

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 03.07.2018

PRONOUNCED ON: 13.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.197 of 2015

Aban Infrastructure Limited (previously
Aban Infrastructure Private Limited)
represented by its Authorised Signatory
N.V.Purandiran, Chennai-8

Plaintiff

Vs

1. Trade line, partnership firm, represented by its
Partner, Palayam Prabhakar Prashanth, Chennai-18
2. Palayam Prabhakar Prashanth
3. Githanjali Prashanth
4. Varun Prashanth

Defendants

Prayer:- This Civil Suit is filed under Order IV Rule 1 of Original Side Rules
read with Order VII Rule 1 of CPC, for the reliefs as stated therein.

For Plaintiff : Mr.V.G.Suresh Kumar

For Defendant : Set Exparte

JUDGEMENT

This Civil Suit is filed, seeking a Judgement and Decree, against the
Defendants, for the following reliefs:-

- i. directing the Defendants 1 to 4 jointly and severally to pay the Plaintiff a sum of Rs.1,32,90,600/- (Rupees one crore thirty two lakhs ninety thousand and six hundred only) together with interest a 23% p.a. on the sum of Rs.1,15,00,000/- from the date of the plaint till the date of realisation.
- ii. directing the Defendants to pay the Plaintiff the costs of the suit.

2. The case of the Plaintiff is as follows:-

a. The Plaintiff is a Private Limited Company, registered under the Companies Act, 1956. The 1st Defendant is a partnership firm and the 2nd and 3rd Defendants are its partners. The 4th Defendant is the son of the 2nd Defendant. The 1st Defendant entered into a loan agreement with the Plaintiff on 13.01.2010 for a sum of Rs.1,15,00,000/- on the terms specified therein. The 1st Defendant executed a promissory note, evidencing the borrowing a sum of Rs.1,15,00,000/- in favour of the Plaintiff on the same day, promising to pay the said sum with interest at 20% p.a. The 2nd Defendant had also executed a guarantee deed in favour of the Plaintiff, guaranteeing repayment of the loan with interest thereon on the same day. The 1st Defendant had effected payments as shown in the statement of accounts towards. Thereafter, interest was not paid and a cheque towards interest dated 26.7.2013 was dishonoured. As on 31.12.2014, there was an arrears of interest to the tune of Rs.17,47,534/. As on the date of filing of the suit, the arrears of interest of Rs.17,90,584/- was due and payable by the Defendants, apart from the principal amount.

b. A fresh repayment schedule was also executed by the Defendants and appended to the loan agreement. Accordingly, a sum of Rs.2,30,000/- became payable by the Defendants every month. The entire principal amount

should have been paid on or before 10.1.2013 and as the same was not paid, in terms of the Clause 5 of the Memorandum, the Defendants are liable to pay interest at 23% p.a. on and from 11.1.2013. However, the Defendants defaulted in repayment of the loan and hence, the Plaintiff issued a letter to the 1st Defendant on 28.06.2014, calling upon the Defendants to effect repayment. By reply dated 11.07.2014, the 1st Defendant promised to pay the entire outstanding to the Plaintiff. On and from 1.07.2014, there had been no payment by the Defendants, except for two payments of Rs.2,00,000/- on 31.12.2014 and 25.2.2015. Hence, the Plaintiff issued a notice to the Defendants on 16.1.2015, calling upon the Defendants to pay the amounts due to the Plaintiff together with interest. The 2nd Defendant issued a reply dated 28.1.2015, stating that repayment would be honoured. However, the Defendants did not pay any amount thereafter. In such circumstances, this civil suit has been filed, seeking the reliefs as stated above.

3. Though service of notice on the Defendants 1, 2 and 4 and the 3rd Defendant was completed on 12.05.2015 and 01.09.2015, respectively, the Defendants did not choose to file their written statement and hence, the matter was posted under the caption 'Undefended Board'. Thereafter, after several hearings, for non filing of the written statement, the Defendants were set exparte, by order dated 09.11.2017 and recording of exparte evidence was ordered. Since the borrowal was for commercial purposes, jurisdiction of this Court is attracted.

4. Accordingly, the authorised signatory of the Plaintiff Company,

N.V.Purandiran has filed the proof affidavit for his chief examination and

receipt of 13 documents as documentary evidence to prove the suit claim. In the Evidence, he examined himself as PW.1 and marked Exs.P1 to P13 as documentary evidence in order to prove the suit claim.

5. In the absence of evidence on the side of the Defendants, this Court can therefore only examine the evidence produced by the Plaintiff. The documents marked by the Plaintiff, viz. Ex.P1 to Ex.P13, establish the suit claim as prayed for.

6. Considering the oral and documentary evidence, viz. Ex.P1 to Ex.P13 adduced by PW.1, this Court is of the view that the plaintiff has proved the suit claim and hence, the Plaintiff is entitled for the reliefs, as asked for. Accordingly, this civil suit is decreed as prayed for, with costs. Time for payment is three months.

13.07.2018

Index:Yes/No
Web:Yes/No
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1. List of Witnesses Examined on the side of the Plaintiff:-

1. P.W.1 - N.V.Purandiran

2. List of Exhibits Marked on the side of the Plaintiff:-

1. Ex.P1 is the board resolution of the Plaintiff.

2. Ex.P2 is the copy of deed of partnership entered into by the Defendants 2 to 4 in respect of the 1st Defendant firm dated 1.1.2008.

3. Ex.P3 is the minutes of meeting of the partners of the 1st Defendant firm dated 11.1.2010.

4. Ex.P4 is the loan agreement dated 13.1.2010.

5. Ex.P5 is the promissory note.
6. Ex.P6 is the guarantee deed executed by the 1st Defendant in favour of the Plaintiff.
7. Ex.P7 is the fresh repayment Schedule.
8. Ex.P8 is the true office copy of the letter dated 25.6.2014 issued by the Plaintiff to the 1st Defendant.
9. Ex.P9 is the reply letter dated 11.7.2014.
- 10.Ex.P10 is the true office copy of the reminder letter dated 24.07.2014.
- 11.Ex.P11 is the copy of the dishonoured cheque and the return memo.
- 12.Ex.P12 is the true copy of the legal notice dated 16.1.2015 issued by the Plaintiff to the Defendants.
- 13.Ex.P13 is the reply letter dated 28.1.2015.
3. List of Witnesses Examined on the side of the defendants:-
Nil
4. List of Exhibits Marked on the side of the defendants:-
Nil

सत्यमेव जयते

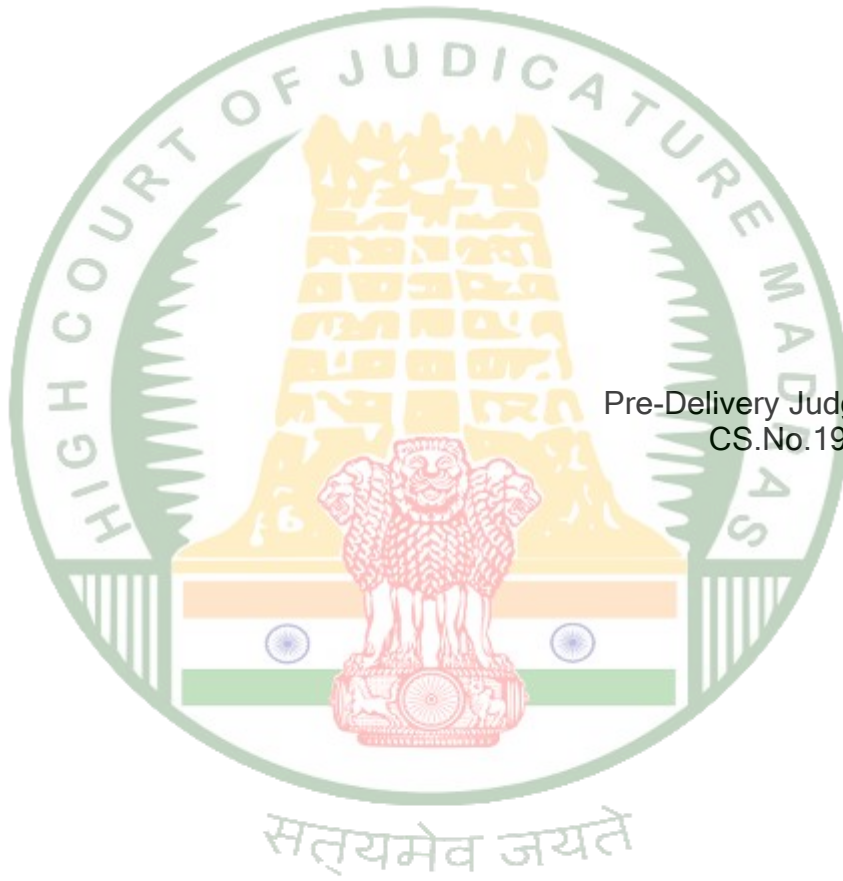
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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
CS.No.197 of 2015

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