

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

C.S.No.411 of 2002

M/s.Integrated Finance
Company Limited ... Plaintiff

Vs.

1.Ever Fame Electronics Ltd.,
2.S.L.Khanna ... Defendants

Prayer:

Plaint under Order IV Rule 1 of the O.S.Rules 1956
read with Order VII Rule 1 of the Civil Procedure Code
praying for a judgment and decree against the defendants

1. for a sum of Rs.1,31,62,250.18 with interest thereon
at the rate of 36% per annum from date of plaint till
realisation.
2. for costs of the suit.

For Plaintiff : Mr.Najeeb Usman Khan
for Mr.P.J.George

For Defendants : No Appearance

JUDGMENT

The suit is for recovery of a sum of Rs.1,31,62,250.18
with interest and costs.

2.The defendants have been served and their names

appear in the cause list, but there is no representation on their behalf and hence, vide order dated 10.08.2015, they were called absent and set exparte.

3.The plaint averments would state among other things that the first defendant has approached the branch office of the plaintiff for hire purchase and it was favourably considered by the registered/ administrative office of the plaintiff and on positive consideration, the proposal of the defendants was accepted and a cheque bearing no.009846 dated 12.04.1994 for a sum of Rs.14,81,500/- was drawn on State Bank of Travancore to the dealer/ supplier for purchase of the assets and sent the same along with the documentation to be executed by the hirer to the branch office of the plaintiff. The first defendant had executed the Hire Purchase Agreement No.HP93BOMOO109 in respect of the assets described as Item No.1 in the Schedule for a total sum of Rs.24,81,540/- inclusive of the finance assets payable in 60 monthly instalments at the rate of Rs.41,359/- each and the first instalment being payable on 12.04.1994 and the last instalment being payable on 01.03.1999.

4.It is further averred in the plaint that the first

defendant has also executed Lease Agreement No.LE94COR00033 in respect of the assets described as Item No.2 in the Schedule for a sum of Rs.34,58,100/- inclusive of finance charges payable in 60 monthly instalments of Rs.57,635/- each - first of such instalment being payable on 04.01.1995 and the last instalment being payable on 04.12.1999. The second defendant joined in the execution of the Lease and Hire Purchase Agreements as a guarantor for the performance of the terms and conditions of the said agreement executed by the Principal Debtor.

5.It is further averred in the plaint that the first defendant was irregular in payment of hire purchase instalments and lease rentals and several reminders inclusive of letters have been addressed and defendants made request to the plaintiff to reschedule the Additional Finance Charges accrued in respect of Purchase Agreement and Additional Lease Rentals accrued in respect of Lease Agreement and it was favourably considered and a sum of Rs.14,85,000/- being the Additional Finance Charges due as on 01.04.1999 and a sum of Rs.11,00,000/- being the Additional Lease Rental due as on 01.04.1999 were adjusted and a fresh Hire Purchase Agreement was also entered into between the parties for a sum of Rs.39,05,676/- fixing the

instalments in respect of machinery described in Item No.3 in the Schedule.

6.It is the case of the plaintiff that inspite of such an accommodation, the defendants did not make the payments on time and hence, came forward to file the suit.

7.The defendants were served and they did not enter appearance and therefore, the learned Master has directed the listing of the matter before this Court under the caption 'undefended board' and the suit was called on 10.08.2015 and on that date also the defendants did not enter appearance nor filed written statement. Hence, the defendants were called absent and were set exparte.

8.The following issues arise for determination:

1. Whether the first defendant availed financial facilities under Hire Purchase Agreement dated 12.04.1994 and Agreement of Lease dated 04.01.1995?
2. Whether the second defendant has guaranteed for the due performance of the terms and conditions of the Hire Purchase Agreement dated 12.04.1994 and Agreement of Lease dated 04.01.1995 by executing letter of Guarantee dated 04.01.1995?

3. Whether the defendants have committed default in payment of financial facilities availed?
4. Whether the plaintiff is entitled to the decree as prayed for with interest and costs?
5. To what relief the plaintiff is entitled to?

9. On behalf of the plaintiff, A.Hema Jothi, Assistant Vice President- Legal and duly constituted Attorney of the plaintiff Company has filed proof affidavit and on Chief Examination as P.W.1, exhibits Ex.P1 to Ex.P16 were marked.

10. Issue No.1:

(a) The learned counsel appearing for the plaintiff has drawn the attention of this Court to the pleadings as well as to the oral and documentary evidence and would submit that the execution of Ex.P2 original Hire Purchase Agreement dated 12.04.1994 and Ex.P6 original Agreement of Lease dated 04.01.1995 is not under dispute so also the consequential documents marked under Ex.P3 to Ex.P5, Ex.P7 and Ex.P8 and the first defendant prayed for accommodation and therefore, additional agreement also came to be instituted and inspite of many indulgence shown, the defendants did not come forward to settle the amounts due and payable to the plaintiff Company and therefore, the

oral testimony of P.W.1 coupled with the documentary evidence of Ex.P1 to Ex.P16, the plaintiff has probabilsed their case and prayed for judgment and decree as prayed for with interest and costs.

(b)A perusal of the proof affidavit coupled with the documentary evidence would disclose that the execution of Ex.P2 and Ex.P6 is not in serious dispute and consequentially Ex.P3, Ex.P4, Ex.P5, Ex.P7 and Ex.P8 as well as Ex.P13 came into being. The statement of accounts marked as Ex.P14 to Ex.P16 has also established the case of the plaintiff that the amounts advanced to the first defendant, the payment of which guaranteed by the second defendant has not been paid on time. Therefore, issue no.1 is answered in affirmative and in favour of the plaintiff.

11.Issue No.2:

A perusal of Ex.P9 - Original letter of guarantee would disclose that the second defendant is guarantor in respect of the loan facilities availed by the plaintiff and therefore, he is under obligation to fulfil the terms of the Letter of Guarantee. As already pointed out, the summons have been served and the second defendant did not choose to enter appearance and the matter was also posted

before this Court under the caption 'undefended board' and even then, he did not enter appearance and therefore called absent and set exparte. The second defendant being the Guarantor is bound to abide by the terms and conditions of the Letter of Guarantee dated 04.01.1995. Since the first defendant failed to pay the amount, as a Guarantor he is under obligation to satisfy the debtors/ loan advanced by the plaintiff. Therefore, issue no.2 is answered in affirmative and in favour of the plaintiff.

12.Issue No.3:

A perusal of original letters marked as exhibits Ex.P10 to Ex.P12 as well as the statement of accounts maintained regularly during the course of business would disclose that neither the first defendant nor the second defendant, did pay the amount due and payable and as such they are liable to pay the amount as claimed by the plaintiff being the suit claim. Therefore, issue no.3 is answered in favour of the plaintiff.

13.Issue No.4:

As a consequence of this Court answering issue nos.1 to 3 in favour of the plaintiff, it is entitled to the decree as prayed for with interest and costs.

14. In the result, there shall be a judgment and decree, as follows:

1. The defendants shall jointly and severally are liable to pay the sum of Rs.1,31,61,250.18 with interest at the rate of 36% per annum from the date of plaint till decree.
2. The plaintiff is entitled to interest at the rate of 12% per annum from the date of decree till realisation on the sum of **Rs.12,08,182.90**
3. The plaintiff is also entitled to the cost of the suit.

sd/.M.S.N.J
27.11.2015

//Certified to be a true copy//

Dated this the day of 2016

R.s/08.02.2016

COURT OFFICER

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