

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.01.2018

CORAM

THE HON'BLE MR. JUSTICE **R.SUBRAMANIAN****C.S.No.142 of 2011**

1. A.M.Deenathayalan
2. D.Shanthi

... Plaintiffs

Vs.

1. C.S.Thangaraj
2. C.S.Prabakar
3. Bank of Baroda,
Rep by its Manager,
ARM Branch,
Triplicane,
Chennai – 600 005.

...Defendants

Prayer:- Complaint filed under Order 4 Rule 1 of Original Side Rules read with Order 7 Rule 1 to 6 of Civil Procedure Code to pass a judgment and decree against the defendants 1 & 2 for

a. Recovery of a sum of Rs.46,46,000/- with interest at 24% per annum from 18.10.2010 till the date of realization;

b. to pay costs of the suit

For Plaintiff

: Mr.Kaushik N.Sharma

For Defendants

: No appearance

JUDGMENT

The suit is one for recovery of a sum of Rs.46,46,000/- with

interest at Rs.24% per annum from 18.10.2010 till the date of realisation.

The plaintiff stood as a guarantor for repayment of the loan that was borrowed by the defendants 1 & 2 from Bank of Baroda. According to the plaintiff since defendants 1 & 2 did not repay the loan, the Bank had initiated proceedings under SARFAESI Act and the property belonging to the plaintiff was sought to be brought for sale. Under such threat of sale, the plaintiff had negotiated for a one time settlement with the Bank and the Bank had agreed for such settlement at Rs.46,00,000/- by letter dated 08.09.2010, which is marked as Ex.P.13. It is seen from Ex.P.16 that the plaintiff has paid a sum of Rs.46 lakhs as offered by him and the amount has been credited to the loan account of defendants 1 and 2 namely A/c. M/s.Sakthi Mines of which defendants 1 & 2 are partners. The plaintiff seeks recovery of the said sum of Rs.46,00,000/- with subsequent interest.

2. Mr.Kaushik.N.Sharma, learned counsel for the plaintiff submits that as the surety who has guaranteed payment of the debt and the said guarantee having been invoked, the plaintiff is entitled for the money from the principal debtors as per Section 140 of the Indian Contract Act. The defendants have remained ex-parte. The first plaintiff has examined himself as PW1. Ex.P.1 to Ex.P.20 have been marked on the side of the plaintiff. From Ex.P.13 and Ex.P.16 the fact that the plaintiff has paid a sum of Rs.46,00,000/- in Bank of Baroda is proved. In view of the same, the suit is decreed as against the defendants 1 & 2 with costs. They are liable to pay

Rs.46,46,000/- along with interest at Rs.18% per annum from 18.10.2010 till date of realisation. The suit against the third defendant stands dismissed.

19.01.2018

Index: Yes/No
Internet: Yes/No
Speaking/Non speaking order

dpq

List of the witnesses examined on the side of the plaintiffs:

P.W.1 A.Deenathayalan
P.W.2 D.Shanthi

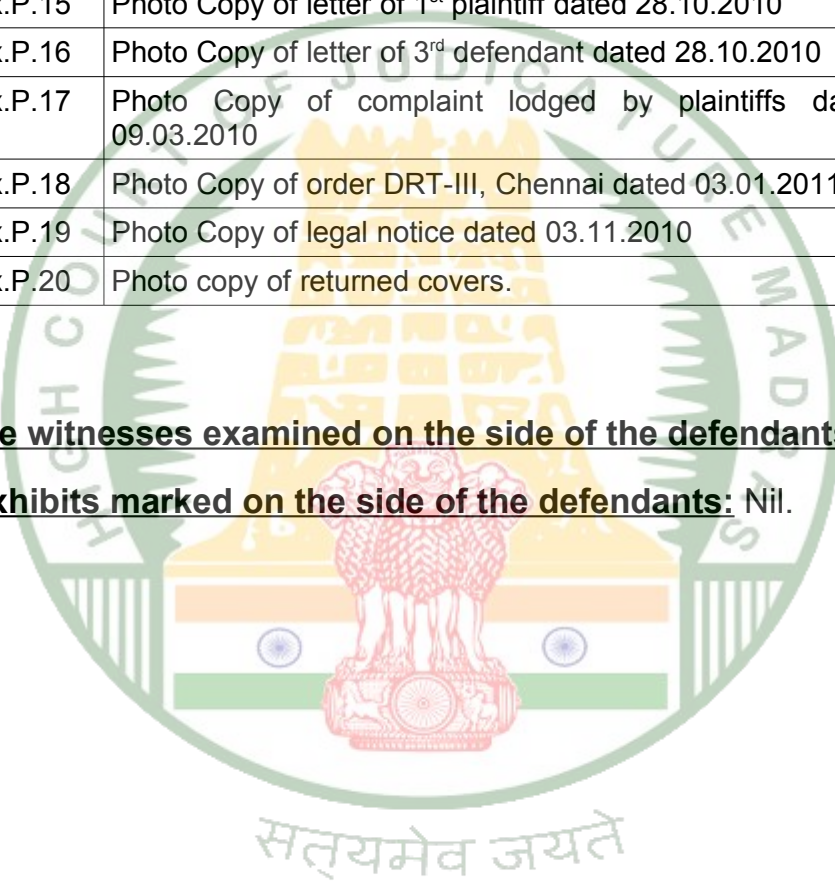
List of Exhibits marked on the side of the plaintiffs:

Sl. No.	Exhibits	Description of Documents
1	Ex.P1	Original Sale Deed dated 05.08.1987
2	Ex.P2	Photo Copy of deed of induction of partners dated 10.09.1990
3	Ex.P3	Photo copy of deed of resignation of partners dated 15.10.1990
4	Ex.P4	Photo Copy of deed induction of partners dated 29.11.1991
5	Ex.P5	Photo Copy of deed of reconstitution of firm dated 06.02.1992
6	Ex.P6	Photo copy of death certificate dated 08.12.2007
7	Ex.P7	Photo copy of legal heir certificate dated 08.12.2007
8	Ex.P8	Photo copy of letter of plaintiffs to 3 rd defendant dated 02.07.2009
9	Ex.P9	Photo copy of order of recovery officer dated 30.12.2009
10	Ex.P10	Photo copy of notice form 3 rd defendant dated 05.02.2010
11	Ex.P.11	Photo Copy of letter of recovery officer dated 22.07.2010

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12	Ex.P.12	Photo Copy of letter to 3 rd defendant dated 30.08.2010
13	Ex.P.13	Photo Copy of letter of 3 rd defendant dated 08.09.2010
14	Ex.P.14	Photo Copy of letter of plaintiffs dated 19.10.2010
15	Ex.P.15	Photo Copy of letter of 1 st plaintiff dated 28.10.2010
16	Ex.P.16	Photo Copy of letter of 3 rd defendant dated 28.10.2010
17	Ex.P.17	Photo Copy of complaint lodged by plaintiffs dated 09.03.2010
18	Ex.P.18	Photo Copy of order DRT-III, Chennai dated 03.01.2011
19	Ex.P.19	Photo Copy of legal notice dated 03.11.2010
20	Ex.P.20	Photo copy of returned covers.

List of the witnesses examined on the side of the defendants: Nil.**List of Exhibits marked on the side of the defendants:** Nil.

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To
The Sub Assistant Registrar
Original Side,
High Court, Madras.