IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.11.2016

PRONOUNCED ON 23.11.2016

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.223 of 2008

M/s. Integrated Finance Company Limited .. Plaintiff

vs.

1. Suresh D.Bhatia
2. Akhilesh Kumar Sharma .. Defendants

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.32,55,334.02 together with interest thereon at the rate of 36% on Rs.12,71,886.00 from date of plaint till realisation.

b) costs of the suit;

For Plaintiff : Mr.Najeeb Usman Khan

For defendants : No appearance

J U D G M E N T

The suit is filed for recovery of sum of Rs.32,55,334.02 together with interest at the rate of 36%

on Rs.12,71,886/- from the date of plaint till the date of realisation.

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

The plaintiff is a company registered under the Companies Act, 1956, carrying on business of Hire Purchase and Lease Financing in the Administrative Office at Chennai and also having branches in several parts of the country. All the documentation will be signed only at the Head Office and the Branch Office has to release the amount, after receipt of cheque from the Head Office.

2.1. The first defendant approached the plaintiff's Branch Office at Bangalore for purchase of Vehicle described as Montego Car. Accordingly, the plaintiff agreed to advance loan for a sum of Rs.13,87,512/- including the finance charges payable in 36 monthly installments of Rs.38,542/- each. The first defendant executed a Hire Purchase Agreement for the said amount, in which the second defendant stood as a Guarantor. Thereafter, the cheque was duly released to the dealer and the agreement was accepted and execution was completed at Chennai.

2.2. According to the plaintiff, after the payment of third installment, the first defendant failed to pay the installments and the agreement also came to an end due to efflux of time on 05.07.1999. Inspite of repeated reminders and personal visits of the plaintiff's Recovery Officer, the first defendant failed to make any further payment. Further, he has not even chosen to surrender the asset. The plaintiff's attempt to repossess the asset also went on vain as the first defendant had shifted the asset without the permission of plaintiff and contrary to the terms and conditions of the Hire Purchase Agreement. The plaintiff also lodged criminal complaint against the defendants. Hence, the plaintiff filed the present suit for recovery of the amount.

3. Though notice was served on the defendants long back, they have not chosen either to appear in person or through counsel. Therefore, they were set *ex parte* by this Court *on 10.8.2015*

4. On the side of the plaintiff, P.W.1, the Assistant Vice President-Legal and duly constituted Attorney, was examined and Exs.A1 to A4 were marked. Exs. P1 to P3 were also marked.

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

6. P.W.1, in her evidence, has clearly spoken about the execution of the Hire Purchase Agreement, Ex.P1, for the purchase of vehicle by the first defendant for the sum of Rs.13,87,512/-. He has also spoken about the default committed by the first defendant.

7. On a perusal of the Exhibits P1 to P3, there is no doubt in the mind of the Court to negate the contention of the plaintiff. In fact, the Hire Purchase Agreement was executed for a sum of Rs.13,87,512/-. Statement of account produced by the plaintiff, which is marked as Ex.P3, would clearly show that the first defendant has defaulted in payment of installments. The second defendant has admittedly stood as Guarantor and signed Ex.P1. Therefore, the second defendant is also jointly and severally liable as that of the principal borrower. Ex.P2 shows that the plaintiff has lodged a criminal case against the first defendant. Inspite of sufficient opportunities given, the defendants have not chosen to appear before the Court. The defendants remained set *ex parte*.

8. From the evidence of P.W1 and Exs.P1 to P3, it is crystal clear that the first defendant, having borrowed the loan amount of Rs.13,87,512/-, failed to repay the same and committed default.

9. The above documents make it clear that the plaintiff is certainly entitled to a decree for a sum of Rs.32,55,334.02.

10. The averments, Exhibits and evidence adduced on the side of the plaintiff remain un-controverted and the same clearly established the plaintiff's case.

11. Accordingly, the suit filed by the plaintiff for recovery of a sum of Rs.32,55,334.02 is decreed with subsequent interest at the rate of 6% p.a. on Rs.12,71,886.00 from the date of plaint till the date of realisation with costs.

sd/.N.S.K.J

23.11.2016

//Certified to be a true copy//

Dated this the day of 2017

R.s/16.03.2017 COURT OFFICER

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