

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.12.2016

PRONOUNCED ON 19.12.2016

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.636 of 2013

K.B.Raju .. Plaintiff

vs.

K.Srinivasan .. Defendant

Civil Suit filed under Order IV Rule 1 of Original Side Rules 1956 read with Order VII Rule 1 CPC praying for the following judgment and decree against the defendant.

a) A sum of Rs.37,33,545/- together with interest on the principal sum of Rs.18,00,000/- at the rate of 36% per annum from date of plaint till realisation.

b) costs of the suit;

For Plaintiff : Mr.T.M.Hariharan

For defendant : No appearance

J U D G M E N T

The suit is filed for recovery of a sum of Rs.37,33,545/- together with interest on the principal sum of Rs.18,00,000/- at the rate of 36% per annum from date of

plaint till realisation.

2.The brief facts of the case of the plaintiff are as follows:

The defendant is a manufacturer of pressure vessels for industrial use. He approached the plaintiff in the second week of April 2009 for financial help of Rs.18,00,000/- for their business purpose. The plaintiff agreed to advance the said amount within fifteen days. Accordingly, he has advanced the said amount of Rs.18,00,000/- in nine instalments commencing from 02.04.2009 to 16.04.2009. The defendant has executed promissory notes for the amount received by him and agreed to pay interest at the rate of 36% per annum. The defendant agreed to repay the amount with interest by March 2011. However, he has not made any payment. Besides, the defendant has also deposited original sale deed dated 29.04.2005 with intent to create equitable mortgage on 03.04.2009. In spite of repeated demands and legal notice dated 26.12.2011, the defendant failed to repay the principal as well as the interest. Hence, the suit for recovery of a sum of Rs.37,33,545/- together with interest on the principal sum of Rs.18,00,000/- at the rate of 36% per annum from date of plaint till the date of

repayment.

3. Though notice was served on the defendant long back, he has not chosen either to appear in person or through counsel. Therefore, he was set *ex parte* by this Court on 11.9.2014.

4. On the side of the plaintiff, plaintiff examined himself as P.W.1 and Ex.P.1 to Ex.P.12 were marked.

5. Heard the learned counsel for the plaintiff and perused the records.

6. P.W.1, in his evidence, has clearly spoken about the advance of Rs.18,00,000/- to the defendant for his business purpose and he has advanced the said amounts in nine instalments commencing from 02.04.2009 and ending with 16.04.2009. The defendant also executed promissory notes Ex.A.1 to Ex.A.9 for various amounts for the above said Rs.18,00,000/- promising to repay the amount with interest at the rate of 36% per annum. It is also the further evidence of the plaintiff that the defendant having received the amount and executed the promissory notes, have failed to pay the principal as well as the interest, inspite of repeated demands made by the plaintiff. He has also issued legal notice, which is unclaimed by the defendant.

7. Ex.A.1 promissory note dated 02.04.2009 for a sum

of Rs.3,50,000/, Ex.A.2 promissory note dated 04.04.2009 for another sum of Rs.3,00,000/- and Ex.A.3 promissory note dated 06.04.2009 for another sum of Rs.2,00,000/- were executed by the defendant. Similarly, Ex.A.4 promissory note dated 07.04.2009 for another sum of Rs.2,00,000/-, Ex.A.5 promissory note dated 09.04.2009 for another sum of Rs.2,00,000/- and Ex.A.6 promissory note dated 11.04.2009 for another sum of Rs.2,00,000/- was executed by the defendant. Similarly, Ex.A.7 promissory note dated 13.04.2009 for another sum of Rs.1,50,000/-, Ex.A.8 promissory note dated 14.04.2009 for another sum of Rs.1,00,000/- and Ex.P.9 promissory note dated 16.04.2009 for another sum of Rs.1,00,000/- was executed by the defendant. A legal notice was also issued by the plaintiff under Ex.P.10. The same was returned as unclaimed as could be seen from Ex.A.11.

8. From the promissory notes executed by the defendant, it could be seen that they have executed the promissory notes after receipt of the amount on various dates and agreed to pay interest at the rate of 36% per annum. The evidence of P.W.1 and the above documents remain unchallenged in the absence of any evidence on the side of the defendant. The first borrowal was done on 02.04.2009 and the suit is filed on 02.04.2009. It has to

be noted that as 31st of March being Saturday and first of April is Sunday, the suit has been filed on the next working day. Therefore, the suit has been filed within the time of limitation. Hence, this Court has no other option except to conclude that the plaintiff has proved his case by oral and documentary evidence.

9. Accordingly, the suit filed by the plaintiff for recovery of a sum of Rs.37,33,545/- is decreed together with interest on the principal sum of Rs.18,00,000/- at the rate of 6% per annum from date of plaint till realisation with costs.

sd/.N.S.K.J

19.12.2016

//Certified to be a true copy//

Dated this the day of 2017

R.s/20.04.2017

COURT OFFICER

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

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