



S.A.No.586 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2024

CORAM

THE HONOURABLE MR.JUSTICE V. SIVAGNANAM

S.A.No.586 of 2012
and MP.No.2 of 2012

1.B.Sultan Mohideen
2.S.Resitha

... Appellants

Vs

Bank of Baroda
Tiruvateeswaranpet Branch
No.280, Triplicane High Road,
Triplicane, Chennai-5.
Rep by its Chief Manager.

...Respondent

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree in AS.No.398 of 2008 dated 06.08.2009 on the file of the II Additional City Civil Court, Chennai confirming the judgment and decree in OS.No.733 of 2007 dated 08.01.2008 on the file of the XVI Assistant City Civil Court, Chennai.

For Appellant : Mr.R.Shankar
For Respondents : Mrs.Revathi Manivannan



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JUDGMENT

Heard the learned counsel for the appellants and the learned counsel for the respondent and perused the judgment of the Courts below and the materials available on record.

2. The appellants are the defendants in the suit in OS.No.733 of 2007 on the file of the XVI Assistant Judge, City Civil Court, Chennai. The respondent/Bank filed a suit for recovery for a sum of Rs.3,46,067/- together with interest at 9.50% p.a. for the housing loan obtained by the appellants/defendants. After trial, the suit was decreed as prayed for with costs.

3. Aggrieved by the said order, the appellants filed an appeal in AS.No.398 of 2008 on the file of the II Additional, City Civil Court, Chennai. The first appellate Court after considering the evidence on record confirmed the judgment and decree of the trial Court. As against the said judgment and decree, the appellants have filed the present second appeal.

4. The learned counsel for the appellants contended that in this case



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natural justice is not followed without invoking SARFAESI Act. The respondent Bank filed the suit for recovery of amount and no notice was given to the appellants. Further, the appellants had not obtained the possession from the Builder, the loan amount has been directly paid to the builder. Under these circumstances, the Bank has not followed the proper procedure for recovery of amount and the nature justice has been violated. Therefore, learned counsel prayed to admit the second appeal and to frame the substantial questions of law.

5. The learned counsel for the respondent/Bank supported the judgment and decree passed by the trial Court and the lower appellate Court and further contended that the suit has been decreed on the basis of the admission that the housing loan has been obtained by the appellants and property document has been executed by the appellants for obtaining the housing loan and the said documents were admitted by the appellants during trial. The findings is based on oral and documentary evidence and on facts and there is no substantial questions of law involved in this appeal and there is no merits in admitting the second appeal and thereby seeks dismissal of



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the second appeal.

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6. On perusal of the records, it is seen that the respondent/Bank filed the suit for recovery for a sum of Rs.3,46,067/- together with interest at 9.50% p.a. from the appellants for obtaining housing loan from the Bank.

7. During trial, the appellants admitted the execution of documents for obtaining the said housing loan, the said loan amount has been directly paid to the Builder's account by the Bank. The failure on the part of the builder to hand over the building to the appellants is not a ground for non payment of loan amount obtained by the appellants. On this ground, the trial Court rejected the contention of the appellants/defendants and the same was confirmed by the lower appellate Court

8. In this case, there cannot be any doubt whatsoever that consideration of irrelevant fact and non consideration of relevant fact would give rise to a substantial question of law. Further, the learned counsel for the appellants does not meet out the parameter laid down by the Hon'ble



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Supreme Court in the following decisions:-

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1. AIR 2008 SC 379 – Moses Wilson v. Kasturiba.
2. AIR 2008 SC 956 – Abdul Raheem v. Karnataka Electricity Board.
3. AIR 2008 SC 1749 – Kashmir Singh v. Harnam Singh and another.

9. Further, on perusal of the records and the judgments of the trial Court and the first appellate Court, I find, the findings recorded by the trial Court as well as by the first appellate Court are not perverse and the view being based on evidences on record and no another view is possible. There is no substantial questions of law arisen to be decided in this appeal.

10. In the result, second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

07.06.2024

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Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

To

1. The II Additional City Civil Court, Chennai
2. The XVI Assistant City Civil Court, Chennai.



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V. SIVAGNANAM, J.

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