

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2015

(Judgment Reserved on 03-09-2015)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Civil Suit No.672 of 2009

R.Janarthanan

.. Plaintiff

Vs.

1. The Indian Overseas Bank,
Rep. by its General Manager,
No.763, Anna Salai,
Chennai-600 002.

2. Branch Manager,
The Indian Overseas Bank,
Perungalathur, Chennai

(Amended as per order dated 20.03.2012
in A.No.1434 of 2012 in C.S.No.672 of 2009)

.. Defendants

Plaint filed and numbered as Civil Suit under Order 7 Rule 1 of the Code of Civil Procedure read with Order 4 Rule 1 of the Madras High Court Original Side Rules, praying for judgment and decree:

(a) to order the defendants-Bank to pay a sum of Rs.25,03,500/- to restore the plaintiff to the position he was before the illegal filing of the recovery proceedings by the defendants-Bank,

(b) for the costs of the suit and interest, if any, and

(c) to impose exemplary damages on the defendants to prevent

recurrence of reckless acts of tort.

For plaintiff : Mr.S.T.Varadarajulu

For defendants: Ms.Ananda Gomathy Sivakumar

JUDGMENT

The Civil Suit is filed by the plaintiff to order the defendants-Bank to pay a sum of Rs.25,03,500/- to restore the plaintiff to the position he was before the illegal filing of the recovery proceedings by the defendants-Bank, for the costs of the suit and interest, if any, and to impose exemplary damages on the defendants to prevent recurrence of reckless acts of tort.

2. The case of the plaintiff is that the second defendant-Indian Overseas Bank filed a debt recovery proceedings before the Debts Recovery Tribunal-1, Chennai, during 1999 for recovery of dues from one Sigma Soaps and Surfactants Private Limited in O.A.No.679 of 1999, which was subsequently transferred to DRT-3, Chennai and numbered as O.A.No.347 of 2007. The defendants-IOB included the plaintiff's name as third respondent in the said applications. They secured a Recovery Certificate from the DRT on false representation behind the back of the plaintiff. Under the provisions of the Companies Act and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act (for short, 'the SARFAESI Act), the Directors are not liable for the borrowing by the Company and they are liable only if they become borrowers. The borrower is Sigma Soaps and Surfactants Private Limited, which executed an Hypothecation Deed and Promissory Note. The guarantors are namely C.S.Salam and C.S.Javid, and hence, the borrowers are the Company and the said Salam and Javid. The plaintiff did not borrow any amount from the Bank. The plaintiff signed on behalf of the Company and not as a personal guarantor. It is the Company which borrowed the money and the plaintiff is not the guarantor or promisor for the loan sanctioned to the Company.

3. It is the further case of the plaintiff that as a professional Company Secretary, he was Secretary/Director of the Company in October-November 1993 for the formation of the Company and he resigned on 25.11.1993 and Form 32 was filed, which is a public document with the Registrar of Companies, Tamil Nadu, which is taken notice of by the Bank. The plaintiff's address is also available with the Bank and also Form 32. The default by the Company was said to have been committed in 1996-1999 after the plaintiff ceased to be the Director of the Company. The plaintiff suffered injuries due to the fraudulent action of the defendants-IOB. The Letter of Guarantee filed by the Bank with the DRT shows that the guarantors are C.A.Salam

and C.S.Javid. The Bank which filed the said O.A., substituted the plaintiff's name for the said Salam, who is the first and principal guarantor and the Bank obtained a Recovery Certificate against the plaintiff based on the notice sent to some address, whereas the address of the plaintiff is clearly recorded in the document with the Bank and with the Registrar of Companies.

4. The plaintiff further states that after he came to know of the above case, he filed I.A.No.194 of 2003 before the DRT pointing out that he was not the guarantor and that his address is known to the Bank and that notices were sent to fictitious address, which are fabricated by the Bank to recover the amount from the plaintiff. The defendants filed counter affidavit in the said I.A., stating that the plaintiff is liable to pay the amount. The said I.A. was filed to give opportunity to the Bank to withdraw the application, which the Bank failed to do and stated in the counter affidavit that the plaintiff resigned as Director in 2003. The correct date of resignation of the plaintiff is 25.11.1993 and the mis-statement of the Bank led the DRT to issue another Recovery Certificate against the plaintiff in the I.A. filed by some other party without even going through the said I.A.No.194 of 2003 filed by the plaintiff in November 2007. The DRT found the plaintiff not liable and discharged him from the case on 27.02.2009.

5. The plaintiff further states that the defendants-Bank has to compensate him for the loss, damages and sufferings he underwent due to their fraudulent filing of recovery petition before the DRT, which is not maintainable against the plaintiff.

6. The defendants damaged the reputation of the plaintiff's profession as Cost Accountant and Company Secretary by issuing advertisements in the newspaper that the plaintiff was a defaulter to the Bank. The plaintiff's integrity in the market suffered. Consequently, his income during 1998-99 at Rs.1,95,000/- dropped to 'nil' during 1999-2000, which continued till 2005-2006. The loss of income for seven years at Rs.13,65,000/-, with interest at 10% per annum on the same, is totalling to Rs.17,74,500/-. The plaintiff was under fear that the property may be lost at the machination of the Bank which obtained Recovery Certificate against the plaintiff and the plaintiff also feared arrest any time. There was tension, constant fear, anxiety and mental agony, for the plaintiff. When false case is dragged on for more than two years, the compensation may not be less than Rs.7 lakhs.

7. The plaintiff further states that he attended all the hearings before the DRT, i.e. 38 sittings in eight years. The travel expense worked out to Rs.500/- per day for himself and his advocate. The Advocate fee is Rs.10,000/-. Totally, the plaintiff claims in the suit that he may be

compensated with Rs.25,03,500/-.

8. Since there was no response for the notice served on the defendants for payment of Rs.25,03,500/-, the plaintiff has filed the present suit for the relief stated supra.

9. The second defendant has filed written statement under Order 8 Rule 1 CPC, which was adopted by the first defendant, stating that the defendants filed O.A.No.679 of 1999 before the DRT, Chennai for recovery of Rs.17,89,889/- with further interest from the date of plaint till the date of realisation as against M/s.Sigma Soaps and Surfactants Private Limited and others. The plaintiff was impleaded as third defendant in the said O.A. Ex-parte decree was passed in the said O.A. on 30.08.2002. The property was brought to auction and sold on 09.01.2004. The sale was confirmed and the auction purchaser is M/s.Sri Chandra Industries, which purchased the property for Rs.16 lakhs. One Mohammed Zafrulla, claiming to be a Director of the said Sigma Soaps Company, filed a set-aside petition in M.A.No.336 of 2005 along with an application in I.A.No.335 of 2005 for condoning the delay of 1200 days in filing the same. Both the said applications were dismissed along with I.A.Nos.641 and 642 of 2003 filed by the second defendant. O.A.No.679 of 1999 was transferred to DRT-3 and re-numbered as O.A.No.347 of 2007, which was dismissed on 05.10.2007, with costs of

Rs.1,000/-. The plaintiff herein filed applications to set aside the ex-parte order passed in O.A.No.347 of 2007, and those applications were disposed of on 27.02.2009 and the DRT observed that the plaintiff herein did not execute any guarantee to the loan transaction and accordingly, the claim against the third defendant was dismissed. The plaintiff in fact executed the promissory note on 17.12.1993. The said Company, namely M/s.Sigma Soaps approached the Bank and executed all the documents and borrowed the loan from the Bank by executing necessary documents in favour of the Bank, which filed the suit and obtained the order from the DRT and the possession was also handed over. The defendants preferred appeal before the Debts Recovery Appellate Tribunal against the order passed by the DRT-3 in the applications filed by the plaintiff in O.A.No.347 of 2007 and notice was ordered in the said appeal. The plaintiff is also liable to pay the decree amount and he cannot escape from his liability. During the execution of documents, the plaintiff was the Director for Sigma Soaps and therefore, he is liable to pay the dues to the Bank. The plaintiff has not obtained any order from the Tribunal regarding the damages caused to him and there was no pleadings regarding the damages before the Tribunal and therefore, the principle of estoppel will apply to the facts of the case. It is open for the plaintiff to adjudicate the matter before the Tribunal as per Rules. The

defendants are not liable to pay any amount to the plaintiff. The defendants acted with norms and the rules and therefore, the suit is not maintainable and liable to be dismissed.

10. This Court, by order dated 20.07.2012, framed the following issues for consideration in the suit:

- (i) Whether the act of the defendants, dragging the plaintiff to DRT in O.A.No.679 of 1999 later O.A.No.347 of 2007, when he has acted as a Director of the creditor, Sigma Soaps and Surfactants P. Limited, is justifiable ?
- (ii) By the act of the defendants, whether the reputation of the plaintiff spoiled ?
- (iii) Whether the plaintiff executed any documents in favour of the second defendant-Bank for borrowing loan ?
- (iv) Whether the plaintiff was added in the Original Application in O.A.No.679 of 1999 before the DRT, Chennai as to represent on behalf of the Company ?
- (v) Whether the cause of action of the plaintiff's claim is within the jurisdiction of this Court ? and
- (vi) Whether the suit claim is barred by limitation ?

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11. During the course of trial, the plaintiff examined himself as P.W.1 and Exs.P-1 to P-13 were marked. During the course of cross-examination of P.W.1, Exs.D-1 to D-4 were marked.

12. Heard both sides and perused the oral and documentary evidence adduced on both sides.

13. It is the contention of the plaintiff that he was not the borrower as defined under Section 2(1)(f) of the SARFAESI Act, which reads as follows:

"Section 2: Definitions: (1) In the Act, unless the context otherwise requires,--

....
 (f) "borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance."

It is his main pleading that he has not borrowed any money from the defendants-Bank in his personal capacity and he has signed only on behalf of the Company, but the defendants-Bank has filed suit (application) against the plaintiff also as third defendant and published advertisements in the newspapers figuring him as a defaulter of the Bank, which damaged the reputation of the plaintiff's profession as Cost Accountant and Company Secretary and his integrity has suffered in the market and he incurred loss of income. The plaintiff was under the fear of arrest at any time, which

caused mental agony, tension, etc. The defendants caused irreparable damages for the plaintiff and hence, the plaintiff totally claims Rs.25,03,500/- for his above loss.

14. It is the crux of the contention of the defendants that the plaintiff executed Promissory Note and Hypothecation Deed as a Director of the Company at the relevant point of time and he was authorised to execute the documents in favour of the Company and since there was default in payment by the said Company, the Bank approached the DRT and filed application for recovery of the amount, in which proceedings, the plaintiff herein is shown as third defendant and he is signatory to the documents for the Company. No notice was given by the plaintiff to the Bank for his resignation from the Company and in the absence of such notice to the defendants-Bank, the Bank filed application (suit) against all the persons who are signatories of the Company, including the plaintiff. The Bank initiated proceedings in respect of the mortgaged property and not for personal decree against the plaintiff. The Bank is a public institution and wanted to recover the public money advanced to the principal debtors and the Bank has no ulterior motive or mala-fide intention to implead the plaintiff as a party to the proceedings before the DRT. Further, motive cannot be attributed to the plaintiff for filing the suit for recovery of money from the

defaulting Company. The averments made by the plaintiff regarding the loss of income and the amount spent for travel for attending the hearing of the case, advocate fee, etc., are all imaginary and excessive. Except the evidence of P.W.1, the plaintiff, there is no evidence produced by the plaintiff to substantiate the damages caused to him. Hence, the plaintiff is not entitled to the relief prayed for in the suit, which is liable to be dismissed.

15. It is admitted by both sides that the plaintiff was the Company Secretary of the Company (i.e. Sigma Soaps and Surfactants Pvt. Ltd) and he signed documents like Promissory Notice, Hypothecation Deed etc., (Exs.P-3, P-4 and D1 to D3) and executed the documents in favour of the Bank as a Director of the Company at the relevant point of time. It is not in dispute that the plaintiff was authorised to execute the documents on behalf of the said Company. It is also admitted that the Company has not repaid the entire loan amount, and since the Company defaulted in payment of the amount, the defendants-Bank instituted recovery proceedings before the DRT in O.A.No.347 of 2007. The Recovery Certificate was also obtained by the Bank.

16. According to the plaintiff, he resigned as Director of the Company as early as on 25.11.1993 itself. He alleges that after his resignation from the Company, he has ceased to be the Director of the Company and he

cannot be termed as a borrower as defined under Section 2(1)(f) of the SARFAESI Act. It is not in dispute that in the proceedings before the DRT, he was arrayed as third defendant.

17. The plaintiff pleads that he is a professional Company Secretary and also a Cost Accountant. This is not disputed by the defendants-Bank. As soon as he resigned from the Directorship of the Company, the Company filed Form 32 under the Companies Act, on 26.11.1993 (Ex.P-2) before the Registrar of Companies, and his resignation was not communicated to the Bank. The plaintiff also did not state in the plaint that he communicated the fact of his resignation to the Bank. Even in his proof affidavit/chief-examination, he has not stated that he communicated his resignation from the Company on 25.11.1993, to the defendants-Bank. In the absence of any such communication by the plaintiff to the defendants-Bank, the Bank will be having no knowledge about the plaintiff's resignation from the post of Director of the said Company.

18. Learned counsel for the defendants-Bank contended that the contention of the plaintiff that he has no mala-fide intention to claim damages, is not proved through evidence, except the evidence of interested witness, i.e. P.W.1. The plaintiff has not proved that the defendants-Bank caused loss to him and damaged his reputation by filing recovery

proceedings against the plaintiff by impleading him as third defendant in the recovery proceedings (application, i.e. suit). In the absence of any mala-fide intention on the part of the defendants-Bank to implead him as a party to the recovery proceedings and when there is no ill-will or bad motive to include him in the recovery proceedings before the DRT, the plaintiff cannot claim any damages from the defendants, more so, when he failed to communicate to the Bank about his resignation from the post of Directorship in the Company as early as on 25.11.1993 itself.

19. Ex.P-1 is the copy of the paper publication (notice) issued in O.A.No.679 of 1999 filed before the DRT, Chennai against the plaintiff and others, in which it is stated that the date of hearing of the case before the DRT was fixed on 10.05.2000. Ex.P-2 is Form No.32 filed before the Registrar of Companies Act, in which, it is stated that the plaintiff resigned on 25.11.1993 from the post of Director of Sigma Soaps and Surfactants Ltd. This fact is also evident from paragraphs 8 and 13 of the plaint filed before this Court in this suit. Ex.P-3 is the Promissory Note, dated 17.12.1993 executed by the said Company in favour of the defendants-Bank, in which, the plaintiff has signed as Director of the said Company. In Ex.P-4 Letter of Hypothecation of the Indian Overseas Bank, dated 17.12.1993, the plaintiff has signed as a Director of the Company. In Ex.P-

5, which is the Revival Letter of the Company to the IOB, Perungalathur, the plaintiff has not signed for the Company.

20. In Ex.P-6, which is the copy of the Original Application filed by the Indian Overseas Bank (IOB) against the borrowers, the plaintiff herein has been arrayed as third defendant, in which, in paragraph relating to the facts of the case in paragraph V, in column (d), it is stated that the defendants availed the term loan facility by executing a Promissory Note, dated 17.12.1993 for Rs.1,50,000/- in favour of the applicant (Bank). In column (e) therein, it is stated that the defendants availed Open Cash Credit facility by executing a Promissory Note dated 17.12.1993 for Rs.5,00,000/- in favour of the applicant (Bank). In column (f) therein, it is stated that the defendants availed Supply Bills facility by executing a Promissory Note, dated 17.12.1993 for Rs.2,50,000/- in favour of the applicant (Bank). These averments in the said O.A. filed before the DRT clearly proves that the plaintiff, on behalf of the said Company, executed the Promissory Note in favour of the IOB. These documents clearly falsify the averment of the plaintiff in the pleadings in the plaint that he resigned from the post of Directorship as early as on 25.11.1993 itself, but as a Director of the Company, he executed the Promissory Note/Hypothecation Deed, etc., in favour of the Bank on 17.12.1993, which is subsequent to the alleged

resignation of the plaintiff on 25.11.1993. Hence, contrary to the above facts, the plaintiff has come forward with the false allegation that he resigned on 25.11.1993 itself. Hence, it is clear that the plaintiff has not come before this Court with clean hands, but has come with false allegation against his own documents produced on his side. So, the evidence of the plaintiff is not credit-worthy and the plaintiff has only adduced false evidence to substantiate his case.

21. In Ex.P-12 letter dated 09.03.2009 addressed by the plaintiff to the Manager of the IOB, Perungalathur, Chennai, in paragraph 5, he has stated that the Bank took note of his resignation as Director of the Company which was on 25.11.1993 and Form 32 was filed before the Registrar of Companies, which became a public document.

22. In Ex.P-7 which is the affidavit of the plaintiff herein, in I.A.No.... of 2003 (set aside petition) in O.A.No.679 of 1999, dated 27.08.2003, filed before the DRT, Chennai, in paragraph 3, the plaintiff stated as follows:

"3. I submit that I have submitted my resignation on 25.11.1993 and my resignation was accepted and I ceased to be a Director from 24.12.1993. Form 32 under Companies Act filed to the Registrar of Company, would establish that I ceased to be the Director from 24.12.1993. I ceased to be the Director of 2nd respondent Company from 24.12.1993. Hence on the date of filing of the application by the bank, I was not a Director. Therefore no liability is cast on me after my resignation. I have not given any personal security to the bank for the loan given to

the 2nd respondent company. I further state that I have not signed promissory note personally. It was signed by me for and on behalf of the company under the seal of the company office."

23. Contrary to the pleadings and other documents, he has come forward to state in the said application (Ex.P-7) filed before the DRT that he ceased to be the Director from 24.12.1993. After one month from 25.11.1993 which is the date of his resignation, there is no relevant document produced to show that he has given one month notice to the Company for his resignation and no document is produced to show that his resignation was accepted on 24.12.1993. The plaintiff has not stated anywhere in the plaint before this Court that his resignation was accepted on 24.12.1993. Form 32 (Ex.P-2) clearly shows that he resigned only on 25.11.1993.

24. The copy of the order, dated 05.10.2007 (Ex.P-9) passed by the DRT-3, Chennai, in I.A.Nos.641 and 642 of 2003 and I.A.Nos.335 and 336 of 2005 in O.A.No.347 of 2007, shows that C.S.Javid who is the second defendant in O.A.No.347 of 2007, has filed I.A.Nos.641 and 642 of 2003 to condone the delay of 428 days in filing the application to set aside the ex-parte order passed on 30.08.2002 and to set aside the ex-parte order dated

30.08.2002 passed in the above O.A., and the Company, i.e. Sigma Soaps and Surfactants Ltd., which is the first defendant in the said O.A., filed I.A.Nos.335 and 336 of 2005 to condone the delay of 1200 days in filing the set aside petition and to set aside the ex-parte decree, dated 30.08.2002 and after hearing the learned counsel for the parties, those applications in I.A.Nos.641 and 642 of 2003 and I.A.Nos.335 and 336 of 2005, were dismissed on 05.10.2007 by the DRT-3, Chennai.

25. The plaintiff who is the third defendant in O.A.No.679 of 1999, after coming to know only in the third week of August 2003 about the ex-parte decree dated 30.08.2002, filed an application to condone the delay of 363 days in filing the application to set aside the ex-parte order and an application to set aside the ex-parte order, and the copy of the affidavit filed along with the said applications in M.A.Nos.193 and 194 of 2003 in O.A.No.679 of 1999 (O.A.No.347 of 2007), is marked as Ex.P-7 before this Court, in which, he prayed to condone the said delay. Since no orders are passed on the said application, the plaintiff herein (third defendant before in the recovery proceedings before DRT) filed a Memo, dated 03.06.2008 (marked as Ex.P-10 before this Court in this suit) before DRT-3, Chennai stating that he is not the guarantor to the loan transaction and prayed for passing final orders on his application in M.A.Nos.193 and 194 of 2003 and

to discharge him from the liability towards the IOB (defendants herein).

26. The DRT-3, after perusing the affidavit and after hearing both sides, passed orders on 27.02.2009 (marked as Ex.P-11) in M.A.Nos.193 and 194 of 2003 in O.A.No.347 of 2007, in which, it was observed by the DRT as follows:

"12. In my opinion as the third respondent has not executed any guarantee to the loan transaction personally binding himself and if he has signed the guarantee, if any, it is only in the capacity of the Director of the company and therefore no liability can be fastened on him. Accordingly the claim against D-3 stands dismissed.

13. This order shall become sequel to the final order dated 30.08.2002. This order is passed by way of rectification of an error which crept up on record as is apparent. The amended Recovery Certificate be prepared and issued to the Recovery Officer accordingly.

14. The Recovery Officer is directed to drop the proceedings, if any initiated against D-3 in view of this order."

27. Subsequently, final order was passed by the DRT-3, Chennai in O.A.No.347 of 2007, which is filed as Ex.P-14, which is dated 03.02.2014, in which, in paragraph 7(d), the DRT observed that the final order dated 30.08.2002 shall form part of the order in respect of D-1 and D-2 alone and D-3 is not personally liable to repay the dues. This shows that the plaintiff (D-3 therein) is exonerated of his liability to pay the dues to the Bank. The said order dated 30.08.2002 is the ex-parte order passed by the DRT

originally, fastening liability on all the defendants therein.

28. From the said documents, it is clear that the plaintiff herein did not appear at the first instance before the DRT, resulting in passing the ex-parte order and after delay of 363 days in filing the restoration petition and filing the petition to set aside the ex-parte final order dated 30.08.2002, he filed applications for the same, which were allowed on 27.02.2009 as seen from Ex.P-11. Thus, it is clear that the plaintiff came to know of the DRT proceedings only after 363 days, i.e. nearly in August 2003, after the final ex-parte order was passed by the DRT on 30.08.2002.

29. In the above circumstances, except the plaintiff examining himself as P.W.1, no other witness is examined to prove the damages, etc., caused to the plaintiff. The plaintiff stated that only after the initiation of the recovery proceedings by the defendants-Bank against him, he immediately came to know of the same and because of institution of Original Application (suit) before the DRT by the Bank, he suffered damages, loss of income, loss of integrity, etc. Only after 363 days after ex-parte order was passed on 30.08.2002, he came to know of the recovery proceedings against him before the DRT.

30. It is admitted by the plaintiff himself that he is a professional Company Secretary and he was appointed as Director of the Company in

pursuance of the post held by him. Admittedly, he resigned from the post of Director of the Company on 25.11.1993, which was duly communicated to the Registrar of Companies through Form 32 filed under the Companies Act. In this context, it is worthwhile to quote Section 283 of the Companies Act, 1956, as follows:

"Section 283: Vacation of office by directors:-- The office of a director shall become vacant if--

(a) he fails to obtain within the time specified in sub-section (1) of section 270, or at any time thereafter ceases to hold, the share qualification, if any, required of him by the articles of the company;

(b) he is found to be of unsound mind by a Court of competent jurisdiction;

(c) he applies to be adjudicated an insolvent;

(d) he is adjudged an insolvent;

(e) he is convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months;

(f) he fails to pay any call in respect of shares of the company held by him, whether alone or jointly with others, within six months from the last date fixed for the payment of the call unless the Central Government has, by notification in the Official Gazette, removed the disqualification incurred by such failure ;

(g) he absents himself from three consecutive meetings of the Board of directors, or from all meetings of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board;

(h) he (whether by himself or by any person for his benefit or on his account), or any firm in which he is a partner or any private company of which he is a director, accepts a loan, or any guarantee or security for a loan from the company in contravention of section 295 :

(i) he acts in contravention of section 299;

(j) he becomes disqualified by an order of Court under section 203;

(k) he is removed in pursuance of section 284;

(l) having been appointed a director by virtue of his holding any office or other employment in the company, he ceases to hold such office or other employment in the company;

(2) Notwithstanding anything in clauses (d), (e) and (i) of sub-section (1), the disqualification referred to in those clauses shall not take effect--

(a) for thirty days from the date of the adjudication, sentence or order;

(b) where any appeal or petition is preferred within the thirty days aforesaid against the adjudication, sentence or conviction resulting in the sentence, or order until the expiry of seven days from the date on which such appeal or petition is disposed of; or

(c) where within the seven days aforesaid, any further appeal or petition is preferred in respect of the adjudication, sentence, conviction, or order, and the appeal or petition, if allowed, would result in the removal of the disqualification, until such further appeal or petition is disposed of.

(2-A) Subject to the provisions of sub-sections (1) and (2), if a person functions as a director when he knows that the office of director held by him has become vacant on account of any of the disqualifications, specified in the several clauses of sub-section (1), he shall be punishable with fine which may extend to five thousand rupees for each day on which he so functions as a director.

(3) A private company which is not a subsidiary of a public company may, by its articles, provide, that the office of director shall be vacated on any grounds in addition to those specified in subsection (1)."

31. On a careful reading of Section 283(1)(l) of the Companies Act,

1956, it is clear that the office of a Director shall become vacant and the Director ceases to hold such office or other employment in the Company, if, having been appointed a Director by virtue of his holding any office or other employment in the Company. In this case, the plaintiff is deemed to have vacated the office of the Director of the Company from the date of his resignation, i.e. from 25.11.1993, which was duly communicated to the Registrar of Companies. It is to be noted that the plaintiff signed all the documents, like Promissory Note, etc., in favour of the Bank on 17.12.1993, i.e. after the vacation of the office of the Director of the Company. Hence, for the above act of signing the documents after his resignation, he is punishable under Section 283(2-A) of the Companies Act, 1956.

32. It is the admitted case of the plaintiff that he does not know the paper publication published by the defendant-Bank against him and he filed the petition to set aside the ex-parte final order with delay of 363 days and in the affidavit filed in support of the delay-condonation-application before the DRT, which is marked as Ex.P-7, the plaintiff has stated as follows in paragraph 7:

"7. I submit that already set aside application was filed by the 2nd respondent and it is numbered as Application No.61 of 2003, which is still pending. I could know about the order passed in application No.679 of 1999 only when I received intimation from the 2nd respondent in the 3rd week of August

2003. Moreover my wife was attacked with stroke from 1995 and she took treatment at Hyderabad from 2001 to July 2003. I was with her at Hyderabad looking after my wife. Hence I could not file the restoration petition in time. Therefore there is a delay of 363 days in filing the restoration petition."

Thus, it is the case of the plaintiff that he was in Hyderabad from 2001 to July 2003 and he only had knowledge about the case in the third week of August 2003.

33. The plaintiff is a professional Company Secretary and Cost Accountant and he signed all the relevant documents on 17.12.1993, after his resignation from the post of Director on 25.11.1993. The defendants-Bank, while filing recovery proceedings before the DRT, has also filed interlocutory applications to grant interim injunction restraining the defendants therein from alienating or dealing with movable properties, etc., described in Schedule-B therein and the immovable properties described in Schedule-A therein in any manner and also for appointment of Advocate Commissioner to seize and sell the hypothecated stocks of raw materials, etc., described in Schedule-B therein by public auction and to deposit the sale proceeds to the credit of the loan amount after defraying the expenses for sale. As a professional Company Secretary and also a Cost Accountant, the plaintiff herein would be knowing the effect of the recovery proceedings

initiated against him by the defendants-Bank. In the plaint filed before this Court, the plaintiff has stated that he was under fear of arrest at any time, tension, constant fear, incalculable mental agony, etc., which cannot be easily quantified, for which, he sought for damages to Rs.7 lakhs. Even though such averments relating to tension, agony, etc., are made in the plaint, the plaintiff has not stated anything in his evidence during chief examination about the same, though simply he stated in the proof affidavit that he is claiming Rs.7 lakhs under the head 'mental agony'. Except his own testimony as P.W.1, no other witness was examined or no document is produced on the side of the plaintiff to prove his claim for damages under the said head of mental agony at Rs.7 lakhs. Hence, the argument of the learned counsel for the plaintiff that the plaintiff must be compensated with Rs.7 lakhs under the above head of mental agony, fear, tension, etc., is not sustainable. Hence, he is not entitled to any amount under the head of mental agony, tension, fear, etc.

34. It is the admitted case of the plaintiff that he was in Hyderabad for treatment of his wife from 2001 to July 2003. But, no evidence, either oral or documentary, is produced to substantiate the same. He resigned from the post of Director on 25.11.1993. He was in Hyderabad from 2001 to 2003. He came to know of the case only in August 2003. Even before that, as per

the plaintiff's own version in the plaint before this Court, the income during 1999-2000 dropped to 'nil'. Hence, the contention of the plaintiff that his income in the year 1999-2000, became 'nil' because of the DRT proceedings, is not acceptable. Hence, his claim in the plaint that he is entitled to get Rs.17,74,500/- towards loss of income from 1999-2000 to 2005-2006, is also not sustainable.

35. Learned counsel for the plaintiff contended that the plaintiff attended 38 sittings (in eight years) before the DRT and the plaintiff claims travel expenses at Rs.500/- per day for himself and his Advocate. But, the plaintiff has not produced any oral or documentary evidence to show that he attended those hearings or spent such amount for travelling to DRT. No case diary of the DRT is produced before this Court. The plaintiff has not proved his claim by producing any document that he incurred expenses for the hearings before the DRT. The fees of the Advocate, etc., are not proved by producing any receipt issued by the Advocate for the same. Further, no costs were ordered by the DRT. Since the DRT disallowed costs to the plaintiff herein from the defendants-IOB herein, which is the applicant before the DRT, the plaintiff is precluded from filing a separate suit for recovery of costs and expenses on that score. Therefore, the plaintiff's claim that he is entitled to be compensated on account of his travel expenses,

advocate fees, etc., for the alleged 38 sittings before the DRT, is also not sustainable.

36. In view of the foregoing discussion, it is clear that the plaintiff is not entitled to any relief sought for in the suit.

37. Learned counsel for the defendants-Bank relied on a decision of a Division Bench of the Bombay High Court reported in MANU/MH/1552/2008 = 2010 (1) BC 207 (Suhas Bhand Vs. State of Maharashtra and another), which relates to the offence under Section 138 of the Negotiable Instruments Act, which is not the case before this Court, and hence, that decision is not applicable to the facts of the present case.

38. Hence, the act of the defendants-Bank dragging the plaintiff to DRT in the recovery proceedings when he acted as Director of the Company, which is the creditor, is justifiable and by the act of the defendants-Bank, the reputation of the plaintiff is not spoiled. Hence, for the reasons stated supra, issue Nos.(i) and (ii) are answered against the plaintiff.

39. The plaintiff executed documents Exs.P-3 and P-4 on 17.12.1993 and in December 1993 and Exs.D-1 to D-3 on 17.12.1993, only after his resignation from the post of Director of the Company on 25.11.1993, which was communicated to the Registrar of Companies through Form-32 under

the provisions of the Companies Act, 1956. Hence, it is clear that the plaintiff executed the above said documents in favour of the Bank for borrowing loan on 17.12.1993, i.e., after his resignation from the post of Directorship on 25.11.1993, which was communicated to the Registrar of Companies in Form No.32 (Ex.P-2 herein). Issue No.(iii) is answered accordingly.

40. Since the factum of resignation of the plaintiff from the post of the Director of the Company on 25.11.1993, was not communicated to the defendants-Bank, the Bank instituted recovery proceedings against the plaintiff, by adding him as a party-defendant in O.A.No.679 of 1999 on the file of the DRT, so as to represent on behalf of the Company. Hence, issue No.(iv) is also answered against the plaintiff.

41. The plaintiff filed the suit for damages for loss of income, for mental agony, fear of arrest, tension, etc., and for expenses towards the hearings before the DRT, including the travel expenses. This Court, in the above discussion, held that the plaintiff is not entitled for any relief prayed for in the suit and he has filed the suit for the alleged cause of action mentioned in the plaint and the same is not sustainable in law. Hence, issue No.(v) is answered against the plaintiff.

42. The suit was filed before this Court on 11.08.2009 on the basis of

the order passed by the DRT-3, Chennai on 27.02.2009 (marked as Ex.P-11) in M.A.Nos.193 and 194 of 2003 in O.A.No.347 of 2007 (O.A.No.679 of 1999). Whether the suit filed before this Court is within the period of limitation or not, has to be decided on the basis of the pleadings in the plaint. From the plaint averments, it is clear that the plaintiff has filed the suit for damages before this Court only within the prescribed period of limitation from the date of the alleged cause of action. Hence, the suit claim is not barred by limitation. Issue No.(vi) is answered in favour of the plaintiff.

43. Conclusion: Since this Court has held that the plaintiff is not entitled to get any amount under the above three heads as discussed supra, he is not entitled to get the relief sought for in the suit. The suit is liable to be dismissed.

44. Accordingly, the suit is dismissed. Both parties are directed to bear their own costs.

Witnesses examined on the side of plaintiff:-- P.W.1 Mr.R.Janarthanan

List of documents marked on the side of plaintiff:--

<i>Exhibit No.</i>	<i>Date</i>	<i>Description of the exhibit</i>
P-1	05.05.1999	Photocopy of the newspaper publication of notice in O.A.No.679 of 1999 before the DRT, Chennai

<i>Exhibit No.</i>	<i>Date</i>	<i>Description of the exhibit</i>
P-2	25.11.1993	Photocopy of Form No.32 filed under the Companies Act, 1956
P-3	17.12.1993	Photocopy of the Promissory Note for Rs.1,50,000/- executed by Sigma Soaps and Surfactants Ltd. in favour of IOB
P-4	December 1993	Photocopy of the Letter of Hypothecation executed by borrower Sigma Soaps and Surfactants Ltd., in favour of IOB for Rs.10 lakhs
P-5	17/1996	Photocopy of the Revival Letter of Sigma Soaps and Surfactants Ltd. to IOB
P-6	29.06.1999	Photocopy of the Original Application filed by IOB, Perungalathur, Chennai before the DRT, Chennai
P-7	27.08.2003	Photocopy of the affidavit of the plaintiff in I.A.No..... of 2003 in O.A.No.679 of 1999 filed before the DRT-1, Chennai
P-8	15.12.2003	Photocopy of the common counter affidavit filed by IOB in I.A.Nos.193 and 194 of 2003 in O.A.No.679 of 1999 before the DRT-1, Chennai
P-9	05.10.2007	Photocopy of the order passed by DRT-3, Chennai in I.A.Nos.641 and 642 of 2003, I.A.Nos.335 and 336 of 2005 and I.A.SR.Nos.988 and 989 of 2007 in O.A.No.347 of 2007 (O.A.No.679 of 1999)
P-10	03.06.2008	Photocopy of the Memo filed by the plaintiff herein in O.A.No.347 of 2007 before the DRT-3, Chennai
P-11	27.02.2009	Photocopy of the order passed by DRT-3, Chennai in M.A.Nos.193 and 194 of 2003 in O.A.No.347 of 2007 (O.A.No.679 of 1999)

<i>Exhibit No.</i>	<i>Date</i>	<i>Description of the exhibit</i>
P-12	09.03.2009	Photocopy of the letter sent by the plaintiff herein to the Manager of IOB, Perungalathur, Chennai, with Acknowledgement, dated 11.03.1999
P-13	1996-1997, 1998-1999, 2002-2003, 2003-2004, 2004-2005	Income Tax Returns, intimation of the Income Tax Department, etc. of the plaintiff
P-14	03.02.2014	Photocopy of the Order passed by DRT-3, Chennai in O.A.No.347 of 2007 (O.A.No.679 of 1999)

Witnesses examined on the side of defendants:- Nil

Documents marked on the side of defendants through P.W.1 cross examination:-

<i>Exhibit No.</i>	<i>Date</i>	<i>Description of the exhibit</i>
D-1	17.12.1993	Certified True Copy of the Promissory Note for Rs.5 lakhs executed by Sigma Soaps and Surfactants Ltd., in favour of IOB
D-2	17.12.1993	Certified True Copy of the Promissory Note for Rs.1,50,000/- executed by Sigma Soaps and Surfactants Ltd., in favour of IOB
D-3	17.12.1993	Certified True Copy of the Promissory Note for Rs.2,50,000/- executed by Sigma Soaps and Surfactants Ltd., in favour of IOB
D-4	09.12.1993	Certified True Copy of the Minutes of the meeting of the Board of Directors of Sigma Soaps and Surfactants Limited

Court witness and Court document : Nil

Registry to note: Registry is directed to issue the judgment copy along with the above typed list of witnesses and documents.

sd/G.C.J

04.11.2015

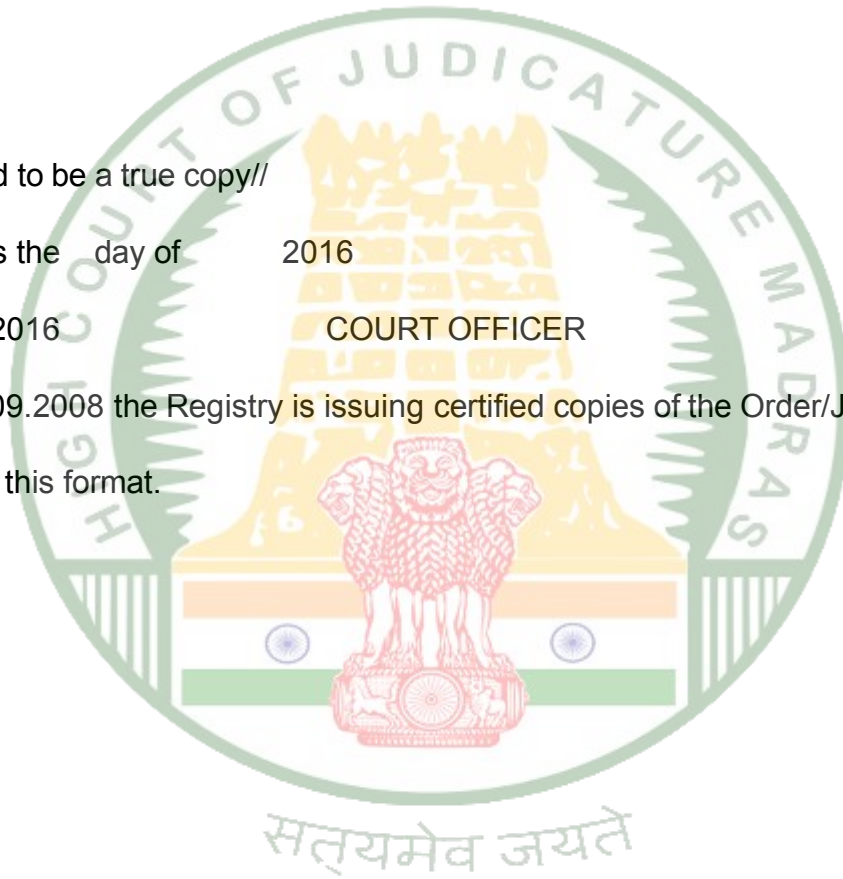
//Certified to be a true copy//

Dated this the day of 2016

S.s/1.04.2016

COURT OFFICER

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



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