



S.A.No.8 of 2022
and C.M.P.Nos.192 of 2022 and 9028 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.8 of 2022

and

C.M.P.Nos.192 of 2022 and 9028 of 2023

1.The Authorized Officer,
M/s.Bank of Baroda,
(Previously Dena Bank),
Chennai Regional Officer / Zonal Officer,
No.32, Venkatesan Street, T.Nagar,
Chennai - 600 017.

2. The Chief Manager,
M/s. Bank of Baroda,
(Previously Dena Bank),
Tondiarpet Branch,
No.234, T.H. Road, Tondiarpet,
Chennai - 600 081.

... Appellants

Vs.

M/s. Kuber Infosolutions Private Limited,
Represented by its Managing Director,
Mr.M.Kuber, Office at Old No.594,
New No.634, T.H. Road,
Chennai - 600 021.

... Respondent



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Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 31.10.2019 passed in A.S. No.36 of 2019, on the file of the III Additional City Civil Court, Chennai, upholding the decree and judgment dated 03.09.2018 passed in O.S.No.4555 of 2015, on the file of the XV Assistant City Civil Court, Chennai.

For Appellants : Mr.G.R.Lakshmanan
For Respondent : Mr.S.Pushpakaran

JUDGMENT

The appellants are the defendants in O.S.No.4555 of 2015, on the file of the XV Assistant City Civil Court, Chennai. The respondent, M/s. Kuber Infosolutions Private Limited, represented by its Managing Director Mr.M.Kuber filed the said suit for a declaration that no amount is payable by him to the defendants (appellants herein) in respect of his Working Capital Term Loan Account Number 052554023762 and Cash Credit Hypothecation Account Number 052513000038. He also prayed for a mandatory injunction directing the defendants to return all the original title deeds of plaintiff's property at Door No.594, second lane, T.H. Road, Old Washermenpet, Chennai, and for costs.



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2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

3. The case of the plaintiff in a nutshell is as follows :

3.1. The plaintiff company entered into an agreement with the second defendant during the year 2002 for cash credit facility of Rs.10,00,000/-. The title deeds of the land and building at No.594, 2nd lane, T.H. Road, Old Washermenpet, Chennai - 600 021, belonging to the plaintiff were handed over to the second defendant as a security for due repayment of the loan by way of Equitable mortgage. The plaintiff was also making payments regularly without any default. The second defendant therefore enhanced the cash credit facility to Rs.25,00,000/-.

3.2. Subsequently, the business of the plaintiff was affected due to recession and therefore, the plaintiff and the second defendant mutually agreed to convert the cash credit facility into working capital



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term loan. A memorandum of agreement dated 31.01.2009 (Ex.A2) was executed by the plaintiff and the second defendant. As per the restructuring agreement dated 31.01.2009, the outstanding amount was Rs.28,24,292/- (principal Rs.25,00,000/- and interest Rs.3,24,292/-) which has to be paid in sixty (60) equated monthly installments at Rs.63,522/- per month commencing from 31.07.2010. However, the defendants calculated the interest during the moratorium period and pressurized the plaintiff to pay interest as well as principal. Subsequently, the account was declared as Non performing Asset (NPA) on 30.11.2009 and the defendants sent a demand notice under SARFAESI dated 19.12.2009 (Ex.A3) claiming a sum of Rs.32,01,202/- from the plaintiff. After receiving the demand notice, the plaintiff paid a sum of Rs.50,000/- on 05.12.2009 and also sent a representation dated 24.12.2009 (Ex.A4) requesting the bank to stop the legal action, if any, to be taken against the plaintiff. However, the first defendant issued a possession notice dated 05.03.2010 (Ex.A5) under SARFAESI stating that the symbolic possession of the secured asset was taken. They also informed the plaintiff that the amount due and payable by the plaintiff is



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Rs.34,33,125/-.

3.3. Therefore, the plaintiff challenged the same in S.A.No.30/2010 before the DRT II, Chennai. The said application was decreed on 02.02.2011. Even during the pendency of the application before DRT, the sale notice was issued by the first defendant on 15.05.2010 (Ex.A6). The DRT II, Chennai, vide its judgment dated 02.02.2011 declared both the demand notice dated 19.12.2009 (Ex.A3) and the possession notice dated 05.03.2010 (Ex.A5) as invalid and set aside them. The DRT II, Chennai, also directed the defendants to adjust the sum of Rs.6,00,000/- that was paid by the plaintiff in compliance of the conditional order dated 16.06.2010, from the outstanding balance amount. As per the direction of DRT II, Chennai, the plaintiff had paid a sum of Rs.8,00,000/- to the bank and subsequently, made various payments till 30.07.2012. Thus the plaintiff had paid a sum of Rs.25,00,000/- and sent a representation dated 31.07.2012 to the defendants requesting waiver of the interest and to return the property documents. The defendants informed the plaintiff that there is a balance of Rs.4,812/- and requested the plaintiff to pay the same. The plaintiff



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also paid the said amount. However, the defendants did not return the title deeds to the plaintiff and claimed some imaginary amount. Therefore, the plaintiff sent a legal notice dated 01.09.2012 (Ex.A12) to the defendants. The second defendant vide its communication dated 18.08.2012 (Ex.A11) had demanded the plaintiff to pay some imaginary amount and hence the suit.

4. The suit was resisted by the defendant on the following grounds:

- i. All the allegations contained in the plaint are false.
- ii. The plaintiff himself had admitted that he was not regular in making payments to the bank.
- iii. The claim of the plaintiff that the total outstanding amount was reduced to Rs.28,24,292/- and therefore, he need not pay interest is false to the knowledge of the plaintiff.
- iv. The plaintiff has to pay interest from 01.01.2009 and the moratorium period is only six months from the date of the agreement.



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- v. The outstanding amount as on 31.12.2008 in CC (Hypothecation) facility granted to the plaintiff was converted to working capital term loan. In order to facilitate the plaintiff to make the repayment, the principal amount as on 31.12.2008 was crystallized and consolidated and agreed to be received in sixty equated monthly installments commencing from 31.07.2010 with interest from 01.01.2009 @ BPLR + 1% per annum with monthly rests.
- vi. The contention of the plaintiff that he had already paid a sum of Rs.25,00,000/- is totally false.

5. On the basis of the above pleadings, the trial Court framed the following issues :

- i. *"Whether the plaintiff is entitled to the relief of declaration as prayed for ?*
- ii. *Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for ?*
- iii. *To what other relief, the plaintiff is entitled to ?*



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6. In the trial Court, the plaintiff examined himself and marked Ex.A1 to Ex.A14. One witness was examined on the side of the defendants and Ex.B1 was marked.

7. The learned trial court judge after analysing the oral and documentary evidence on record, decreed the suit in favour of the plaintiff vide his decree and judgment dated 03.09.2018 on the following grounds :

- i. Admittedly, the SARFAESI proceedings of the defendants was set aside by DRT II, Chennai, in S.A.No.30/2010. In the circumstances, the defendants are not entitled to recover the amount mentioned in their notice.
- ii. The DW1 during the course of cross examination had admitted that the plaintiff had paid a sum of Rs.24,50,000/- to the second defendant bank.
- iii. In Ex.A10, the defendants had stated that the balance amount is Rs.187/- as on 13.08.2012.



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iv. In the circumstances, the claim made by the defendants cannot be sustained.

8. Aggrieved over the same, the defendants filed an appeal in A.S. No.36 of 2019, before the III Additional City Civil Court, Chennai. The learned III Additional City Civil Judge, Chennai, after analysing the evidence on record, upheld the findings recorded by the trial court vide her decree and judgment dated 31.10.2019, as against which the present second appeal is filed.

9. At the time of admission the following substantial questions of law were framed :

"(i) When the plaintiff and the second defendant bank entered into an agreement for re-settling the credit facility as per Ex.A2 and the plaintiff agreed to pay Rs.28,24,292/- (Rupees Twenty Eight Lakhs, Twenty Four thousand, Two hundred and ninety two only) in 60 Equated monthly installment at Rs.63,522/- (Rupees Sixty three thousand, Five hundred and Twenty two only) each along with interest, whether can he claim the relief of declaration that there is no due and mandatory injunction for return of documents, after paying only



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WEB COPY Rs.25,00,000/-?

(ii) When the plaintiff has not paid amount as indicated in Ex.A2, agreement for re-settling of credit facility, whether the judgment and decree granted by the Courts below in favour of the plaintiff can be sustained ?"

10. Heard Mr.G.R.Lakshmanan, learned counsel for the appellants and Mr.S.Pushpakaran, learned counsel for the respondent.

11. It is true that the respondent company had availed a cash credit facility of Rs.10,00,000/- initially in the year 2002 from the second appellant bank branch which was later enhanced to Rs.25,00,000/- in 2008. It got converted to working capital term loan as per restructuring agreement dated 31.01.2009 (Ex.A2) to ease the pressure on the borrower and prevent slippage of the account into Non Performing Asset (NPA) category. A plain reading of this agreement (Ex.A2) of restructuring clearly shows that the balance in the existing cash credit account of Rs.28,24,292/- was converted to working capital term loan repayable in sixty months with an EMI of Rs.63,522/- each commencing



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from 31.07.2010 along with interest @ BPLR + 1% per annum with monthly rests. The moratorium period offered was six months. Prima facie it is clear that if Rs.63,522/- is paid every month for sixty months, it would amount to Rs.38,11,320/- which clearly shows that the principal component of Rs.28,24,292/- as on 31.12.2008 when repaid in sixty months at Rs.63,522/- per month (along with interest) would amount to Rs.38,11,320/- including interest. Thus, the contention of the respondent company that interest is not to be charged during the moratorium period can only be a wishful thinking. At the same time, the appellants bank has also committed an error while mentioning the date from which the repayment would begin. Even a layman could observe that when the restructuring date is 31.01.2009 and a moratorium of six months is given, the repayment ought to have commenced on 31.07.2009 and not from 31.07.2010 as wrongly mentioned in the memorandum of agreement Ex.A2. This blunder has gone unnoticed not only by the DRT but also by the two courts below. Strangely, the appellant bank has not realised that this error has led to such a piquant situation where they have been pulled up for declaring the account as 'Non Performing Asset (NPA)' even before



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the repayment started. Thus it is evident that there are two aspects which are to be analysed in the instant case. One is regarding whether any interest will accrue (and is to be repaid) during the moratorium and second one is whether the moratorium agreed upon by the appellants and the respondent is six months as found in Ex.A2 or eighteen months as claimed by the respondent company. In fact, the respondent in their letter dated 24.12.2009 (Ex.A4) which was a reply to the notice dated 19.12.2009 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) has averred thus :

"I refer to your letter dated 19.12.2009 / CRO:RML:SEC:KUB:TON:2009, which I had received on 23rd December 2009.

I am in complete agreement with the contents of the letter. "

In the same reply he had continued to explain the reasons for the delay in repayment. Even at this juncture, the respondent company did not realise that the repayment ought to start from July 2009 and not July 2010. Neither the bank did.



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12. DRT-II at Chennai in S.A. No.30/2010 harped only on the date in the memorandum of agreement (Ex.A2) and set aside the demand notice dated 19.12.2009 and the possession dated 05.03.2010 categorically stating that the appellant bank's action of declaring the account as Non Performing Asset (NPA) on 30.11.2009 when the repayment itself is stated to commence only from 31.07.2010 as arbitrary. Even at this point of time, surprisingly, the appellant bank did not (presumably) realise its mistake of mentioning the wrong date of commencement of EMI. This being so even assuming that the moratorium period was not six months but eighteen months and therefore, the mistake could have crept in, in mentioning the moratorium period, the levy of interest during the moratorium period cannot be presumed to be waived as contended by the respondent. In fact in banking terms there is a huge difference between moratorium period and grace period and the difference lies in the fact that interest accrues on the outstanding loan



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amount during the moratorium whereas no interest is charged during grace period. Therefore, as already stated the contention of the respondent company that no interest is payable during the moratorium period has no basis.

13. To throw further clarity on the definition of 'Non Performing Asset (NPA)' it is a loan or debt instrument where the borrower has stopped making payments or interest on time. For a term loan, if interest and / or principal instalment is overdue for more than ninety days it is termed as Non Performing Asset (NPA). In the instant case, the EMI ought to have started on 31.07.2009 and therefore with no forthcoming repayment till November 2009, the account automatically turned Non Performing Asset (NPA) on 30.11.2009. Unfortunately, the bank failed to realise its mistake and present the facts in the right perspective not only before the DRT but also before both the courts below. It is also pertinent to mention that the interest ceases to be charged to the account from the date of declaration of Non Performing Asset (NPA). However, once the borrower approaches the bank for liquidation,



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the interest for the entire period from the date of Non Performing Asset (NPA) to the date of liquidation will be debited to the account by the bank. Thus the contention of the respondent that only a sum of Rs.4,812.99/- was outstanding as on 11.08.2012 is not acceptable for the sole reason that interest accrued in the account after becoming Non Performing Asset (NPA) was not charged to the account. It is a known fact that the entire interest accrued in the account after declaration of Non Performing Asset (NPA) would be added up to the loan account only when the borrower approaches the bank either for a full settlement or compromise of outstanding dues. Therefore, this court opines that there is no justification on the part of the respondent company to claim any relief as a matter of right.

14. The appellant bank is a Public Sector Bank and for that matter any bank does the lending business by deploying funds collected from the public and such unreasonable demands as in the instant case, from the respondent company have to be treated with caution. Merely because the demand notice and possession notice were set aside by the



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DRT on 'presumed' technical grounds it cannot entitle the respondent company for any financial relief on the borrowed money. Both the Courts below have been swayed by the observations of the DRT without independently analysing the relevant documents adduced in the instant case. Therefore, the substantial questions of law are answered accordingly.

15. In the result,

- i. the Second Appeal is allowed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.
- ii. the decree and judgment dated 31.10.2019 passed in A.S. No.36 of 2019 on the file of the III Additional City Civil Court, Chennai, is set aside.
- iii. the suit in O.S.No.4555 of 2015 on the file of the XV Assistant City Civil Court, Chennai, is dismissed with costs.

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Internet: Yes/No

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Speaking/Non-Speaking order
mtl

To

1. The III Additional City Civil Court, Chennai.
2. The XV Assistant City Civil Court, Chennai.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

mtl

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