

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2018

CORAM

THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

C.S. No. 350 of 2016

P. Sivakumar ... Plaintiff
 Vs.
 K. Vinothkumar ... Defendant

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

- (a) Directing the defendant to pay a sum of Rs.25,01,250/- together with interest at the rate of 30% per annum Rs.14,50,000/- from the date of plaint till realization; and
- (b) For the cost of the suit;

For Plaintiff : M/s. S. Sadasharam

For Defendant : No Appearance

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JUDGMENT

The Plaintiff instituted this suit for recovery of a sum of Rs.25,01,250/- from the Defendant together with interest at the rate of 30% per annum Rs.14,50,000/- from the date of plaint till realization.

2. The summons issued through Court to the Defendant had been

returned unserved with the endorsement of the bailiff that the Defendant had gone to Kerela and in respect of the private notice permitted, the Plaintiff filed affidavit of service with copy of notice and acknowledgment card, which has been recorded by the Master as service completed on 01.11.2016. Since the Defendant had not filed Written Statement, he was set exparte on 02.11.2017 and the matter was posted before the Additional Master-I for recording evidence.

3. The Plaintiff, who was examined as P.W.1 has filed his proof affidavit dated 13.11.2017 along with the following documents:-

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description of documents</i>
1	P-1	Photocopy of the counter foil for depositing a sum of Rs.5,00,000/- in the name of the Defendant by the Plaintiff to Indian Bank, Open University Branch, Saidapet, Chennai dated 23.04.2013.
2	P-2	Photocopy of the counter foil for depositing a sum of Rs.4,00,000/- in the name of the Defendant by the Plaintiff to Indian Bank, Open University Branch, Saidapet, Chennai dated 23.04.2013.
3	P-3	Original cheque bearing No.001716 for Rs.3,00,000/- by Defendant to the Plaintiff dated 30.04.2015.
4	P-4	Original return memo by Axis Bank Limited to the Plaintiff dated 12.05.2015.
5	P-5	Original cheque bearing No.001718 for Rs.5,00,000/- by Defendant to the Plaintiff dated 20.07.2015.
6	P-6	Original cheque bearing No.001719 for Rs.5,00,000/- by Defendant to the Plaintiff dated 20.07.2015.
7	P-7	Original cheque bearing No.001720 for Rs.3,00,000/- by Defendant to the Plaintiff dated 20.07.2015.
8	P-8	Original return memo by Axis Bank Limited to the Plaintiff dated 21.07.2015.
9	P-9	Copy of notice by Plaintiff's Counsel to the Defendant dated 01.08.2015.
10	P-10	Photocopy of the delivery report of the notice by Plaintiff dated

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description of documents</i>
		24.08.2015.

4. The case of the Plaintiff is that he had paid a sum of Rs.14,50,000/- to the Defendant for securing employment for him and as the Defendant failed in that regard, the Plaintiff had demanded the said sum of Rs.14,50,000/- from him. In furtherance thereto, the Plaintiff had issued following cheques drawn on Axis Bank, Kovilpatti, towards refund of that amount with interest:-

<i>Date</i>	<i>Cheque No.</i>	<i>Amount (in Rs.)</i>
30.04.2015	001716	3,00,000
20.07.2015	001718	5,00,000
20.07.2015	001719	5,00,000
20.07.2015	001720	3,00,000
	Total	16,00,000

5. When the aforesaid cheques were presented for payment to AXIS Bank Limited, Kilpauk Branch, Poonamallee High Road, Chennai-600 010, the same were returned with memo dated 12.05.2015 (Ex. P-4) stating that there was insufficient funds in the account of the Defendant.

6. When the Plaintiff contacted the Defendant over phone, the Defendant instructed him to present all the four cheques for realization and accordingly, when the same were presented into his account in AXIS Bank Limited, Kilpauk Branch, Poonamallee High Road, Chennai-600 010 on 21.07.2015, the same were returned by memo dated 21.07.2015 (Ex. P-8).

The Plaintiff through his Advocate issued a legal notice dated 21.08.2015 (Ex. P-9) calling upon the Defendant to pay the sum of Rs.14,50,000/- with interest at the rate of 12% per annum, aggregating to Rs.18,56,000 as on 01.08.2015 within a period of 15 days from the date of receipt of the said notice. The Defendant received the same as seen from the postal acknowledgment card (Ex. P-10). As the Defendant failed to comply with the demand of the Plaintiff, the suit has been instituted for the aforesaid relief.

7. It is seen from the averments made in the plaint corroborated with the evidence of P.W.1 and the documents marked as Exs. P-1 to P-10, that the Plaintiff proved his claim to the extent that the Defendant is liable to pay a sum of Rs.16,00,000/- on the following cheques:-

<i>Date</i>	<i>Cheque No.</i>	<i>Amount (in Rs.)</i>
30.04.2015	001716	3,00,000
20.07.2015	001718	5,00,000
20.07.2015	001719	5,00,000
20.07.2015	001720	3,00,000
	Total	16,00,000

The aggregate sum of Rs.16,00,000/- issued by way of cheques by the Defendant to the Plaintiff is found to be restoration of the benefit that he had received under the void agreement in terms of Section 65 of the Indian Contract Act, 1872. Though the Plaintiff has claimed interest at the rate of 36% per annum, no such contract to that effect has been produced. Having regard to the fact that the aforesaid cheques for the value of

Rs.16,00,000/-, which have been dishonoured, include interest on the sum of Rs.14,50,000/- said to have been paid by the Plaintiff to the Defendant, the Plaintiff shall not be entitled to any interest on that sum till the filing of the suit. In terms of Section 34 of the Code of Civil Procedure, 1908, the Plaintiff shall be entitled to interest on the value of the aforesaid cheques for Rs.16,00,000/- at the rate of 6% per annum from the date of suit till realization in full.

In the result the Plaintiff is entitled to judgment and decree for a sum of Rs.16,00,000/- with interest at the rate of 6% per annum from the date of suit till realization in full with proportionate costs.

31.10.2018

vjt

Index : Yes/ No

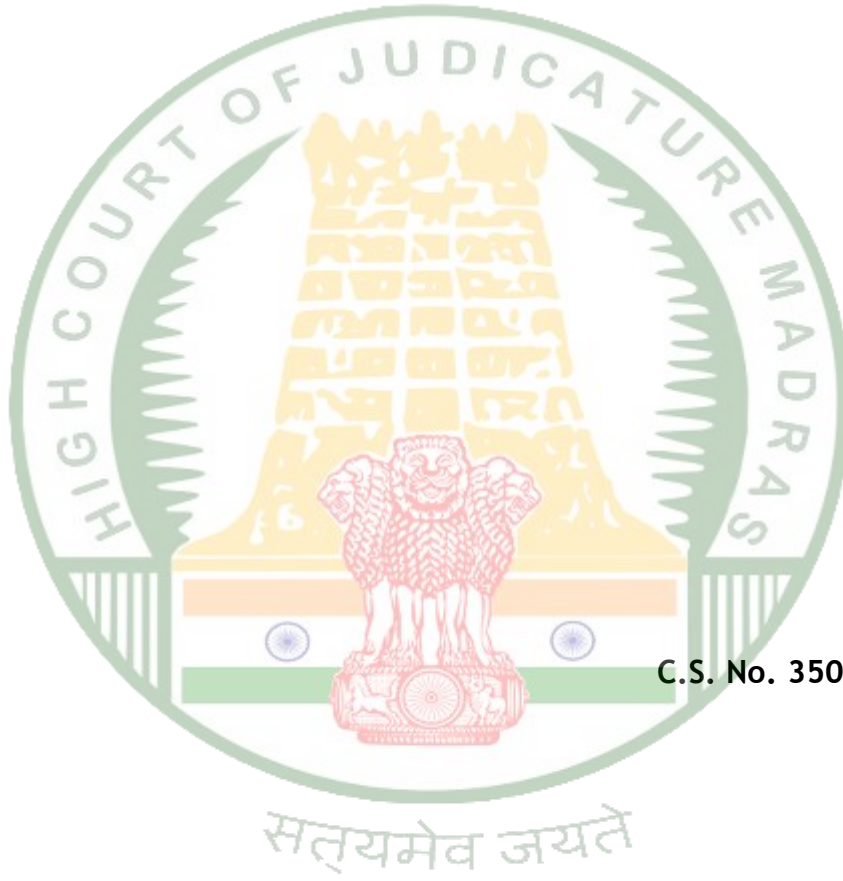
Internet : Yes/ No

Speaking Order/ Non-speaking Order

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P.D. AUDIKESAVALU, J.

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