



S.A.No.1412 of 2008

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.01.2024

Pronounced on : 29.01.2024

CORAM

THE HON'BLE MR. JUSTICE **G.ARUL MURUGAN**

S.A.No.1412 of 2008

Tamilnadu Merchantile Bank,
Represented by its Power of Attorney,
P.Ramakrishnan, Chief Manager,
Mount Road Branch,
No.688, Mount Road,
Chennai – 600 006.

... Appellant

(Cause title accepted vide order of Court
dated 03.11.2008 made in MP.No.1/2008
in SA.Sr.No.78533 of 2008).

Vs.

1.H.M.Justin
2.G.John Sarguru Doss
3.P.Devesasahayam

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 10.03.2008 made in AS.No.370 of 2006, on the file of the VI Additional City Civil Court, Chennai, reversing the judgment and decree dated 28.11.2002 in OS.No.5563 of 1997 on the file of XVII Assistant Judge, City Civil Court, Chennai.



S.A.No.1412 of 2008

WEB COPY

For Appellant : Mr.T.Karunakaran

For Respondents : No Appearance

JUDGMENT

The instant second appeal is filed by the plaintiff challenging the judgment and decree dated 10.03.2008 in AS.No.370 of 2006 on the file of the VI Additional City Civil Court, Chennai by reversing the judgment and decree dated 28.11.2002 in OS.No.5563 of 1997, on the file of the learned XVII Assistant Judge, City Civil Court, Chennai. Respondents 1 to 3 herein are the defendants 1 to 3 in the suit.

2. For the sake of convenience, the parties are referred to as per the ranking before the Trial court.

3. According to the plaintiff, the first defendant is carrying on business as a tourist taxi operator and has availed a loan to purchase an Ambassador car bearing registration No.TSB 6768. The first defendant executed a Hire Purchase Agreement on 03.03.1987 with respect to the



S.A.No.1412 of 2008

WEB COPY

ambassador car, purchased by him, by using the money advanced by the plaintiff. Further, the first defendant executed a demand promissory note in favour of the plaintiff for Rs.1,00,000/- on 31.03.1987 and he also executed an agreement agreeing to repay the borrowed money in monthly instalments from June 1987 and to pay the entire amount on or before 28.02.1991. Further, the first defendant executed a hypothecation deed on 31.03.1987, thereby hypothecating the ambassador car in favour of the plaintiff. The 2nd and 3rd defendants executed a separate agreement on 31.03.1987 as guarantors for the due repayment of the money borrowed by the first defendant. They also agreed that the agreement shall be a continuing guarantee and that they would reimburse the bank in case of default. However, the first defendant did not pay the promised amount. The first defendant submitted a letter on 20.10.1990 stating that he was unable to repay the money due to acute financial strain and that he would repay the money at the rate of Rs.3,000/- per month. Further, on 11.05.1991, the first defendant acknowledged his liability to pay a sum of Rs.1,90,660.43 to the plaintiff as on 30.03.1991. Since the first defendant failed to pay the amount, the plaintiff issued a lawyer's notice on 19.02.1992. Though, the first defendant received the notice, he did not



S.A.No.1412 of 2008

send any reply. When the plaintiff attempted to seize the vehicle, the

WEB COPY



S.A.No.1412 of 2008

vehicle was secreted by the first defendant. As a result, the plaintiff filed a suit for the recovery of money.

4. The defendants 1 to 3 filed a written statement controverting the claim of the plaintiff. The defendants 1 to 3 while admitting the loan availed through the plaintiff bank, disputed the quantum and the plaintiff has got the promissory note with an exorbitant rate of interest. The defendants further stated that they have paid the part of the amount in instalments. Since the vehicle was deteriorated due to efflux of time, the defendants are unable to pay the balance amount and they informed the plaintiff-bank to take further steps. The defendants incurred the losses in their tourist business, and due to a major mechanical problem of the vehicle, they reported it to the plaintiff bank, and as per the plaintiff's instructions, they sent the vehicle to a workshop in the Vadapalani area. The defendants deny the allegation that the first defendant has acknowledged his liability, but the plaintiff bank invited the first defendant and obtained his signatures in several papers stating that his signatures are required for selling the vehicle and without the knowledge of the defendants, the vehicle was sold by the plaintiff-bank. According



S.A.No.1412 of 2008

to the defendants, the plaintiff without any notice to the defendants sold the vehicle and the entire balance was recovered and therefore the question of repayment does not arise. Further, no notice was issued to the guarantors before the vehicle was sold by the plaintiff bank. The defendants' claim is that the plaintiff issued a Hire Purchase termination agreement in favour of the first defendant after full and final settlement and therefore the question of further payment does not arise and as such, the suit filed by the plaintiff is not maintainable and the same is liable to be dismissed.

5. Based on the above pleadings, the trial court framed the following issues,

“1. Whether the defendants sent the vehicle to the workshop as per the instruction given by the plaintiff?

2. Is it true that the defendants unable to pay the loan amount because of the vehicle's repair?

3. Whether the plaintiff-bank obtained signatures of the first defendant in several papers stating that his signatures are required for selling the vehicle?



S.A.No.1412 of 2008

4. *Whether the plaintiff sold the vehicle without notice to the defendants and the entire balance was recovered?*

5. *Whether the defendants need not pay the amount for the reason that the plaintiff has terminated the Hire Purchase Agreement?*

6. *To what other relief?”*

6. Before the Trial Court, on the side of the plaintiff PW.1 was examined and Exs. A.1 to A.13 were marked. On the side of the defendants, 1st defendant was examined as DW.1 and Exs.B.1 to B.20 were marked.

7. After analysing the evidences and documents, the Trial Court decreed the suit. Aggrieved by the judgment, the first defendant filed the appeal and the Appellate Court after reappraising the evidence allowed the appeal setting aside the decree of the Trial Court. Aggrieved by the same, the plaintiff-bank is before this Court with the above second appeal.

8. This Court by order dated 13.11.2008 was pleased to formulate



S.A.No.1412 of 2008

the following substantial question of law:

“a) Is the Appellate Court correct in coming to the conclusion that there is suppression of fact with absence of any issue to that effect?

b) Is the finding of the Appellate Court correct in holding that a common account was maintained for two-loan transactions, while there were two separate accounts maintained by the appellant I.e) 1) 0967460000034-TSH 798 for Diesel Mini Bus 2) 0967460000033-TSB 6768 for Ambassador car and a separate suit was filed for 0967460000034-TSH 798 for Diesel Mini Bus in O.S.No.5563/1997 and the same was decreed.

c) Is the Court correct that the non-whisper about TSH 798 will amount to Suppression of fact?”

9. The learned counsel appearing for the appellant submitted that the first defendant has availed two separate loans from the plaintiff-bank, one in respect of the diesel mini bus in account no.096700460000034-TSH 798 and a separate loan for the ambassador car in account no.096700460000033-TSB 6768. Both these accounts were completely separate and the loans have been advanced by the bank in favour of the



S.A.No.1412 of 2008

first defendant for the respective vehicles. As far as the present suit is concerned, the first defendant has availed the loan for the purchase of the ambassador car in TSB 6768 by executing the promissory note, the Hire purchase agreement and the hypothecation deed by hypothecating the ambassador car in favour of the plaintiff bank and executed the agreement for repaying the loan in instalments. The defendants 2 and 3 have stood as guarantors and they have also executed the guarantee agreement. The first defendant has also by letter dated 20.10.1990 in Ex.A.9 has expressed his difficulties in repaying the instalments and further by letter dated 11.05.1991 in Ex.A.10 has acknowledged his liability of the loan to be repaid to the plaintiff. The plaintiff-bank has also filed the statement of accounts in Ex.A.13 and since the first defendant did not repay the amount, legal notice in Ex.A.11 dated 19.02.1992 was issued, the defendants did not choose to reply. When the suit was specifically filed for recovery of money based on the promissory note, the Hire Purchase Agreement and the documents executed by the defendants in favour of the plaintiff-bank only in respect of the ambassador car TSB 6768, the defendants have filed the written statement admitting the loan availed by them from the plaintiff bank but only they disputed the quantum and the



S.A.No.1412 of 2008

WEB COPY

interest. The defendants have only claimed that on the instructions of the plaintiff bank, they have left the car in a workshop and the plaintiff bank has taken the vehicle and sold without issuing any notice and also a hire purchase termination document was issued in favour of the first defendant as full and final settlement. Considering the pleadings, the trial court framed the issues and after analysing the evidences and documents has rightly decreed the suit. The trial court has also considered the fact that the defendants having admitted the ambassador car loan, has failed to prove that they have left the car in a workshop on the instructions of the plaintiff-bank and that the vehicle was sold and further when the defendants claimed that the termination of hypothecation deed was issued in his favour, the first defendant failed to establish the same.

10. The learned counsel for the appellant further submitted that the lower appellate court by reappraising the evidence, allowed the appeal on the ground that since there was another account in respect of the mini bus and the same was not stated in the pleadings by the plaintiff, that would amount to suppression. The lower appellate court relied on the documents filed by the defendants in respect of another account pertaining to mini



S.A.No.1412 of 2008

bus and erroneously allowed the appeal, setting aside the decree, holding that the plaintiff had suppressed the fact in respect of the other loan account.

11. The learned counsel further submitted that the lower appellate court grossly erred in allowing the appeal on the ground of suppression when no such issue was framed by the trial court and particularly when the defendants have admitted the ambassador car loan and they have not raised anything in respect of the mini bus loan account.

12. The learned counsel further contended that the present case of the plaintiff is completely in respect of car loan. The defendants have also admitted the car loan, but they have disputed only the quantum and interest. As far as mini bus is concerned, the plaintiff bank initiated separate proceedings against the first defendant which ended in their favour. The lower appellate court exceeded its jurisdiction and allowed the appeal on the ground of suppression, which was not the issue at all. As such, the judgment of the lower appellate court is perverse and requires the interference of this Court.



S.A.No.1412 of 2008

WEB COPY

13. Even though the respondents have been served and their names have been printed in the cause list, there is no appearance on the side of respondents.

14. Heard the learned counsel for the Appellant and gave my anxious consideration.

15. It is the admitted case that the first defendant has availed a loan for the ambassador car bearing registration no.TSB 6768 from the plaintiff bank by executing the promissory note in Ex.A.3 and the agreement with the plaintiff bank for the due repayment and instalments in Ex.A4. The first defendant has also executed the Hire Purchase Agreement in respect of the ambassador car in Ex.A.5, and the hypothecation deed in Ex.A.6 has been executed, hypothecating the ambassador car in favour of the plaintiff. The defendants 2 and 3 have also executed a guarantee agreement in Exs.A.7 and A8. The plaintiff has filed the documents in Exs.A.9 and A.10 to show that the first defendant has expressed his inability to repay the instalments due to some loss in



S.A.No.1412 of 2008

business, but however, he has acknowledged the liability from the loan amount to be repaid to the plaintiff bank. The plaintiff has caused a legal notice for the repayment of the money, but the defendants did not reply to it, and the plaintiff has come up with the suit for the recovery of money based on the hypothecation agreement and the promissory note. The defendants have admitted to the loan availed for the ambassador car, but they disputed the quantum and interest. It is the case of the defendants that, pursuant to the instructions of the plaintiff bank, they have left the ambassador car in a workshop in the Vadapalani area, and the defendants have claimed that the plaintiff has sold the car without notice to the first defendant or to the guarantors. It is their further case that the plaintiff has also issued the termination of the hypothecation agreement in favour of the first defendant as full and final settlement.

16. The defendants have admitted the car loan account. There are two separate accounts in respect of the ambassador car and another loan for a mini bus. The present suit was filed only for the recovery of money in respect of the ambassador car in account no. 0967460000033-TSB 6768. It is not the case of the defendants that there was a common



S.A.No.1412 of 2008

WEB COPY

account and that the account of the ambassador car got adjusted in pursuance of the sale of the mini bus. It is the specific case of the defendants that the ambassador car was left in a workshop in the Vadapalani area and the same was sold by the plaintiff-bank and the termination of hypothecation was issued. Under these circumstances, it is incumbent on the defendants to establish that they were instructed to leave the car in a workshop and that pursuant to the same they left the car, and further they are bound to file the termination of hypothecation agreement as full and final settlement issued by the plaintiff bank as claimed by them. However, from the evidence of DW.1, it can be seen that he is not aware of the name of the workshop where he has left the car and when he has left the car in a workshop. No documents have been filed on the part of the defendants to prove that they were instructed by the plaintiff to leave the car. Further, the defendants failed to file the termination of hypothecation deed towards full and final settlement as claimed by them. Considering the pleadings, oral and documentary evidence, the trial court has rightly decreed the suit.



S.A.No.1412 of 2008

WEB COPY

17. However the lower Appellate Court has allowed the appeal by setting aside the decree on the ground that the plaintiff has not pleaded the fact in the plaint or proof affidavit in respect of the loan account of the mini bus. The documents filed in Ex.B.11 to Ex.B.15 shows that they pertain to the loan account of the mini bus availed by the first defendant from the plaintiff-bank. The lower appellate court relied on the documents in Ex.B.20 and Ex.A.9 and has given findings that those documents shows some transactions between the plaintiff and the first defendant but however, the plaintiff did not disclose the same and therefore, the plaintiff is not entitled to get the decree due to suppression of facts.

18. At this juncture, it is useful to refer Order 14 Rule 1 of CPC in respect of framing of issues. The framing of issue arises only when a material proportion of fact or law is affirmed by one party and denied by the other. But, in the present case, the loan account of the ambassador car was admitted by the defendants and nothing was raised in respect of the other loan account of the mini bus. No specific issue in respect of any suppression or the other loan account of the mini bus has been framed.



S.A.No.1412 of 2008

19. From the issues framed by the trial court, it could be seen that there was no issue in respect of the suppression of facts. It is also not the case of defendants that the loan account of the mini bus is in any way connected to the loan account of the ambassador car in respect of which the present suit is filed. It is also brought to the notice of this Court from the grounds filed in the second appeal that in respect of the loan account of the mini bus, a separate suit in OS.No.1500/1996 was filed before the XVI Assistant Judge, City Civil Court, Chennai for the recovery of money and the suit was decreed and the first defendant herein has filed an appeal in AS.No.158 of 2005 on the file of IV Additional City Civil Court, Chennai. By judgment and decree dated 06.07.2007, the appeal was partially allowed by modifying the interest alone, and the judgment and decree have become final since the first defendant has not filed any second appeal and the execution petition is still pending.

20. When the above suit for recovery of money in respect of the loan account of the Ambassador car was filed, the defendants have admitted the loan account and have not raised any plea in respect of the other loan account of the mini bus. The documents in the suit were filed



S.A.No.1412 of 2008

only for the ambassador car, and the issues were framed only for this loan account. Even the lower appellate court has only framed omni bus point for consideration as to whether the judgment and decree of trial court is right and has not determined any specific point for consideration with respect to mini bus loan account or suppression. While so, the findings of the lower appellate court that the plaintiff is guilty of suppression of facts by referring to the mini bus loan account that was not at all in issue in this suit and setting aside the decree on the ground of suppression is erroneous and perverse and is liable to be interfered.

21. In view of the same, the substantial questions of law are answered in favour of the appellant and against the defendants. As a result, the second appeal is allowed and the judgment and decree of the lower appellate court is set aside. The judgment and decree of the trial court is restored, however by modifying the decree in respect of interest alone @ 12% from the date of the plaint till the date of decree and @ 6%



S.A.No.1412 of 2008

WEB COPY

from the date of the decree till the date of the realisation. However there will be no order as to costs.

29.01.2024

drl

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

To

1.The VI Additional Judge, City Civil Court, Chennai

2.The XVII Assistant Judge, City Civil Court, Chennai.



WEB COPY



S.A.No.1412 of 2008

G.ARUL MURUGAN.,J.

drl

S.A.No.1412 of 2008

29.01.2024