



S.A. No. 1583 of 2011

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 18.11.2024**

**CORAM**

**THE HONOURABLE Ms. JUSTICE R.N.MANJULA**

**S.A. No. 1583 of 2011**

1. Strong Constructions Rep. By its Managing  
Partner, Senthil Kumar, S/o.Sugumar

2. Sadish Kumar

...Appellants

**Vs.**

Arumugam, S/o.Krishnasamy

... Respondent

**PRAYER:** Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 19.04.2011 made in A.S. No. 6 of 2008 on the file of the Principal District Judge, Puducherry, confirming the judgment and decree dated 28.02.2007 made in O.S. No. 494 of 2003 on the file of the Additional Sub Judge, Puducherry.

For Appellants : Mr.Elangovan

For Respondent : Mr.G.Saravanan

**JUDGMENT**

The appellants are the defendants against whom the plaintiff has filed a suit for recovery of money. The trial Court had decreed the suit and the first



appeal preferred by the defendant, the first appellate Court confirmed the judgment and decree of the suit. Aggrieved over that, the defendants have preferred the second appeal.

**2. The short facts leading to the case :-**

*“The plaintiff is doing business in the supply of building materials and he has been supplying materials to the defendant company since the year 2000 and they used to pay the cost of materials either by way of cash or cheque in plaintiff's favour.*

*2.1. On 30.04.2001, the defendants issued a cheque No.396698 dated 30.04.2001 drawn on UCO Bank, Bazar Branch, Pondicherry for a sum of Rs.75,000/- representing the value of building materials supplied by the plaintiff to the defendants. On the same day, when the cheque was presented for realization, and the same was returned as dishonoured for want of funds in the account of the defendants. The plaintiff immediately approached the defendants and informed the same. The defendants requested to wait the plaintiff for three more months. Though the plaintiff waited for three more*



WEB COPY



S.A. No. 1583 of 2011

month, but the defendants did not choose to pay the dues as promised.

2.2. Even after 2 ½ years, the defendants did not pay the amount and hence, the plaintiff issued a notice dated 31.10.2003 calling upon the defendants to pay the cheque amount due. On 01.11.2003, the defendants had acknowledged the said notice, but did not choose to pay the amount due. Since the cheque has been issued towards the cost of construction materials supplied purchased by the defendants company, the defendants are liable to pay the interest @ 18% per annum.

**3. The writ-statement in brief reads as follows:-**

“ The defendant firm was a Civil Contractor and they had dealing with the Public Works Department, Pondicherry. In such course, the defendants partners were approached by the plaintiff in the year 1999 to purchase materials from him. So the defendants firm started to purchase materials from him and placed orders to the plaintiff and got the orders on prompt



WEB COPY



S.A. No. 1583 of 2011

*payments. The partners of defendant firm could not spare all attention to the said business as contractors. So the business ended gradually in the middle of 2003. All the transactions between the parties were amicably ended and settled. By trusting the plaintiff, the partners of the defendant firm did not demand to return any old papers from the plaintiff.*

*3.1. In this backdrop, the plaintiff had sent a legal notice. The defendants also sent a suitable reply notice. Since the defendants had not agreed to pay any sum to the plaintiff on any cheque as on the alleged date, it is not liable to pay the suit amount. The purported cheque as alleged in the plaint is void ab-initio and non-est in the eye of law. The suit is prima facie unjust and inequitable and hence, it is liable to be dismissed.*

4. On the basis of the above pleadings, the Court framed the following issues:-

*(1) Whether the defendant has purchased building materials from the plaintiff and issued cheque dated 30.04.2001*



WEB COPY



S.A. No. 1583 of 2011

*for Rs.75,000/- drawn on UCO Bank?*

*(2) Whether the plaintiff is entitled to get the amount as prayed for in the suit?*

*(3) To what other relief or reliefs the plaintiff is entitled to?*

5. During the course of trial, on the side of the plaintiff, two witnesses have been examined as PW1 and PW2 and Exhibits A1 to A3 were marked and on the side of the defendants, the managing partner of the first defendant firm examined as DW1 and Exhibits B1 was marked.

6. At the conclusion of the trial and after considering the materials available on record, the suit was decreed. The first appeal preferred by the defendants challenging the said judgment was dismissed by confirming the judgment of the trial Court. Hence, the defendants have preferred the second appeal by raising the following questions of law:-

*(a) Whether the suit claim made with specific interest and principal amount from the date of the transaction and not from the date of the plaint is maintainable when there is no contract between the parties to the suit*



*specifying any interest, or pleadings to that effect.*

- (b) *Having framed the relevant issues under Order XIV rule 1 whether the Courts below are right in decreeing the suit without answering the main issue 1 as required under order XIV Rule 2 and order 20 rule 5.*
- (c) *When Section 138 of the Negotiable Instrument Act and RBI guidelines clearly says that the statutory period for validity of a cheque is 6 months from the date of its execution, Whether the suit can be filed or claim can be made after the cheque has lost its validity i.e. 6 months. Even without sending notice within the said period of 6 months.*
- (d) *Whether the claim notice for validating the cheque should be sent within a period of 6 months from the date of its execution as required under Section 138 of the Negotiable Instruments Act since the cheque will be enforceable only after notice within the period of its validity for filing the civil suit.*

On perusal of the materials, this Court thought it fit to re-frame the



substantial question of law as under:-

(1) *Whether it is correct in law for the first appellate Court to confirm the judgment of the trial Court without appreciating the error of appreciation of evidence made by the trial Court.*

7. The facts that the plaintiff was doing the business in the supply of building materials is not denied. The defendant firm was also a construction company and had been getting the materials from the plaintiff and the said facts was also admitted. But the only contention of appellants /defendants is that though they settled the entire suit amount to the plaintiff, the plaintiff had filed the suit by making false allegations. The defendants had issued a cheque for Rs.75,000/- on 30.04.2001 towards the dues payable by him in purchasing the buildings materials supplied by the plaintiff. But when the said cheque was presented for collection, it was dishonoured for want of funds. The cheque has been produced as Exhibit A1 and the defendants have not disputed the signature in Exhibit A1. The notice sent by the plaintiff on 31.10.2003 received by the defendants and acknowledgment to that effect has also been produced as Exhibit A3. Despite the same, the defendants did not choose to send any reply stating that as to how they have settled the amount



by giving break-ups of the payments. The contention as to the denial of the signature has been negated by the bare examination done by the Courts itself. So far as the cheque is a Negotiable Instrument and once the signature in the Negotiable Instrument is admitted, the presumption under Section 138 of the Negotiable Instrument Act, 1881 will go in favour of the plaintiff. The presumption as to the liability of the defendants on the cheque would become a conclusive proof.

**8.** Both the Courts below have rightly appreciated the evidence and the applicability of the law to the facts, the correct perspective and have chosen to decree the suit and in so far as the interest is concerned, the trial Court has awarded only 6% interest.

**9.** The learned counsel for the appellants submitted that the plaintiff had claimed interest @ 18% and calculated it from the date of cheque till the date of suit and that there is no agreement as to the interest part.

**10.** The learned counsel for the respondent submits that the transaction is a business transaction and 18% is quite reasonable, even though there is no



S.A. No. 1583 of 2011

specific agreement for the rate of interest and it is the interest, which is applicable to such business practices. The appellants is aggrieved that the interest of 18% is too much and in respect of the awarding of the interest some consideration can be shown as only 12% instead of 18%.

**11.** Considering the above circumstances, the plaintiff is entitled to get the suit amount of Rs.75,000/- with interest at 12% per annum from the date of issue of the cheque. The suit is decreed with costs for the cheque amount along with interest calculated @ 6% from the date of the suit till the date of realization and to that effect the judgment is modified and accordingly, the second appeal is partly allowed. No costs.

**18.11.2024**

Index : Yes/No  
Speaking order : Yes/No  
NCC : Yes/No  
*Maya*

To

1. The Principal District Judge, Puducherry.
2. The Additional Sub Judge, Puducherry.
3. The Section Officer,  
V.R. Section, High Court, Madras.



WEB COPY



S.A. No. 1583 of 2011

**R.N.MANJULA, J.**

*Maya*

**S.A. No. 1583 of 2011**

**18.11.2024**