

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 9TH DAY OF APRIL 2015

THE MASTER

C.S.No.758 of 2014

G.Ramakrishnan,
S/o.Mr.K.Govindan,
No.3, Mariamman Koil St,
Tharamani, Chennai-600 113 ..Plaintiff

-Vs-

1.B.Sathish Kumar,
S/o.Bhaskaran,

2.A.Bhaskaran,
S/o.Arokyadoss

3.Yasotha Bhaskaran
W/o.A.Bhaskaran,

All residing at
Gopal Brindavan,
No.3/80, Saraswati St,
Jameen Payanoor,
Payanoor Post, (Via), Mahabalipuram,
Kancheepuram-603 104 ..Defendants

**This Civil Suit praying that this Hon'ble Court may be
pleased to:**

a). for a recovery of sum of Rs.50,00,000/- (Rupees
Fifty Lakhs Only) together with interest at 24% per annum
from the date of plaint till the date of realization.

b) for the cost of the suit.

This Civil Suit coming on this before the Court made the following order:

This suit was filed under Order XXXVII, rule 1 & 2 of CPC, as summary suit praying to pass decree and judgment directing the defendants to pay the suit amount of Rs.50,00,000/- together with interest at 24% p.a from the date of suit to till realization of entire amount. The 1st defendant is the son of defendants 2 and 3. The 2nd defendant is the husband of 3rd defendant. The defendants were served with special summons on 20.01.2015 informing them to file application for unconditional leave, failing which the plaintiff is entitled for decree and judgment against them. But, the defendants not filed application seeking unconditional leave to defend within the period of stipulated time. Hence, heard the plaintiff counsel and perused the suit records.

The suit Document No.1 is the Promissory note dated 24.05.2014, executed by the 1st defendant in favour of the plaintiff agreeing to pay Rs.50,00,000/- with interest at 24% p.a on demand. Previously the defendants 2 and 3 borrowed Rs.25,00,000/- from the plaintiff under Demand Promissory Note for the purpose of own residential house construction. The defendants 2 and 3 not paid the due amount under the promissory note and hence this plaintiff filed suit in C.S.No.644 of 2009 on the file of

said suit was transferred to City Civil Court and numbered as O.S.No.743 of 2011 and placed before the Hon'ble VIth Additional Judge, City Civil Court, Chennai and after contest Decree and Judgment passed directing this defendants 2 and 3 to pay the suit amount on Rs.25,00,000/- with the interest and for cost. The suit Document No.2 and 3 are the copy of the plaint and written statement filed in O.S.No.743 of 2011. The suit Document No.4 and 5 are copy of the Decree and Judgment passed in O.S.No.743 of 2011.

The defendants 2 and 3 not filed any appeal against the decree and judgment passed in O.S.No. 743/2011. This plaintiff not take steps to execute the decree passed in O.S.No. 743/2011. According to the plaintiff the 1st Defendant approached him and made request not to execute the decree against his parents and he agreed to discharge the entire decree amount. The plaintiff and 1st defendant negotiated the matter and the 1st defendant is agreed to settle the entire claim for Rs. 50,00,000/- and also execute promissory note for Rs.50,00,000/- towards the full satisfaction of the decree passed in O.S.No.743 of 2011 dated 24.05.2014. The 1st defendant also issued cheques for the said amount and when the cheque was presented for collection, the same was returned as "Insufficient Fund" and hence the plaintiff initiated criminal proceedings against the 1st defendant under

section 138 of the Negotiable Instrument Act in C.C.No.3808 of 2014 on the file of 18th Metropolitan Magistrate court, Saidapet, Chennai. The suit Document No.6 is the copy of the complaint filed in C.C.No.3808 of 2014.

According to the plaintiff, the defendants not paid the amount as promised under the promissory note dated 24.05.2014 and hence filed the suit to pass decree and Judgment. The perusal of the promissory note dated 24.05.2014, clearly proved that the 1st defendant alone is liable to pay the amount of Rs.50,00,000/- to the plaintiff with interest. The 2nd and 3rd defendant not executant under the promissory note dated 24.05.2014. The 2nd and 3rd defendant not made written promise to the plaintiff to pay the suit amount. Under such circumstances, this court raised query how the suit is maintainable against the defendants 2 and 3.

The learned plaintiff counsel also fairly conceded that since the defendants 2 and 3 are not party to the suit promissory note, the suit against them not maintainable. But, the learned plaintiff counsel requested this court to pass order closing the suit against the defendants 2 and 3. It is not permissible to pass order closing the suit against D2 and D3 when the suit itself not maintainable against them. There was no cause of action against the defendants 2 and 3. The

decree passed in O.S.No.743 of 2011 was adjusted with the promissory note dated 24.05.2014 and after the plaintiff not entitled to execute the decree passed in O.S.No.743 of 2011 against the defendants 2 and 3 also. Considering all these aspects, this court comes to the conclusion this suit not maintainable against the defendants 2 and 3. On the other hand it is decided the 1st Defendant is liable to pay the suit amount to the plaintiff.

The plaintiff claiming subsequent interest at the rate of 24% p.a. The defendants 2 and 3 borrowed Rs.25,00,000/- for construction of own residential house. There was no recital in the promissory note dated 24.05.2014 that the loan transaction was commercial in nature. Therefore, it is decided the suit transaction was not commercial in nature and the plaintiff not entitled for the subsequent interest at 24% p.a. As per section 34 of CPC, the plaintiff is entitled subsequent interest only at the rate of 9% p.a from the date of the suit till this date and thereafter at 6% p.a till realization.

In the result, this suit is partly decreed directing the 1st defendant alone to pay suit amount of Rs. 50,00,000/- together with subsequent interest at the rate of 9% p.a from the date of the suit to till this day and thereafter at 6% p.a till realization and with cost, and

the suit is partly dismissed against the defendants 2 and 3 without cost.

Sd/- THE MASTER
09.04.2015

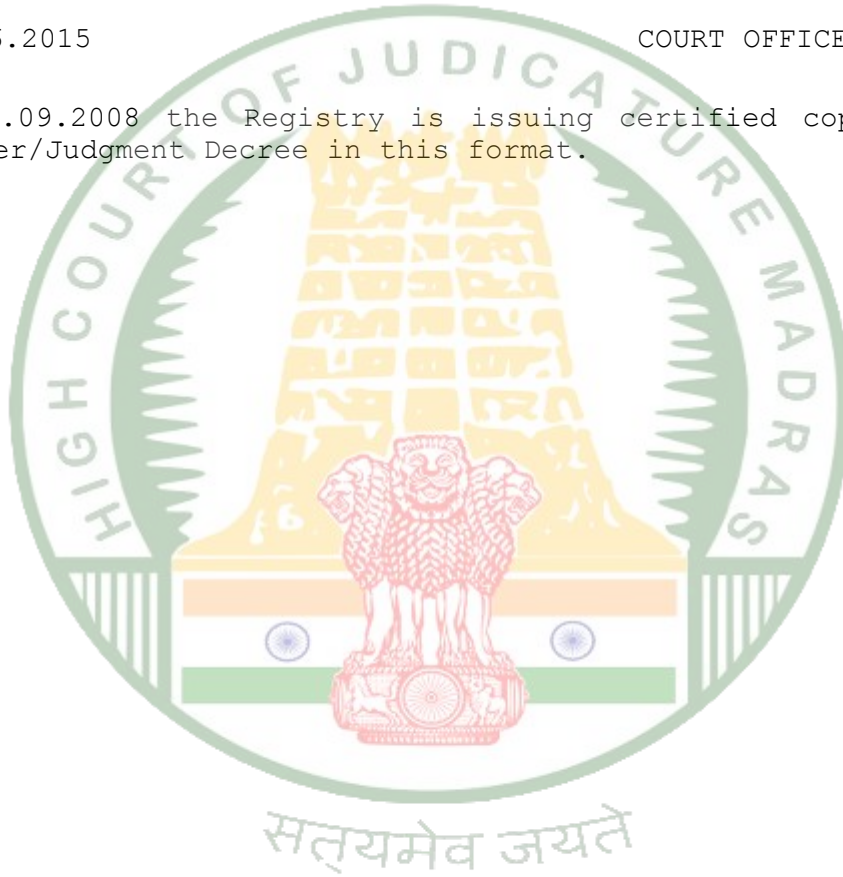
//Certified to be a true copy//

Dated this the day of 2015.

SU/24.06.2015

COURT OFFICER

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



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