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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.02.2024**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.22 of 2024
and
C.M.P.(MD)No.650 of 2024

G.K.Rajendran ... Appellant

/Vs./

1.N.Veyilumuthu
2.V.Nagarajan
3.Senthilkumar
4.M.Muthu
5.Shanthi ...Respondents

PRAYER**:** Second Appeal filed under Section 100 of the Civil Procedure Code against the decree and judgment, dated 15.02.2023, in A.S.No.23 of 2022 on the file of the 1st Additional District Court, Madurai, which confirmed the decree and judgment, dated 06.10.2021, passed in O.S.No.973 of 2017, on the file of the 2nd Additional Subordinate Court, Madurai.

For Appellant : Mr.B.Rajesh Saravanan

For Respondents : Mr.V.Santhakumaresan

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JUDGMENT

The second appeal is preferred against the judgment and decree passed by the First Appellate Court. The defendant is the appellant herein.

2. The suit was filed by the plaintiffs for recovery of money and the suit was allowed. Aggrieved over the same, the defendant preferred an appeal before the First Appellate Court and the appeal was dismissed. Aggrieved over the same, the defendant has preferred this second appeal.

3. The contention of the appellant is that the appellant was having a company in the name and style of GKR Star Agri Tech Private Limited. In order to purchase shares in the said company the 1st respondent herein had paid money Rs. 2,00,000/- and the other respondents had paid Rs.1,00,000/- each. After receipt of the amount the appellant ought to have sell the shares and transferred the shares equivalent to the said amount. But the appellant failed to transfer the shares of the company to the respondents. But the respondents without stating the true facts had stated incorrect facts. The respondents had stated as if they the money is paid for loan transaction and had filed the suit for recovery of money. Further it would be evident that the respondents had not claimed any interest for the said amount.

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Hence the appellant had raised a substantial question of law the finding of Courts below as perverse since the transaction is not loan transaction but transfer of shares for the amount paid.

4. The first substantial questions of law raised by the appellant is on the ground of limitation. It is admitted by both the appellant and the respondents that the respondents had paid the amount on 03.08.2013, 06.11.2013, 18.01.2014, 25.07.2014 and 26.11.2014. The claim of the appellant is that the suit is filled on 21.09.2017, which is beyond three years and hence the suit is barred by limitation. But the respondents submitted that the appellant had issued confirmation letter dated 23.09.2016 and the limitation would start from the said date. For which the appellant submitted the said confirmation is created. However, the appellant has not taken any steps to compare the signature by sending it to the forensic. Therefore, this Court is of the considered opinion that the suit is filed within the period of limitation.

5. The appellant admit the fact of receipt of amount. But the claim of the respondents is that the said is paid as loan, however the claim of the appellant is that the amount is paid for purchase of shares. Once the amount is received, then the appellant is bound to transfer the shares of the company to the respondents.

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When the share is not transferred, then the respondents are entitled to return of the amount. Therefore, this Court is of the considered opinion that the appellant is bound to return the amount. In fact, the respondents have not claimed any interest for the said amount, at least the appellant is bound to return the principal amount. The Court below had rightly held that the appellant is bound to return the amount.

6. As far as the other substantial questions of law raised by the appellant is concerned, this Court do not find any question of law much less substantial questions of law raised in the second appeal. Therefore, this Court is not inclined to entertain this second appeal.

7. Hence, the second appeal is dismissed, confirming the judgment and decree of the Lower Courts. No costs. Consequently, connected miscellaneous petition is closed.

15.02.2024

Index : Yes / No
NCC : Yes / No

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TO:

1. 1st Additional District Court, Madurai.

2. 2nd Additional Subordinate Court, Madurai.

3. The Section Officer,
   VR Section,
   Madurai Bench of Madras High Court,
   Madurai.

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S.SRIMATHY, J.

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Judgment made in
S.A.(MD)No.22 of 2024

Dated:
15.02.2024