

[NON-REPORTABLE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2708 OF 2022

M/s Jersey Developers (P) Limited & Ors. ...Appellants

Versus

Canara Bank

...Respondent

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 23.04.2021 passed by the High Court of Judicature at Madras in Civil Revision Petition No.4427 of 2015 by which the High Court has dismissed the said revision application preferred by the appellants herein in which the appellants challenged the order passed by the

learned Trial Court dismissing the petition to set aside the ex-parte decree, the appellants herein – original defendants have preferred the present appeal.

2. The appellant no.1 is the company who availed the loan facility from the respondent – Bank and appellant nos. 2 and 3 are the Directors who are staying along with their family in United States of America (USA) for last 40 years. The respondent - Bank instituted suit being OS No.3749 of 2003 before the learned Trial Court for recovery of the amount. The summons of the suit and the notices were sent to the address at Chennai which remained closed as the appellants herein original defendants are staying in USA. The summons and the notices were returned ‘unclaimed’. Therefore, the Court below ordered substituted service by newspaper publication. Thereafter the suit proceeded ex-parte and an ex-parte decree came to be passed vide judgment and decree dated 12.02.2004. The Bank

subsequently approached the Debts Recovery Tribunal for issuance of the recovery certificate. The DRT, Chennai issued a notice dated 07.06.2013 in the name of the appellants calling upon them to pay a sum of Rs.47,21,320.53. The said notice was also sent to the address at Chennai which property according to the appellants was already sold in the year 2002. According to the appellants when appellant no.2 visited India in the year 2014, he become aware of the recovery certificate on 29.03.2014 and the ex-parte decree. The appellants herein-original defendants therefore filed the application before the learned Trial Court to set aside the ex-parte judgment and decree dated 12.02.2004. The said application came to be dismissed by the learned Trial Court. The revision application against the order passed by the learned Trial Court dismissing the application to set aside the ex-parte judgment and decree has also been dismissed by the High Court by the impugned judgment and order.

2.1 At the time of hearing of the present appeal it was stated at the Bar that pursuant to the order passed by the High Court, the petitioners have already deposited 50% of the decretal amount. This Court passed an order dated 26.11.2021 that on deposit of the balance 50% of the decretal amount with the Registry of this Court, notice shall be issued. It is reported that by now the petitioners have deposited the entire decretal amount (50% with the High Court and 50% with the Registry of this Court).

3. Having heard learned counsel for the respective parties and considering the fact that summons/notices issued by the learned Trial Court were returned 'unclaimed' as the same were sent at the address at Chennai and the house was closed as the appellants herein original defendants were staying in USA and thereafter the said house was sold and so as to give one additional opportunity to the defendants to defend the suit and as by now entire decretal amount is

deposited by the appellants to show their bonafides and therefore the amount alleged to have been due and payable to the Bank is secured, we are of the opinion that if the appellants are given one additional opportunity to defend the suit it will be in the fitness of things and meet the ends of justice.

4. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court as well as the order passed by the learned Trial Court dated 17.03.2015 passed in I.A. No.6778 of 2014 in OS No.3749 of 2003 dismissing the application to set aside the ex-parte decree are hereby quashed and set aside. The ex-parte judgment and decree passed by the learned Trial Court in OS No.3749 of 2003 is hereby quashed and set aside and the original suit is ordered to be restored on the file of the learned Trial Court,

which shall be decided and disposed of by the learned Trial Court in accordance with law and on its own merits.

4.1 Now appellants – original defendants to appear before the learned Trial Court either in person or through their Advocate(s) on 10th May, 2022 and they shall file their written statements within a period of four weeks from the first appearance before the learned Trial Court.

4.2 Now so far as the amount already deposited by the appellants herein (50% of the amount pursuant to the order passed by the High Court and the balance 50% of the decretal amount pursuant to the order passed by this Court) is concerned, it will be open for the respondent – Bank original plaintiff to withdraw the same and keep it in an interest bearing fixed deposit which shall be dealt with subject to the ultimate outcome of the suit. In case the plaintiff succeeds in the suit and the decree is passed the said amount shall be appropriated towards the decree and if

the suit is dismissed the same shall be repaid to the defendants subject to the further order to be passed by the Appellate Court. The Bank shall retain the amount as ordered hereinabove without prejudice to the rights and contentions of the respective parties in the suit.

5. Present appeal is accordingly allowed to the aforesaid extent. However, there shall be no order as to costs.

.....J.
[M.R. SHAH]

.....J.
[B.V. NAGARATHNA]

**NEW DELHI;
APRIL 13, 2022**