

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2016

CORAM:

THE HONOURABLE Mr. JUSTICE **M. SATHYANARAYANAN**

C.S.No.277 of 1997
and Appln. No.4246 of 2006

Upasana Finance Limited,
rep. by its President
Mr.S.Ramakrishnan

... Plaintiff

Vs.

1. Kumaran Textiles,
Dharapuram Road,
Udumalpet - 642 126,
Coimbatore District.

2. D.Palanisamy
3. Smt.N.Santhyavalli
4. D.Vijayasekharan
5. N.Krishnaswamy Naidu
6. G.Baluswamy
7. N.Parthiban
8 N.Jayaraj
9. N.balasubramaniam
10. Mrs.R.Janaki Ammal
11. Mrs.D.Padmavathy Ammal
12. V.Chandrasekhar

... Defendants

For Plaintiff : Mr.R.Dasaratha Rao
for M/s.B.T.Seshadri

For Defendants : No appearance

J U D G M E N T

The plaintiff would aver as follows:

The plaintiff is a non-banking financial institution engaged in the business of providing leasing, hire purchase and Bill Discounting facilities to persons,

firms and institutions. The 1st defendant is a partnership firm engaged in the business of manufacturing cotton yarn. During the month of March 1997, 1st defendant represented by its partner viz., the 2nd defendant had approached the plaintiff for grant of a short term loan of Rs.35 Lakhs agreeing to repay within 30 days with interest at the rate of 36% per annum. The plaintiff has also agreed to grant the said loan in favour of the 1st defendant and accordingly, an agreement came into being at Madras on 03.03.1997 (Ex.P2). Defendants 3 to 5 are the other partners of the 1st defendant and the 1st defendant firm represented by the 2nd defendant executed a Demand Promissory Note dated 03.03.1997 (Ex.P3) agreeing to repay the sum of Rs.35 Lakhs on demand in favour of plaintiff. The plaintiff had advanced a sum of Rs.35 Lakhs to the 1st defendant firm on 03.03.1997 and defendants 6 to 12 had also executed a Deed of Guarantee dated 03.03.1997 (Ex.P4). Defendants 6 to 12 had also agreed to create an equitable mortgage and had also agreed to execute letters of confirmation and they executed the same on 03.03.1997 (Exs.P5 to P11).

2. It is the specific case of the plaintiff that inspite of execution of promissory notes, deed of guarantee and letters of confirmation and repeated request made, the defendants had failed to repay the loan

borrowed with interest and hence, came forward to file the present suit, for recovery of money.

3. 1st and 4th defendants had filed the written statement and in that they took a stand that the plaintiff has been holding a deposit of Rs.1,50,000/- made by them, in an aggregate sum of Rs.19,20,979.12p and would further state that the defendants 6 to 12 never executed or created a mortgage for the money alleged under Ex.P2 loan agreement dated 03.03.1997. Defendants 1 and 4 also took a stand that the plaintiff have manipulated documents for the purpose of filing the suit.

4. Defendants 1 and 4 also filed the additional written statement and took a stand that the plaintiff never advanced any amount on 03.03.1997 and the allegations with regard to the advancement of loan is wholly false, concocted and fabricated and reiterating the stand that the defendants 6 to 12 did not execute any equitable mortgage for a sum of Rs.35 Lakhs, prayed for dismissal of the suit.

5. This Court on 17.04.2009, has framed the following issues:

"1. Whether the defendants had validly executed loan agreement dated 3.3.1997 in favour of the plaintiff?

2. Whether the plaintiff had advanced Rs. 35,00,000/- as short term loan to the 1st

defendant as alleged in the plaint?

3. Whether the defendants 6 to 12 have executed mortgage and deposited their title deed with the plaintiff for due repayment of the amount payable by the 1st defendant to the plaintiff?

4. Whether the plaintiff is entitled to the claim as prayed for?

5. To what relief, the parties are entitled?"

6. The Manager of the plaintiff company has filed the proof affidavit in lieu of chief examination and marked Exs.P1 to P11. The matter was listed before the learned Additional Master-IV on 29.02.2016 and the learned Additional Master-IV has recorded the fact that inspite of very many occasions, learned counsel for the defendants 1, 2, 4, 6 to 9 and 11 & 12 did not cross examine PW1 and they also contemplate to report 'no instructions' and on that date he has posted the matter before this Court for passing exparte decree.

7. The learned counsel appearing for the plaintiff has drawn the attention of this Court to the pleadings, oral and documentary evidence and would submit that defendants 3 and 5 were already set exparte and though, the defendants 1 and 4 had filed their written statement as well as additional written statements, which were adopted by rest of the contesting respondents, the learned counsel appearing for them did not cross examine

PW1 and also made a submission before the learned Additional Master-IV that he is contemplating to report 'no instructions' and the learned Additional Master-IV has recorded the said fact and posted the matter before this Court. It is the further submission of the learned counsel appearing for the plaintiff that the pleadings coupled with documentary evidence had amply probalised the case of the plaintiff and prays for decreeing of the suit, as prayed for, with costs.

8. Though, the counsel name appeared, learned counsel for defendants 1, 2, 4, 6 to 9 and 11 & 12 remained absent.

9. This Court has considered the submission of the learned counsel appearing for the plaintiff and also perused the pleadings, oral and documentary evidence.

Issue No.1:-

10. It is the specific case of the plaintiff that the 1st defendant had approached the plaintiff for availing the said loan and it was also agreed upon and accordingly, a sum of Rs.35 Lakhs was advanced and loan agreement under Ex.P2 was also executed by the 2nd defendant on behalf of the 1st defendant in his capacity as Managing Partner of the 1st defendant. A perusal of Ex.P2, agreement would disclose that the borrower viz., the 1st defendant had agreed to pay interest at the rate

of 36% per annum on or before 03.04.1997.

11. Though, defendants 1 and 2 took a stand that they never executed such agreement the fact remains that in spite of the filing the written statement they did not chose to contest the suit by cross examining PW1, the authorised signatory of the plaintiff company. Therefore, this Court is of the view that Ex.P2 has been validly executed by the 1st defendant represented by the 2nd defendant and hence, Issue No.1, is answered in favour of the plaintiff.

Issue No.2:-

12. This Court while answering Issue No.1, has recorded the fact that in pursuance to Ex.P2, a sum of Rs.35 lakhs was advanced by the plaintiff to the 1st defendant and therefore, Issue No.2 is also answered in the affirmative in favour of the plaintiff.

Issue No.3:-

13. PW1 in his proof affidavit filed in lieu of chief examination has submitted that apart from execution of promissory note by 2nd defendant on behalf of 1st defendant marked as Ex.P3, rest of all the defendants 6 to 12 had executed a deed of guarantee, marked as Ex.P4 and they had individually executed letters of confirmation for creating equitable mortgage, which are

marked as Exs.P5 to P11. Therefore, the defendants having executed the deed of guarantee as well as letters of confirmation, are bound to satisfy the suit claim to the plaintiff. Therefore, Issue No.3 is also answered in favour of the plaintiff.

Issue Nos.4 & 5: -

14. In the light of the positive answers given to Issue Nos.1 to 3, this Court is of the view that the plaintiff is entitled to the judgment and decree, as prayed for. In the result there shall be a judgment and decree directing the defendants 1 to 12, jointly and severally to pay a sum of Rs.37,10,000/- together with interest at the rate of 36% per annum on the sum of Rs.35 Lakhs from the date of plaint till the decree and thereafter, at the rate of 6% per annum on the sum of Rs.35 Lakhs from the date of decree till realisation. Plaintiff is also entitled to the costs of the suit. Consequently, the connected application in A.No.4246 of 2006 is closed.

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List of Witnesses:

PW1 - R.Somasundaram

List of Exhibits

<i>S.No</i>	<i>Exhibits</i>	<i>Description of Documents</i>
1	Ex.P1	Resolution dated 29.10.2007 signed by the Secretary
2	Ex.P2	Original Loan agreement dated 03.03.1997 between the plaintiff and the 1st defendant firm represented by the 2nd defendant as partner
3	Ex.P3	Demand Promissory Note dated 03.03.1997 for the sum of Rs.35 Lakhs in favour of the plaintiff.
4	Ex.P4	Original Deed of guarantee dated 03.03.1997
5	Ex.P5	Letter of confirmation given by 6th defendant dated 03.03.1997
6	Ex.P6	Letter of confirmation given by 7th defendant dated 03.03.1997
7	Ex.P7	Letter of confirmation given by 8th defendant dated 03.03.1997
8	Ex.P8	Letter of confirmation given by 9th defendant dated 03.03.1997
9	Ex.P9	Letter of confirmation given by 10th defendant dated 03.03.1997
10	Ex.P10	Letter of confirmation given by 11th defendant dated 03.03.1997
11	Ex.P11	Letter of confirmation given by 12th defendant dated 03.03.1997

sd/.M.S.N.J

06.04.2016

//Certified to be a true copy//

Dated this the day of 2016

R.s/23.11.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified
<https://hcservices.ecourts.gov.in/hcservices/>
 copies of the Order/Judgment Decree in this format.