

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.07.2015

CORAM

THE HONOURABLE MRS. JUSTICE **S.VIMALA**

C.S.No.351 of 2015

Dr.Prosper Fernando ... Plaintiff

.Vs..

Mr.D.Joseph Jayaraman ... Defendant

PRAYER: Plaint under Order VIII Rule 1 of CPC Read with Order IV Rule 1 of O.S.Rules for the following relief:

(a) directing the defendant to pay the Plaintiff a sum of Rs.26,26,660/- of which Rs.20,00,000/- being the principal amount due and Rs.6,26,660/- towards interest @ 24% from 23.12.2013 till 10.04.2015 and also further interest from the date of institution of suit till date of realisation of Rs.20,00,000/-

(b) Cost of the suit.

For Plaintiff : Mr.T.Mahendran

For Defendant : Mr.V.Devendhiran

J U D G M E N T

The suit has been filed by the Plaintiff against the defendant, seeking recovery of money to the extent of Rs. 26,26,660/- with interest, based upon the promissory notes dated 23.12.2013 and 24.12.2013.

2. The defendant has also issued three cheques, bearing Numbers 013430 dated 21.01.2015, 013473 dated 15.03.2015 and 013422 dated 15.03.2015 for a sum of Rs.10,00,000/-, Rs.5,00,000/- and Rs.5,00,000/- respectively and the same have been filed by the plaintiff, as documents.

3. Pre-suit notice has been issued directing the defendant to pay the amount.

4. When the suit was filed before this court, an application has been filed by the plaintiff in Application No.2999 of 2015, seeking to furnish the security to the suit claim of Rs.26,26,660/- failing which to order attachment before judgment of the schedule mentioned property.

5. This Court by an order dated 24.04.2015 had directed the respondent/defendant to furnish security to the suit claim within a period of three weeks and the plaintiff was also directed to take private notice. Accordingly, private notice has been taken and the same has been served upon the respondent on 25.04.2015. The respondent did not appear to get leave to defend and did not also furnish security.

6. When the matter is taken up on 07.07.2015, the learned counsel for the plaintiff represented that Leave to defend was not obtained by the defendant and therefore the plaintiff is entitled to an immediate decree. There was no representation on behalf of the defendant on the said date and therefore the matter was directed to be listed under the caption "For Orders" on 09.07.2015.

7. Today, the learned counsel for the defendant is present and seeks time to file an application for Leave to Defend. Under Order VII Rule 5 of the Madras High Court Original Side Rules, 1956 (hereinafter will be referred to as "the Rules"), the defendant is directed to obtain leave to defend from the learned Master. In default of the defendant obtaining such leave or if he fails to defend in pursuance of such leave, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for a sum claimed in the plaint. It will be appropriate to quote Order VII Rule 5 of the Rules, under which the defendant has to obtain leave to defend:-

"Leave to defend to be obtained; in default decree to be passed.

5. In any case in which the

plaint and summons are in the form prescribed in this order, the defendant shall not defend the suit unless he obtains leave to defend from the Master as hereinafter provided. In default of the defendant obtaining such leave or if he fails to defend in pursuance of such leave, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for the sum claimed in the plaint, and in cases where interest is payable either by contract or statute, interest till the passing of the decree and further interest at six per cent per annum from the date of the decree to the date of payment, and such sum for costs as may be prescribed."

8. The suit has been filed on 23.04.2015. The suit summons was served on 15.04.2015. As the leave to defend is the only method available for the defendant to defend the suit and the same having not been done in time, the plaintiff is entitled to an immediate decree.

8.1. The cases in which this kind of summary procedure has been contemplated in Order VII Rule 1 of the said Rules, which reads thus:-

"VII - Special Procedure in Respect of

Certain suits.-

Option to file suits to recover a debt or liquidated claim under summary procedure.

1. A suit to recover a debt or a liquidated demand in money, evidenced by a document, or any money payable by the defendant with or without interest, arising on a negotiable instrument or on a bond or a contract for payment of a liquidated amount of money evidenced by a document, or on a guarantee where the claim arises against the principal in the manner aforesaid, may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed.

For the purpose of this order "Liquidated demand" means a demand for the amount stated or so expressed that the ascertainment of the amount is a mere matter of calculation."

8.2. In respect of a summary suit, special procedure has been prescribed under Rule 2 of the said Rules. Following the special procedure is mandatory under Rule 2 and Rule 2 reads as under:-

"Special Procedure in respect of suits under this order.

2. Subject to the provisions of Rule 7 below the procedure prescribed by this order shall be followed in all suits instituted under Rule 1 above the ordinary procedure being excluded to that extent."

8.3. The plaint allegations are deemed to be admitted and the plaintiff is entitled to a decree.

9. What is the rate of interest is the next issue to be decided.

9.1. Proviso to Order VII Rule 5 of the Rules provides for rate of interest to be awarded by the Court and which reads as under:-

".... where the liability in relation to the sum for which the decree is passed had arisen out of a commercial transaction the rate of such further interest may exceed six percent per annum but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by Nationalised Banks in relation to commercial transactions."

9.2. The transaction, in this case being a

commercial one, as mentioned in the plaint itself, the plaintiff is entitled to the contractual rate of interest, i.e., at the rate of 24%.

10. In the result, the Civil Suit is decreed and the plaintiff is entitled to a sum of Rs.26,26,660/- (of which Rs.20,00,000/-, being the principal amount due and Rs.6,26,660/- towards interest @ 24% from 23.12.2013 till 10.04.2015) with interest at 24% per annum on the principal sum of Rs.20,00,000/-, from the date of plaint till the date of decree and thereafter, at the rate of 6% per annum till the date of payment. No costs.

sd/.S.V.J

09.07.2015

//Certified to be a true copy//

Dated this the day of सत्यमेव जयते 2015.

R.s/18.09.2015

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.