IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **20.06.2017**

CORAM

THE HON'BLE MR.JUSTICE **P.KALAIYARASAN**

C.S.No.877 of 2010

M/s. Integrated Finance
Company Limited .. Plaintiff

vs

1. Incentive Marketing & Advertising (P) Ltd.,

2. Sri Bharathi Electronics Industries Ltd.,

3. N.H.Vyas

4. Asha Vyas

5. Venkatesh Iyer .. Defendants

Civil Suit filed under Order IV Rule 1 of the High Court Original Side Rules, 1956 read with Order VII Rule 1 of Civil Procedure Code, 1908, praying for a Judgment and Decree against Defendants 2, 3 and 4 for a sum of Rs.87,24,713.16/- with further interest thereon at the rate of 36% per annum from date of plaint till realisation and for costs.

For Plaintiff : Mr.Najeeb Usman Khan

For Defendant : No appearance (Exparte)

J U D G M E N T

The suit has been filed for recovery of a sum of Rs.87,24,713.16/- with future interest thereon at the rate of 36% p.a from the date of plaint till realisation and for costs.

2. The plaintiff carries on business in Hire Purchase and Lease Financing in several parts of the country. The first defendant is a company incorporated under the Companies Act, 1956, having its registered office at Bombay represented by its Director, the third defendant approached the branch office of the plaintiff at Mumbai for a hire purchase facilities which was favourably considered by the plaintiff. The defendants 1, 2, 3 and 5 entered into hire purchase agreement, dated 01.02.1994 in respect of the asset described as Item No.1 in the plaint schedule for a total sum of Rs.11,57,100/- payable in 60 monthly instalments of Rs.19,285/- each. The first of such instalments is payable on 01.02.1994 and the last instalment is payable on 01.01.1999. The defendants 3 to 5 joined in the execution of the above mentioned agreement as guarantors guaranteeing the due performance of the terms and conditions of the agreement thereby rendering themselves jointly and severally liable along with the first defendant.

3. The first defendant was irregular in payment and the last instalment paid by them was on 05.03.1998 representing part of the 20th instalment payable on 01.09.1995. Thereafter on a request by

the first defendant, a sum of Rs.8,08,550/- towards amount outstanding and other charges was granted and hire purchase agreement was rescheduled into a fresh hire purchase agreement dated 28.98.1998. The defendants were irregular in payment of the instalments amount under the rescheduled agreement and the last instalment paid by them was on 18.12.1004. The earlier agreement was rescheduled due to outstanding and a fresh hire purchase agreement was entered into on 25.03.2000 in respect of Item 3 of the plaint schedule and on 30.09.2000 in respect of Item 4 of the plaint schedule. The defendants were again irregular in payment of the instalment amounts under the said agreement and the last instalment paid by them was on 01.09.2001 representing part of the second instalment payable on 01.04.2001. The plaintiff further states that as on the date of termination of the above mentioned Hire Purchase Agreements, a total sum of Rs.39,37,622.45/- is due and payable by the defendants and also entitled to interest at the contractual rate of 36% under the above mentioned Hire Purchase Agreements. The plaintiff states a total sum of Rs.87,24,713.16/- is due and payable by the defendants. Hence, the plaintiff has come forward with this suit.

4. The plaintiff calculating the dues with interest at the rate of

36% claims a sum of Rs.87,24,713.16/- with further interest thereon at the rate of 36% p..a., from the defendants 2 to 4. The defendant was called absent and set exparte. The authorised signatory of the plaintiff company has been examined as P.W.1 and Exs.P.1 to P.13 have been marked.

5. Through oral and documentary evidence, the plaintiff has established non-payment of instalments by the defendants 2 to 4. The plaintiff claims the amount calculating the default interest at the rate of 36% p.a. Charging excess rate of interest for defaulted instalment cannot be found fault, if it is at a reasonable rate from the date of default.

6. The interest agreed between the parties is 13.25% p.a., as per the agreement. No doubt default interest is mentioned in the agreement as 36% p.a. Charging 36% as default interest is highly unreasonable. Therefore, this Court directed the plaintiff to file the statement of calculation by calculating the dues with interest at the rate of 13.25% p.a. The plaintiff also filed a calculation memo; but the same does not reflect the real calculation. Therefore, this Court directed the Registry to calculate the due with reference to the dues

mentioned in the plaint charging interest at the rate of 13.25% p.a. In the plaint for the three hire purchase agreements, calculations have been given clearly charging the interest, i.e., additional finance charges at the rate of 36% in paragraph 17. The Registry with reference to the dues mentioned in paragraph 17 for all the three hire purchase agreements made a calculation charging the interest at the rate of 13.25% and arrived at to Rs.45,40,487.21/- as due to the plaintiff from defendants 2 to 4 for all the three hire purchase agreements. Accepting the calculation given by the Registry, this Court holds that the plaintiff is entitled to a sum of Rs.45,40,487.21/- with interest at 13.25% p.a., from the date of plaint till the date of realization from the defendants 2 to 4.

In fine, this Civil Suit is partly allowed, whereby the defendants 2 to 4 are directed to pay to the plaintiff a sum of Rs.45,40,487.21/- with interest at 13.25% p.a., from the date of plaint till the date of realisation with proportionate costs.

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Index : Yes / No

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P.KALAIYARASAN, J

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