IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2015

CORAM

THE HONOURABLE MR. **JUSTICE G.CHOCKALINGAM**

Civil Suit No.716 of 2010

M/s. Muthoot Finance Limited,
2nd Floor, Muthoot Chambers,
Opp. Saritha Theatre Complex,
Banergi Road, Ernakulam,
Kerala - 682 018.
Having its Regional Office at No.6,
Arya Gowda Street, West Mambalam,
Chennai - 600 033.
... Plaintiff

Vs.

1. N.Mohandass
2. The Inspector of Police,7
R-7, K.K. Nagar Police Station,
Under Ashok Nagar Range,
Chennai - 600 083.
... Defendants

The suit has been filed under Order IV Rule 1 of O.S.Rules read with Order VII Rule 1 of C.P.C., praying for a judgment and decree against the defendants [a] directing the first defendant to pay a sum of Rs.30,22,677/- with interest at the rate of 30% on Rs.30,22,677/- from the date of Suit till the date of repayment [b] In the event of failure of the first defendant to pay the said amount, the second defendant may be directed to hand over the pledged Articles more fully described in the schedule hereunder, on completion of the criminal case as against the first defendant and [c] for the costs of the suit.

For Plaintiff	:	Mr.S.Sethuraman
For D-1	:	Summons Served
For D-2	:	Service completed Set ex-parte

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JUDGMENT

The suit has been filed by the plaintiff praying for a judgment and decree against the defendants [a] directing the first defendant to pay a sum of Rs.30,22,677/- along with interest at the rate of 30% on Rs.30,22,677/- from the date of suit till the date of repayment [b] In the event of failure of the first defendant to pay the said amount, the second defendant may be directed to hand over the pledged Articles more fully described in the schedule, on completion of the criminal case as against the first defendant and [c] for the costs of the suit.

2. The case of the plaintiff, as stated in the plaint, is as follows:-

The plaintiff is a Company registered under Companies Act of 1956 and registered with Reserve Bank of India as a Non Banking Finance Company carrying on business of financing having its Corporate Office at Kochi, Kerala. It has several branches/Regional Offices in all over the country and one such Regional Office is at No.6, Arya Gowda Street, West Mambalam, Cehnnai - 600 033. The plaintiff Company is in the business of advancing money on the security of gold Jewellery/Ornaments under various schemes of lending. The first defendant had availed a loan under Super Personal Loan scheme [hereinafter referred to as SPL Scheme] bearing No.SPL 8999 on 01.09.2009 for an amount of Rs.2,65,000/- (Rupees two lakhs and sixty five thousand only), by pledging 237 gms of gold. The said limit was renewed / enhanced from time to time and latest under SPL Scheme as SPL 10850 being on 03.12.2009, for a sum of Rs.3,15,300/- (Rupees Three lakhs fifteen thousand and three hundred only). To secure the said loan amount, the first defendant had executed a Demand Promissory Note dated 03.12.2009 for a sum of Rs.3,15,300/-. The first defendant has also executed a consent letter detailing of the items of gold, which the first defendant intends to pledge. He has also acknowledged the receipt of the loan amount from the plaintiff.

[ii] The first defendant had availed another loan under SPL Scheme bearing No.SPL 9356 on 19.09.2009 for an amount of Rs.2,20,000/- [Rupees Two lakhs and twenty thousand only] by pledging 191.8 gms of gold. The said limit was renewed / enhanced from time to time and latest under SPL Scheme as SPL 10849 being on 03.12.2009, enhanced to a sum of Rs.2,49,800/- (Rupees Two lakhs forty nine thousand and eight hundred only). To secure the said loan amount, the first defendant had executed a Demand Promissory Note dated 03.12.2009

for a sum of Rs.2,49,800/-. The first defendant has also executed a consent letter detailing of the items of gold, which the first defendant intends to pledge. He has also acknowledged the receipt of the loan amount from the plaintiff.

[iii] Subsequently, the first defendant had availed another loan under SPL Scheme bearing No.SPL 9532 on 30.09.2009 for an amount of Rs.1,37,000/- [Rupees one lakh and thirty seven thousand only] by pledging 118 gms of gold. In support of the said loan amount, the first defendant had executed a Demand Promissory Note dated 30.09.2009 for a sum of Rs.1,37,000/-. The first defendant has also executed a consent letter detailing of the items of gold, which the first defendant intends to pledge. He has also acknowledged the receipt of the loan amount from the plaintiff.

[iv] The first defendant had availed yet another loan under SPL Scheme bearing No.SPL 9549 on 01.10.2009 for an amount of Rs.2,98,000/-

[Rupees Two lakhs and ninety eight thousand only] by pledging 260 gms of gold. The said limit was renewed / enhanced from time to time and latest under SPL Scheme as SPL 10853 being on 03.12.2009, enhanced to a sum of Rs.3,38,000/- (Rupees three lakhs and thirty eight thousand only). To secure the said loan amount, the first defendant had executed a Demand Promissory Note dated 03.12.2009 for a sum of Rs.3,38,000/-. The first defendant has also executed a consent letter detailing of the items of gold, which the first defendant intends to pledge. He has also acknowledged the receipt of the loan amount from the plaintiff.

[v] The first defendant had availed yet another loan under SPL Scheme bearing No.SPL 9592 on 05.10.2009 for an amount of Rs.64,000/- [Rupees sixty four thousand only] by pledging 56 gms of gold. The said limit was renewed / enhanced from time to time and latest under SPL Scheme as SPL 10851 being on 03.12.2009, enhanced to a sum of Rs.72,800/- (Rupees seventy two thousand and eight hundred only). In support of the said loan amount,

the first defendant had executed a Demand Promissory Note dated 03.12.2009 for a sum of Rs.72,800/-. The first defendant has also executed a consent letter detailing of the items of gold, which the first defendant intends to pledge. He has also acknowledged the receipt of the loan amount from the plaintiff.

[vi] Further, the first defendant had availed another loan under SPL Scheme bearing No.SPL 7803 on 08.07.2009 for an amount of Rs.2,90,000/- [Rupees two lakhs and ninety thousand only] by pledging 270.300 gms of gold. In support of the said loan amount, the first defendant had executed a Demand Promissory Note dated 08.07.2009 for a sum of Rs.2,90,000/-. The first defendant has also executed a consent letter detailing of the items of gold, which the first defendant intends to pledge. He has also acknowledged the receipt of the loan amount from the plaintiff.

[vii] The first defendant had availed another loan under SPL Scheme bearing No.SPL 10854 on 03.12.2009 for an amount of Rs.5,22,000/- [Rupees

five lakhs and twenty two thousand only] by pledging 401.300 gms of gold. In support of the said loan amount, the first defendant had executed a Demand Promissory Note dated 03.12.2009 for Rs.5,22,000/-. The first defendant has also executed a consent letter detailing of the items of gold, which the first defendant intends to pledge. He has also acknowledged the receipt of the loan amount from the plaintiff.

[viii] On 29.03.2010, the first defendant had availed another loan under SPL Scheme bearing No.SPL 13269 for an amount of Rs.6,21,900/- [Rupees six lakhs twenty one thousand and nine hundred only] by pledging 462.400 gms of gold. In support of the said loan amount, the first defendant had executed a Demand Promissory Note dated 29.03.2010 for Rs.6,21,900/-. The first defendant has also executed a consent letter detailing of the items of gold, which the first defendant intends to pledge. He has also acknowledged the receipt of the loan amount from the plaintiff.

[ix] The plaintiff submits the first defendant

defaulted the payment of the principal and interest. While it is so, on 24.04.2010, the second defendant, being the Investigating Officer in Crime No.1258 of 2008, had visited the Porur Branch of the plaintiff Company along with the first defendant and informed that the first defendant was involved in a criminal case and the jewels pledged were all stolen and the same has to be seized for the purpose of investigation. The first defendant identified the jewels pledged with the plaintiff Company for the above said loans and the same was seized by the second defendant Investigating Officer. Hence, the plaintiff Company has filed this suit for the relief as stated above.

3. Though summons were already served on the defendants, they have not chosen to enter appearance either in person or through any counsel and they have also not chosen to file their written statements. Hence, the defendants were set ex-parte by this Court on 03.04.2014.

4. This Court, by an order dated 03.06.2014, has framed the following issues:-

"1. Whether the first defendant had pledged the jewels with the plaintiff company and had borrowed money from the plaintiff?

2. Whether the jewels pledged by the first defendant were seized by the second defendant?

3. Whether the first defendant had executed Demand Promissory Notes to secure the repayment of the loans availed?

4. Whether the first defendant is liable to repay the amount of Rs.30,22,677/- with interest at the rate of 30% per annum to the plaintiff?

5. Whether the second defendant is liable to handover the pledged articles morefully described in the schedule hereunder?

6. Relief and cost?"

5. Thereafter, the case was posted before the learned concerned Additional Master, for recording ex-parte evidence. The Chief Manager of the plaintiff company was examined as P.W.1 and the documents were marked as Exs.P1 to P16 to substantiate his case as stated in the plaint.

6. Heard, Mr.S.Sethuraman, learned counsel for the plaintiff. The defendants were set ex-parte by this Court on 03.04.2014.

7. P.W.1, who is the Chief Manager of the plaintiff company, in his proof affidavit, has

stated as follows:-

The first defendant had availed a loan under Super Personal Loan scheme bearing No.SPL 8999 on 01.09.2009 for an amount of Rs.2,65,000/- by pledging 237 gms of gold and to secure the said loan, the first defendant had executed a Promissory Note for a sum of Rs.2,65,000/- along with delivery letter of the promissory note and consent letter dated 01.09.2009, which is marked as Ex.P.1. The first defendant had availed another loan under SPL Scheme bearing No.SPL 9356 on 19.09.2009 for an amount of Rs.2,20,000/- [Rupees Two lakhs and twenty thousand only] by pledging 191.8 gms of gold and to secure the said loan, the first defendant had executed a Demand Promissory Note for a sum of Rs.2,20,000/- along with delivery letter and consent letter, which is marked as Ex.P.2. The first defendant had also availed yet another loan under SPL Scheme bearing No.SPL 9549 on 01.10.2009 for Rs.2,98,000/- [Rupees Two lakhs and ninety eight thousand only] by pledging 260 gms of gold and to secure the said loan, the first defendant had executed a Demand Promissory Note along with Delivery Letter, which is marked as Ex.P.3.

(b) The first defendant had availed yet another loan under SPL Scheme bearing No.SPL 9592 on 05.10.2009 for an amount of Rs.64,000/- [Rupees sixty four thousand only] by pledging 56 gms of gold and to secure the said loan amount, the first defendant had executed a Demand Promissory Note along with Delivery Letter which is marked as Ex.P.4. Further, the first defendant had availed another loan under SPL Scheme bearing No.SPL 7803 on 08.07.2009 for an amount of Rs.2,90,000/- [Rupees two lakhs and ninety thousand only] by pledging 270.300 gms of gold and to secure the said loan amount, the first defendant had executed a Demand Promissory Note, dated 08.07.2009 for a sum of Rs.2,90,000/- along with Delivery Letter, which is marked as Ex.P.5. The first defendant had availed another loan under SPL Scheme bearing No.SPL 9532 on 30.09.2009 for Rs.1,37,000/- [Rupees one lakh and thirty seven thousand only] by pledging 118 gms of gold and to secure the said loan amount, the first defendant had executed a Demand Promissory Note dated 30.09.2009 for a sum of Rs.1,37,000/- along with demand promissory note and Delivery Letter, which is marked as Ex.P.6.

(c) The said limit was renewed / enhanced from time to time under latest Super Personal Loan as SPL 10849 being on 03.12.2009 enhanced to a sum of Rs.2,49,800/- and in support of the said loan amount, the first defendant had executed a Demand Promissory Note, dated 03.12.2009 for a sum of Rs.2,49,800/- along with demand promissory note and Delivery Letter, which is marked as Ex.P.7. P.W.1 has further stated that the first defendant had availed loan bearing SPL 10850 on 03.12.2009, for Rs.3,15,300/- (Rupees Three lakhs fifteen thousand and three hundred only) and to secure the said loan amount, the first defendant had executed a Demand Promissory Note along with Delivery Letter, which is marked as Ex.P.8. P.W.1 has also stated that the said limit was renewed and enhanced from time to time and latest SPL Loan No.10851 being on 03.12.2009 enhanced to a sum of Rs.72,800/- and in support of the said loan amount, the first defendant had executed a Demand Promissory Note dated 03.12.2009 for Rs.72,800/- along with Delivery Letter, which is marked as Ex.P.9. P.W.1, in his proof affidavit, has also stated that the said limit was renewed and enhanced from time to time under Upper Personal Loan SPL No.10853 being on 03.12.2009, enhanced to a sum of Rs.3,38,000/- (Rupees three lakhs and thirty eight thousand only) and in support of the said loan amount, the first defendant had executed a Demand Promissory Note dated 03.12.2009 for Rs.3,38,000/- along with demand promissory note delivery letter, which is marked as Ex.P.10.

(d) P.W.1 states that the said limit was renewed and enhanced from time to time under Upper Personal Loan SPL No.10854 being on 03.12.2009 enhanced to a sum of Rs.5,22,000/- [Rupees five lakhs and twenty two thousand only] and in support of the said loan amount, the first defendant had executed a Demand Promissory Note dated 03.12.2009 for Rs.5,22,000/- along with demand promissory note delivery letter, which is marked as Ex.P.11. P.W.1 further stated that the first defendant had availed another loan under Super Personal Loan Scheme bearing No.SPL 13269 being on 29.03.2010 enhanced to Rs.6,21,900/- [Rupees six lakhs twenty one thousand and nine hundred only] and in support of the said loan amount, the first defendant had executed a Demand Promissory Note dated 29.03.2010 for Rs.6,21,900/- along with demand promissory note delivery letter, which is marked as Ex.P.12.

(e) Further, P.W.1 has stated that for the above said loan amounts, the first defendant has defaulted the payment of the principal and interest. While the said loan is pending, on 24.04.2010, the second defendant, who is the Investigating Officer in Crime No.1258 of 2008, had visited the Porur Branch of the plaintiff Company along with the first defendant and stated that the first defendant has involved in a criminal case and the jewels pledged by the first defendant were stolen and the same has to be seized for the purpose of investigation. The first defendant identified the jewels pledged by him with the plaintiff Company for the above said loans and the same was seized by the second defendant Investigating Officer. The acknowledgment for receipt of gold jewels, which were seized from the custody of the plaintiff company, is marked as Ex.P.13. Hence, it is proved on the side of the plaintiff company that the first defendant had borrowed loans on different dates by pledging gold jewels with the plaintiff company and also executed promissory notes for the said loan amounts. But the said jewels were recovered by the second defendant Investigating Officer as the same were stolen jewels by the first defendant. In view of the above circumstances, the suit is pending.

8. Learned counsel appearing for the plaintiff has informed that since the first defendant has involved in a criminal case in Crime No.1258 of 2008, now all the jewels are in the custody of the Criminal Court as the same were marked as materials objects. During the course of arguments, the learned counsel for the plaintiff has made an

endorsement in the bundle stating that he has restricted his prayer only with regard to money decree alone viz., prayer in (a) and **he is not pressing the prayer in (b) viz., directing the second defendant to hand over the pledged Articles more fully described in the schedule, on completion of the criminal case as against the first defendant**.

9. The availing of the loans on different dates is proved by the documents produced on the side of the plaintiff Company. Hence, the plaintiff Company is entitled to decree in respect of the main relief 'a' alone.

10. From the above evidence of P.W.1 and the documents produced on the side of the plaintiff company, it is clearly established that the first defendant has borrowed loan on the respective dates and the first defendant has not repaid the amount and the jewels pledged by him has also been recovered in connection with the criminal case. Hence, the case of the plaintiff company is clearly established and they are entitled to the first part

of the prayer made in the plaint in "a".

11. Hence, the suit is decreed in respect of the main relief 'a' alone. However, the plaintiff Company has prayed for 30% interest on the principal amount which is abnormal one. Therefore, this Court is of the considered view that it is just and necessary to award interest at the bank rate at 18% alone. The first defendant is directed to pay a sum of Rs.30,22,677/- along with interest at the rate of 18% on Rs.30,22,677/- from the date of suit till the date of repayment. The prayer regarding 'b' is dismissed as not pressed. Further, the first defendant is directed to pay the costs of the suit.

Plaintiff side Exhibits

Ex. P.1 - dated 01.09.2009 - Promissory Note executed by D.1 for Rs.2,65,000/-

Ex. P.2 - dated 19.09.2009 - Promissory Note executed by D.1 for Rs.2,20,000/-

Ex. P.3 - dated 01.10.2009 - Promissory Note executed by D.1 for Rs.2,98,000/-

Ex. P.4 - dated 05.10.2009 - Promissory Note executed by D.1 for Rs.64,000/-

Ex. P.5 - dated 08.07.2009 - Promissory Note executed by D.1 for Rs.2,90,000/-

Ex. P.6 - dated 30.09.2009 - Promissory Note executed by D.1 for Rs.1,37,000/-

Ex. P.7 - dated 03.12.2009 - Promissory Note executed by D.1 for Rs.2,49,800/-

Ex. P.8 - dated 03.12.2009 - Promissory Note executed by D.1 for Rs.3,15,300/-

Ex. P.9 - dated 03.12.2009 - Promissory Note executed by D.1 for Rs.72,800/-

Ex. P.10 - dated 03.12.2009 -Promissory Note executed by D.1 for Rs.3,38,000/-

Ex. P.11 - dated 03.12.2009 -Promissory Note executed by D.1 for Rs.5,22,000/-

Ex. P.12 - dated 29.03.2010 -Promissory Note executed by D.1 for Rs.6,21,900/-

Ex. P.13 - The acknowledgment given by the Inspector of Police, K.K.Nagar Police Station, Chennai.

Ex. P.14 - dated 24.05.2010 - The copy of the letter addressed to the Inspector of Police along with acknowledgment.

Ex. P.15 - dated 26.05.2010 - The returned cover along with the copy of the notice issued to the first defendant

Ex. P.16 - dated 22.07.2010 - The statement of accounts of the first defendant is maintained in the plaintiff concern.

Plaintiff side witness:

P.W.1 - N.Thangamani

Defendants side exhibits:

Nil

Defendants side witness:

Nil

sd/.G.C.J

11.09.2015

//Certified to be a true copy//
Dated this the day of 2016.

S.s/06.06.2016 COURT OFFICER
From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.