

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2016

CORAM:

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

C.S.No.550 of 2012

1.M.Sathyan Sundararajan
2. Mrs.L.Vinodhinee Sharma
3. M/s.Sun Architecte
Rep. by its Partner,
M.Sathyan Sundararajan ... Plaintiffs

Vs.

1. M/s.KP Graphics
rep. by its Partner Pallavaram Vadivelu Gopi
2. Pallavaram Vadivelu Gopi ... Defendants

For Plaintiffs : Mr.P.Kumanan
For Defendants : Set exparte on 09.09.2015

J U D G M E N T

The plaintiffs would aver as follows:

The 1st plaintiff along with one J.Sam Noel initially started the 3rd plaintiff firm, which is an unregistered partnership firm to do business in the name and style of SUN ARCHITECTE, at Door No.6, Mahalinga Chetty Main Road, Mahalingapuram, Chennai - 600 034. J.Sam Noel retired from the partnership business and the 2nd plaintiff was inducted and at

present both plaintiffs 1 and 2 are carrying on the unregistered partnership firm.

2. The plaintiffs would further state that defendants 1 and 2 are carrying on printing business under the name and style of KP Graphics and they approached the plaintiff for availing a loan of Rs.15,00,000/-, as they have to produce a bank guarantee in favour of M/s.Hewlett Packard Financial Services (India) Private Limited for the installation of the HP Designjet H45000 printer series machinery. Initially the plaintiffs were reluctant to advance the loan and since the 2nd defendant, is already known to the 1st plaintiff and acceding to his request decided to advance the loan and accordingly, an agreement came into being between them on 09.04.2009 and as per the terms of the agreement, the plaintiffs have advanced a sum of Rs.15,00,000/- and the defendants agreed to repay 50% of the amount i.e. Rs.7,50,000/- within 4 months from April 2009 i.e. on or before 30.08.2009 and the balance 50% of the amount within four years from April 2009 and they also agreed to pay

interest at the rate of 12% per annum. The defendants also agreed to share the profits arising out of the goods sold from the said printing machinery in the ratio 75:25 and further that the plaintiffs would not be responsible for the rent due arising out of the lease agreement nor any loss arising out of the above said business.

3. However, the defendants have failed to keep up their promise for repayment and the cheque issued by them towards part payment for a sum of Rs.5,00,000/- bearing Cheque No.718353 dated 22.12.2009 drawn on HDFC Bank, Madipakkam Branch, Chennai got dishonoured for want of funds and in this regard, a legal notice was also issued on 05.01.2010 and the defendants promised to pay the first cheque amount of Rs.5,00,000/- on or before the end of January and also issued two more cheques dated 15.02.2010 and 25.03.2010 in Cheque Nos.718362 and 718361 drawn on HDFC Bank, Madipakkam Branch, Chennai for a sum of Rs.2,00,000/- and Rs.3,00,000/- respectively and once again the defendants failed to repay the

amounts due and payable under the said cheque, as the cheques presented returned with endorsement 'insufficient funds'. Therefore, the plaintiffs came forward to file the present suit for recovery of money and other consequential reliefs.

4. Though, the defendants were served they did not enter appearance and file their written statement and therefore, they were called absent and set exparte on 09.09.2015.

5. When the matter was posted before the Learned Additional Master-I, for recording the evidence, the 1st plaintiff has filed the proof affidavit in lieu of chief examination and marked Exs.P1 to P5.

6. The learned counsel appearing for the plaintiffs would submit that under Ex.P1, loan agreement dated 09.04.2009, a sum of Rs.15 Lakhs was advanced and since the defendants failed to adhere to the promise, they were repeatedly requested to settle the dues and accordingly,

Cheque under Ex.P2 dated 22.12.2009 was issued and

it was returned and the defendants once again issued two cheques dated 15.02.2010 and 25.03.2010 respectively [Ex.P3 series] and it was returned. In respect of the part payment remitted a receipt was also issued under Ex.P5 dated 23.03.2010. Under Ex.P4, a legal notice dated 09.06.2010 was sent to the defendants and despite many opportunities given the defendants did not come forward to make the payment and hence, the plaintiffs are constrained to file the present suit and prays for decreeing of the suit with cost.

7. This Court has carefully considered the submission made by the learned counsel appearing for the plaintiffs and also perused the pleading, oral and documentary evidence and the following issues arise for adjudication.

(i) Whether the defendants have received the loan amount of Rs.15,00,000/- and executed Ex.A1, Agreement of Loan dated 09.04.2009?

(ii) Whether the defendants had repaid the amounts due and payable to the plaintiffs promptly and as per the terms of Ex.A1-

Loan Agreement?

(iii) Whether, the plaintiffs are entitled to the judgment and decree as prayed for, with costs?

(iv) To what other relief the plaintiffs are entitled to?

ISSUE NO.1:-

8. According to the plaintiffs the 3rd plaintiff is an unregistered partnership firm and therefore, he cannot maintain the present suit. However, plaintiffs 1 and 2 in their individual capacities have filed the suit and therefore, this Court is of the view that if at all the suit is to be decreed the plaintiffs 1 and 2 alone are entitled to get such a judgment and decree as prayed for.

9. It is not in serious dispute that for the purpose of borrowing a sum of RS.15,00,000/- the defendants executed Ex.A1 Loan agreement and as per Clause No.3, the defendants have agreed to repay 50% of the borrowed amount within four months i.e, 30.08.2009 and the balance 50% shall be paid after

48 months commencing from April 2009. Admittedly, they did not repay the amount and when the plaintiffs insisted they issued cheques under Ex.P2 and P3 series, which on presentation got dishonoured and though the legal notice under Ex.P4 was issued, there is no reply from the defendants challenging the genuineness of the agreement and therefore, Issue No.1, is answered in the affirmative in favour of the plaintiffs.

ISSUE NO.2:-

10. When the plaintiff's made the demand for repayment of the amount due and payable under the loan agreement, the defendants issued cheques and got dishonoured and it was followed by a legal notice dated 05.01.2010 and in response to the same the defendants issued two cheques under Ex.P3 series, which also got dishonoured and therefore, despite opportunity given to the defendants they did not make good the payment. Therefore, Issue No.2, is also answered in the affirmative in favour of the plaintiffs.

ISSUE NO.3:-

11. The documentary evidence marked on behalf of the plaintiffs would amply probabalise the case of the plaintiffs and though summons were served, defendants did not choose to enter appearance for the purpose of contesting the suit and they were also called absent and set exparte. The pleadings and documentary evidence has substantiated the case of the plaintiffs beyond probability and they are entitled to succeed in the suit. In the result, there shall be a judgment and decree as follows:

(i) directing the defendants jointly or severally to pay a sum of Rs.28,90,000/- with further interest at the rate of 12% per annum on Rs.15,00,000/- from the date of decree till realisation;

(ii) directing the defendants to render true and proper accounts in respect of the profit earned by them using the machinery funded by the plaintiffs and grant 25% of the same to the plaintiffs as per Ex.P1, Agreement.

(iii) directing the defendants to pay the

costs of the suit to the plaintiffs.

List of Witnesses:

PW1 - M.Sathyan Sundararajan

List of Exhibits

S.No	Exhibits	Description of Documents	Date
1	Ex.P1	The agreement of loan	09.04.2009
2	Ex.P2	The return cheque bearing NO.718353 for a sum of Rs.5 Lakhs	22.12.2009
3	Ex.P3 (series)	The another return cheque bearing No.718362 and also another cheque bearing No.718361	15.02.2010 25.03.2010
4	Ex.P4	The legal notice issued by the plaintiffs' counsel to the defendant	09.06.2010
5	Ex.P5	The photocopy of the part payment receipt.	22.03.2010

sd/.M.S.N.J

30.03.2016

//Certified to be a true copy//

Dated this the day of
S.s/25.07.2016

2016
COURT OFFICER

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