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S.A.No.664 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2025

PRESENT:

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

S.A. No. 664 of 2014

M/s.Amaravathi Finance & Investments,
by its Proprietor Mr.K.Radhakrishnan,
No.30, Kutchery Road, Mylapore,
Chennai – 600004.

...Appellant

Vs.

K.C.Raj,
S/o.P.Kunjan,
A2, Touch Stone Apartments,
No.10, Vasu Street, Kilpauk,
Chennai – 600 010.

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure praying to set aside the Judgment and decree of II Additional City Civil Court, Chennai dated 19.08.2013 in A.S.No.122 of 2013 and confirm the Judgment and decree passed by the XI Assistant City Civil Court at Chennai dated 05.01.2013 in O.S.No.7982 of 2011 and thus render justice.

For Appellant : Mr. B. Dinesh Kumar.



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J U D G M E N T

Heard.

2.This Second Appeal is filed against the judgment and decree dated 19.08.2013 in A.S. No.122 of 2013 passed by the II Additional City Civil Court, Chennai, whereby the judgment and decree dated 05.01.2013 in O.S.No.7982 of 2011 passed by the IX Assistant City Civil Court, Chennai, decreeing the summary suit for recovery of money in consequence of the dismissal of the leave to defend petition in I.A.No.98 of 2012, were set aside.

3.The appellant in this Second Appeal is the plaintiff in the original suit. For the sake of convenience, the parties are referred to as arrayed in the suit.

4.The brief facts of the case necessary to dispose of this second appeal are as follows:The plaintiff filed a summary suit for recovery of money on the basis of a promissory note dated 22.05.2009 for a total sum of Rs.4,30,000/- towards principal and interest, with a prayer for subsequent interest on the principal amount of Rs.4,00,000/- at 30% per annum.



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5.The defendant filed I.A.No.98 of 2012 seeking leave to defend the suit. In the said application, the defendant raised, inter alia, the following contentions:

- i.That the plaint was improperly presented in the name of a proprietary concern, which is a non-juristic person, and not by the proprietor.
- ii.That there was only a chit transaction and not of any loan transaction as pleaded.
- iii.That his signatures were obtained forcibly in blank promissory notes and letters by the representatives of the chit company.
- iv.That a police complaint was lodged in this regard before Nungambakkam Police Station.
- v.That even after the alleged closure of the chit transaction, he paid a sum of Rs.30,000/-.

6.The plaintiff filed a counter denying all allegations. Upon hearing both sides, the trial court refused leave to defend and dismissed I.A.No.98 of 2012, and consequently decreed the summary suit on the same day.



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7. Aggrieved, the defendant preferred appeal. The first appellate court allowed the appeal, set aside the judgment and decree of the trial court, and further observed in the concluding paragraph that "*subsequently the suit is dismissed with cost*". However, in the very same paragraph of the judgment, the appellate court directed the trial court to permit the defendant to file a written statement and to treat the suit as a regular suit.

8. In this Second Appeal, the appellant raised the following points in the memorandum of grounds assubstantial questions of law:

(i) Whether the 1st Appellate Courts erred apparent on record in holding that the Lower Court had concentrated only in the point of filing of Suit by the Proprietary concern, when all the points raised by the Respondent had been duly dealt with by the Lower Court in its Order in I.A. No. 98/2012.

(ii) Whether the Respondent is entitled for any unconditional leave when he admits his signature in the Suit Documents and it is his case that he will not execute documents blank but will write the name of Payee and date and amount?

(iii) Whether the 1st Appellate Court granting unconditional Leave entitled to Dismiss the Suit with Cost?



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9. On a perusal of the trial court order, it is evident that the trial court predominantly discussed the issue of maintainability of the suit by a proprietary concern in its own name. The court ultimately held that such defect does not go to the root of the matter and is not a triable issue.

10. Though other points were framed, Points Nos.2 to 5 and 6 to 9 were cursorily dealt with in comparison to the emphasis laid on the maintainability aspect. The first appellate court's observation that the trial court primarily concentrated on this issue is therefore a factual finding. It does not give rise to any substantial question of law.

11. The first appellate court considered the rival claims relating to two parallel transactions—one being the chit transaction and the other the alleged loan transaction. The defendant denied the loan transaction totally, and relied upon the police complaint alleging coercion. The first appellate court further held that the presumption under Section 118 of the Negotiable Instruments Act is rebuttable. It concluded that triable issues arise and leave to defend must be granted.



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12. The first appellate court, being the final fact-finding court, has exercised its discretion upon due appreciation of facts and law. No perversity or illegality has been demonstrated by the appellant.

13. It is true that in the concluding paragraph, the first appellate court recorded the words: “*subsequently the suit is dismissed with cost*”. This observation is inconsistent with the operative portion of the judgment wherein the appellate court directed the trial court to permit filing of written statement and treat the matter as a regular suit. Further, Clause 3 of the decree also states: “*subsequently that the suit be and the same is hereby dismissed*”.

14. It is apparent that this is an accidental error which has crept into the judgment and followed in decree. The overall tenor of the judgment of first appellate court clearly reflects the intention of the appellate court to *restore the suit for trial* after granting leave to defend. Such a clerical or accidental error, which is apparent on the face of the record, is rectifiable and does not constitute a question of law.



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15. No substantial question of law arises for consideration in this Second Appeal. There is neither misapplication of law nor perversity in the findings of the first appellate court. However, since an apparent clerical error has crept into the judgment and decree, the same requires correction.

16. In view of the foregoing discussion, the Second Appeal is dismissed at the admission stage. However, since a clerical/accidental error has crept into the judgment and decree dated 19.08.2013 in A.S.No.122 of 2013, the following directions are issued:

1. The sentence “*subsequently the suit is dismissed with cost*” appearing in the concluding paragraph of the appellate court judgment is ordered to be deleted.

2. Clause No.3 of the decree reading “*subsequently that the suit be and the same is hereby dismissed*” is accordingly set aside.

3. The trial court shall restore O.S.No.7982 of 2011 to file.

4. The trial court shall give an opportunity to the defendant to file written statement.

5. The suit shall be treated as a regular suit and disposed of it in accordance with law.

6. The trial court is directed to dispose of the suit expeditiously, preferably within a period of four months from the date of receipt of a copy of this judgment.



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7. There shall be no order as to costs.

8. Consequently, the connected miscellaneous petition, if any, stands closed.

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Index : Yes/No

NCC : Yes/No

Speaking Order / Non-Speaking Order

To

1. The II Additional City Civil Court, Chennai.

2. The XI Assistant City Civil Court at Chennai

3. The Section Officer,
V.R. Section,
High Court of Madras.



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DR. A.D. MARIA CLETE, J

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