

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 08.01.2018****CORAM****THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN****C.S.No.454 of 2014**

P.Munuswamy

... Plaintiff

Versus

G.Vijayalakshmi

... Defendant

Plaint filed under Order VI Rule 1 of Original Side Rules read with Order VII Rule 1 of Civil Procedure Code praying to pass a judgment and decree:

- a) directing the defendant to pay a sum of Rs.23,00,000/- being the sum payable towards principal in a sum of Rs.20,00,000/- besides interest @ 12% per annum computable from 01.04.2013 up to 01.07.2014 that works out to Rs.3,00,000/- based on the two promissory Notes executed by the defendant dated 09.10.2012 both in the name of the plaintiff and his wife;
- b) directing the defendant to pay a sum of Rs.3,00,000/- towards damages for the mental agony and hardship faced by the plaintiff due to the willful and deliberate act of the defendant who is adopting dilatory tactics by dragging the plaintiff to pillar and post at this age;
- c) For costs of this suit

For Plaintiff : Mr.T.S.Rajamohan

For Defendant : No appearance

J U D G M E N T

The suit has been filed for recovery of sum of Rs.23,00,000/- due, based on two promissory notes for Rs.10,00,000/- each executed by the defendant on 09.10.2012 with interest at 12% per annum from 01.04.2013 up to 01.07.2014 and for a sum of Rs.3,00,000/- for damages towards the mental agony and hardship.

2. The defendant initially did not file a written statement and she was set *ex-parte* on 26.03.2015. Thereafter, the defendant had appeared and filed a written statement admitting a portion of the claim. On an application filed by the defendant, the *ex-parte* order was set aside on 29.04.2015 on condition the defendant pays a sum of Rs.5,00,000/- by 02.06.2015 and another sum of Rs.5,00,000/- by 02.07.2015. It is not in dispute that the said condition has been complied with. Thereafter, the written statement filed by the defendant was taken on file and issues were framed by this Court on 16.03.2016.

3. The suit was posted before the learned Additional Master III,

who was directed to complete the evidence within a period of 12 weeks. It is seen from the proceedings before the learned Additional Master III that the plaintiff filed the proof affidavit and Exhibits P1 to P8 were marked on 07.04.2015. P.W.1 was again examined on 04.04.2016 and the documents were again marked on the said date. Subsequently, there was no representation for the defendant. Hence, the matter was referred to Court on 18.04.2016, by the learned Additional Master III. Thus the matter is posted to-day before me under the caption "Undefended Board".

4. In view of the fact that the defendant had not diligently prosecuted the suit, despite opportunities being afforded to defend the suit, the defendant is set *ex-parte*.

5. Heard the learned counsel appearing for the plaintiff. The two promissory notes have been marked as Ex.P2 and P3. The legal notice issued by the plaintiff and the acknowledgment card had been marked as Ex.P4. Ex.P5 is the copy of the reply notice. From the above documents, it is seen that the execution of the promissory note is admitted by the defendant. The defendant would contend that she borrowed only Rs.10,00,000/- not Rs.20,00,000/- as claimed by the

plaintiff. In the absence of any evidence to prove the contentions of the defendant, the suit has to be decreed. There is no proof for the claim of damages made by the plaintiff. Hence, the claim of damages of Rs.3,00,000/- stands rejected. It is stated that pursuant to the conditional order dated 29.04.2015, the defendant has deposited a sum of Rs.10,00,000/-. The plaintiff is permitted to withdraw the said sum of Rs.10,00,000/-

6. In fine, the suit is decreed for a sum of Rs.13,00,000/- after giving credit to the tune of Rs.10,00,000/- deposited by the defendant with interest on Rs.20,00,000/- at 12% per annum from the date of suit till 02.07.2015 and thereafter on Rs.10,00,000/- at 12% per annum till today and at 6% per annum on Rs.10,00,000/- from today till the date of realization. The plaintiff will be entitled to proportionate costs.

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

P.W.1 P.Munuswamy

List of Exhibits marked on the side of the plaintiff:

Sl. No.	Exhibits	Description of Documents	Date
1	Ex.P1	Certified copy of the sale deed registered as Doc.No.4443/1993 at SRO, Sembium	13.09.1993
2	Ex.P2	Original Promissory note	09.10.2012
3	Ex.P3	Original Promissory note	09.10.2012
4	Ex.P4	Copy of the legal notice along with two postal acknowledgment cards sent by the plaintiff's counsel to the defendant	10.06.2013
5	Ex.P5	Copy of the reply notice sent by the defendant's counsel to the plaintiff's counsel	20.06.2013
6	Ex.P6	Rejoinder sent by the plaintiff's counsel to the defendant's counsel	04.07.2013
7	Ex.P7	Original encumbrance Certificate	23.06.2014
8	Ex.P8	Original affidavit of Mrs.Kalaivani	04.07.2014

List of the witnesses examined on the side of the defendant: **Nil**

List of Exhibits marked on the side of the defendant: **Nil**

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Index : Yes/ No

Internet : Yes/ No

Speaking Order/ Non-speaking Order

To

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

R.SUBRAMANIAN, J.

jv



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