
(2013) 07 MAD CK 0273
In the Madras High Court
Case No : S.A. No. 432 of 2013

S. Manickam

APPELLANT

Vs

Indian Bank, Kulandaiammal, Govindan and Anbalagan

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Contract Act, 1872 — Section 176

Citation : (2014) 1 BC 209 : (2013) 7 MLJ 77

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : T. Murugamanickam, for the Appellant;

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—This Second appeal is focussed by the first defendant animadverting upon the judgment and decree dated 29.4.2011 passed by the Additional District Court, Fast Track Court No. 1, Salem, in confirming the judgment and decree dated 31.3.2010 passed by the Sub Court, Attur, in O.S. No. 53 of 2004, which was one for recovery of money. The parties are referred to hereunder according to their litigative status and ranking before the trial Court.

2. A resume of facts absolutely necessary for the disposal of this Second Appeal, would run thus:

(a) The first respondent herein, as plaintiff, filed the suit seeking the following reliefs:

a) to direct the first defendant to pay the plaintiffs bank personally the sum of Rs. 3,38,768/- with interest at the rate of 15.80% per annum from the date of the suit till realisation on or before the date that will be fixed by this Hon"ble Court, failing which to direct the sale of the properties morefully described hereunder in the plaint "A" and "B" schedule and the sale proceeds shall apply to the decreetal amount and in case if the said proceeds are not sufficient for the

same, to permit the plaintiffs bank to proceed against the first defendant personally.

b) To direct the defendants 1 and 2 to pay the aforesaid sum with interest at the rate of 15.80% per annum from the date of suit till realisation from out of the estate of the deceased guarantor namely Sitha Gounder son of Molaya Gounder of Kuppur Village.

c) To direct the defendants 3 to 6 to pay the aforesaid sum with interest at the rate of 15.80% p.a. from the date of suit till realisation from out of the estate of the deceased guarantor namely Raju son of Ramasamy of Pethakurichi Valavu, Kuppur Village, Pagadupattu Post.

e) to direct the defendants to pay the costs of the suit.

(extracted as such)

contending that the first defendant borrowed a sum of Rs. 1,46,000/- from them on 16.2.1990 for the purpose of purchasing a tractor and he executed various documents undertaking to repay the debt with interest and also with half yearly rests. D1 also executed an agreement of hypothecation concerning the tractor-Mahindra in favour of the bank. He also created a equitable mortgage by deposit of title deeds in respect of the property described in the "B" schedule of the plaint.

(b) Subsequently D1 committed default in discharging the loan. Whereupon the suit was filed.

3. The first defendant resisted the suit on various grounds. The gist and kernel of them would run thus:

(i) Even though various amounts were paid, they were not given due credit by the plaintiff bank.

(ii) The interest claimed is exorbitant. Over and above 6% interest per annum, the plaintiff cannot claim interest, as the loan lent was for agricultural purpose.

(iii) The tractor concerned was seized by Scorpion Bank Mukadams INC, Bangalore and thereafter, various payments were made. Despite that, the tractor described in the "A" schedule of the plaint was not returned.

Accordingly D1 would pray for the dismissal of the suit.

4. Whereupon issues were set down for trail, during which, on the plaintiff's side P.Ws. 1 to 5 were examined and Exs. A1 to A84 were marked. The first defendant examined himself as D.W.1 and marked Exs. B1 to B12.

5. Ultimately the trial Court decreed the suit and passed the preliminary decree, as against which, the appeal was filed for nothing but to be dismissed by the first appellate Court, confirming the judgment and decree of the trial Court.

6. Challenging and impugning the judgments and decrees of both the Courts below, this second appeal has been focussed by the first defendant on various grounds and also suggesting the following substantial questions of law:

1. Whether the suit filed by the respondent-bank for recovery of money is maintainable, when it has already resorted to its remedy u/s 176 of the Indian Contract Act by seizing the hypotheca and not bringing into sale?

2. Whether the suit is barred by limitation?

3. Whether the decree granted is sustainable, considering that credit has not been given to the payments made by the appellant under Ex. A72 and Ex. B6?

(extracted as such)

7. Placing reliance on the grounds of appeal and also the substantial questions of law, the learned counsel for the appellant would pyramid his arguments, which could succinctly and precisely be set out thus:

(i) Even though various amounts were paid after the seizure of the vehicle described in the "A" Schedule of the plaint, the bank has not chosen to return the tractor. In such a case, the first defendant, being an agriculturists, would not be able to repay the entire loan.

(ii) Over and above that, the plaint was earlier presented in the year 1999, whereas, it was got numbered only in the year 2004 and as such, for that longish period, interest cannot be claimed by the plaintiff, because there was no fault on the part of the defendant.

Accordingly, the learned counsel would pay for the dismissal of the suit, after setting aside the judgments and decrees of both the fora below.

8. At the outset itself, I would like to fumigate my mind with the following decisions of the Honourable Apex Court:

Union of India (UOI) Vs. Ibrahim Uddin and Another, an excerpt from it would run thus:

59. Section 100 CPC provides for a second appeal only on the substantial question of law. Generally, a second appeal does not lie on question of facts or of law. In State Bank of India and Others Vs. S.N. Goyal, this Court explained the terms "substantial question of law" and observed as under: (SCC p. 103, para 13)

13... The word "substantial" prefixed to "question of law" does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. "Substantial questions of law" means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties... any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally,

having no bearing on the final outcome, will not be a substantial question of law... There cannot, therefore, be a straitjacket definition as to when a substantial question of law arises in a case.

48. To sum up on the issue, it may be held that an application for taking additional evidence on record at a belated stage cannot be filed as a matter of right. The court can consider such an application with circumspection, provided it is covered under either of the prerequisite conditions incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led in the Court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. In case the court comes to the conclusion that the application filed comes within the four corners of the statutory provisions itself, the evidence may be taken on record, however, the court must record reasons as on what basis such an application has been allowed. However, the application should not be moved at a belated stage.

9. In the same precedent, the following decisions are found referred to:

- (1) Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd.,
- (2) Vijay Kumar Talwar Vs. Commissioner of Income Tax, Delhi,
- (3) AIR 1947 19 (Privy Council)
- (4) (1949) 17 ITR 269
- (5) Oriental Investment Co. Ltd. Vs. Commissioner of Income Tax, Bombay,
- (6) Jagdish Singh Vs. Natthu Singh,
- (7) Prativa Devi Vs. T.V. Krishnan,
- (8) Smt. Satya Gupta Alias Madhu Gupta Vs. Brijesh Kumar,
- (9) Ragavendra Kumar Vs. Firm Prem Machinery and Co.,
- (10) Molar Mal (Dead) Through L.Rs. Vs. M/s. Kay Iron Works(P) Ltd.,
- (11) Bharatha Matha and Another Vs. R. Vijaya Renganathan and Others,
- (12) Dinesh Kumar Vs. Yusuf Ali,
- (13) Jai Singh Vs. Shakuntala,
- (14) Kashmir Singh Vs. Harnam Singh and Another,

10. A mere running of the eye over the above precedents would connote and denote, exemplify and demonstrate that unless there is any substantial question of law is involved, the question of upsetting the findings of the courts below

would not arise.

11. Keeping in mind the dictum as found enunciated in the aforesaid precedents of the Supreme Court, I would like to analyse the records.

12. A mere poring over and perusal of the judgments of both the Courts below would show that they adverted to the actual circumstances threadbare. They also took into account the amounts paid by the first defendant to the plaintiff. No doubt, the vehicle was seized at the instance of the plaintiff bank, because it happened to be the hypotheca concerning the debt. Simply because the said hypotheca was recovered from the first defendant that it does not mean that on a partial payment of the debt, the said hypotheca has to be returned back to the first defendant. As such, I could see no substantial question of law involved in that aspect.

13. Precisely I could see nothing to show that despite payments made, they were not given due credit. The trial Court adverted to the facts and held that the first defendant is liable to pay the amounts claimed by the plaintiff.

14. Over and above that, the learned counsel for the appellant/D1 would argue that for the time taken for representation of the plaint by the plaintiff, the first defendant should not be mulcted with liability.

15. I would readily agree with him. However, the trial Court in fact rendered equity by reducing the contractual rate of interest to 6% p.a. only, from the date of plaint till recovery, which itself in my opinion is a benefit given by the trial Court in favour of the first defendant and in fact, the bank also has not preferred any cross-appeal as against such reduction of interest. When such is the factual scenario, I could see no injustice done by either of the Courts below. On balance, there is no merit in the second appeal and accordingly, it is dismissed. However there is no order as to costs.