BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.(MD)No.216 of 2025

1.C.Sangaran

2.Murugammal ... Appellants / Defendants 1 and 2

Vs

The Manager,
Door No.188/1, B- Main Road,
Reddiyarpatti Branh,
Reddiyarpatti,
Tamil Nadu Mercantile Bank,
Palayamkottai,
Tirunelveli District. ... Respondents / Defendants

Prayer : This Second Appeal is filed under Section 100 C.P.C., to set aside the judgment and decree dated 20.11.2024 in A.S.No.43 of 2024 on the file of 3rd Additional District Court, Tirunelveli and in the judgment and decree dated 13.02.2024 in O.S.No.244 of 2019 on the file of the Additional Sub Court, Tirunelveli.

For Appellants : Mr.D.Karkuzhali

For Respondents : Mr.P.Pethu Rajesh

ORDER

The defendant is before this Court on appeal. The Second Appeal is filed challenging the judgment and decree dated 20.11.2024 on the file of the III Additional District Court, Tirunelveli, confirming the judgment and decree dated 13.2.2024 on the file of O.S.No.244 of 2019 on the file of the Additional Sub Court, Tirunelveli.

2. The parties are referred to as per their litigative status before the trial Court.

3. According to the plaintiff, the first defendant had submitted an application seeking loan for a sum of Rs.5,70,000/- in respect of a Mahindra Bolero Truck for which the second defendant, who is the wife of the first defendant stood as a guarantor. It is the case of the plaintiff that the loan amount of Rs.5,70,000/- was sanctioned on a repayment of 84 equal monthly installments with an interest at the rate of 11.65%. The defendants on agreeing with the terms and conditions executed a Letter of waiver, Take Delivery Letter, Article of Agreement, Hypothecation

Agreement, Hire Purchase Agreement, Letter of undertaking, Consent Letter and by creating hypothecation and availed the loan. The second defendant also being a guarantor had executed the documents guaranteeing the repayment of the loan amount. It is the further case of the plaintiff that in the case of default in repayment of the installments, they are entitled to impose 2% penalty. Even though the loan amount was sanctioned and availed by the defendants, they failed to repay the loan through installments and after paying a sum of Rs.10,000/- on 28.02.2019, no further payments were made and the plaintiff had issued letters on 12.04.2019 and 03.05.2019. Since the defendants did not come forward to repay the amount, the Bank had issued legal notice through its counsel on 16.05.2019 for which the first defendant had issued a reply on 30.01.2018, agreeing to repay the amounts. According to the plaintiff, as on 31.07.2019, the first defendant is due to pay a sum of Rs.3,76,196/- and therefore they have come up with this suit for recovery of money.

4. The defendants resisted the suit by contending that though it is true that they have availed a loan for a sum of Rs.5,70,000/- on 21.01.2016, it is their contention that in respect of the Mahindra Bolero

Truck for which they have availed loan, it was informed by the plaintiff Bank that only 4% of interest will be charged. But however, now they are charging 11.65% interest which is against the norms. It is the further case of the defendants that the plaintiff Bank had filled up the forms taking advantage of the illiteracy of the defendants and obtained their signatures. It is the further case of the defendants that from 16.02.2016 to 28.02.2016, the defendants have repaid a sum of Rs.4,06,685/- and the plaintiff has not properly accounted and the present suit is filed for recovery of sum of a Rs.3,76,196/- by including 2% penalty and charging interest at the rate of 13.65% which is not maintainable and sought for dismissal of the suit.

5. During trial, the Manager of the plaintiff Bank was examined as P.W.1 and documents in Ex.A1 to Ex.A27 were marked. On the side of the defendants, the first defendant examined himself as D.W.1 and they have not marked any documents. The trial Court after analysing the evidences and documents, decreed the suit by holding that though the defendants had only taken a stand that since it is an agricultural loan, only 0% interest is applicable and the plaintiff Bank cannot claim interest

at the rate of 13.65% and also charge further penalty, but however, the defendants were not able to substantiate that it is an agricultural loan. The trial Court also by considering the documents including the application, the sanction letter and the mortgage created, came to the conclusion that the defendants had agreed to repay the loan with an interest at the rate of 13.65 %, further to pay 2 % penalty, in case of any default and had decreed the suit. On appeal, the lower appellate Court also by relying on the documents executed by both the defendants, came to a categorical conclusion that no where it is mentioned as agriculture loan and the defendants have agreed to repay the loan amount with interest at the rate of 13.65 % and further the lower appellate Court also considered the letter issued by the defendants themselves in Ex.A26, wherein the defendants had agreed to repay the pending dues, but had only sought for time, dismissed the appeal confirming the judgment and decree of the trial Court. Assailing the concurrent finding of fact, the defendants are before this Court on appeal.

6. The appeal has not been admitted and only by order dated 11.06.2025, notice was issued to the respondents.

7. Learned counsel appearing for the appellants contended that since the defendants had availed loan for purchase of Mahindra Bolero Truck, it was only for an agriculture purposes and therefore if the loan is availed for agriculture purpose, then it would be only on a 0% interest. But whereas the Bank had filed the suit claiming interest at the rate of 11.65%, the same is not sustainable.

8. Learned counsel further submitted that even though the defendants have repaid a sum of Rs.4,06,765/- to the plaintiff Bank, the Bank had not properly accounted for and they have come up with the suit claiming huge amount which is not sustainable. It is the further vehement contention of the learned counsel that the Bank is further not entitled to impose 2% penal interest, particularly, when the loan has been sanctioned for agricultural purposes. As such the Courts below have not considered the documents in a proper perspective and that therefore are perverse and sought for interference of this Court.

9. Learned counsel appearing for the Bank submitted that it is not an agricultural loan, but the loan amount was sanctioned towards a Mahindra Bolero Truck, which was used for commercial purposes of the defendants.

10. Learned counsel further by relying on the loan application and the sanction letter coupled with the hypothecation executed by both the defendants submitted that the defendants have agreed that they will repay the loan amount along with an interest at the rate of 13.65% and in case of any default, the Bank was entitled to impose 2% penal interest.

11. Learned counsel further contended that when even the defendants themselves had issued a letter on 27.05.2019, the defendants have only accepted to repay the amounts and sought for time and when they failed to repay the amount and the bank has preferred the above suit. But the defendants are taking a inconsistent stand which is contrary to their own documents executed in favour of the Bank. Contending that the Courts below have rightly considered the documents and the finding

of fact arrived at by the Courts below are based on the materials available on record submitted that therefore no interference is required in this appeal.

12. Heard the rival submissions and perused the materials available on record.

13. Admittedly, the first defendant had availed a loan for a sum of Rs.5,70,000/- for purchase of Mahindra Bolero Truck from the plaintiff Bank. For availing the loan, the defendants / appellants had submitted an application to the Bank in Ex.A3. Based on the application submitted by the first defendant in Ex.A3, the loan amount has been sanctioned. The perusal of the application reveals that the defendants have sought for the loan amount and agreeing to repay the loan amount with an interest at the rate of 11.65 %. Further, nowhere in the loan application, it is mentioned as it is for an agriculture vehicle loan and therefore, the defendants are entitled for a 0% interest.

14. On the loan being sanctioned, the first defendant had executed a promissory note in favour of the plaintiff Bank in Ex.A4 agreeing to

repay the loan amount to a sum of Rs.5,70,000/- along with the monthly interest at the rate of 11.65%. Further along with this promissory note, the plaintiff had also executed the hypothecation in favour of the plaintiffs in Ex.A7 and Ex.A8. Averments in the hypothecation deed executed by the first defendant in Ex.A7 and Ex.A8, specifically refers to the creation of hypothecation for the vehicle, agreeing to repay the loan amount along with the interest at the rate of 11.65%. The second defendant who is the wife of the first defendant also had executed a guarantee deed in Ex.A17. The perusal of the guarantee deed executed in Ex.A17 also makes it clear that the second defendant had guaranteed the plaintiff Bank for due repayment of the loan amount along with interest at the rate of 11.65%.

15. The plaintiff Bank had also filed documents in Ex.A18 which is the balance confirmation letter and also the statement of accounts which all reveal and would go to show that the loan has been issued to the defendants for a sum of Rs.5,70,000/- on a agreed interest at the rate of 11.65%. Further, the above documents would also clearly reveal that the defendants have agreed that they will repay the loan amount along

with 11.65% interest and if there is any default, they are liable to pay a penal interest at the rate of 2%. The sanction letter issued by the bank in Ex.A3 particularly reveals details of the sanctioning of the loan amount and the repayment with interest and the further charge of penal interest.

16. The documents filed on behalf of the plaintiff bank clearly make it evident that only a commercial purpose loan was availed by the defendants and the same was sanctioned in their favour on agreeing to repay the same with interest for which the first defendant had executed the agreements, consent deed and hypothecation. Further, for which the second defendant also had stood as a guarantor for the first defendant guaranteeing the repayment of the loan amounts availed by the first defendant. The contention taken by the defendants initially that it is an agricultural loan and only the plaintiff Bank agreed to charge 4% interest, is without any records, and it is the further claim taken by the defendants in the suit that since it is an agricultural loan, they are entitled to repay 0% interest is also not sustainable, without placing any document. When the defendants have taken such a stand, utterly they have failed to establish that it is a loan for agriculture purpose.

17. Further it is to be noted that when the letter was issued by the plaintiff bank, calling upon the defendants to repay the amount, the defendants have issued a letter to the plaintiffs in Ex.A26. Perusal of the letter issued by the defendants in Ex.A26 clearly reveals that the defendants have agreed to pay the loan amount, however they only sought for some time to repay the amount. When the defendants had issued the letter agreeing to repay the amount and sought for time, the defence taken by them in the suit contending that it is an agriculture loan and they have made payments and the plaintiff Bank filed the suit seeking for excess payment, are all unsustainable.

18. The Courts below have rightly considered all the documents, in an appropriate perspective and had come to the conclusion that the suit filed by the plaintiff Bank is based on the loan issued by them to the defendants, based on the documents executed. Since concurrent finding of fact has been arrived by the Courts below which are based on the documents available on record, this Court is not able to find any illegality or perversity in the findings arrived at. No substantial question of law arise for consideration in this Second appeal.

19. Accordingly, this Second Appeal is dismissed. However, there shall be no orders as to the costs.

01.07.2025

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

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To

1. The 3rd Additional District Judge, Tirunelveli.
2. The Additional Subordinate Judge, Tirunelveli.
3. The Section Officer, VR Section,
   Madurai Bench of Madras High Court, Madurai.

G.ARUL MURUGAN, J.

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