

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.01.2015

CORAM

THE HONOURABLE MRS. JUSTICE S.VIMALA

C.S.No.870 of 2009

M.Abdul Salam

... Plaintiff

Vs.

M/s.Sri Sakthivilas Mission for
Health and Consciousness
Represented by its Chief Functionary/
Trustee Mr.E.Srikumar,
No.B-2/7 (Extn) and B-2/8(Extn),
Safdarjung Enclave (Extn)
New Delhi - 110 029.

... Defendant

PRAYER: Complaint under Order IV Rule 1 of the High Court Original Side Rules read with Order VII Rule 1 C.P.C. praying to (a) to direct the defendant to pay the amount of Rs.52,25,040/- (Rupees fifty two lakhs twenty five thousand and fourty only) together with interest on the principal amount of Rs.36,00,000/- (Rupees Thirty Six Lakhs) @ 12% per annum till the date of payment and (b) the cost of the suit.

For Plaintiff : Mr.K.Kannan

For Defendant : No appearance

JUDGMENT

This suit has been filed by the plaintiff seeking recovery of a sum of Rs.52,25,040/- from the defendant together with interest on the principal amount of Rs.36,00,000/- @ 12% per annum till the date of payment.

2. The facts in brief:

(i) The plaintiff is a businessman carrying on business in money lending. The defendant made a request for loan, for the purpose of a property at Delhi. The Trustee Sri Kumar was authorised to raise the loan by the resolution of the Board as per Ex.P1. Accordingly, the defendant availed the loan to the tune of Rs.51,00,000/-. The borrowing was evident by the loan agreement dated 01.09.1998.

(ii) After obtaining the loan, the defendant has paid a sum of Rs.15 lakhs towards the principal amount. The last payment of Rs.5 lakhs on 21.12.2001 was through Cheque.

(iii) The repayment of loan by the defendant was not in time and was irregular. That made the plaintiff to issue notice to the defendant on 04.09.2004 through his advocate calling upon the defendant to discharge the loan. The notice first sent was returned as no such addressee, but, at a later point of time, the defendant sent a reply stating that the entire

amount has been repaid. This reply was obviously false as the defendant did not pay any amount excepting the 15 lakhs referred above. Hence, the suit by the plaintiff.

3. Despite service of summons, the defendant did not appear and therefore, no written statement has been filed.

3.1. When the defendant has taken its specific defence in the reply notice that the entire amount has been repaid, the burden of the proof is only upon the defendant to prove the same, i.e. it is for the defendant to show that the amount has already been repaid. But, the defendant has avoided the appearance before the Court. Naturally, the Court is bound to take adverse inference.

4. The plaintiff has proved his claim by adducing oral and documentary evidence. Therefore, the suit has to be decreed as prayed for with costs.

4.1. In the result, the suit is decreed with costs.

13.01.2015

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Index : Yes / No

Internet: Yes / No

S.VIMALA, J.

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