IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2018

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

C.S.No.896 of 2002

1.M/s.Gem Granites,
76, 78 Cathedral Road,
Chennai-600 086.

2.M/s.Imperial Granites Pvt. Ltd.,
76, Cathedral Road,
Chennai-600 086.

3.M/s.Coramandel Agencies,
No.8, II Street, Ganapathy Colony,
Chennai-600 086.

4.M/s.Galaxy Enterprises,
No.8, II Street, Ganapathy Colony,
Chennai-600 086.
Plaintiffs 1 to 4 are Gem Group of Companies
represented by their Group Accounts Manager
S.Muralikrishnan, having their office at
76, 78, Cathedral Road, Chennai-600 086. .. Plaintiffs

Vs.

M/s.Jupiter Agency,
rep by its Proprietor V.P.Rahavendra
19, 4th Main Road,
Kasturba Nagar,
Adyar,
Chennai-600 020. .. Defendant

This Civil Suit is preferred, under Order IV Rule 1 of Original Side Rules and Order XXXVII Rules 1 and 2 of CPC seeking judgment and decree by (a)directing the defendant to pay a sum of Rs.62,94,000/- to the first plaintiff herein together with interest at 16% p.a. from the date of plaint till date of realisation, (b)directing the defendant to pay a sum of Rs.62,94,000/- to the second plaintiff herein together with interest at 16% p.a. from the date of plaint till date of realisation, (c)directing the defendant to pay a sum of Rs.41,96,000/- to the third plaintiff herein together with interest at 16% p.a. from the date of plaint till date of realisation, (d)directing the defendant to pay a sum of Rs.41,96,000/- to the fourth plaintiff herein together with interest at 16% p.a. from the date of plaint till date of realisation, (e)to pay the cost of the suit, and (f) to pass such further or other orders as this Hon'ble Court may deem fit and proper and thus render justice.

For Plaintiffs : Mr.Manohar
for Mr.G.Rajan

For Defendant : set exparte on 09.10.2018

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JUDGMENT

There are four plaintiffs and a sole defendant in the instant suit.

2 While plaintiffs 1 and 3 are registered partnership firms, second plaintiff is a private limited company incorporated under the laws of India (juristic person) and fourth plaintiff is a proprietary concern wherein one S.R.Kumar, who is one of the partners in the first plaintiff firm, is carrying on business as its sole Proprietor in the name and style Galaxy Enterprises.

3 As far as sole defendant is concerned, it is a sole proprietary concern, wherein one V.P.Rahavendra is carrying on business in the name and style Jupiter Agency.

4 The entire suit turns on a very narrow compass. The facts in a nutshell are to the effect that the sole defendant approached plaintiffs, stated that the sole defendant is running financial services, besides being a leading stationery wholesale dealer. On this basis, sole defendant requested plaintiffs to deposit moneys with him by way of fixed deposits, promising to repay principal amount with interest at the rate at 16% per annum. Trusting the sole defendant, four plaintiffs made eight different deposits with sole defendant totalling Rs.1 Crore in all. The deposits were by way of fixed deposits and post maturity of fixed deposits, there was delay in repayment leaving the defendant liable to pay a total sum of Rs.2,09,80,000/- , but the defendant did not repay inspite of demands and legal notice, necessitating the instant suit, wherein a money claim qua aforesaid eight fixed deposits has been made.

5 Having set out the factual matrix in a nutshell, before I proceed with the trajectory of the suit, it is necessary to ascertain whether this Commercial Division has jurisdiction to entertain this suit.

6 Mr.Manohar, learned counsel representing the counsel on record for plaintiffs submits that from the plaint averments, it will be clear that sole defendant is a financier and the transaction of plaintiffs depositing

moneys with sole defendant financier by way of eight different fixed deposits is an ordinary transaction of a financier. Saying so, learned counsel drew my attention to the relevant averment in the plaint which is contained in paragraph 3. Relevant averment in paragraph 3 reads as follows :

> "3.....The defendant herein during the year 1995-96 approached the plaintiffs through the Chairman of the Gem Group of Companies and represented that they are one of the leading stationary wholesale dealers also running financial services and recurring deposits and persuaded him to make Fixed Deposits with the Jupiter Agency promising to repay the principal amount with interest at 16% p.a. and the plaintiff carried away by the representation of the defendant's Proprietor and obliged him and made deposits in the name of the four plaintiffs concern with the defendant on different fixed deposits on different dates....."

7 Referring to the aforesaid plaint averments, learned counsel submits that this suit is a commercial dispute within the meaning of section 2(1)(c)(i) of 'The Commercial Courts Act, 2015' ('said Act' for brevity) as the lis in this suit is a commercial dispute arising out of an ordinary transaction of a financier who is also a merchant / trader besides being a leading stationery wholesale dealer as can be culled out from undisputed plaint averments.. Most importantly, it was highlighted that the entire lis pertains to financial transaction of fixed deposits made by plaintiffs with sole defendant who is a financier.

8 After asserting that the lis in the instant suit is a commercial dispute within the meaning of section 2(1)(c)(i) of the said Act, learned counsel drew my attention to the valuation paragraph in the plaint which is paragraph 11. A perusal of paragraph 11 reveals that the suit has been valued at Rs.2,09,80,000/-. In other words, the suit has been valued at over Rs.2.09 Crores. On this basis, it was submitted that this suit qualifies qua specified value also within the meaning of section 2(1)(*i*) read with section 12 of the said Act. On this basis, it was further submitted that this suit is a commercial dispute of specified value and therefore, this Commercial Division will have jurisdiction to entertain this suit under Section 7 of the said Act.

9 I perused the plaint in the backdrop of aforementioned submissions and there is no difficulty in accepting the submissions of learned counsel. Therefore, I hold that this Commercial Division does have jurisdiction to entertain this suit.

10 Having determined jurisdiction, it is now necessary to have a birds eye view of the trajectory of this suit. The trajectory of this suit is captured in two earlier proceedings of this Commercial Division dated 01.10.2018 and 09.10.2018 which read as follows :

<u>Proceedings dated 01.10.2018</u> :

> "Mr.Manohar, learned counsel, is before this Commercial Division on behalf of four plaintiff.

M/s.M.K.Padma, learned Counsel on behalf of sole defendant submits that they have no further instructions from the sole defendant. In other words, learned counsel reports no instructions qua sole defendant.

Registry to list this matter under the same caption and show the name of sole defendant together with full/ complete address of the sole defendant as given in the short and long cause title of the plaint in the next listing.

List on 09.10.2018."

<u>Proceedings dated 09.10.2018</u> :

"Read this in conjunction with and in continuation of earlier proceedings of this Commercial Division dated 01.10.2018.

2.Mr.Manohar, learned counsel for plaintiffs and Mr.Kathir, learned counsel representing the counsel on record, who was appearing for the sole defendant are before this Commercial Division.

3.On behalf of the sole defendant, the earlier proceedings are reiterated.

4.In the light of the earlier proceedings being reiterated, sole defendant is set *ex-parte*.

5.List this matter before learned Additional Master-II for recording *ex-parte* evidence on 24.10.2018.

6.Learned Additional Master-II is requested to record *ex-parte* evidence preferably on the same day and in any event on or before 26.10.2018.

7.List this matter before this Commercial Division under the caption 'FOR ORAL ARGUMENTS' on 01.11.2018."

11 A perusal of the aforesaid two proceedings will reveal that sole defendant has been set ex parte and the suit itself has been set down for

recording ex parte evidence before learned Additional Master-II on 24.10.2018. Ex parte evidence was recorded and one Mr.S.Gopal, son of Mr.Srinivasan, has deposed on behalf of plaintiffs. P.W.1 has deposed on the strength of four different authorisation letters given by four plaintiffs and the same have been marked as Exs.P.21 to P.24.

12 As many as 24 documents, namely Exs.P.1 to P.24 have been marked through P.W.1. Thereafter, the suit has now been listed before me for arguments.

13 I heard learned counsel Mr.Manohar on behalf of counsel on record for plaintiffs. With regard to the facts of the case, the same have been set out in a nutshell supra.

14 Eight fixed deposits made by four plaintiffs with sole defendant are as follows :

F.D. Receipt No.	***Date of Deposit***	***Name of Depositor***	***Amount Deposited Rs.***	***Rate of Interest Agreed***	***Total Amount Due (Rs.)***
1	17/11/95	Gem Granites	15,00,000/-	16%	31,69,333/-
2	17/11/95	Imperial Granites Pvt. Ltd.	15,00,000/-	16%	31,69,333/-
3	17/11/95	Coramandel Agencies	10,00,000/-	16%	21,12,889/-
4	17/11/95	Galaxy Enterprises	10,00,000/-	16%	21,12,889/-
5	25/1/96	Gem Granites	15,00,000/-	16%	31,24,667/-

6	25/1/96	Imperial Granites Pvt. Ltd.	15,00,000/-	16%	31,24,667/-
7	25/1/96	Coramandel Agencies	10,00,000/-	16%	20,83,111/-
8	25/1/96	Galaxy Enterprises	10,00,000/-	16%	20,83,111/-
		Total	1,00,00,000/-		2,09,80,000/-

15 The eight fixed deposit receipts have been marked as Exs.P.2 to P.5 and P.7 to P.10. To be noted, deposits have been made by way of cheques issued by plaintiffs to sole defendant and letters under cover of which such deposits were made are dated 17.11.1995 and 25.01.1996. These letters have been marked as Exs.P.1 and P.6.

16 As mentioned supra, plaintiffs were not paid the maturity amount even after expiry period of fixed deposits.

17 Under the aforesaid circumstances, defendant issued two separate letters, one dated 25.1.2000 and another dated 06.06.2001 to each of the four plaintiffs confirming and acknowledging their liability and promising repayment. That makes it eight letters in all, i.e., four dated 25.1.2000 and four dated 6.6.2001. These eight letters have been marked as Exs.P.11 to P.18. Notwithstanding acknowledgment of liability and notwithstanding confirmation of the liability, the sole defendant did not make good payments inspite of repeated requests and demands resulting in plaintiffs finally issuing lawyer's notice which is also a pre-suit notice dated 19.1.2002. This lawyer's

notice issued by all four plaintiffs have been marked as Ex.P.19 and four postal acknowledgment cards have been marked as Ex.P.20. As there are four copies of lawyer's notices and four postal acknowledgment cards, ideally 'Ex.P.19' and 'Ex.P.20' should have been marked as 'Ex.P.19 series' and 'Ex.P.20 series'. That has not been done by learned Additional Master-II. Now that it is before me, I deem it appropriate to rewrite and rechristen the nomenclature of 'Ex.P.19' and 'Ex.P.20' as 'Ex.P.19 series' and 'Ex.P.20 series' respectively. As already mentioned supra, Exs.P.21 to P.24 are four letters of authorisation given by each of the four plaintiffs, authorising P.W.1 to depose on their behalf.

18 This Commercial Division has perused deposition of P.W.1. A perusal of deposition of P.W.1 reveals that it is cogent and convincing. It is also in tandem with plaint averments. In other words, a reading of plaint averments, i.e., pleadings, deposition of P.W.1 and exhibits being Exs.P.1 to P.24 in its sum totality reveals that plaintiffs have proved their claim.

19 This takes us to the question as to whether plaintiffs are entitled to interest at the rate of 16% per annum which has been claimed. For this purpose, it is necessary to look at documents that is obtaining between plaintiffs and sole defendant and as to whether the documents i.e., contract between parties to lis provide for rate of interest. As mentioned supra, eight fixed deposit receipts have been marked as Exs.P.2 to P.5 and P.7 to P.10. A perusal of eight exhibits reveals that the rate of interest has clearly been

covenanted and set out as 16% per annum. As there is contract between parties for rate of interest at 16% per annum, plaintiffs are entitled to interest at 16% per annum.

20 This takes us to the prayer paragraph in the plaint. Prayer paragraph in the plaint is an unnumbered paragraph which has been set out after paragraph 11 in the plaint. Unnumbered paragraph in the plaint occurs after paragraph 11 in the plaint which the learned counsel for plaintiffs confirms that it is the prayer paragraph and the same reads as follows :

> "The plaintiff therefore pray for a decree and judgement against the defendant
> (a)directing the defendant to pay a sum of Rs.62,94,000/- to the first plaintiff herein together with interest at 16% p.a. from the date of plaint till date of realisation.
> (b)directing the defendant to pay a sum of Rs.62,94,000/- to the second plaintiff herein together with interest at 16% p.a. from the date of plaint till date of realisation.
> (c)directing the defendant to pay a sum of Rs.41,96,000/- to the third plaintiff herein together with interest at 16% p.a. from the date of plaint till date of realisation.
> (d)directing the defendant to pay a sum of Rs.41,96,000/- to the fourth plaintiff herein together with interest at 16% p.a. from the date of plaint till date of realisation.
> (e)to pay the cost of the suit.
> (f) to pass such further or other orders as this Hon'ble Court may deem fit and proper and thus render justice."

21 In the light of the narrative supra, plaintiffs have proved their claim with regard to plaint prayers in (a) to (d) supra. Considering the nature

of the matter which emerges clearly from the narrative thus far, plaintiffs are entitled to costs and therefore, plaintiffs are entitled to prayer paragraph (e) also.

22 With regard to prayer paragraph (f), which is the usual residuary limb of prayer paragraph, learned counsel for plaintiffs requests me to consider the possibility of awarding compensatory costs under Section 35-A of 'The Code of Civil Procedure, 1908' ('CPC' for brevity) as amended by said Act. To be noted, amended CPC as amended by said Act is such that the cap or the upper financial limit for awarding compensatory costs, which is otherwise known as exemplary costs in common parlance has now been removed. Learned counsel points out that the suit is of the year 2002, deposits itself have been made in 1995 / 1996, defendant has been using the huge sum of Rs.1 Crore for more than two decades now, besides this, learned counsel points out that defendant has left the plaintiff high and dry, owing to which plaintiffs had to carry this suit to its logical end in this Court for over a period of 16 years or in other words, for over one and a half decades, expending time, energy and money. All these, according to learned counsel for plaintiffs, are determinants / parameters which make out a case for awarding of exemplary costs or compensatory costs of Rs.10,00,000/- (Rupees ten lakhs only) under Section 35-A of amended CPC as amended by said Act.

23 Considering the conduct of sole defendant and considering the

fact that sole defendant has virtually appropriated Rs.1 Crore for a period of over two decades and has not even chosen to come before this Court, plaintiffs are certainly entitled to compensatory costs of Rs.10,00,000/- (Rupees ten lakhs only) based on the plea made by learned counsel for plaintiffs under prayer paragraph (f) supra.

24 In the light of the narrative supra, the suit is decreed with costs and compensatory costs.

26.11.2018

Speaking Order / Non Speaking order

Index : Yes/No

vvk

M.SUNDAR, J.

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