
(2009) 03 MAD CK 0158

In the Madras High Court

Case No : S.A. No. 935 of 2008 and M.P. No. 1 of 2008

Mir Ali Mujahith

APPELLANT

Vs

State Bank of Trivancore

RESPONDENT

Date of Decision : 19-03-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 109
Constitution of India, 1950 — Article 133(1)

Citation : (2009) 03 MAD CK 0158

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : No appearance, for the Appellant; No appearance, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—This second appeal is focussed by the defendant, animadverting upon the judgement and decree dated 22.11.2007 passed in A.S. No. 74 of 2007 by the VII Additional City Civil Court, Chennai, confirming the judgement and decree dated 17.8.2006 passed by the 11th Assistant City Civil Judge, Chennai, in O.S. No. 6176 of 2004, which was filed for recovering a sum of Rs. 1,36,649.90 with interest at 11% per annum in quarterly rest. However, the defendant entered appearance and resisted the suit by filing written statement.

2. The trial Court framed the relevant issues. During trial, the plaintiff examined himself as P.W.1 and Exs.A1 to A5 were marked. The defendant examined herself as D.W.1 on her side and no document was marked.

3. Ultimately, the trial Court decreed the suit and as against which, A.S. No. 74 of 2007 was filed for nothing but to be dismissed by the first appellate Court, confirming the judgement and decree of the lower Court.

4. Being disconcerted and aggrieved by the judgements and decrees of both the Courts below, this second appeal is focussed by the defendant on various grounds and also setting out the following substantial question of law:

(1) Whether the judgement and decree of the Court below are legally sustainable in as much as the respondent failed to establish the case of payment under bills purchase?

(2) Whether the Courts below are right in not considering the admission of P.W. 1.?

5. Despite printing the names concerned, none appeared.

6. A bare poring over and perusal of the typed set of papers, including the judgements of both the Courts below, would exemplify and expatiate, demonstrate and display that the defendant approached the plaintiff bank for availing loan for setting up a xerox centre under the PMRY Scheme and accepting his request, the plaintiff sanctioned a Medium Term Loan of Rs. 94,500/-. In consideration of the said loan, the defendant executed the sanctioned letter-Ex.A1-dated 27.5.2001 and Composite Loan Agreement-Ex.A2-dated 24.2.2009. Subsequently, the defendant also executed a revival letter-Ex.A3-dated 26.11.2001 in favour of the plaintiff. However, the defendant committed default in repaying the loan amount, which necessitated the plaintiff to file the suit.

7. The defendant's contentions are that the xerox machine, which was supplied to him was defective, whereupon he called upon the plaintiff not to honour the bill payable to the supplier in respect of such machine, and nevertheless that was not responded to by the plaintiff. Accordingly, she prayed for the dismissal of the suit.

8. The trial Court discussed the plea of the defendant and found out that it was a spurious and false plea. Absolutely there is no shard or shred, scintilla or pint-sized, iota or molecule extent of evidence to fortify and buttress the plea of the defendant.

9. The expectation of both the Courts below that if at all the case of the defendant was true, he should have communicated at the relevant time itself, in writing and he should have produced some documentary evidence before the Court. Only when the plaintiff Bank took steps to enforce the recovery of loan, the defendant did choose to dish out and fabulate such untenable plea. On the contrary, the very factum of the defendant made part payment up to 24.11.2004 to the plaintiff would prove fatal to his plea. The lower Court, on the plaintiff's side, considered the evidence of P.W.1-the official of the Bank, including Exs.A1 to A5 and rendered the judgement on merits and the appellate Court also, after correctly appreciating the relevant facts and evidence, dismissed the appeal. The suggested substantial questions of law, in stricto sensu cannot be treated as substantial question of law at all, in view of the fact that the lower Court considered the evidence properly and decided it and nothing has been highlighted to find fault with the same.

10. At this juncture, my mind is redolent and reminiscent of the following decisions of the Honourable Supreme Court:

(ii) Hero Vinoth (minor) Vs. Seshammal, , certain excerpts from its would run thus:

17. After the amendment a second appeal can be filed only if a substantial question of law is involved in the case. The memorandum of appeal must precisely state the substantial question of law involved and the High Court is obliged to satisfy itself regarding the existence of such a question. If satisfied, the High Court has to formulate the substantial question of law involved in the case....

18. ...It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in the section must be strictly fulfilled before a second appeal can be maintained and no court has the power to add or to enlarge those grounds. The second appeal cannot be decided on merely equitable grounds. The concurrent findings of facts will not be disturbed by the High Court in exercise of the powers under this section. Further, a substantial question of law has to be distinguished from a substantial question of fact....

21. ...However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by sufficing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In Guran Ditta v. Ram Ditta the phrase "substantial question of law" as it was employed in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. In Sir Chunilal case the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in Rimmalapudi Subba Rao v. Noony Veeraju (Sir Chunilal case, SCR p.557)

When a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular fact of the case it would not be a substantial question of law." This Court laid down the following test as proper test, for determining whether a question of law raised in the case is substantial: (Sir Chunilal case, SCR pp.557-58)

The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or

whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or call for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.

23. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law has a substantial one and involved in the case or not, the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis. (See *Santosh Hazari v. Purushottam Tiwari*).

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(iii) The general rule is that High Court will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the Courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.

(ii) *Kashmir Singh Vs. Harnam Singh and Another*, an excerpt from it would run thus-

9. It has been noted time and again that without insisting for the statement of such a substantial question of law in the memorandum of appeal and formulating the same at the time of admission, the High Courts have been issuing notices and generally deciding the second appeals without adhering to the procedure prescribed u/s 100 of the Code. It has further been found in a number of cases that no efforts are made to distinguish between a question of law and a substantial question of law. In exercise of the powers under this Section in

several cases, the findings of fact of the first appellate Court are found to have been disturbed. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in the section must be strictly fulfilled before a second appeal can be maintained and no court has the power to add or to enlarge those grounds. The second appeal cannot be decided on merely equitable grounds. The concurrent findings of facts will not be disturbed by the High Court in exercise of the powers under this Section. Further, a substantial question of law has to be distinguished from a substantial question of fact. This Court in *Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd.*, held that:

The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.

A plain reading of the above judgements would leave no doubt that unless there is substantial question of law involved in a matter, no second appeal would lie.

11. My discussion supra would connote and denote that here absolutely there is no merit in the second appeal and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.