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A.S.No.46 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2025

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THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.46 of 2022

K.Ganapathy

... Defendant/Appellant

-vs-

Indian Overseas Bank,

Sirkali Branch,

Rep. by its Power Agent & Branch Manager,

Sirkali Town, Mayiladuthurai District,

PIN-609 110.

... Plaintiff/Respondent

Prayer: Appeal Suit is filed under Section 96 of CPC to set aside the judgment and decree passed in O.S.No.42 of 2019 dated 19.08.2021 on the file of Additional District and Sessions Judge, Mayiladuthurai and dismiss the suit by allowing this appeal.

For Appellant : Mr.A.Muthukumar

For Respondent : Mrs.V.Rajeswari

J U D G M E N T

Aggrieved over the decree and judgment of the Trial Court, directing the defendant to pay the suit amount for a sum of Rs.10,45,000/- @ 6% interest p.a., the present appeal came to be filed.



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2. The parties are arrayed as per their own ranking before the Trial Court.

3. It is the case of the plaintiff that the defendant applied for a loan of Rs.10,00,000/- on 27.03.2015 and also executed a pronote for that amount by agreeing to pay the said amount with interest at 10.25% p.a. The defendant also agreed to clear the loan amount in 250 equal monthly installments of Rs.9,698/- each. Besides, he also mortgaged a property. However, the amount has not been paid. Hence, the plaintiff has filed the suit, claiming Rs.10,45,000/- from the defendant in terms of loan amount.

4. Whereas it is the contention of the defendant that he has availed a loan of Rs.8,00,000/- only and executed a pronote with a promise to repay the amount with an interest @ 10.25% p.a. Whereas, in the public auction notice, it is stated that the defendant has to pay a sum of Rs.9,33,300/-.

5. The Trial Court, on the basis of the aforesaid pleadings, framed the following issues:



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i) Whether the plaintiff is entitled to the relief as prayed for?

ii) Whether the defendant has borrowed Rs.10,00,000/- on 27.03.2015 or not?

iii) Whether the accounts are correct or not?

iv) Whether the suit is barred by limitation? The revival letter is true?

v) As to what other relief the plaintiff is entitled to?

6. On the side of the plaintiff, the Branch Manager of the Bank was examined as P.W.1 and Ex.A1 to Ex.A12 were marked. On the side of the defendant, the defendant was examined as D.W.1 and Ex.B1 was marked.

7. The Trial Court, after considering the entire evidence, decreed the suit for a sum of Rs.10,45,000/- and held that though application has been filed for Rs.10,00,000/-, only Rs.8,00,000/- has been paid and when D.W.1 was cross examined in respect of Ex.A8 / Account Ledger, he had agreed that a sum of Rs.10,45,000/- is due and therefore, the Trial Court decreed the suit. Challenging the same, the present appeal is filed.



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8. Learned counsel for the appellant would mainly submit that the plaint proceeded as if the defendant had borrowed a sum of Rs.10,00,000/-. In fact, the defendant had borrowed only Rs.8,00,000/-, which has been fortified in Ex.B1 (sale notice), wherein it was stated that only a sum of Rs.9,33,300/- is due after the suit. According to him, the entire account is not proper. Hence, he assailed the judgment of the Trial Court.

9. Learned counsel for the respondent would contend that though the actual amount paid to the defendant is only Rs.8,00,000/-, the suit was filed for recovery of Rs.10,00,000/- by calculating both principal and interest, which is evident from Ex.A8. That apart, D.W.1 himself admitted that Ex.A8 / account is proper and valid. Merely because some mistake has crept in while issuing sale notice, it cannot be said that the entire account is not proper.

10. In the light of the above, the points for consideration in this



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appeal are as follows:

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i) Whether Ex.A8 account is proper and valid?

ii) Whether the claim is based on Rs.10,00,000/- or Rs.8,00,000/-?

11. I have perused the material documents available on record.

12. It is not disputed by the plaintiff as to the borrowal of Rs.8,00,000/- and execution of pronote and other aspects. It is also not disputed that a revival letter has been executed by him, which has been marked as Ex.A6. Application / Ex.A1 is also filed; Ex.A2 is the pronote and Ex.A3 is the loan agreement. Execution of those documents have not been disputed. The only contention raised by the learned counsel for the appellant before this Court is that actual borrowal is only Rs.8,00,000/- and not Rs.10,00,000/-. However, the suit amount is claimed for Rs.10,00,000/-. Whereas P.W.1 in his evidence deposed that only Rs.8,00,000/- has been released in favour of the defendant. He also admitted that in Ex.B1 (sale



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notice), lesser amount has been shown after the suit.

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13. According to the respondent, the suit was filed for Rs.10,00,000/- and in the account marked as Ex.A8, the actual disbursal amount reflected is only Rs.8,00,000/- Even before this Court, the details of account in respect of debit and credit statement pertaining to the loan availed by the defendant have been produced. However, the fact remains that the said document cannot be looked into, whereas during cross examination, D.W1 accepted the receipt of Rs.8,00,000/-. When confronted with Ex.A8 statement, he clearly admitted that interest has been calculated only on a sum of Rs.8,00,000/- and not on Rs.10,00,000/-.

14. From the positive admission made by the defendant in his cross examination, it is clear that as on 29.06.2019, he is liable to pay Rs.10,45,000/- and the said amount is reflected in Ex.A8. When the party himself admitted with regard to the correctness of the account, merely on the basis of some mistake that crept in while issuing the sale notice Ex.B1, it cannot be said that the entire accounts are not proper. In such view of the matter, I do not find any merit in this appeal and the same is liable to be



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dismissed.

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15. In the result, while answering the points accordingly, the instant Appeal Suit is dismissed. The decree and judgment of the Trial Court is confirmed. No costs.

19.02.2025

Index: Yes / No

Internet: Yes / No

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To:

1. The Additional District and Sessions Judge,
Mayiladuthurai.
2. The Section Officer,
V.R.Section,
High Court,
Madras.



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N.SATHISH KUMAR,J.,
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