



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.01.2026

PRONOUNCED ON : 12.01.2026

CORAM:

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

CMA No. 2457 of 2025

R.Subramanian
S/o. G.S.Ramaswami

... Appellant/Plaintiff

Vs

1. IndusInd Bank Ltd.,
No.3, Village Road
Nungambakkam, Chennai – 600 034.

2. Subiksha Trading Services Ltd.,
Cabin A, 2nd Floor, Habib Complex
No.5, Durgabai Deshmukh Road
R.A.Puram, Chennai – 600 028.

...Respondents/Defendants

Prayer: Civil Miscellaneous Appeal filed under Section 13 of the Commercial Court Act 2015 read with Order 43 Rule 1(a) of CPC against the order dated 05.02.2025 passed in COS No.1956 of 2022 passed by the Additional Commercial Court, Egmore, Chennai.



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For Appellant : Mr. R.Subramanian
Party-in-Person

J U D G M E N T

(Order of the Court was made by **C.V.KARTHIKEYAN, J.**)

The plaintiff in COS No. 1956 of 2022 on the file of the Additional Commercial Court at Egmore is the appellant herein aggrieved by the Judgment dated 05.02.2025, by which Judgment, the Commercial Court had returned the plaint under Order VII Rule 10(1) CPC for representation before the appropriate Court by fixing the value of the suit for the relief of declaration at Rs.30/- crores and after payment of necessary Court fee under Section 40(1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 (the Act).

2. The appellant appeared as party-in-person through video conference. He contended that he had instituted the suit seeking a declaration that the document dated 29.05.2008 claimed as a guarantee, executed by him in favour of the first defendant, IndusInd Bank Ltd., Nungambakkam, Chennai, in respect of the debts of the second defendant/Subiksha Trading Services Ltd., Chennai, as void abinitio and



unenforceable and for a permanent injunction restraining the first defendant from making or pursuing a claim against the plaintiff in connection with the deed of guarantee dated 29.05.2008 and for costs of the suit.

3. In the cause of action in the plaint dated 28.10.2011, it had been contended that the plaintiff had executed the guarantee deed in the office of the first defendant on 29.05.2008. Subsequently in the year 2010, the first defendant had filed O.A.No. 181 of 2011 raising a claim under the guarantee against the plaintiff.

4. It had been contended that the contract of guarantee executed for a sum of Rs.30/- crores was impossible of performance under Section 56 of the Contract Act since the net worth of the guarantor / plaintiff was not even Rs.5/- crores. It was also contended that the plaintiff had executed guarantees with respect to liabilities of different borrowers and if ever there was a claim on the guarantees, they would be called at the same time. It was contended that there was no possibility of the plaintiff ever being able to make payment of the amount guaranteed. It was also contended that this fact of impossibility of performance was known to the lenders. It was contended that therefore, the guarantee was impossible of performance even



though executed.

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5. The plaintiff had valued the suit for purposes of Court Fees and Jurisdiction at Rs.25,01,000/- for the relief of declaration and at Rs.1,000/- for the relief of permanent injunction and had paid Court fees of Rs.29,535/- under Section 25(d) of the Tamil Nadu Court Fees and Suit Valuation Act for the relief of declaration and a Court Fee of Rs.75/- under Section 27(c) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, for the relief of permanent injunctions. The total value of the suit was stated to be Rs.25,02,000/- and the total Court fee paid was Rs.29,610/-.

6. It is to be mentioned that this suit was initially presented before the Original Side of the High Court and taken on file as C.S.No. 694 of 2011. Subsequently owing to change in pecuniary jurisdiction, the suit was transferred to the City Civil Court, and re-numbered as O.S.No. 4639 of 2020 on the file of the 15th Additional City Civil Court, Chennai. On establishment of the Commercial Court, it was transferred to the Additional Commercial Court at Chennai and further renumbered as COS No. 1956 of 2022.



7. The Commercial Court took up the issue of valuation of the suit and examined whether the Court had the pecuniary jurisdiction to decide the issues raised. With respect to the valuation of the suit, it had been noted that though the value of the document for which the declaration was sought was Rs.30/- crores, the suit had been valued at Rs.25,01,000/-. The Court fees had been paid under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. It was observed that the value of the document was Rs.30/- crores and that therefore the Court fee should have been paid under Section 40(1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, since in effect the plaintiff sought cancellation of the document, though the prayer was couched as one for declaration.

8. The argument of the learned counsel for the plaintiff that the guarantee was prima facie unenforceable was noted by the Court. However, it was held that the suit had been filed seeking a declaration that the guarantee deed for Rs.30/- crore was void abinitio and when the value of the guarantee deed was Rs.30/- crores, the suit should have been valued at Rs.30/- crores and not at Rs.25,01,000/- and that the Court fee should have been paid under Section 40(1) of the Court Fees and Suit Valuation Act 1955 and not under Section 25(d) of the said Act.



9. The Court had also noted the precedents cited on behalf of the plaintiff, *M/s. Siddha Construction Private Limited Vs. M. Shanmugam and Others* reported in (2006) 4 LW 176 wherein, it had been held that when a declaration is sought to declare a sale deed as null and void, it is sufficient to pay Court Fees under Section 25(b) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. It was however noted that the dictum laid down in the above Judgment would not be applicable to the facts of this case wherein the plaintiff had sought a specific declaration that the deed of guarantee is null and void and incapable of performance. It was held that therefore, the Court fees should be paid as stipulated under Section 40(1) of the Act. Holding as above, it was held that the Court had no pecuniary jurisdiction to decide the issues in the suit. The plaintiff was directed to represent the suit before the Court having competent to pecuniary jurisdiction. Challenging that Judgment, the present Appeal had been filed.

10. The appellant appeared as party-in-person and argued that the deed of guarantee was impossible of performance and therefore, he had sought the relief of declaration and had valued the suit at Rs.25,01,000/- and had paid Court Fees under Section 25(d) of Tamil Nadu Court Fees and Suits Valuation Act, 1955.



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11. Section 25(b) of the Act is as follows:-

“where the prayer is for a declaration and for consequential injunction and the relief sought is with reference to any immovable property, fee shall be computed on one-half of the market value of the property or on [rupees one thousand] [Substituted for the words ' three hundred' by the Tamil Nadu Court-fees and Suits Valuation (Amendment) Act, 2003 (Tamil Nadu Act 17 of 2003) with effect from 15th June 2003], whichever is higher; ”

12. However, reference must also be made to Section 40 of the Act which specifically deals with cancellation of documents.

13. Section 40(1) of the Act is as follows:-

“40. Suits for cancellation of decrees, etc.

(1)In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish,



whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit, and such value shall be deemed to be if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed; if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property. '

14. The distinction between the two provisions is that Section 25 applies when a declaratory decree is sought with respect to immovable property with or without consequential relief which does not fall under Section 26 of the Act. Section 26 relates to adoption suits. Section 40 however is very specific and relates to cancellation of a decree for money or other property having value or other document which purports or operates to create any right in movable or immovable and if the cancellation of such document is sought, then, the Court fee shall be computed on the value of the document.

15. In the instant case, the deed of guarantee had been executed by the appellant. He seek for a declaration that the guarantee is impossible of



performance. The actual relief which he seeks is for cancellation of the said document, the document will have to be cancelled in manner known to law.

When he is a party to the document and seeks cancellation of the document for any reason whatsoever, then the fee has to be computed only under Section 40(1) of the Act and not under Section 25(b) of the Act.

16. In the Judgment relied on by the appellant before the trial Court, *M/s. Siddha Construction Private Limited* (referred supra), the facts were that the plaintiff had filed the suit seeking a declaration that a sale deed executed by the first defendant in favour of the third defendant was null and void. The plaint contained an averment that the plaintiffs were not parties to the sale deed which was to be declared as null and void and had therefore valued the suit for the purpose of Court fee under Section 25(b) of the Tamil Nadu Court Fees and Suits Valuation Act 1955. This was held to be correct since the plaintiffs were not signatories to the impugned sale deed and had also not sought cancellation of the same.

17. In the instant case, the appellant was the executant of the guarantee deed. When he had executed the guarantee deed and seeks a declaration that it is impossible of performance, in effect, he seeks to cancel



the guarantee deed. He should therefore value the suit on the value of the document as stipulated under Section 40(1) of the Act. The Judgment relied on by the appellant is not applicable to the facts of this case.

18. In *A.P.Arulandum Perumal Pillai (dead) reported in 1986 (1) MLJ 462*, which was a suit for declaration that a settlement deed executed by the plaintiff was sham and bogus, it was held that its cancellation being sought, the Court fee payable was under Section 40 of the Act.

19. The ratio laid down in this Judgment is directly applicable to the facts of this case. He had executed the deed of guarantee. He seeks that it should be declared as impossible of performance. Necessarily he seeks cancellation of the deed of guarantee. Since he was a party to the document and had executed the same, he has to value the Court fee under Section 40(1) of the Tamil Nadu Court Fees and Suits Valuation Act.

20. Even in a suit where minors had sought for cancellation of a sale deed executed by their parents as guardians as void, and also sought consequential declaratory and possessory reliefs, it had been held in **1959 (1) MLJ 118 : 1959 (72) LW 671 [Raju Vs. Venkataswami Naidu]** that the suit fell under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.



21. We hold that there are no merits in the Appeal. We are not inclined to admit the Appeal. The Appeal stands dismissed.

[C.V.K., J.]

[K.B., J.]

12.01.2026

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

C.V.KARTHIKEYAN, J.
AND
K.KUMARESH BABU, J.

vsg

To:

Additional Commercial Court, Egmore, Chennai.

Pre-Delivery Judgment made in

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