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S.A.No.779 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.11.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A.No.779 of 2024
and
CMP.No.24895 of 2024

M/s.Mylapore Hindu Permanent Fund Ltd.,
Having its office at No.22, 24 (Old Nos.32 & 33)
South Mada Street,
Mylapore, Chennai-600 004.
Represented by its Secretary

.. Appellant

Vs.

1.P.Arunmozhi
2.Mohana Devi
3.A.Meenakshi (Minor)
4.M/s.Balajee and Co,
Government Auctioneers
No.160, Thambu Chetty street,
IInd Floor, Chennai-600 001.
5.S.Suresh Kumar
6.N.Laksmi Narayanan

.. Respondents

PRAYER : Second Appeal is filed under Section 100 of the Code of Civil Procedure, prayed to set aside the Judgement and Decree dated 15.10.2022 passed in A.S.No.206 of 2017 on the file of the XIX Additional City Civil Court, Chennai, confirming the judgement and decree in O.S.No.6592 of 2005 dated 02.07.2007 on the file of the XVII Assistant City Civil Court, Chennai.



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For Appellant : Mr.D.Hariniyadav
For Respondents : Mr.E.Senthil Kumar
for Mr.M.Kempuraj

J U D G M E N T

The appellant has filed this Second Appeal against the Judgment and Decree dated 15.10.2022, passed in A.S. No. 206 of 2017 on the file of the XIX Additional City Civil Court, confirming the judgment and decree in O.S. No. 6592 of 2005, dated 02.07.2007, on the file of the XVII Assistant City Civil Court, Chennai.

2. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.

3. Challenging the concurrent findings of the courts below, the 1st defendant preferred this appeal. Before the trial court, the respondents 1 to 3 /plaintiffs filed a suit for the redemption of a mortgage with a prayer for a permanent injunction restraining the first defendant from bringing the suit property for sale through a public auction. The second defendant remained ex-parte.



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4. The first defendant filed a written statement admitting the loan transaction and submitted that the plaintiffs were irregular in the payment of the loan amount. The dispute pertains to the payment of the balance amount along with interest. The defendants also submitted the calculation of the balance amount according to the terms, rules, and regulations.

5. Before the trial court both the parties adduced oral and documentary evidence. On the plaintiffs' side, 1st plaintiff was examined as PW1 and Ex,A1 to Ex.A8 were marked. On the side of the defendants Secretary of the company/first defendant was examined as DW1 and Ex.B1 to Ex.B4 documents were marked.

6. The learned trial judge framed issues. The foremost issues were i) whether the plaintiff was entitled to pay Rs. 6,69,659/- only towards the mortgage loan and what is actually payable? and ii) whether he was entitled to redeem the mortgage?. The plaintiff borrowed a loan from the defendant firm and agreed to pay in installments. Thus, a mortgage loan transaction existed between the parties, which was admitted. However, the right of the



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plaintiff to release the mortgage was disputed by the defendants, citing irregular payments.

7. According to the first defendant, the plaintiffs were liable to pay Rs. 10,76,840/- by the end of February 2007. However, the plaintiff contended that he was entitled to pay Rs. 6,69,659/-, which had already been deposited in the Court. The passbook, marked as Ex.A3 and Ex.A4, was not denied by the defendants.

8. Upon considering the evidence on record, the trial court calculated the default period interest at 24%, as agreed between the parties, and awarded 9% interest after the filing of the suit. Accordingly, the learned trial judge calculated the total claim with interest and fixed the plaintiffs' liability at around Rs. 127825/-.

9. Challenging these findings, the 1st defendant preferred A.S. No. 206 of 2017. The first appellate court independently analyzed the evidence on record as well as the defense taken by the 1st defendant. The learned first appellate judge was not inclined to accept the defendants' claim for interest



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on interest, as per Section 3 of the Interest Act. The court ruled that no court or tribunal granted interest on interest. Therefore, the appellate court accepted the findings of the trial court and dismissed the appeal. Challenging the concurrent findings of the courts below, the present appeal was filed by the 1st defendant.

10. The Learned Counsel for the appellants raised various grounds. The foremost grounds are,

i) The trial Court as well as the first appellate Court has totally misdirected in having allowed the suit for redemption of mortgage when the respondents 1-3 / plaintiffs were absolutely irregular in the payment of loans.

ii) The trial Court and the 1st appellate Court failed to consider that the respondents 1 to 3 is a regular defaulter in terms of the mortgage loan of rS.4,50,000/- availed by the respondents 1 to 3 herein from the appellant company.

iii) The trial Court and the 1st appellate court failed to consider the bye-laws of the Nidhi Fund wherein the Bye-laws mandates the imposition of interest and penal interest in the event of default in payment.



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iv) The trial Court and the 1st appellate Court proceeded in a wrong footing by holding that the interest pendente lite is 9 % and interest post lite as 6% rather than the 24% which was already agreed by both the parties vide the execution of the mortgage deeds marked as Ex.A1 and Ex.A2.

v) The trial Court and the 1st appellate Court failed to consider that the respondents 1 to 3 herein had not approached the Hon'ble Court with clean hands but rather suppressed material facts regarding the payment default.

vi) The trial Court and the 1st appellate Court failed to look into the above said glaring inconsistencies and proceeded to redeem the mortgaged schedule of property despite the respondents 1 to 3 herein / plaintiff approached the Hon'ble Court with a malafide intention.

vii) That the first appellate Court had solely dismissed the appeal based upon the calculation memo filed by the appellant company without looking into the inconsistent pleas and suppression of material facts rendered by the respondents 1 to 3 herein.

11. Upon considering the submissions of the appellants as well as the entire facts of the case, it is evident that the plaintiffs approached the court for the redemption of the mortgage with interest. The loan transaction



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between the parties was admitted. The defendant claimed 24% interest as per the loan terms, however, earlier payments were not properly considered by the defendants. Therefore, the trial court extensively discussed the principal amount with interest at 24%, as well as 9% interest after the filing of the suit, as reflected in Paragraphs 11, 12, 13, and 14 of the trial court's findings. Accordingly, the trial court determined that the first defendant was entitled only to Rs. 1,27,825/- . The first plaintiff was entitled to redeem the mortgage (Ex.A-1).

12. The first appellate court also rightly held that the defendants were not entitled to claim interest on interest. Therefore, I find no merit in this appeal. Since the plaintiffs have already deposited the mortgage loan amount, I find no infirmity in the findings of the courts below. No substantial question of law is involved. Thus, the appeal is dismissed.

13. As per the respondents counsel, the entire amount has been deposited. Therefore, the appellant is permitted to withdraw the amount. Upon withdrawal of the said amount, the appellant is directed to hand over the original documents within one week from the date of receipt of a copy of



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this order. Failing compliance, the respondents are entitled to obtain the documents through execution proceedings as per the law.

14. Accordingly, this second appeal is dismissed. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

19.11.2024

Index : Yes/No
Speaking Order: Yes/No
Neutral citation: Yes/No

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To

- 1.The XIX Additional Judge, City Civil Court, Chennai.
- 2.The XVII Assistant Judge, City Civil Court, Chennai.
- 3.The Section Officer, VR Section,
High Court of Madras.



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T.V.THAMILSELVI, J.

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