



S.A.(MD) No.386 of 2005

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A. (MD) No.386 of 2005

1.V.R.Radhakrishnan

2.R.M.Umayal

... Appellants

-VS-

S.V.Subbaiah Chettiar

... Respondent

PRAYER: Appeal against the judgment and decree, dated 31.12.2004, passed in A.S.No.49 of 2004 on the file of Subordinate Judge, Devakottai, confirming the judgment and decree, dated 07.06.2004, passed in O.S.No.42 of 2004 on the file of District Munsif, Devakottai.

For Appellants : Ms.V.T.Harshini
for Mr.D.Nallathambi

For Respondent : Mr.T.Balaji



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JUDGMENT

The defendants in the suit for recovery of money are the appellants. The respondent/plaintiff filed a suit for recovery of money, based on a promissory note. The suit was decreed by the trial Court and the findings of the trial Court were affirmed by the first appellate court. Aggrieved by the concurrent findings, the defendants are before this Court by way of this Second Appeal.

2. According to the plaintiff, the first defendant borrowed a sum of Rs.50,000/- from him on 22.01.1998 for the purpose of meeting his business expenses, agreeing to repay the same with interest at the rate of 36% per annum. Again, the first defendant borrowed a sum of Rs.50,000/- from the plaintiff on 05.10.1998 to meet his business expenses, agreeing to repay the same with interest at 36% per annum. Later on, the rate of interest was reduced to 30% per annum and, after some time, it was further reduced to 24% per annum, at the request of the defendants. The defendants were very irregular in repayment of the amount and hence the plaintiff sent a letter to the first defendant, demanding repayment of the entire amount, on



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09.10.1999. Though the said letter was delivered to the first defendant, he failed to give any reply. Thereafter, the plaintiff sent another letter on 12.02.2002 to the defendants. Though the same was received by them, there was no reply. Hence, the plaintiff issued a legal notice on 06.05.2002, demanding repayment of the amount. The legal notice was received by the first defendant on 09.05.2002. The notice sent to the second defendant was returned with an endorsement "intimation sent, redirected to plaintiff's counsel". The suit was laid for recovery of Rs.84,094.40 ps., after adjusting various payments made by the defendants.

3. The defendants filed a written statement, wherein they admitted the execution of the suit pro-note and borrowal of the amount. However, it was claimed by the defendants that the suit promissory note was executed with an understanding that the same would not be enforced as a promissory note. The defendants also raised a plea that borrowal was to meet the personal expenses and the same was not for meeting the business expenses and hence the plaintiff was not entitled to claim interest at the rate of 24% per annum.



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4. Before the trial Court, the plaintiff was examined as P.W.1 and 7 documents were marked on his side as Exs.A-1 to A-7. On behalf of the defendants, the first defendant was examined as D.W.1 and no document was marked on their side.

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that borrowal by the defendants was for business purpose and hence the plaintiff was justified in claiming interest at the rate of 24% per annum. Based on the evidence available on record, the trial Court also gave a finding that the suit promissory note was executed for the amount borrowed by the defendants and hence the plaintiff was entitled to the suit claim. Aggrieved by the same, the defendants preferred an appeal in A.S.No.49 of 2004 on the file of Sub-Court, Devakottai, and the first appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the defendants have come by way of this Second Appeal.

6. At the time of admission, this Court formulated the following substantial questions of law, by an order, dated 05.07.2005 :



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(1) Whether the Courts below passed judgment and decree in favour of the respondent herein by overlooking the Tamil Nadu Prohibition of Charging Exorbitant Interest Act ?

(2) Whether the Courts below overlooked the fixed interest rate over and above the interest rate fixed by the Apex Court ?

7. At the time of argument, the learned counsel for the appellants argued only on the first question of law and no argument was advanced on the second question of law. The learned counsel for the appellants submits that as per Section 3 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, the plaintiff is not entitled to charge interest at the rate of 36% per annum and, therefore, the suit claim, which is calculated at a higher rate, is liable to be rejected.

8. The learned counsel for the respondent submitted that the Tamil Nadu Prohibition of Charging Exorbitant Interest Act came into force only in the year 2003 subsequent to the filing of the suit and, therefore, the said provisions cannot be made applicable to the suit transactions, which had taken place in the year 1998.



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9. A perusal of the pleadings would suggest that borrowal by the defendants had taken place on 22.01.1998 and 05.10.1998, as seen from Exs.A-1 and A-2. The endorsements in the promissory note were dated 12.01.2001 and 25.06.2001. The suit was filed on 02.07.2002. The Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, came into force on 09.06.2003. Therefore, the provisions of the said Act, which came into force subsequent to the filing of the suit, cannot be made applicable to the suit transactions, which had taken place earlier. Further, a perusal of Exs.A-5 and A-6 would suggest that the defendants were engaged in manufacturing of rubber and were running a factory. In the letter written to the plaintiff, marked as Ex.A-6, the first defendant categorically admitted that he had been paying interest at the rate of 24% per annum. Therefore, the contention raised by the defendants in the written statement that there was an understanding that the suit pro-note would not be enforced as a pro-note is not acceptable to this Court. Hence, the first substantial question of law, raised by the learned counsel for the appellants, is rejected. As far as the second question of law is concerned, no argument was advanced. Therefore, the findings rendered by the Courts below are confirmed by answering the first question of law against the appellants.



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10. Accordingly, the Second Appeal stands dismissed. No costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

- 1.Subordinate Judge,
Devakottai.
- 2.District Munsif,
Devakottai.
- 3.Section Officer,
V.R. Section,
Madurai Bench of Madras High Court.



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