

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17 / 08 / 2016

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.S.NO.21 OF 2002

M/s. Industrial Venture Capital Limited .. Plaintiff

Versus

Pradeep Ranganathan .. Defendant

PRAYER: Plaint filed under Order IV Rule 1 of the Original Side Rules, 1956 read with Order VII Rule 1 CPC praying for a judgment and decree against the defendant for the following:

a) for a sum of Rs.1,45,93,508.31 together with interest thereon at the rate of 24% on Rs.59,87,400/- from the date of plaint till realisation.

b) for costs of the suit.

For Plaintiff : Mr.P.J.George
For Defendant : Mr.C.K.M.Appaji

J U D G M E N T

The suit is filed by the plaintiff against the defendant for recovery of money of Rs.1,45,93,508.31 together with interest thereon at the rate of 24% on Rs.59,87,400/- from the date of plaint till realisation, based on the document styled as loan agreement.

2. The plaintiff states that the defendant along with one S.N.Natarajan promoted a Company under the name of Neptune Inflatables Limited, with an authorised capital of Rs.3,50,00,000/- made up of 3,50,000 equity shares at Rs.10/- per share. It is stated that the defendant applied for a personal loan of Rs.59,87,400/- to the plaintiff for purchase of 3,52,200 equity shares of Rs.10/- at a premium of Rs.7 /- each and the loan was also sanctioned by the plaintiff. Thereafter, a loan agreement was executed between the plaintiff and the defendant on 11.01.1996. As per the said agreement, the defendant had agreed to pledge 3,52,000 equity shares purchased by him as security for the amount borrowed by the defendant and the same would be kept pledged till the amount was repaid. Accordingly, the shares purchased by the defendant vide Certificate Nos.23884 to 27405 (consolidated) were pledged with the plaintiff. Despite several demands, the defendant failed to repay the loan amount.

3. According to the plaintiff, it was not in a position to sell the shares pledged, since the shares of Neptune Inflatables Limited were not listed. The defendant also had admitted the liability vide letter dated 06.01.1999 under Ex.P3. The plaintiff, therefore sent a notice on 06.12.2001, calling upon the defendant to pay the loan amount, with interest at 24% per annum. As there was no response, the suit has been filed.

4. The defendant had not filed his written statement on time. Therefore, an application to condone the delay in filing the written statement in A.No.849 of 2009 was filed. The said application was dismissed on 30.06.2009 and was challenged in O.S.A.No.113 of 2011. The Division Bench also dismissed the appeal and the same was confirmed in Special Leave Petition before the Honourable Supreme Court. While dismissing the Special Leave Petition, the defendant was given permission to participate in the trial and cross examine the plaintiff's witness questioning the legality of his claim. Thus, the defendant was not allowed to put forth his claim and only challenged the legal issues by way of cross examination.

5. The only question that has to be decided is whether the plaintiff is entitled to a decree as prayed for by him.

6. The plaintiff has marked the loan agreement as Ex.P2 and the letter written by the defendant admitting the liability dated 06.01.1999 was marked as Ex.P3. It is relevant to advert to the terms of agreement under Ex.P2 for the purpose of deciding the case:

*"3.The Borrower shall repay the Loan on demand by
the Lender:*

(OR)

In case the Borrower fails to repay any part of loan when demanded by the Lender, notwithstanding any other provisions of this agreement the Lender at his option shall have a right to purchase the shares pledged as security at a price of Rs.17/- per share and on such purchase the loan amount shall be reduced by the ratio of the shares transferred bears to the total of shares pledged.

4.The Lender has agreed not to charge interest on the amount of the Loan on condition that if on a sale of the said shares, the Lender realises by way of net proceeds, an amount which is in excess of what is due under the Loan account, the Borrower is not entitled to claim Payment from the Lender the amount in excess. The Borrower agrees and undertakes that in the event of sale of the said shares by the Lender resulting in the realisation of proceeds which are in excess of the amount due under the Loan account, the Borrower shall not make any claim / demand in respect of the said excess amount.

5.The Borrower agrees that so long as the Pledged shares appreciate in value, he shall not have the right to liquidate the loan and claim redemption of the pledge and

that the lender shall always be entitled to all the benefits accruing from the appreciation in the value of the pledged shares.”

7. During the cross examination of P.W.1, the defendant was trying to make out a case that the plaintiff, being the Industrial Venture Capital Company was investing in new ventures. In the said process, investment was made in the defendant company by purchasing 3,52,200 equity shares. It was also suggested that the clauses mentioned above, namely, 3, 4 and 5 of the loan agreement was only a share purchase agreement and not a loan agreement.

8. Clause 3 specifically states that the borrower shall repay the loan on demand, in default, the lender at his option shall have the right to purchase the shares pledged as security at a price of Rs.17 /- per share and on such purchase, the loan amount shall be reduced by the ratio of the shares transferred.

9. Clause 4 states that no interest would be charged on the amount of loan, on condition that if on a sale of such shares, the plaintiff realises an amount, which is in excess of what is due under the loan account, the defendant / borrower will not be entitled to claim payment from the plaintiff / lender, the amount in excess.

10. As per Clause 5, in the event of appreciation in value of the shares, the defendant / borrower will not have the right to liquidate the loan and claim redemption of the pledge and it is only the borrower, who will be entitled to all the benefits accruing from the appreciation in the value of the pledged shares.

11. It is relevant to consider whether the shares were pledged with the plaintiff. If there is any pledge, then the title continues in the pledger. The pledgee has no right to lodge the shares in his own name and no title passes to the pledgee. Therefore, in the present case, it is only pledge of shares and it is not a mortgage. Nothing can prevent a borrower from repaying the loan and reclaiming the securities on such payment. So, to this extent the principle behind the concept of redemption applies.

12. The essential distinction between a pledge and mortgage is that unlike a pledge, a mortgage acquires general property in the thing mortgaged, subject to the right of redemption of the mortgagor. In other words, the right in the goods passes on to the mortgagee. But in the pledge, which has a special property in the goods pledged, it is the right of the pledgee to keep

them as a security. In case of default, the pledgee must either bring a suit against the pledger or sell the goods after giving reasonable notice. Therefore, the main distinction is the right of enjoyment of the property is not given to the pledgee whereas the mortgagee has the right of enjoyment of the property. So far as the mortgage is concerned, there is a right of redemption, whereas, in a pledge, the right of redemption is not available.

13. A notice was sent on 06.12.2001, as per Ex.P4. As per Ex.P4, demanding the defendant to repay the borrowed amount together with interest @ 24% per annum, which was also acknowledged by the defendant. It is the case of the plaintiff that Neptune Inflatables Limited discontinued its operations and that the shares were not listed, so that he could not sell the shares, in the market to make the goods loss. The right of redemption of the security was given to the defendant, as per Clause 3 of the agreement. Only on failure of repayment of the loan, the option of purchase of the shares pledged as security would arise.

14. Admittedly, the defendant had not paid anything to the plaintiff and the pledged shares were also not saleable and the Company itself discontinued its operations. So far as Clause 5 of the loan agreement is

concerned, it places restriction on the right of the borrower, in the sense, once the shares appreciation in value, the borrower shall not have the right to liquidate the loan and claim redemption of the shares. May be, if the defendant had repaid the loan, the question, whether this Clause would be void or unenforceable, would arise for consideration. The applicability of this clause does not arise for two reasons;

(i) The company Neptune Inflatables Limited itself discontinued its operation and therefore, there was no question of appreciation in value of the shares and no right to reclaim the securities on payment of dues.

(ii) The defendant also at no time offered or come forward to pay the borrowed amount to claim the shares back. So, there is no necessity for relying on this clause.

15. Though in the cross examination of P.W.1, the defendant had tried to suggest that the plaintiff Company had the intention to retain the shares of the defendant permanently, the same was denied by the plaintiff. It was also further suggested that the core business of the plaintiff is Venture Capital and the investment in the defendant's company is only one such venture

and therefore, it is stated that the defendant is not liable for payment of the amount. However, this submission of the defendant cannot be accepted, in view of the foregoing discussions holding that P.W.2 is only a loan agreement and it is not a share purchase agreement. Hence, the plaintiff would be entitled for the relief of recovery of amount.

16. So far as the question of limitation is concerned, the suit is filed on 17.01.2002. As per Section 4 of the Limitation Act, 1963, where the prescribed period for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the date when the Court re-opens. In this case, on that particular year, the Court reopened only on 17.01.2002, which is well within the period of limitation. Hence, the suit is maintainable in law.

17. The plaintiff has claimed interest at the rate of 24% per annum. Though the said transaction, being a commercial transaction, admittedly, there is no contra evidence adduced by the defendant, to show that it is not a commercial transaction.

18. It is well settled that interest for the period prior to the suit is payable under contractual interest, and after the institution of the suit, it is governed by Section 34 of the Civil Procedure Code. After institution of the suit, the Court has got discretion to order payment of interest at such rate as the Court deems reasonable. In this case, despite the transaction being commercial, so far as the percentage of interest payable is concerned, excepting the claim made in the plaint, there is no document filed. Therefore, as per Section 34 of the Civil Procedure Code, the discretion lies with the Court.

19. Accordingly, the defendant is directed to pay interest at the rate of 6% per annum on the principal sum adjudged from the date of filing of the suit, to the date of decree, that is, pendente lite. Interest from the date of decree, till the date of realisation i.e., future interest or further interest is also fixed at the rate of 6% per annum.

20. In the result, the suit is decreed, as indicated above. No costs.

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Index : Yes/No
Internet : Yes/No
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LIST OF WITNESSES EXAMINED ON THE SIDE OF THE PLAINTIFF

P.W.1 - Mr.R.Kalyanaraman

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	P-1	Extract of the Board resolution	31.10.2011
2	P-2	Loan agreement	11.01.1996
3	P-3	Letter written by the defendant to the plaintiff	06.01.1999
4	P-4	Legal notice issued by the plaintiff's counsel to the defendant	06.12.2001
5	P-5	Statement of account	

PUSHPA SATHYANARAYANA, J.

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