IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22 / 09 / 2016

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.S.NO.736 OF 1998

Alwarpet Benefit Fund Ltd.,
Rep. By its Commissioner
Justice A. Raman (Retired Judge)
High Court, Madras.
Having office at
Old No.75, New No.40, C.P.Ramasamy Road,
Alwarpet, Chennai – 18.
(Amended as per order dated 04.01.2016 in
Application No.5988 / 2015 and time extended
as per order dated 29.04.2016) .. Plaintiff

Versus

1.G.Padma
2.V.Gunasundari
3.K.Indrani
4.M.Maragatham
5.M.Sivagami
6.G.Kalaiselvi
(Defendants 1 to 5 rep. By their
Power Agent Mr.M. Palani)
7.M.Palani
8.P.Chandru
9.S.Chandrasekhar
10.Sri Suresh Kumar Poddar, D.
11.N.Ananda Kumar
12.Amruthavalli
13.P.Mohan
14.Geetha
15.P.Chandrasekharan

16.G.Abbas
17.Muthumeenakshi .. Defendants

PRAYER: Plaint filed under Order IV Rule 1 and Order XXXVII of the Original Side Rules, 1956 read with Order VII Rule 1 CPC and Order XXXIV Rule 4 and 15 of the Code of Civil Procedure praying for a judgment and decree against the defendants for the following:

a) directing the defendants to pay the plaintiff a sum of Rs.42,31,638.23 together with subsequent interest at 28% per annum from the date of plaint till the date of realisation together with the costs of this suit within a time to be fixed by this Court and in default, the plaintiff may be permitted to bring the property, more fully described in the schedules "A" and "B" hereunder, to be sold and the proceeds, after defraying throughout the expenses of the sale, applied in and towards the payment of the amount of the said principal, interest and costs;

b) that if such proceeds shall not be sufficient for the payment in full of such amount, the defendants 1 to 8 may be ordered to pay the plaintiff the amount of the deficiency with interest thereon at 28% per annum until realization;

c) that for that purpose, all proper directions may be issued by this Court; and

d) to grant such other suitable reliefs.

For Plaintiff : Mr.R.Bharathkumar
For Defendants : Set *exparte* on 18.11.2014

J U D G M E N T

The plaintiff is a Benefit Fund Limited administered by the Court appointed Commissioner. The defendants 1 to 6 are the owners of the suit "A" Schedule property represented by their Power Agent, the seventh defendant herein, under the registered Power of Attorney dated 08.02.1993. The seventh

defendant, as Power Agent, approached the plaintiff for a project loan by offering the "A" Schedule property as security and necessary documents were also produced by the seventh defendant. The project was to develop the property by constructing flats and sell the same and with the sale amount to discharge the loan taken. The eighth defendant is the son of the seventh defendant and he had also volunteered to give the Schedule "B" property as additional security which was standing in his name. Based on the above securities, a sum of Rs.13 Lakhs was sanctioned and disbursed in three stages to the seventh defendant on behalf of his members. The eighth defendant also created a mortgage by depositing the title deeds and executed three promissory notes.

2. It is stated that by making use of the project loan amount, construction was put up in the "A" Schedule property. However, the borrowal was not settled as promised. The seventh defendant gave a letter on 01.02.1994 acknowledging the loan availed towards the first instalment and further disbursement by the plaintiff was acknowledged by the seventh defendant on 24.02.1994. The defendant also gave a cheque for Rs.9613.35 dated 05.04.1994 and another cheque for Rs.7210.00 dated 07.04.1994, however, those cheques were dishonoured. The seventh defendant had been irregular in making

payments. Therefore, the plaintiff sent a letter of demand dated 03.06.1994 and also sent a telegram dated 14.06.1994.

3. In the meanwhile, to the shock and surprise of the plaintiff, the seventh defendant had sold the undivided share of "A" schedule property, which is the subject matter of mortgage, to various third parties. The said alienees of "A" schedule property are the defendants 9 to 17. When the originals of the documents of title was deposited with the plaintiff, the defendants 9 to 17 had purchased the property, even without seeing the original or without insisting to see the original documents, which shows the lack of *bonafide* in their purchase. The registered letters sent by the plaintiff to the eighth defendant and the defendants 9 to 17 calling upon them to settle the amount due under the mortgage were not responded with a proper reply. As on date, the suit has been filed for recovery of Rs.42,31,638.23 together with interest, being the outstanding as on the date of suit.

4. Despite service of notice, the defendants have not made their appearance either in person or through counsel and not filed written statement hence, they were set *exparte* on 18.11.2014.

5. The plaintiff had produced Exs.P1 to P68 to evidence the transactions between the plaintiff and the defendants.

6. On a perusal of the above documents, it is seen that the debt had been acknowledged by the seventh defendant as Power Agent on various dates, and the cheques issued by the seventh defendant were dishonoured on 19.09.1995 and the cheques were represented on 30.10.1995. The suit has been filed within the period of limitation and the suit claim is proved from the statement of accounts filed by the plaintiff.

7. Accordingly, the defendants 1 to 8 are directed to pay the plaintiff a sum of Rs.42,31,638.23 together with interest at the rate of 12% per annum on the principal sum adjudged from the date of filing of the suit, to the date of decree, that is, pendente lite. Interest from the date of decree, till the date of realisation i.e., future interest or further interest is also fixed at the rate of 6% per annum. In default, the plaintiff is permitted to bring the property, more fully described in the schedules "A" and "B" for sale. If such proceeds are not sufficient for the payment, the defendants 1 to 8 are directed to pay the plaintiff the amount of the deficiency with interest thereon at 12 % per annum until realization. The suit is decreed in the above terms. No costs.

22 / 09 / 2016

Index : Yes/No
Internet : Yes/No
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LIST OF DOCUMENTS MARKED ON THE SIDE OF THE PLAINTIFF

Sl.No.	*Exhibits*	*Description of documents*	*Date*
1	P-1	Authorization letter	08.12.2014
2	P-2	Registered power of attorney	08.02.1993
3	P-3	Promissory note	13.01.1994
4	P-4	Letter given by the 7th defendant	13.01.1994
5	P-5	Letter from the 7th defendant	01.02.1994
6	P-6	Promissory note	05.02.1994
7	P-7	Letter from the 7th defendant to the plaintiff	24.02.1994
8	P-8	Report	01.03.1994
9	P-9	Promissory note	07.03.1994
10	P-10	Letter from the 4th defendant depositing title deeds	07.03.1994
11	P-11	Letter	07.03.1994
12	P-12	Office copy of letter from the plaintiff to the 7th defendant	20.04.1994
13	P-13	Letter from 7th defendant	25.04.1994
14	P-14	Office copy of letter from the plaintiff to the 7th defendant	03.06.1994
15	P-15	Office copy of letter from the plaintiff to the 7th defendant	31.01.1995
16	P-16	Postal acknowledgment	03.02.1995
17	P-17	Office copy of letter from the plaintiff to the 7th defendant	30.08.1995
18	P-18	Postal acknowledgment	01.09.1995
19	P-19	Office copy of letter from the plaintiff to the 7th defendant	09.09.1996
20	P-20	Office copy of letter from the plaintiff to the 7th defendant	27.11.1996
21	P-21	Office copy of letter from the plaintiff to the 9th defendant	13.04.1998

Sl.No.	*Exhibits*	*Description of documents*	*Date*
22	P-22	Office copy of letter from the plaintiff to the 10th defendant	13.04.1998
23	P-23	Returned cover	-
24	P-24	Office copy of letter	13.04.1998
25	P-25	Returned cover	-
26	P-26	Office copy of letter from the plaintiff to the 12th defendant	13.04.1998
27	P-27	Postal acknowledgment	-
28	P-28	Office copy of letter from the plaintiff to the 13th defendant	13.04.1998
29	P-29	Office copy of the letter from the plaintiff to the 14th defendant	13.04.1998
30	P-30	Office copy of the letter from the plaintiff to the 15th defendant	13.04.1998
31	P-31	Returned cover	-
32	P-32	Office copy of letter from the plaintiff to the 16th defendant	13.04.1998
33	P-33	Returned cover	-
34	P-34	Office copy of letter	13.04.1998
35	P-35	Office copy of letter	18.04.1998
36	P-36	Postal acknowledgment	27.04.1998
37	P-37	Office copy of letter	18.04.1998
38	P-38	Postal acknowledgment	27.04.1998
39	P-39	Letter from the 17th defendant to the plaintiff	30.04.1998
40	P-40	Reply from the counsel for the 13th defendant	18.05.1998
41	P-41	Office copy of rejoinder by the counsel for the plaintiff	26.05.1998
42	P-42	Original sale deed	27.06.1957
43	P-43	Original registered will	19.04.1962
44	P-44	Encumbrance certificate	13.11.1956

Sl.No.	*Exhibits*	*Description of documents*	*Date*
45	P-45	Encumbrance certificate	13.12.1972
46	P-46	Encumbrance certificate	12.12.1972
47	P-47	Encumbrance certificate	18.04.1977
48	P-48	Encumbrance certificate	06.10.1981
49	P-49	Encumbrance certificate	25.05.1990
50	P-50	Encumbrance certificate	15.10.1993
51	P-51	Builders agreement	06.02.1993
52	P-52	Photo copy of approved building plan	-
53	P-53	Legal heir certificate	08.03.1993
54	P-54	Patta	24.09.1981
55	P-55	Photo copy of encumbrance certificate	-
56	P-56	Photo copy of encumbrance certificate	15.01.1994
57	P-57	Encumbrance certificate	-
58	P-58	Photo copy of sale deed	27.10.1986
59	P-59	Photo copy of sale deed	02.02.1987
60	P-60	Original sale deed	09.10.1992
61	P-61	Original construction agreement	09.10.1993
62	P-62	Photo copy of encumbrance certificate	06.01.1994
63	P-63	Photo copy of planning permit	17.07.1987
64	P-64	Photo copy of planning permit	06.04.1988
65	P-65	Photo copy of valuation certificate / report	10.01.1994
66	P-66	Encumbrance certificate	11.11.1997
67	P-67	Encumbrance certificate	-
68	P-68	Statement of accounts	14.08.1998

PUSHPA SATHYANARAYANA, J.

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C.S.NO.736 OF 1998

22 / 09 / 2016