.R.Section, High Court, Madras.

P.T.ASHA, J.,

srn

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