

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.01.2015

CORAM

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

C.S.No.706 of 2009

Manali Benefit Fund Ltd.,
Rep. By Power of Attorney,
S.Ganapathy,
34, Srinivasan Street, Manali, Chennai - 600 068.
... Plaintiff

Vs.

1. M.Kannappan @ Kannan
2. A.R.Ramasamy
3. R.Chitti Bangaru Rao
4. G.Thanikachalam
5. P.Srinivasan
6. M/s.Standard Chartered Bank,
58, Armenian Street, Chennai - 600 001.
(6th defendant has been impleaded as per
order dated 30.06.2009 in Application No.853 of 2009)
7. Asset Reconstruction Company
(India) Ltd.,
(As the Trustee for Arcil-Retail
Loan Portfolio 002-A Trust)
Sreepati Arcade August Kranti
Marg, Nana Chowk, Mumbai - 400 036.
(7th defendant impleaded as per orders
dated 28.01.2010 in Application No.292/10)
.. Defendants

PRAYER: Complaint filed under Order VII Rule 1 of C.P.C.

Read with Order 4 Rule 1 of O.S.Rules, praying to (a)
direct the defendants to pay a sum of Rs.25,73,146/-
along with interest at 24% per annum within the period to
be stipulated by this Court; (b) In the event of failure
on the part of the defendants to make payment of the
amount decreed by the Court within the period stipulated

to direct the mortgaged property be brought to sale and the sale proceeds to be appropriated towards the decreed debt after defraying the sale expenses and costs; (c) If the sale proceeds of the mortgaged property is not sufficient to discharge the decreed debt along with cost and expense, to pass a personal decree against the defendants herein; (d) directing the defendants either to furnish security in such sum as may be specified by this Court or to produce and place at the disposal of the Court the said property or value of the same as may be sufficient to satisfy the decree and (e) directing the defendants to pay cost of this suit.

For Plaintiff : Mr.R.Dhamodaran

JUDGMENT

The plaintiff is a body constituted and functioning under Company Act 1956 and carrying on business within the jurisdiction of this Court. The first defendant obtained a loan of Rs.4,75,000/- from the plaintiff by mortgaging his property by executing a mortgage deed dated 16.09.1995.

2. The loan shall be repayable in monthly instalment of Rs.13,680/- spread over a period of five years, from the date of sanction, i.e. 09.09.1995. The

first defendant as agreed did not repay the amount and committed default in payment of money. The defendant has paid only intermittent payment and this also was credited by the plaintiff.

2.1. The first defendant has sold the mortgaged property to the 3, 4 and 5th defendants without discharging the mortgage. The defendants while purchasing the property did not verify the encumbrance certificate and thus they are not the bonafide purchasers.

2.2. The loan period ended on 09.09.2000. But, the loan amount was not repaid.

3. Therefore, the plaintiff issued a notice dated 21.11.2005 requiring the first defendant to pay a sum of Rs.21,95,750/-. But, there was no reply. Hence, the suit was filed.

4. Even after service of notice, the first defendant did not appear and contest the suit. Therefore, he was set ex parte.

4.1. The rest of the defendants, who are the purchasers of the property also did not contest the suit.

4.2. The evidence on the side of the plaintiff has been recorded. On behalf of the plaintiff, its authorised signatory has been examined as P.W.1. The

loan application has been filed as Ex.P2. Ex.P3 is the Original Settlement deed dated 18.11.1961 and the Ex.P4 is the Original Will document No.11/75 dated 29.03.1975. Original mortgage deed is filed as Ex.P11. The office copy of the notice issued to the first defendant has been filed as Ex.P13 and acknowledgement has been filed as Ex.P14. Thus, the plaintiff through oral and documentary evidence has proved the claim. Eventhough, it is alleged that the first defendant has sold the property in favour of the defendants 3,4 and 5, the sale can only be subject to mortgage.

5. Therefore, the decree is passed directing the defendants to pay a sum of Rs.25,73,146/- along with interest at 24% p.a. from the date of filing till the date of the decree and thereafter, at the rate of 6% from the date of decree till payment.

5.1. In the result, the suit is decreed as prayed for. No costs.

WEB COPY

sd/.S.V.J

13.01.2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/17.08.2015

COURT OFFICER

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