IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024

CORAM

THE HONOURABLE MR.JUSTICE M. JOTHIRAMAN

SA.No.1038 of 2010
and MP.No.1 of 2010

The Deputy Director
Anna Silk Exchange,
Siru Kaveripakkam,
Kancheepuram … Appellant / defendant

V.

P.Viswanathan ... Respondent / Plaintiff

Prayer : This Second Appeal is filed under Section 100 of the Code of Civil Procedure 1908 against the judgment and decree dated 14.11.2003 made in AS.No.13 of 2001 on the file of Subordinate Judge, Kancheepuram confirming the judgment and decree dated 20.12.2000 made in OS.No.41 of 1998 on the file of the Principal District Munsif, Kancheepuram.

For appellant : Mrs.R.Anitha, AGP (CS)

For Respondent : Mr.Govinda Reddy

JUDGMENT

This second appeal is filed against the judgment and decree dated 14.11.2003 passed by the Sub Judge, Kancheepuram [“First Appellate Court” for short] in AS.No.13 of 2001 confirming the judgment and decree dated 20.12.2000 made by the Principal District Munsif, Kancheepuram [“Trial Court” for short] in OS.No.41 of 1998.

2. The appellant herein is the defendant and the respondent herein is the plaintiff in the suit.

3. For the sake of convenience, the parties are hereinafter referred to according to their litigative status in the Original Suit.

Case of the plaintiff in brief :-

4. The plaintiff is one of the members in “Anna Silk Exchange” under the defendant . The defendant exchange buy the raw silks from the reelers and sell the raw silks to its members on commission. The plaintiff used to buy the raw silks in cash and carry basis and also on credit basis. As per the directions from the defendant, the plaintiff had given Bank

Guarantee to the tune of Rs.75,000/- during the month of August 1995. Prior to August 1995, the plaintiff was having cash dealings, the plaintiff was allowed to buy the raw silks on credit basis i.e., on 3 occasions within the bank guarantee limit. During the month of July 1996, due to various reasons, he had stopped the credit transactions and informed the defendant to invoke the bank guarantee offered by him to the exchange and to close the account on the same day. The plaintiff had purchased raw silks for nearly Rs.80,000/- by paying cash. The defendant exchange had not taken any steps to get a sum of Rs.75,000/- from the Bank in time. The defendant had intimated the plaintiff and directed him to pay a sum of Rs.1,03,859/- on 26.08.1997 by his letter Na.Ka.No.630/A/95, after receiving the said intimation letter, the plaintiff requested the defendant to invoke the bank guarantee and adjust the said Rs.75,000/- towards due. The plaintiff had paid a sum of Rs.75,000/- to the defendant by adjusting the Bank guarantee amount on 07.10.1997 and the same amount had been credited on 14.10.1997. Hence, as on 14.10.1997, he had paid the entire amount to the defendant. On 09.10.1997, the defendant sent a letter to the plaintiff stating that the plaintiff will have to pay only a sum of Rs.95,484/- (principal Rs.94,773/- + Levy Rs.711/-). Though the said notice had been prepared on 15.10.1997, it was post dated for the reasons best known to the defendant.

5. While so, the defendant had sent a letter (notice dated 10.12.1997) to the plaintiff in Na.Ka.No.630/A/97, with a direction to pay a sum of Rs.30,538/- to the defendant on or before 31.12.1997 failing which further action will be taken. The plaintiff had already paid a sum of Rs.8,375/- in excess and the plaintiff is not liable to pay a sum of Rs.30,538/- as claimed by the defendant. Hence, it is just and necessary to claim that that the letter in Na.Ka.No.630/A/97 dated 10.12.1997 is against law, invalid, arbitrary in law.

The case of the defendant in brief :-

6. The plaintiff has never intimated at any point of time to close and adjust the Bank guarantee amount much less during the month of July 1996. Even though, the Bank guarantee limitation is upto Rs.75,000/-, and availed the stocks to the tune of Rs.1,47,971/- as on 29.12.1995 and repaid a sum of Rs.59,147/- on 30.12.1995 and totally he was due as on Rs.88,824/-. The defendant has sent notice initially to the plaintiff on 26.08.1997 and 2nd notice dated 09.10.1997 before auditing the accounts,. After the final audit only, the actual due by the plaintiff has been arrived

to Rs.30,538/- as on that date and after making all deductions and final notice to the plaintiff has been given on 10.12.1997. The Bank guarantee has been cleared and adjusted only on 08.10.1997, the plaintiff has never given any communication to the defendant with regard to the actual due to the defendant by the plaintiff to be paid lawfully. The defendant is having every right to recover the due by due process of law and his legal right could not be restrained by injunction order.

7. The trial Court based on the pleadings, the trial Court has framed the following issues :-

(i)Whether the plaintiff is entitled for seeking declaration against the defendant that the letter sent by the defendant in Na.Ka.No.630A/1997 dated 10.12.1997?

(ii)Whether the plaintiff is entitled to seek relief of permanent injunction against the defendant based on the letter dated 10.12.1997?

(iii)Whether the plaintiff had stopped the credit transactions and informed to invoke the Bank guarantee offered by the plaintiff to the exchange and

closed the account.

(iv)Whether the plaintiff in the month of July 1996 had informed to invoke Bank guarantee to the exchange and close the bank account.

8. During trial, on the side of the plaintiff, the plaintiff himself examined as PW1 and Ex.A1 to A10 were marked. On the side of the defendant, one Tr.Kolappa Pillai was examined as DW1 and Ex.B1 to Ex.B7 were marked.

9. Upon hearing either side and considering the materials available on record, the trial Court held that the plaintiff has proved that after receiving Ex.A1 notice dated 26.08.1997 from the defendant, the plaintiff had came to know that Bank guarantee amount has not been adjusted and immediately plaintiff had taken steps. The plaintiff also proves, the fact that the balance amount was also been tried to settle by way of demand draft and the same has been denied by the defendant. Thereafter, the plaintiff has issued the legal notice Ex.A3. Even after receiving Ex.A3/legal notice dated 10.10.1997. The defendant did not send any reply and infact, the original bank guarantee was available with the

defendant. If the defendant had taken necessary steps in the year 1995, to collect the dues from the plaintiff, then the plaintiff need not pay the interest amount along with the penal interest and only due to the act of the defendant alone, the delay has been occurred.

10. Upon dismissal of the suit the defendant has preferred the first appeal. The first appellate Court held that in Ex.A6 notice dated 10.12.1997, there is no proper calculation as to, how the balance amount arrived, as stated in Ex.B6, that 22% interest at 5% penal interest were not reflected in Ex.A6. There is no proper calculation arrived in Ex.A1 & A6, as to when the plaintiff had availed loan, how much amount due etc. Even after issue Ex.A6 notice, the defendant had not taken any steps to recover the amount from the plaintiff thereby confirming the findings of trial Court and dismissed the first appeal. As against concurrent findings of the Court below, the present second appeal has been filed.

<u>Substantial Questions of Law</u>

11. At the time of admission, this Court has formulated the following substantial questions of law :-

"*(i)Whether the appellant is competent to* *issue a demand notice Ex.A6 for the breach of trust committed in the Co-operative Society.*

(ii)Whether the plaintiff is entitled to draw the loan facility beyond the bank guarantee furnished by him.

(iii)Whether the loan account availed by the plaintiff beyond the limit of bank guarantee furnished is not recoverable."

Submissions on either side

12. The learned Additional Government Pleader (CS) appearing on behalf of the appellant/defendant would submit that both the Courts below over looked, the stand taken in written statement, that the plaintiff availed loan beyond the credit capacity of Rs.75,000/- especially when the total outstanding, to an extent of Rs.80,000/- which has been admitted by the plaintiff himself. The findings of the first appellate Court to an extent of suggesting, the defendant to initiate separate proceedings or initiate civil suit for recovery of the amount, than issuing demand notice/Ex.A6 is incorrect, as the plaintiff could have discharged the admitted debt of Rs.30,538/-, pursuant to the issuance of the Ex.A6.

13. Per contra, the learned counsel for the respondent/plaintiff would submit that in the month of July 1996, due to various reasons he had stopped the credit transactions and informed to invoke the bank guarantee to the exchange and to close the account. But the exchange had not taken any steps. On 07.10.1997, the bank guarantee amount of Rs.75,000/- had been sent to the defendant and as per Ex.A1/letter dated 26.08.1997, the defendant had adjusted his bank guarantee on 07.10.1997 and the balance amount of Rs.28,859/- had been sent to the defendant by way of demand draft on 09.10.1997. The said amount had been credited on 14.10.1997, hence as on 14.10.1997, the plaintiff had paid the entire amount of Rs.1,03,859/- and he was not liable any amount to the defendant. Whileso, the defendant had sent Ex.A6 letter dated 10.12.1997 with a direction to pay a sum of Rs.30,538/- without any valid reason and the same is against law.

14. This Court has given anxious consideration to the submission made on either side and perused the materials available on record.

15. The defendant has admitted the fact that the plaintiff used to buy raw silks on cash and carry basis and also on credit basis. Ex.B1 to ExB5 are the silk exchange cards issued by the defendant. Ex.B6 is the agreement for sale of silks, on credit basis to the limit of Rs.75,000/-. Ex.A1 letter dated 26.08.1997, directing the plaintiff to pay a sum of Rs.1,03,859/- on or before 31.08.1997 it has been also mentioned about the bank guarantee details.

16. According to the defendant/appellant the plaintiff has never intimated at any point of time, to close or adjust the bank guarantee much less during the month of July 1996 and also contended that even though the Bank guarantee limit is upto Rs.75,000/- he has availed the stock to the tune of Rs.1,47,971/- as on 29.12.1995 and totally he was due as on Rs.88,824/-. Ex.A2 is the letter dated 07.10.1997 addressed by the Indian Overseas Bank to the Deputy Director of Sericulture, wherein it has been stated that the intimation letter of guarantee, issued on behalf of the plaintiff for a sum of Rs.75,000/-. Admittedly no explanation was offered by the defendant as to why the immediate action was not initiated after, 1995 to recover the due amounts from the plaintiff.

17. Ex.A5/letter dated 09.10.1997 issued to the plaintiff wherein it was directed the plaintiff to pay a sum of Rs.95,484/- (principal Rs.94,773/- + Levy Rs.711/-). EX.A6/letter dated 10.12.1997 was issued to the plaintiff wherein it has been mentioned about Ex.A1 and Ex.A5, wherein it is also been stated that after conducting final audit, the due amount payable will be calculated.

18. After receiving Ex.A1, the plaintiff had immediately taken steps to adjust the bank guarantee amount and also tried to settle the balance amount by way of demand draft and the same was refused to be received by the defendant and thereafter, the plaintiff had issued Ex.A3/legal notice. The defendant has belatedly issued Ex.A6/notice without any basis and the same is unsustainable under law.

19. The Courts below has thoroughly analysed the evidence and documents in a proper manner have rendered factual findings and there is no perversity or illegality in the findings rendered by the Courts below. The substantial question of law are answered in favour of the plaintiff / respondent.

> *"The Hon'ble Apex Court has held in catena of judgments (i)* ***Karnataka Board of Wakf v.***

> ***Anjuuman-E-Ismail Madris-Un-Niswan – (1999) 6 SCC 343*** *(ii)* ***Ramanuja Naidu v. V.Kanniah Naidu – (1996) 3 SCC 392*** *(iii)* ***Navaneethammal v. Arjuna Chetty – (1996) 6 SCC 166*** *and (iv)****Secy., Taliparamba Education Society v. Moothedath Mallisseri Illath M.N. - (1997) 4 SCC 484*** *that if the findings of fact of the Courts below are based on legal evidence, the same cannot be interfered by this Court while exercising power under Section 100 of the C.P.C."*

20. In the result, the second appeal stands dismissed by confirming the judgment and decree passed in AS.No.13 of 2001 on the file of the Subordinate Judge, Kancheepuram and Judgment and decree passed in OS.No.41 of 1998 on the file of the Principal District Munsif, Kancheepuram. No costs. Consequently, connected miscellaneous petition is closed.

29.10.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

1.The Subordinate Judge, Kancheepuram.
2.The Principal District Munsif, Kancheepuram.

M. JOTHIRAMAN, J.

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