

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.08.2016

Coram:

The Hon'ble Mr.Justice **M.M. SUNDRESH**

C.S.No.594 of 2013

Sundaram Finance Ltd.,
No.21, Pattullos Road,
Chennai-600 002 represented by
its Assistant General Manager,
Mr.K.Ramanathan. ... Plaintiff

Vs.

1. Mr. J.Jaiananth
2. Mr.K.P.Jaipragash
3. Mr.R.Vaidhyanathan ... Defendants

The suit has been filed under Order IV Rule 1 of
Original Side Rules of the High Court of Judicature at
Madras read with Order VII Rule 1 of Code of Civil
Procedure, for a judgment and decree:

(a) declaring that the defendants are liable to
pay to the plaintiff a sum of Rs.15,93,611.57 being the
shortfall amount after the sale of the hypothecated asset
and a sum of Rs.15,11,693.38 towards interest totalling a
sum of Rs.31,05,304.85 and direct the defendants to pay
to the plaintiff the said sum of Rs.31,05,304.85 with
such time that this Honourable Court may stipulate;

(b) if the defendants failed to pay or deposit the
amount mentioned in clause (a) supra within the time
stipulated by this Honourable court then to pass a final

decree directing the sale of the properties more particularly set out in the schedule herein;

(c) if the sale proceeds from the sale in the final decree of the schedule properties are insufficient to discharge the amount in the clause (a) above then to pass a personal decree against the defendants in respect of the amount remaining as a shortfall after appropriating the sale proceeds of the sale of the schedule properties; and for costs.

For Plaintiff : Mr.S.Suresh for
M/s. T.Srinivasaraghavan
& Associates
For Defendants: No Appearance.

Judgment

The plaintiff is a Public Limited Company carrying on business of Hire Purchase of Motor Vehicles / Auto Mobiles, Machinery/Equipments and leasing of Motor Vehicles/Auto Mobiles, Machinery / Equipments. The Defendant No.1 during April 2007 approached the Plaintiff seeking loan for the purpose of purchasing two Numbers of Tata Tipper HCVs' of 2007 model. Accordingly, a Loan Agreement dated 28.04.2007 under Ex. P2 has been entered into. The defendants No.2 and 3 stood as guarantors and executed separate guarantee letter dated 28.04.2007 for the loan amount of Rs.40,38,000/- repayable in 47 monthly instalments. The second defendant on 28.04.2007 also created an equitable mortgage in favour of the plaintiff in dealing with the property owned by him in pursuant to

the sale deed dated 16.11.1981 under Ex.P5. As the defendants have defaulted in making repayment despite several notices issued under Ex.P7 and P8 etc., followed by a legal notice under Ex.P13, the present suit has been laid seeking the following relief:

(a) declaring that the defendants are liable to pay to the plaintiff a sum of Rs.15,93,611.57 being the shortfall amount after the sale of the hypothecated asset and a sum of Rs.15,11,693.38 towards interest totalling a sum of Rs.31,05,304.85 and direct the defendants to pay to the plaintiff the said sum of Rs.31,05,304.85 with such time that this Honourable Court may stipulate;

(b) if the defendants failed to pay or deposit the amount mentioned in clause (a) supra within the time stipulated by this Honourable court then to pass a final decree directing the sale of the properties more particularly set out in the schedule herein;

(c) if the sale proceeds from the sale in the final decree of the schedule properties are insufficient to discharge the amount in the clause (a) above then to pass a personal decree against the defendants in respect of the amount remaining as a shortfall after appropriating the sale proceeds of the sale of the schedule properties; and for costs.

2. Despite the notice having been served, none of the defendants have chosen to appear before this Court. Accordingly they have been set ex parte. Before the learned Master, the plaintiff examined himself as P.W.1 and has marked Exs. P1 to P18.

3. The following issues are for consideration:-

(i) Whether the loan agreement and the deed of guarantee and the letter confirming the deposit of title deeds dated 28.04.2007 are true and genuine?

(ii) Whether the defendants committed default in repaying the loan amount along with interest?

(iii) Whether the suit is liable to be decreed as prayed for?

4. In tune with the exhibits filed, P.W.1 has made his statement. Thus, the existence of Exs. P2, P3 and P6 are not in dispute. Exs. P7 to P12 clearly established the factum of non-payment of loan amount resulting in the liability on the part of the defendants. Defendant No.1 is the principal borrower and the defendants 2 and 3 are guarantors. As per the aforesaid documents executed by them, all of them are jointly liable.

5. Accordingly, this Court is inclined to decree the suit as prayed for by the plaintiff. The issues framed are answered in favour of the plaintiff. Time for payment is on or before 31/03/2017.

sd/.M.M.S.J

10.08.2016

//Certified to be a true copy//

Dated this the day of 2017.

P.M./16.06.2017

COURT OFFICER

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

सत्यमेव जयते

WEB COPY