

S.A(MD)No.735 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

RESERVED ON : 12.02.2026

DELIVERED ON : 19.02.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD).No.735 of 2021

Tamilnadu Mercantile Bank Ltd.,
Rajapalayam Branch,
through its Chief Manager and
Power Agent J.Sundaresh Kumar.

: Appellant/Respondent/Plaintiff

Vs.

Venkatrama Subbiah

: Respondent/Appellant/Defendant

2.Renuga Devi

3.V.Rohini

: Respondents

(Respondents 2 and 3 are brought on
record as LR's of the deceased sole
respondent vide order dated 12.12.2024
made in C.M.P.(MD)Nos.8245 to 8247 of 2024)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the decree and judgment in A.S.No.10 of 2018, on the file of the Principal District Court, Tuticorin, dated 14.08.2019, which partly set aside the decree and judgment, dated 10.08.2017, passed in O.S.No.23 of 2015, on the file of the Subordinate Court, Kovilpatti.



WEB COPY



S.A(MD)No.735 of 2021

For Appellant : Mr.B.Rajesh Saravanan

For Respondents : Mr.M.P.Senthil
for R.2 and R.3
: R.1 - died

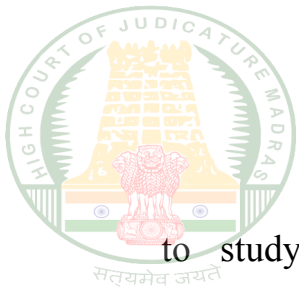
JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.10 of 2018, dated 14.08.2019, on the file of the Principal District Court, Tuticorin, modifying the judgment and decree, passed in O.S.No.23 of 2015, dated 10.08.2017, on the file of the Subordinate Court, Kovilpatti.

2. The appellant is the plaintiff. The plaintiff Bank filed a suit for recovery of mortgage debt due by the deceased first defendant.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

4. The case of the plaintiff Bank is that the defendant applied for a term loan of Rs.1,40,000/- to meet out educational expenses of his daughter V.Rohini



S.A(MD)No.735 of 2021

to study B.E., Computer Course at Arulmigu Kalasalingam College of

WEB COPY

Engineering, that the plaintiff sanctioned the said loan on 19.09.2004, that the defendant agreed for the terms and conditions stated in the sanction letter and in thereof, signed in the letter, that the defendant availed the said loan of Rs.1,40,000/- on 24.09.2004 after accepting the terms and conditions of the loan, that the defendant executed a promissory note dated 24.09.2004 in favour of the plaintiff promising to repay the same with interest at the rate of 11% per annum or at the Banks ruling rate prevailing from time to time with quarterly rests, that the defendant has also executed an Articles of Agreement on 24.09.2004 and thereafter agreed to pay the penal interest at the rate of 2% per annum over and above the prevailing rate of interest and the balance outstanding from the date of default till the date of payment, that the defendant had agreed and undertaken to repay the loan amount in 60 equal monthly instalments commencing from 30.01.2009, that the defendant had created an equatable mortgage in favour the plaintiff Bank by depositing title deeds of his property with an intention to create equitable mortgage for the said loan amount and thereby mortgaged the suit property with the plaintiff on 24.09.2004 at Rajapalayam town, that the defendant had executed revival letter on 13.09.2007, 09.09.2010 and 21.06.2013 and thereby acknowledged and extended his liability, that the defendant was very irregular in repaying the said amount and as such, he is liable to pay penal



S.A(MD)No.735 of 2021

interest on the outstanding amount, that since the defendant did not pay as agreed, the plaintiff sent a legal notice demanding the loan amount on 07.11.2014, but the defendant had not settled the outstanding amount and that therefore, the plaintiff was constrained to file the above suit claiming preliminary decree directing the defendant to pay a sum of Rs.2,48,286/- with subsequent interest at 16.50% per annum including the penal interest of 2% from the date of plaint till the date of realisation to the plaintiff within the time fixed by the Court and in case of the defendant's failure to pay the decretal amount, to permit the plaintiff to apply for final decree to bring the suit property for sale and also to pass a personal decree against the defendant.

5. The defence of the defendant is that the defendant availed a loan of Rs.1,40,000/-, but he had been regularly paying the amounts in instalments, that the plaintiff sent a notice dated 07.11.2014, calling upon the defendant to pay a sum of Rs.2,30,890/- on 30.09.2014, that the defendant sent an interim reply dated 17.11.2014 disputing and denying the notice allegations, that the defendant signed in the various forms and papers at the places marked “X” as directed by the then bank branch manager of the plaintiff bank, who obtained signatures of the defendant at the time of sanctioning the loan, that the defendant has also handed over the documents related to the suit property to the then branch



S.A(MD)No.735 of 2021

manager as demanded by him, that the defendant never executed revival letters on

WEB COPY

13.09.2007, 09.09.2010 and 21.06.2013 and never acknowledged and extended his liability, that the defendant and his daughter are entitled to avail benefits under Interest Subsidy Scheme which is a beneficial scheme launched by the Government of India in providing financial assistance to the needy beneficiaries, that the plaintiff has charged and claimed interest at 16.50% per annum including penal interest and as such, the plaintiff is not entitled to claim such interest, that the plaintiff has no cause of action to file the suit and that therefore, the suit is liable to be dismissed.

6. The learned trial Judge, upon considering the pleadings framed the following issues:

“ (i).Whether the plaintiff is entitled to get the preliminary decree as prayed for?

(ii) To what other relief, the plaintiff is entitled to?”

7. During trial, the plaintiff examined its Chief Manager Thiru.L.Jeyapandian as P.W.1 and exhibited 16 documents as Exs.A1 to A.16. The defendant examined himself as D.W.1 and adduced no documentary evidence. The learned trial Judge, upon considering the pleadings and evidence



S.A(MD)No.735 of 2021

WEB COPY

both oral and documentary and on hearing the arguments of both sides, passed the judgment dated 10.08.2017, granting preliminary decree as prayed for. Challenging the preliminary decree, the defendant preferred an appeal in A.S.No. 10 of 2018 and the learned Principal District Judge, Thoothukudi, upon considering the materials available on record and on hearing the arguments of both sides, passed the impugned judgment and decree dated 14.08.2019, partly allowing the appeal and modified the judgment and decree passed by the trial Court and granted a preliminary decree directing the defendant to pay the balance amount of Rs.41,000/-with simple interest at 6% per annum from the date of the suit till the date of realisation. Aggreived by the impugned judgment and decree, the plaintiff bank has filed the present appeal.

8. Pending Second Appeal, the sole defendant had died and hence, his wife and daughter were impleaded as respondents 2 and 3 in the Second Appeal.

9. At the time of admission, the following Substantial Question of Law came to be formulated:

“(a) Whether the finding of the Lower Appellate Court is perverse as without marking document and without giving opportunity



S.A(MD)No.735 of 2021

to this Appellant/Plaintiff come to a conclusion on the basis of unmarked document?

(b) Whether the finding of the Lower Appellate Court is perverse as it finds that the defendant is entitled for waiver of interest but made waiver in principal?”

10. It is not in dispute that the defendant availed loan of Rs.1,40,000/- under educational loan category to meet out the educational expenses of his daughter V.Rohini for her studies in B.E., Computer Science Course at Arulmigu Kalasalingam College of Engineering, Krishnankovil. Though the defendant has taken a stand that he had subscribed signatures at the time of sanctioning of loan in the blank forms and papers as directed by the then bank manager and that he had not executed any agreement nor any revival letters nor any other document depositing the title deeds of his property, but the learned trial Judge, considering the evidence available on record, has come to a finding that the defendant alone had executed the documents and availed the educational loan for his daughter and that subsequently had executed the revival letters acknowledging the liability due by him to the bank. In the appeal filed by the defendant, the learned first appellate Judge has also come to a finding that the defendant had executed all necessary documents for obtaining loan and subsequently the revival letters.



S.A(MD)No.735 of 2021

WEB COPY

11. In the first appeal, the defendant relied on an interest subsidy scheme for educational loans issued by the Government and the learned first appellate Judge by observing that the educational loan obtained by the defendant cannot be treated as a commercial loan and that the defendant is entitled to get the benefit of interest subsidy scheme. The learned Counsel for the plaintiff bank would contend that the said interest subsidy scheme circular has not been produced nor exhibited and nobody was examined to prove that the scheme was in force at that time and the same was applicable to the defendant. No doubt, the learned first appellate Judge referred Clause 4 of the circular issued by the Indian Bank Associations, Mumbai which deals with the applicability of the scheme and the same is extracted hereunder:

“4. Applicability of the Scheme:

The Scheme will be adopted by all scheduled Banks/RRBs and would be applicable only for students from Economically Weaker Sections who have taken education loan up to 31.03.09 and outstanding as on 31.12.13 and were pursuing studies in recognized Technical/Professional Courses in India. RRBs should submit their claim directly to Canara Bank the nodal bank and not to route it through the sponsor bank.”



S.A(MD)No.735 of 2021

WEB COPY

12. The learned Counsel for the plaintiff would submit that in the same circular, it has been specifically mentioned that the benefits of the said scheme would be applicable to those students belonging to economically weaker sections with annual income gross parental / family income upto the limit of Rs.4.5 Lakhs per year from all sources. But the defendant has not produced any such income proof to show that their income was below Rs.4.5 Lakhs per year and that the first appellate Court without considering the above criteria has mechanically held that the scheme is applicable to the defendant. It is necessary to refer the income limit/proof shown in the said circular:

“Income Limite/Proof:

The benefits of the Scheme would be applicable to those student belonging to economically weaker sections, with an annual gross parental/family income upper limit of Rs.4.5Lacs per year (from all sources). Income proof shall be required from the students from such public authorities which are authorised by the State Governments for certification of income status for this Scheme, including Central and State Sector Schemes. The present scheme is intended to cater to the needs of students belonging to economically weaker sections with prescribed upper parental gross income limit of the family from all



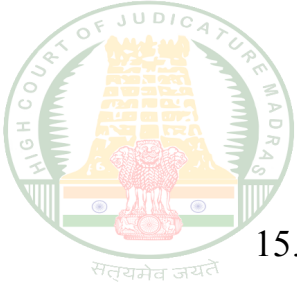
S.A(MD)No.735 of 2021

WEB COPY

sources, which is based on economic index and not on social background. The scheme is independent of any other schemes which may cater to EWS.”

13. Admittedly, the defendant has not produced his income proof before the first appellate Court nor before this Court to show that their annual income was less than Rs.4.5 Lakhs. Considering the above, as rightly contended by the learned Counsel for the plaintiff bank, the finding of the first appellate Court that the said circular is applicable to the defendant cannot be sustained.

14. The first appellate Judge, by observing that the defendant had already repaid Rs.99,160/- out of Rs.1,40,000/- and as such, he is only liable to pay Rs.41,000/- and on that basis, directed the defendant to pay Rs.41,000/- with Simple Interest at 6% per annum from the date of the suit. It is not the case of the defendant that he had paid Rs.99,160/- as a lumpsum payment to discharge the portion of the loan, but admittedly the defendant had repaid Rs.99,160/- for the period between 30.10.2004 till 31.12.2010.



S.A(MD)No.735 of 2021

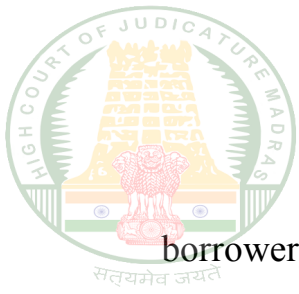
15. The defendant as D.W.1 in his evidence would admit that

WEB COPY

“நான் வாதிட்டம் ரூ.1 இ4 0 இ0 0 0 / –த்தை கல்விக்கடனாக வாட்சுனன் என்றால் சரிதான். அவ்வாறு நான் வாட்சிய கடனை முழுவதும் செலுத்தி தீர்க்கவில்லை என்றும்இ வழக்கு தாக்கல் செய்யும்பாது கடன் பாக்கி ரூந்தது என்றும் சொன்னால் சரிதான். நான் தவணை முறையில் சில தொகைகளை செலுத்தியுள்ளேன்.”

16. It is evident from Ex.A.15 ledger extract that the amounts repaid by the defendant were duly given credit and interest was calculated only on the outstanding balance. As rightly contended by the learned counsel for the plaintiff Bank, since the defendant had paid a total sum of Rs.99,190/-, the same cannot be directly appropriated towards the principal amount of Rs.1,40,000/-. As per Ex.A. 15 ledger extract, the outstanding balance as on 24.02.2015, on which date the suit came to be filed, was Rs.2,46,286/-. Hence, the finding of the learned appellate Judge that, since the defendant had repaid Rs.99,190/-, he is liable to pay only Rs.41,000/-, is contrary to the evidence available on record and is liable to be treated as perverse.

17. When the appeal was taken up for final hearing, the learned counsel for the respondents submitted that the sole defendant, who was the principal

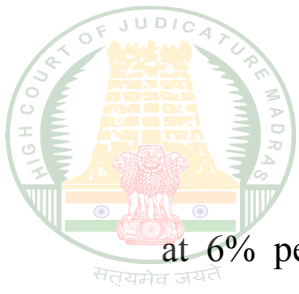


S.A(MD)No.735 of 2021

borrower, had already died; that the third respondent, for whose benefit the educational loan was obtained, has since been married and is now residing with her husband and in-laws; and that the second respondent, who is now aged about 65 years, is willing to pay the decretal amount in order to give a quietus to the issue. In this regard, the learned counsel has also filed an affidavit sworn to by the second respondent.

18. In the said affidavit, the second respondent has stated that she is willing to pay the decretal amount of Rs.2,46,286/- with interest at 12% per annum from the date of suit till the date of decree and thereafter at 6% per annum till the date of realisation. The learned counsel for the plaintiff Bank would submit that the trial Court had granted interest at 16.50% per annum from the date of the suit till the date of payment and that the Bank has objections for reduction of the rate of interest.

19. As already pointed out, the learned first appellate Judge has awarded simple interest at 6% per annum from the date of suit till the date of realisation. Admittedly, the proceedings have been pending from the year 2015 onwards. Though the trial Court had granted a decree as prayed for, the first appellate Court modified the same and granted a decree only for Rs.41,000/- with interest



S.A(MD)No.735 of 2021

at 6% per annum from the date of suit till the date of realisation. Now, the respondents have come forward with an affidavit expressing their willingness to pay the entire decretal amount of Rs.2,46,286/- with interest at 12% per annum from the date of suit till the date of decree and thereafter at 6% per annum till the date of payment, within a period of 10 days from the date of judgment of this Court. Considering the long pendency of the proceedings from 2015 onwards, the nature of the educational loan availed, the demise of the principal borrower, the age and financial condition of the second respondent, and the bona fide willingness expressed by the respondents to settle the liability in full, this Court is of the view that, in exercise of its equitable jurisdiction, the ends of justice would be met by directing the respondents to pay a sum of Rs.2,46,286/- with interest at 12% per annum from the date of suit till 10.08.2017 and thereafter at 6% per annum till the date of payment.

20. The learned Counsel for the respondent would submit that they are ready and willing to pay the suit costs awarded at Rs.23,619.50/- and the Court fee paid for the present Second Appeal at Rs.7,381.89/-.

21. No doubt, as rightly pointed out by the learned Counsel respondents, cost memo was not filed by the plaintiff bank before the first appellate Court and



S.A(MD)No.735 of 2021

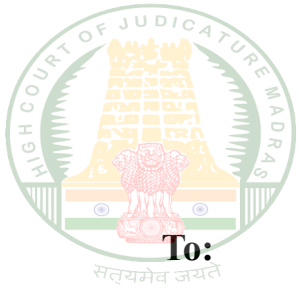
no cost was awarded. Considering the above, the plaintiff bank is entitled to get total costs of Rs.31,001.39/-.

22. 22. In the result, the Second Appeal is allowed and the judgment and decree of the first appellate Court are set aside. Consequently, there shall be a preliminary decree directing the defendants 2 and 3 to pay a sum of Rs.2,46,286/- together with interest at 12% per annum from the date of suit till 10.08.2017 and thereafter at 6% per annum till the date of payment, along with costs of Rs.31,001/-. The said amount shall be paid within a period of 10 days from the date of receipt of a copy of this judgment.

19.02.2026

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

SSL



S.A(MD)No.735 of 2021

To:

WEB COPY

1. The Principal District Court, Tuticorin.
2. The Subordinate Court, Kovilpatti.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A(MD)No.735 of 2021

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN
S.A.(MD).No.735 of 2021

19.02.2026