IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2016

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

C.S.No.595 of 2014

Mr.N.D.Ravikumar ... Plaintiff

Vs.

Mr.Jayakumar Muthiah ... Defendant

Prayer:

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

a.Directing the Defendant to pay a sum of Rs.66,88,000/-

b.Directing the Defendant to pay interest @ 18% p.a. on Rs.66,88,000/- from date of the suit, till the date of decree and thereafter at the same rate, till the date of recovery.

c.Directing the Defendant to pay the costs of the suit.

For Plaintiffs : Mr.P.B.Balaji
For Defendant : Set Exparte

JUDGMENT

The plaintiff would aver as follows:

(i)The plaintiff is carrying on business as the Proprietor of Padmatheja Exports, Adyar, Chennai 600 020 in the field of exporting variety of goods to various countries. The defendant is also carrying on business as the Proprietor of Input Conduits at Kottivakkam, Chennai 600 041 and during the course of business, he borrowed amounts from the plaintiff on various occasions to promote his business aggregating a sum of Rs.85,88,000/-. The defendant also promised to repay the same together with interest at the rate of 18%.

(ii)The plaintiff would further state that the defendant has failed and neglected to pay the interest and therefore, he started making demand of the principal amount and on account of repeated request and demand, the defendant came forward to repay a sum of Rs.14,00,000/- by way of two cheques dated 17.11.2012 and also represented that he had delivered goods and raised invoice in the name of the plaintiff to the tune of Rs.38,50,000/- to M/s.Lerar Impex Pvt. Ltd., Srilanka vide purchase order dated 02.11.2011 and represented that once the purchaser pay the money, he would settle the substantial portion of the dues payable to the plaintiff. However, at a later point of time, the plaintiff came to know vide e-mail dated 01.03.2012 sent by the said company that they had made the payments to the defendant and settled the amount in full, but the defendant having collected the money, has avoided payment to the plaintiff.

(iii)The plaintiff in this regard has also lodged police complaint with the Commissioner of police, Chennai on 07.10.2013 and it was also acknowledged. Thereafter, the defendant issued three cheques dated 11.05.2014, 11.06.2014 and 11.07.2014 respectively, for a sum of Rs.33,00,000/- and the said cheques on presentation returned with endorsement 'funds insufficient'. When the said fact was informed to the defendant, the defendant made a request to the plaintiff not to represent the said cheques once again and promised to settle the amounts very soon. However, he failed to adhere to the said promise.

(iv)The plaintiff issued Lawyer's notice dated 20.06.2014 to the defendant calling upon him to pay the amount in full and the defendant has also managed to return the said notice with endorsement 'left'. On 27.06.2014, the defendant paid a sum of Rs.5,00,000/- by way of cash promising to pay the entire dues by July, 2014 and once again failed to keep his promise. Accordingly, the plaintiff after giving credit to the payments of Rs.14,00,000/- paid on 17.11.2011 by way of two cheques and Rs.5,00,000/- paid by way of cash, in all aggregating to a sum of Rs.19,00,000/-, is still due and payable to a sum of Rs.66,88,000/- towards principal apart from interest and hence, came forward to file the suit for recovery of money with interest and costs.

2.Though the defendant was served, he did not choose to enter appearance and therefore, the matter was listed before this Court under the caption 'for undefendant board' and since he did not file written statement, he was called absent and set exparte on 13.07.2015.

3.The plaintiff has filed proof affidavit in lieu of chief examination and marked exhibits Ex.P1 to Ex.P8 and also examined him in chief by way of oral evidence.

4.Mr.P.B.Balaji, learned counsel appearing for the plaintiff would contend that though long rope has been given to the defendant to make with the payment due and payable to the plaintiff, he has deliberately failed to pay the same and he has not even responded to the legal notice under Ex.P7 and left with no other option, the plaintiff came forward to file the suit and would further contend that the plaintiff through oral and documentary evidence has substantiated his case beyond all probabilities and prayed for decreeing of the suit with costs.

5.This Court has carefully considered the submissions made by the learned counsel appearing for the plaintiff and also perused the pleadings, oral and documentary evidence.

6.The following issues arise for consideration:

1. Whether the defendant borrowed the amounts on various dates aggregating a sum of Rs.85,88,000/- and promised to pay the same with interest at the rate of 18% p.a. from the date?
2. Whether the defendant has paid a sum of Rs.14,00,000/- by way of two cheques on 17.11.2012 and cash of Rs.5,00,000/- on 27.06.2014 in all aggregating a sum of Rs.19,00,000/- towards partial discharge of the dues?
3. Whether the cheques dated 11.05.2014, 11.06.2014 and 11.07.2014 respectively, issued for a sum of Rs.33,00,000/- got dishonoured?
4. Whether the plaintiff is entitled to a sum of Rs.66,88,000/- together with interest at the rate of 18% p.a. with consequential relief?
5. To what other relief the plaintiff is entitled to?

7.Issue No.1:

As per Ex.P2 – statement of accounts as well as Ex.P3 – statement of account of Union Bank of India – Banker of the defendant, it is established that the defendant has borrowed amounts on various dates and it is not in dispute that the plaintiff has advanced a sum of Rs.85,88,000/-, to the defendant who also made promises to repay the same at the rate of 18% p.a. In the light of the same, this Court is of the view that issue no.1 is to be answered in favour of the plaintiff and accordingly, it is answered in affirmative and in favour of the plaintiff.

8.Issue No.2:

It is known from Ex.P2 – statement of accounts of the plaintiff maintained at Canara Bank, Ramapuram Branch, the defendant has paid a sum of Rs.4,00,000/- and Rs.10,00,000/- respectively and it was also deposited to the credit of the plaintiff's account and hence, issue no.2 is answered in affirmative and in favour of the plaintiff.

9.Issue No.3:

The plaintiff under Ex.P4 has lodged police complaint stating that the above said three cheques issued for discharge of a sum of Rs.33,00,000/- got dishonoured, on the file of the Commissioner of

Police, Chennai City. It was forwarded to the Central Crime Branch, FW 5-A Team, Egmore, Chennai and they also received and acknowledged the same under Ex.P5. The plaintiff also sent legal notice dated 20.06.2014 under Ex.P7 wherein, it is indicated that the above three cheques on presentation got dishonoured. Therefore, the plaintiff has established the fact that the cheques on presentation got dishonoured. Therefore, issue no.3 is answered in favour of the plaintiff.

10.Issue No.4:

(i)It is the specific case of the plaintiff that he made attempt to represent the above said three cheques and on the request made by the defendant, he did not represent it and having waited for so long, the defendant did not come forward to discharge the balance dues and after crediting to a sum of Rs.14,00,000/- paid by way of two cheques on 17.11.2012 and a sum of Rs.5,00,000/- paid by way of cash on 27.06.2014, the defendant is still due and payable, a sum of Rs.66,88,000/- and hence, came forward to file the suit claiming interest on the said principal amount along with costs.

(ii)As already pointed out, the defendant did not dispute the claim of the plaintiff though very many opportunities have been given to him and inspite of service of summons in the suit, did not choose to enter appearance and therefore, called absent and set exparte on 13.07.2015. The plaintiff through oral and documentary evidence, has substantiated his case beyond all probabilities. Therefore, the plaintiff is entitled to get a judgment and decree as prayed for. The plaintiff is also entitled to decree with interest at the rate of 9% p.a. instead of 18% p.a. as this Court is of the view that there is no clear evidence as to the entitlement of the plaintiff to get interest at the rate of 18% p.a.

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

1. directing the defendant to pay a sum of Rs.66,88,000/- with interest at the rate of 9% p.a. on the said sum from the date of the suit till the date of decree, thereafter with interest at the rate of 6% p.a. from the date of decree till recovery, in favour of the plaintiff.
2. the Plaintiff is also entitled to the costs of the suit.

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Index: Yes / No
Internet: Yes / No

M.SATHYANARAYANAN,J.

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