IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.06.2024

PRONOUNCED ON : 23.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.981 of 2011

City Union Bank Ltd.,
Mayiladuthurai Branch,
Nagapattinam District ... Appellant

Vs.

1. S.V.Raman

2. R. Mamu ... Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 31.03.2011 passed by the Additional Subordinate Judge, Mayiladuthurai in A.S.No.98 of 2010 reversing the judgment and decree dated 04.08.2010 passed by the Additional District Munsiff, Myladuthurai in O.S.No.186 of 2009.

For Appellants : Mr. G. Senthil Kumar

For Respondents : set-exparte

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 31.03.2011 passed in A.S.No.98 of 2010 on the file of Additional Subordinate Court, Mayiladuthurai, reversing the Judgment and Decree dated 04.08.2010 passed in O.S.No.186 of 2009 on the file of Additional District Munsif Court, Myladuthurai.

2. For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3. The plaintiff in the suit in O.S.No.186 of 2009 on the file of Additional District Munsiff Court, Mayiladuthurai, is the appellant in this Second Appeal.

4. The fact of the case is that on 01.07.2003, the defendants borrowed commercial loan of Rs.27,000/- for their business development from the plaintiff bank and agreed to repay the same on demand and executed a

promissory note on the same day. Thereafter, the defendants executed renewal of demand promissory note and acknowledgement on 25.06.2006 ad 28.12.2006 respectively. Since the defendants failed to repay the said loan amount in spite of repeated demands, the suit has been filed.

5. The defendants filed written statement and contested the suit stating that the first defendant alone borrowed a sum of Rs.27,000/- from the plaintiff bank on 01.07.2003 for agricultural purpose and executed a pro-note on the same day. Thereafter, neither he sent letter nor executed promissory note to the plaintiff bank. Further, the first defendant is having agricultural lands less than 5 acres and he has deposited the original partition deed to the bank while obtaining loan. Further, the loan obtained by these defendants are waived off by the Central Government and hence, the suit is liable to be dismissed and the plaintiff is bound to return the documents. The suit is also barred by limitation and the suit has to be dismissed with costs.

6. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

1. Whether the documents dated 25.06.2006 and 28.12.2006 are true ?

2. Whether the suit is barred by limitation ?
3. Whether the plaintiff is entitled for a decree for suit amount ?
4. To what other reliefs the plaintiff is entitled for ?

7. Before the Trial Court, in support of the plaintiff's case, one Mrs.Ananthi, Assistant Manager of the plaintiff bank, was examined as P.W.1 and 4 documents have been marked as Ex.Al to Ex.A4. On the side of defendants, the first defendant examined himself as DW1, and one document has been marked as Ex.B1.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Trial Court decreed the suit as prayed for by a judgment and decree dated 04.08.2010. Aggrieved over the same, the defendants had preferred an appeal in A.S.No.98 of 2010 before the Additional Subordinate Court, Mayiladuthurai. The First Appellate Court, after considering the entire materials, vide judgment and decree dated 31.03.2011, allowed the appeal and set aside the judgment and decree passed by the Trial Court. Now, challenging the same, the present Second Appeal has been filed by the plaintiff.

9. The second appeal has been admitted on the following substantial question of law:

1. In a promissory note if there are more than one executants whether all of them have to sign on the Revenue Stamp affixed in the promissory note or Will it suffice if it one of them sign on it?
2. Whether the Maxim "Res Ispa Loquitur" is applicable in the present case ?
3. If the defendants seek the relief under agricultural loan waiver scheme the burden is on him to prove his eligibility or the plaintiff has to prove that the defendants are entitled to the relief ?

10. The learned counsel appearing for the appellant contended that the First Appellate Court failed to consider the fact that the first defendant(DW1), during the cross examination, has admitted the suit loan and also admitted that he has not repaid the loan amount. Admittedly, the first defendant signed in the promissory note and the second defendant, who is none other than his wife, also signed under the stamp. Both of their names are mentioned in the promissory note, dated 01.07.2003. The First Appellate Court misconstrued the evidence and not properly appreciated the documents on record. The

finding of the First Appellate Court is that the first defendant alone is the borrower. Even if the first defendant alone is the borrower, on admitting the suit loan, the suit ought not to be dismissed as against the first defendant. The learned First Appellate Judge erred by observing that the plaintiff has failed to prove that the loan is not waived by the Central Government. On the other hand, the defendants had not claimed any waiver of the loan by the Central Government and he has not given any application to the bank to waive the suit loan amount. The First Appellate Court erred by the observing the Maxim *"Res Ispa Loquitur"* applies to the facts of the case. The finding of the First Appellate Court is erroneous and reiterated the other grounds raised in the grounds of appeal and thus, pleaded to allow the appeal.

11. Even though, notice served on the respondents and their names also printed in the cause list and sufficient time was granted to them, they had not appeared and hence, they were called absent and set exparte on 20.06.2024.

12. I have considered the matter in the light of the submission made by the learned counsel for the appellant and perused the materials available on records carefully.

13. It is seen from the records that the appellant/plaintiff has filed the suit for recovery of money, against the defendants, based upon the promissory note dated 01.07.2003. The Trial Court, by its judgment and decree dated 04.08.2010 decreed the suit as prayed for. Aggrieved over the same, the defendants had preferred an appeal in A.S.No.98 of 2010 before the Additional Subordinate Court, Mayiladuthurai and the same was allowed by the First Appellate Court on 31.03.2011, against which, the present Second Appeal has been filed by the plaintiff Bank.

14. On perusal of records, it is noticed that both the defendants have signed in Ex.A.1 Loan Application & Promissory note, in which, the first defendant signed upon the stamp paper and the second defendant signed below the stamp paper. That will mean that both the defendants have borrowed the loan amount from the bank. Further, on perusal of the oral evidence, it is noticed that the first defendant himself admitted that he had not repaid any loan amount. For better appreciation, his evidence is reproduced hereunder:-

" நான் கடன் வாங்கியது முதல் வங்கிக்கு பாக்கி தொகை எதுவும் திருப்பி செலுத்தவில்லை. எனக்கு விவசாயத்தில் நஷ்டம் ஏற்பட்டதால் திருப்பி செலுத்த இயலவில்லை. அசல் ஆவணத்தை வங்கியில் ஒப்படைத்ததற்கு ரசீது

நான் வாங்கியுள்ளேனா என்றால் நான் எதுவும் வாங்கவில்லை."

When the first defendant admitted the suit loan amount, it is his burden to prove the repayment of the suit loan amount and it is also his burden that the loan amount was waived by the Central Government Scheme. But, in this case, the Defendants failed to adduce any evidence to show that they had repaid the joint loan amount and the suit loan amount was waived by any one of the Central Government Scheme. Under these circumstances, the First Appellate Court, without assigning any valid reason, set aside the judgment and the decree passed by the Trial Court, which is erroneous one. The Trial Court, after discussing the entire evidence, rightly found that the defendants had borrowed the suit loan amount from the Bank and not repaid the loan amount, which was also not waived by any scheme of Central Government and decreed the suit. However, the First Appellate Court, by misapplying the Maxim " *Res Ispa Loquitur"* dismissed the suit and allowed the Appeal. On fact, both the defendants singed in the promissory note, in which, the first defendant signed upon the stamp paper and the second defendant signed below the stamp paper. Under these circumstances, it cannot be said that the first defendant alone executed the promissory note. The burden of proof is upon the defendants, who signed in the collateral loan and eligibility for the Central Government Scheme and thus, the defendants failed. Therefore, the findings of the First Appellate

Court being erroneous one and not considered the evidence on record.

15. In view of the above, the finding of the First Appellate Court is liable to be setaside and the judgment and decree of the Trial Court is liable to be restored and the substantial question of law formulated in the second appeal is, accordingly, answered in favour of the appellant/plaintiff.

16. For the aforesaid reasons, the second appeal is allowed and the judgment and decree passed by the First Appellate Court is set aside and the judgment and decree passed by the Trial Court is restored. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No
Internet : Yes / No

23.07.2024

mrp

To

1.The Additional Subordinate Court,
Mayiladuthurai

2.The Additional Principal District Munsif,
Mayiladuthurai.

V.SIVAGNANAM, J.

mrp

Pre-Delivery Judgment made in S.A.No.981 of 2011

23.07.2024