

K. Udhayakumar Vs. Shri Ramdhas Finance Private Ltd. Rep by Its Director

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Court : Chennai

Decided On : Oct-17-2012

Judge : P.R. Shivakumar

Appeal No. : S.A.No.475 of 2012 and M.P.No.1 of 2012

Appellant : K. Udhayakumar

Respondent : Shri Ramdhas Finance Private Ltd. Rep by Its Director

Advocate for Pet/Ap. : For the Petitioner : Mrs. Chitra Sampath, Sr. Counsel for T.S. Baskaran, Advocate. For the Respondent: R. Vishnu, Advocate.

Judgement :

(Second appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree of the learned Additional District and Sessions Judge (FTC-IV) Chennai, dated 30.09.2009 made in A.S.No.458 of 2005 confirming the Judgment and Decree of the XV Assistant City Civil Judge, Chennai dated 01.12.2004 made in O.S.No.4882 of 2000.)

The defendant in the original suit is the appellant herein. The respondent herein filed the suit O.S.No.4882 of 2000 on the file of the trial court for recovery of a sum of Rs.72,240/- being the principal amount of Rs.42,000/- lent under the suit promissory note and the interest accrued up to the date of plaint, together with a further interest at the rate of 24% per annum compounded quarterly from the date of plaint till realization and also for costs.

2. The suit was filed based on the plaint averment that on 01.08.1997, the appellant herein/defendant borrowed a sum of Rs.42,000/- from the respondent herein/plaintiff and executed the suit promissory note agreeing to repay the said amount with interest at the rate of 24% per annum. The respondent herein/plaintiff had also filed a suit in C.S.No.419/1999 on the file of this court (High Court) against the mother-in-law of the appellant herein, the appellant herein and the wife of the appellant for the recovery of the amount due on a loan taken by the mother-in-law of the appellant herein on a hire purchase arrangement. Therein the appellant herein/defendant was sought to be made liable as a guarantor. The respondent herein/plaintiff has made a clear averment that both the transactions are distinct and separate and for the loan obtained under the suit promissory note, no amount was paid by the appellant herein/defendant till the date of filing of the suit.

3. The suit was resisted by the appellant herein/defendant contending that the entire amount obtained as loan under the suit promissory note dated 01.08.1997, was repaid with interest by way of five post-dated cheques of Rs.10,000/- each, the particulars of which are as follows:

<i>Sl.No</i> <i>.</i>	<i>Receipt</i> <i>Date</i>	<i>Cheque</i> <i>No./Date</i>	<i>Amount</i>
1	27.10.1997	329821/15.10.97	Rs.10,000
2	27.11.1997	329822/20.11.97	Rs.10,000
3	21.01.1998	329823/14.12.97	Rs.10,000
4	21.01.1998	329824/13.01.98	Rs.10,000
5	19.02.1998	329825/15.02.98	Rs.10,000

It was also contended by the appellant herein/defendant that the above said sum of Rs.50,000/- realized by the respondent herein/plaintiff by encashing the cheques, was wrongly appropriated towards the loan extended to the mother-in-law of the appellant herein/defendant without the consent of the appellant herein/defendant. It was the further contention of the appellant herein/defendant that even the said amount of Rs.50,000/-, admittedly realised by encashing the cheques, was not given credit to in respect of the loan availed by the mother-in-

law of the appellant herein/defendant, which was the subject matter of C.S.No.419/1999 filed on the file of this court against the appellant herein, his mother-in-law and his wife.

4. Based on the pleadings, the following issues were framed by the trial court:

1) Whether the plaintiff is entitled to realise the suit amount?

2) Whether the suit is filed in time?

3) To what relief is the plaintiff entitled?

In the trial, the party witnesses alone appeared as PW.1 and DW.1 respectively. Eleven documents were marked as Exs.A1 to A11 on the side of the plaintiff and a series of receipts (5 Nos) were produced as Ex.B1 (series) on the side of the defendant.

5. The learned trial judge, on an appreciation of evidence in the light of the points canvassed on behalf of both the parties in the arguments advanced by the learned counsel, rejected the contention of the appellant herein/defendant and accepted the case of the respondent herein/plaintiff, with the result that the suit was decreed for the amount claimed in the suit up to the date of plaint, namely Rs.72,240/- with cost. So far as *pendentelite* and post decree interests are concerned, though the claim was for payment of interest at the rate of 24% per annum with quarterly rests, the learned trial judge chose to award the interest at the rate of 9% per annum on the principal amount of Rs.42,000/- uniformly from the date of plaint till realization. The said decree of the trial court was challenged unsuccessfully by the appellant herein/defendant before the lower appellate court in A.S.No.458/2005. The learned first appellate judge, after hearing the appeal, concurred with the findings of the trial court in all respects and dismissed the appeal thereby confirming the decree passed by the trial court.

6. Challenging the decree of the lower appellate court by which the decree passed by the trial court was confirmed, the present second appeal has been filed. At the time of admission, two questions canvassed on behalf of the appellant herein/defendant and they were accepted to be the substantial questions of law

involved in the second appeal. The substantial questions of law, thus formulated at the time of admission, are as follows:-

"1. Whether the Courts below were right in holding that the payment of Rs.50,000/- was adjusted for the claim in C.S.No.419 of 1999 on the file of the Hon'ble High Court of Madras, Chennai, without any pleadings and evidence?"

2. Whether the Courts below had jurisdiction to decide the issue of payment in regard to the claim in C.S.No.419 of 1999 in the present suit?"

7. Based on the same, Mrs.Chitra Sampath, learned senior counsel appearing on behalf of the counsel on record for the appellant herein/defendant and Mr.R.Vishnu, learned counsel for the respondent herein/plaintiff advanced their arguments. The arguments thus advanced on both sides were heard and the materials available were also perused. Upon such hearing and after such perusal, this court pronounces the following judgment:-

8. The unsuccessful defendant, who was sued for recovery of money based on the suit promissory note is the appellant in the second appeal. The execution of the suit promissory note, which has been marked as Ex.A1, has been admitted. It is also not in dispute that the appellant herein/defendant borrowed a sum of Rs.42,000/- from the respondent herein/plaintiff on the date of Ex.A1 and executed the said promissory note. It is also not in dispute that the promissory note contains a clause that the amount borrowed was agreed to be repaid with an interest @ 24% per annum. When the borrowal and the execution of the promissory note are not disputed and on the other hand are admitted, the borrower, who faces the suit for recovery of money based on the promissory note, should prove discharge, if such a plea of discharge is taken by the borrower.

9. In this case, the appellant herein/defendant took a plea that on the date of execution of the promissory note itself the respondent herein/plaintiff got five post-dated cheques, each one for a sum of Rs.10,000/-; that those cheques were encashed by the respondent herein/plaintiff and that hence the entire loan amount covered by Ex.A1-promissory note stood discharged. The respondent herein/plaintiff has not disputed the fact that five cheques, each one for Rs.10,000/-

, as referred to by the appellant herein/defendant had been issued and the said cheques were encashed by the respondent herein/plaintiff. It is also an admitted fact that on encashment of those cheques, receipts came to be issued by the respondent herein/plaintiff in favour of the appellant herein/defendant and those receipts are the documents produced as Ex.B1 series. The respondent herein/plaintiff, who has admitted payment of Rs.50,000/- by way of five cheques for which Ex.B1 series were issued, would contend that those payments were made not in respect of the suit transaction and on the other hand they were made in respect of yet another transaction, which is not connected with the suit transaction or the suit promissory note. The said contention of the respondent herein/plaintiff seems to be one admitted by the appellant herein/defendant. Such an admission was made in the reply notice sent to the presuit notice issued by the respondent herein/plaintiff, as a prelude to the filing of another suit, namely C.S.No.419/1999 filed by the respondent herein/plaintiff against the mother-in-law of the appellant herein/defendant, appellant herein/defendant and his wife. The said suit was filed for recovery of the money due under a hire purchase arrangement with the mother-in-law of the appellant herein/defendant for which the appellant herein/defendant allegedly stood as a guarantor. The pleadings made by other defendants in the said suit are not relevant to the case on hand. However, what is sought to be relied on by the respondent herein/plaintiff, in the case on hand, is an admission made in the reply notice issued to the notice issued on behalf of the appellant herein/defendant as a prelude to the said suit C.S.No.419/1999 regarding the loan (hire purchase) transaction with the mother-in-law of the appellant herein/defendant. For the notice issued on behalf of the respondent herein/plaintiff, the appellant herein/defendant and his mother-in-law through their counsel (same counsel) chose to send reply notices separately on 11.07.1998. Copies of those notices have been produced as Exs.A8 and A9. Whatever averments that might have been made by the mother-in-law of the appellant herein/defendant, may be disregarded as irrelevant, because she is not a party to the present suit. However by sending the said reply notice the appellant herein/defendant made an admission that the appellant herein/defendant executed a promissory note on 01.08.1997 in favour of the respondent herein/plaintiff for a sum of Rs.4,36,116/- for the amount due from his mother-in-law in respect of the

loan availed by her under the hire purchase agreement; that in discharge of the said loan, a total sum of Rs.50,000/- was remitted by the appellant herein/defendant and the same should have been deducted from the amount covered by the said promissory note and that only a sum of Rs.3,86,116/- was due. A reference to the said stand taken in the reply notice made by the courts below as an admission that the cheque payments were made in discharge of the other promissory note and not the present suit promissory note marked as Ex.A1, is sought to be projected as a finding and decision rendered in respect of an issue in the other suit, namely C.S.No.419/1999. On the other hand, a thorough study of the judgments of the courts below, will show that the same was referred to show that the admitted payment of Rs.50,000/- was made towards the other loan, which was the subject matter of C.S.No.419/1999 and not towards the loan covered by the present suit promissory note produced as Ex.A1. It is not the case of the appellant herein/defendant that apart from the amount of Rs.50,000/- covered by the five cheques referred to above, for the encashment of which Ex.B1 (series) receipts had been issued, no payment was made either towards the discharge of the suit promissory note or towards the other loan. That being so, the said admission becomes very much relevant. Having admitted that the said payments were made towards the discharge of the other loan, the appellant herein/defendant shall be estopped from contending that the said amounts should have been appropriated towards the suit loan covered by the present suit promissory note produced as Ex.A1.

10. A meek attempt was made on behalf of the appellant herein/defendant to show that since the receipts were issued in the name of the appellant herein/defendant without specifying the loan for which the amount was appropriated, the present claim of the respondent herein/plaintiff for the said amount was appropriated towards the other loan should be rejected. It is also the contention of the learned senior counsel that since the payment of the said amount of Rs.50,000/- towards the other loan was not given credit to in the loan account of the mother-in-law of the appellant herein/defendant, it should be presumed that the said amount was appropriated only towards the present suit promissory note. The said contention, according to the considered view of this court, is nothing but the result of an afterthought. The courts below have arrived at a correct conclusion that no amount

was paid towards the loan covered by Ex.A1-promissory note and that the appropriation of the amounts paid by way of cheques, which are acknowledged under Ex.B1 series towards the other loan concerned in C.S.No.419/1999, was not improper. The said finding cannot be construed to be a finding rendered in respect of the other suit, namely C.S.No.419/1999. As such, this court is of the view that both the substantial questions of law have been projected on a misconception as if the issues in the other suit have been decided in the present suit. Therefore, both the substantial questions of law are decided against the appellant herein/defendant and in favour of the respondent herein/plaintiff.

11. Though it was not raised and though it was not framed as a substantial question of law at the time of admission, during the course of the hearing, it was brought to the notice of the court that the award of interest was not in accordance with the provision found in section 34 of CPC and hence the same should be treated as a substantial question of law for interfering with the decree passed by the trial court, which was confirmed by the appellate court, at least in respect of the *pendentelite* and post decree interest. Hence an additional substantial of law as canvassed during the course of arguments, was framed as follows:

"Whether the interest awarded by the courts below from the date of plaint till the date of realization is not in consonance with section 34 of the Civil Procedure code?"

After framing the said question, the learned senior counsel appearing on behalf of the appellant and the learned counsel for the respondent were given opportunity to canvas their points regarding the same. Based on the points urged in this regard, the said question is also considered.

12. Under section 34 of the Civil Procedure Code regarding *pendentelite* interest, there is a discretion vested with the court to award *pendentelite* interest, at such rate which the court deems reasonable. So far as *pendentelite* interest is concerned, the amount awarded by the courts below does not exceed the contractual rate of interest and the said rate of interest cannot also be stated to be unreasonable. But so far as post decree interest is concerned, there is a cap of 6% per annum subject to an exception that in case the liability having been arisen

under a commercial transaction, the same may exceed 6%, but shall not exceed the contractual rate of interest or in the absence of a contract regarding rate of interest, it shall not exceed the bank rate of interest. The exemption clause is not attracted in this case, because the transaction is not projected to be a commercial transaction. On the other hand, the present suit has been filed as a pure money suit based on a promissory note. Therefore, the post decree interest cannot exceed 6% per annum. Hence, this court comes to the conclusion that both the courts below have committed mistake and error in awarding 9% post decree interest, which is in violation of the mandatory provision found in section 34 of the Civil Procedure Code. Because of the said mistake, the decrees of the courts below are liable to be interfered with for correcting the same and restricting the same to 6% per annum. It is brought to the notice of the court during arguments that pending the appeal, pursuant to an interim order, a sum of Rs.71,873/- was paid by the appellant/defendant to the respondent/plaintiff. The said amount shall be adjusted towards the decretal amount and the respondent herein/plaintiff shall be entitled to recover only the balance amount.

13. In the result, the second appeal is allowed in part. The post decree interest is reduced to 6% per annum instead of 9% per annum as mentioned in the decrees of the courts below. Subject to the above modification in all other respects, the judgment and decree of the trial court (XV Assistant City Civil Judge, Chennai) made in O.S.No.4882 dated 01.12.2004, which was confirmed in the judgment and decree of the lower appellate court (Additional District and Sessions Judge (FTC-IV) Chennai) in A.S.No.458/2005 dated 30.09.2009 shall stand confirmed. However, considering the facts and circumstances of the case, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

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