IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : **09.03.2018**

JUDGMENT PRONOUNCED ON : **06.04.2018**

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.499 of 2003

M/s.Kamakoti and Kamakoti
by its sole Proprietor
G.V.Ramakrishnan
20, Venkataraman Street,
Srinivasa Avenue, R.A.Puram,
Chennai - 600 028. ... Plaintiff

Vs.

Bank of Baroda,
rep. by its Chief Manager
E.C.Street Branch,
Angappa Naicken Street,
Chennai - 600 001. ... Defendant

PRAYER :- Plaint filed under Order VII Rule 1 of Code of Civil Procedure read with Order IV Rule 1 of O.S. Rules, praying for the following judgment and decree:-

(a) directing the defendant to pay a sum of Rs.50,00,000/- being the damages payable by the defendant to the plaintiff together with interest at the rate of 24% per annum from the date of the decree till the date of realization;

(b) directing the defendant to pay the costs of the suit.

For Plaintiff : Mr.M.Sridhar

For Defendant : Mr.K.S.V.Prasad

JUDGMENT

The suit has been laid for recovery of a sum of Rs.50,00,000/- being the damages payable by the defendant to the plaintiff for the alleged wrongful dishonour of the cheque issued by the plaintiff.

The brief facts as avered in the plaint are as follows:-

2. The plaintiff is a sole proprietorship concern. The plaintiff commenced operations in the year 1992. The original business enterprise known as Kamakoti and Company was a partnership firm where the proprietor of the present plaintiff Mr.G.V.Ramakrishnan and his father were the partners. The said partnership firm was a member of the Madras Stock Exchange and was doing business as a stock broker from the year 1980. Subsequently, the present concern viz., Kamakoti and Kamakoti came into existence. It had developed its own distinct clientele and had a reputation of being a responsible and trustworthy stock broker in Chennai.

3. According to the plaintiff, the average turnover of the plaintiff is about Rs.30 Crores per annum. The plaintiff has been adopting a corporate style of functioning. During the year 1997, the plaintiff wanted to utilize the policy of bringing in a corporate entity as a member of the stock exchange and also for the

purpose of saving capital gains tax on the sale or transfer of the membership ticket in the stock exchange by utilising the opportunity provided by the Income Tax Department, which had proposed a waiver of capital gains tax on conversion of sole proprietorship and partnership concerns which were carrying on business as stock brokers into corporate entities by inviting outside investments, the plaintiff had taken steps to garner outside investments so as to convert the plaintiff into a corporate entity.

4. According to the plaintiff, the proprietor of the plaintiff was approached by M/s.Jaishankar Associates from Mumbai through one Mr.S.Venkataraman for the purpose of converting a sole proprietary business into corporate entity and the said M/s.Jaishankar Associates had agreed to invest a sum of Rs.42.50 lakhs as their contribution for converting the sole proprietary concern into an corporate entity. The plaintiff would further claim that in order to meet the exigencies of business, the plaintiff had approached the defendant Bank and requested the defendant Bank to extend temporary overdraft facilities. The defendant Bank was also extending the said facilities, considering the overall turnover and the reputation of the plaintiff. According to the plaintiff, every time the defendant Bank sanctioned temporary

overdraft facilities, the plaintiff had been repaying the same promptly.

5. It is the claim of the plaintiff that on 17.03.1997, the plaintiff had requested a temporary overdraft facility for Rs.40 lakhs and the same was sanctioned by the defendant. According to the plaintiff, this amount of Rs.40 lakhs was sought for expecting the ensuing investment of Rs.42.50 laksh by M/s.Jaishankar Associates. Since the capital gains exemption was available only upto 31.03.1997 there was a sense of urgency in the entire plan. According to the plaintiff, even in the letter dated 17.03.1997 by which a request was made by the plaintiff to the defendant Bank for sanctioning of temporary overdraft facilities, it was pointed out by the plaintiff about the impending contribution to be made by M/s.Jaishankar Associates to the plaintiff with a view to convert the plaintiff into a corporate entity.

6. On 19.03.1997, according to the plaintiff, when the proprietor of the plaintiff approached the defendant Bank and after discussion with the defendant Bank it had requested to sanction a temporary overdraft facility to the tune of Rs.29 lakhs instead of Rs.40 lakhs as sought for in the letter dated 17.03.1997. The plaintiff would also claim that it had given a detailed statement showing

the receivables and the payables. The list of receivables included the amount that was expected to be invested by M/s.Jaishankar Associates viz.,a sum of Rs.42.50 lakhs.

7. The plaintiff would contend that on 19.03.1997, the defendant Bank had issued 23 pay orders totaling a sum of Rs.28,51,272.20/- and debited the plaintiff's account with a sum of Rs.28,52,976.20/- which included the pay order commission. It is the further case of the plaintiff that on 26.03.1997, the plaintiff received a letter from one Mr.S.Venkataraman, the person who was coordinating the efforts for converting of plaintiff into a corporate entity seeking an initial payment of Rs.18,000/- towards travel and communication expenses. It is claimed that the said Mr.S.Venkataraman wanted to impress upon M/s.Jaishankar Associates to invest a sum of Rs.42.50 lakhs before 31.03.1997 to enable the plaintiff to enjoy the capital gains exemption which was available at that point of time. The plaintiff on the basis of the request made by Mr.S.Venkataraman had issued a cheque dated 26.03.1997 for a sum of Rs.18,000/- and on 27.03.1997, the plaintiff had informed the Bank that the temporary overdraft facilities sanctioned by the Bank will stand reduced by a cash remittance of Rs.1.20 lakhs into the account and also by cancellation of Bankers cheque for a sum of Rs.1,99,980/-. Thus, the overall

balance that was available in the current account of the plaintiff was about Rs.3,37,003.80/- out of the sanctioned amount of Rs.29 lakhs.

8. It is claimed that the cheque issued by the plaintiff in favour of Mr.S.Venkataraman for Rs.18,000/- was dishonoured by the Bank on the ground that the plaintiff's account did not have sufficient funds on 27.03.1997. This dishonour according to the plaintiff had resulted in the entire process of conversion of the plaintiff into corporate entity being derailed and Mr.S.Venkataraman, who was the person who was negotiating the deal, withdrew from the deal, inasmuch as the plaintiff was unable to pay even a paltry sum of Rs.18,000/- to him. Therefore, according to the plaintiff, the dishonour of the cheque by the defendant Bank on a wrong premise that the plaintiff's account did not have sufficient funds on 27.03.1997 lead to a huge loss and the plaintiff could not carry out the object of its conversion into a corporate entity. This had resulted in the plaintiff losing heavily.

9. Therefore, the plaintiff had sent a legal notice to the Bank claiming that this action of the defendant bank in dishonouring the cheque has had an undesired effect of the entire process being scuttled. The defendant Bank had sent a reply on 17.11.1997 to the

legal notice issued by the plaintiff on 28.03.1997, wherein, it was claimed that the overdraft that was sanctioned was a specific overdraft and not a temporary overdraft for a particular limit. The Bank took a stand that the overdraft would cover only the amounts shown as payables in the statement furnished by the plaintiff to the Bank and not anything over and above that. This stand of the defendant Bank, according to the plaintiff, is an attempt to wriggle out of the situation. Having dishonoured a cheque unjustly and unlawfully contrary to the Banking norms as well as to the contractual obligations, plaintiff would claim that the Bank is attempting to wriggle out of its obligation by taking a novel plea of specific overdraft.

10. Contending that the dishonour of the cheque had resulted in huge losses to the plaintiff, the plaintiff had come forward with the suit for recovery of a sum of Rs.50 lakhs as damages. It is also claimed by the plaintiff that between the period from 25.03.1997 to 31.03.1997, the defendant Bank had passed various cheques in the very same savings bank account No.6157. Therefore, the claim of the defendant Bank that what was sanctioned was only a specific overdraft facility and it would cover only payment of the amounts shown as payables in the statement provided by the plaintiff to the defendant

Bank. The claim of the defendant Bank is characterized as nothing but an attempt to burke facts and cover up the wrong dishonour of the cheque. The plaintiff would quantify the loss at Rs.77.5 lakhs but restricted its claim to Rs.50 lakhs.

The defendant would resist the suit contending as follows:

11. The defendant Bank would submit that the suit itself as framed is not maintainable in this Court. The defendant Bank had already approached the Debt Recovery Tribunal, Chennai for recovery of the debts due to it from the plaintiff and it is for the plaintiff to have raised the above claim for damages before the Debt Recovery Tribunal as counter claim in original application filed by the defendant Bank. The defendant Bank also denied the claim of the plaintiff that it has a turnover of Rs.30 Crores per annum and it adopted a corporate style of functioning.

12. The claim of the plaintiff that one Mr.Jaishankar of M/s.Jaishankar Associates had promised to pay Rs.42.50 lakhs as their contribution for conversion of the plaintiff into a corporate entity is also denied. The claim of the plaintiff that the defendant Bank has been extending temporary overdraft facilities generally every time when the plaintiff

requested is also denied. The defendant would also deny the claim of the plaintiff that the defendant had sanctioned a temporary overdraft facility to the tune of Rs.29 lakhs to the plaintiff sometime in March 1997.

13. According to the defendant, the plaintiff had approached the defendant for seeking temporary overdraft facilities for meeting some of its urgent financial commitments and the defendant had infact sanctioned a specific overdraft facility, in order to enable the plaintiff to pay the amounts shown as payables in its letter dated 19.03.1997. It is also claimed by the defendant that the amounts shown as miscellaneous in the statement furnished along with the letter dated 17.03.1997 was dis-allowed and it was only a sum of Rs. 28,51,272.20/- that was sanctioned as temporary overdraft during March 1997.

14. It is also claimed that the plaintiff had more than one account with the defendant Bank and in December 1994, the plaintiff was sanctioned general overdraft facility for Rs.2 lakhs for which he was required to execute a demand promissory note, letter of Continuing Security, letter of recording against uncleared effects for Rs.2,00,000/-, letter of undertaking not to divert funds and other documents as security for repayment of the said loan.

15. The defendant would further claim that the request for sanction of temporary overdraft for Rs.40 lakhs was not acceptable to the defendant Bank and therefore, the plaintiff came forward to reduce its claim to Rs.29 lakhs that too for a period of 11 days only. The plaintiff had also given a statement with a list of receivables and payables as on 31.03.1997 and had assured the defendant that the amount payable would not exceed the amount mentioned in the statement and hence, the defendant had sanctioned specific temporary overdraft in order to enable the plaintiff to repay the 22 persons who had been shown as creditors or persons to whom the amounts were payable by the plaintiff.

16. It is also the case of the defendant that on the same day i.e., on 20.03.1997, pay orders were issued to all 22 persons except the sum of Rs.48,727.80/- shown as miscellaneous amounts. Therefore, according to the defendant, the overdraft facilities sanctioned on 20.03.1997 was only for an amount of Rs.28,52,976.20/- and it was specific overdraft facility and not a general overdraft as claimed by the plaintiff.

17. The defendant would also point out that though the plaintiff had claimed that M/s.Jaishankar Associates were to pay a sum of Rs.42.50 lakhs. The said payment

never came through and a letter dated 27.03.1997 claimed to be written by one Mr.S.Venkataraman of Tiruvanmiyur would itself shown that there was some delay in arranging the said payment. It is also claimed that the letter dated 27.03.1997 said to have been written by Mr.S.Venkataraman, wherein Mr.S.Venkataraman claims that because of the dishonour of the cheque he would not be proceeding with the arrangement for conversion of the plaintiff into a corporate entity by attracting investment from M/s.Jaishankar Associates. This letter of Mr.S.Venkataraman is claimed to have been drafted to suit the convenience of the plaintiff.

18. It is also pointed out by the defendant that on 16.04.1997, the plaintiff issued a cheque for Rs.1,59,427.75/- favouring M/s.Raji Share Consultants since this amount was in full and final settlement in the place of the Bankers cheque that was cancelled on 24.03.1997, the defendant Bank had cleared the said cheque on a specific request of the plaintiff. Therefore, according to the defendant Bank, the dishonour of the cheque was fully justified as it was not within the arrangement contemplated between the parties.

19. It is also claimed that the cheque was not dishonoured on the ground that there was no sufficient funds but the dishonour was on the ground that it had

exceeded arrangement. The defendant would also point out that in any event the damages claimed by the plaintiff are fanciful and there is no basis for the said claim. The plaint also does not show the basis on which the damages is arrived at Rs.50 lakhs. From the very nature of the transaction that the plaintiff had in all its Bank accounts, it would be clear that the claim of the plaintiff that it had a turnover of Rs.30 Crores per annum is nothing but false and the plaintiff has not sustained any loss more particularly a loss of about Rs.50 lakhs.

20. On the above pleadings the following issues were framed by this Court.

1. Has not the defendant bank erroneously dishonoured the cheque?

2. Whether there was any damage or loss to the plaintiff due to the return of the cheque?

3. Whether the defendant acted in a negligent manner or with malafide intention of damaging the plaintiff's reputation in the eye of any person?

4. Whether the defendant is liable to pay Rs.50 lakhs or any amount to the plaintiff?

5. To what other reliefs, the parties are entitled to?

21. At trial the Proprietor of the plaintiff was examined as PW1 and one Mr.K.Govindarajan, Chief Manager of the defendant Bank was examined as DW1. Exs.P1 to P12 were marked on the side of the plaintiff and Exs.D1 to D47 were marked on the side of the defendant.

Issue Nos.1 and 3:

22. The sum and substance of the plaintiff's claim is as follows:

(i) On 19.03.1997 the defendant Bank had sanctioned temporary overdraft facilities (General) for Rs.29 lakhs.

(ii) Out of the said 29 lakhs the defendant Bank had issued pay order to the tune of Rs.28,52,976.20/- in favour of known persons/ firms named in the list submitted by the plaintiff.

(iii) On 21.03.1997, the defendant Bank had received a sum of Rs.1,99,980/- by way of transfer due to cancellation of one of the pay orders issued by the defendant Bank.

(iv) On 24.03.1997, there was a cash deposit of Rs.1,20,000/- to Savings Bank Account No.6157.

(v) On 25.03.1997, the defendant Bank had cleared two inward cheques for Rs.6,739/-

(vi) On 26.03.1997, the defendant Bank had cleared nearly three inward cheques totaling a sum of Rs.14,500/-

(vii) Again on 29.03.1997, 31.03.1997, 02.04.1997 the defendant Bank had cleared inward cheques.

23. Pointing out the fact that inward cheques for various amounts have been cleared between 25.03.1997 to 29.04.1997, the plaintiff would contend that what was sanctioned on 20.03.1997 was not a specific overdraft but a general overdraft for a sum of Rs.29 lakhs.

24. The statement of accounts of the Current Account No.6157 maintained by the plaintiff with the 1st defendant Bank has been filed as Ex.D44. The said statement of accounts according to the plaintiff, demonstrates that the defendant Bank has been honouring inward cheques on subsequent dates for various amounts and the said conduct of the defendant would show that what was sanctioned on 20.03.1997 was a general overdraft and not a specific overdraft as claimed by the defendant. In fact, on the dishonour of the cheque and on the receipt of the letter by Mr.S.Venkataraman viz., Ex.P5 the plaintiff had issued a legal notice on 28.03.1997 itself and on 29.03.1997 under Ex.P8 the defendant Bank had claimed that the matter has been referred to the Head Office and the same will be sorted out in the very near future. In Ex.P8, the Bank would state that the matter is under very active

consideration and they will revert in due course. Ultimately a reply notice came to be issued by the defendant Bank on 17.11.1997 which prompted the plaintiff to come forward with the present suit.

25. It is not in dispute that the plaintiff had by its letter dated 17.03.1997, required a temporary overdraft facility of Rs.40 lakhs in its account No.6157. Apparently the said request was not sanctioned by the defendant Bank, therefore, the plaintiff had come up with the modified request for sanction of a Temporary overdraft of Rs.29 laksh for a period of 11 days and in the communication dated 19.03.1997, the plaintiff had shown a total sum of Rs.29 lakhs being the amounts payable by it to others and the said letter also shows a sum of Rs.57,08,824.62/- as the amounts receivable by it on or before 31.03.1997. The said receivables include a sum of Rs.42.50 lakhs from one M/s.Jaishankar Associates. According to the plaintiff, this receivable of Rs.42.50 lakhs was to have been paid by M/s.Jaishankar Associates at the instance of Mr.S.Venkataraman. Since the cheque issued to Mr.S.Venkataraman by the plaintiff was dishonoured, Mr.S.Venkataraman had withdrawn from the process and this has led to the plaintiff being unable to realize the sum of Rs.42.50 lakhs that was promised by M/s.Jaishankar Associates.

26. The defendant Bank would contend that what was sanctioned was only a specific overdraft with a view to enable the plaintiff to tide over the crisis and to make sure that the payments are made by 31.03.1997. It was not a general overdraft facility and that is the reason why the current account of the plaintiff was debited with only a sum of Rs.28,52,976.20/- on 20.03.1997 and not Rs.29 lakhs. According to the defendant Bank, if only the Bank had sanctioned a overdraft facility at Rs.29 lakhs the entire Rs.29 lakhs would have been debited and interest would have become chargeable on Rs.29 lakhs from the date on which it is debited. Therefore, the very fact that the debit was made only to the extent of Rs.28,52,976/- on 20.03.1997 would itself show that the overdraft sanctioned was only a specific overdraft and not a general overdraft.

27. Mr.K.S.V.Prasad, learned counsel appearing for the Bank would also invite my attention to the fact that the Bank had issued 22 pay orders on the same day to enable the plaintiff to discharge the amount to various parties. Insofar as the claim of the plaintiff that the conduct of the defendant Bank in honouring various cheques between 24.03.1997 to 15.04.1997 would show that what was granted was not a specific temporary overdraft facility but was a general overdraft facility for a sum

of Rs.29 lakhs, Mr.K.S.V.Prasad, learned counsel appearing for the defendant Bank would submit that all these cheques were honoured at the special request of the plaintiff to enable him to tide over the crisis. The fact that Bank obliged the plaintiff cannot be put against the Bank. Mr.K.S.V.Prasad would also point out the absence of any document securing the above loan in favour of the Bank.

28. According to him, the fact that even for a overdraft facility of Rs.2 lakhs, the plaintiff was asked to execute atleast six documents and the suit transaction viz., the specific overdraft facility which was sanctioned in the year 1997 is not secured by execution of any document by the plaintiff by itself, according to the learned counsel for the defendant, would show that what was granted was only a specific overdraft facility for a limited period of 11 days and not a general overdraft.

29. Mr.K.S.V.Prasad would also invite the attention of the Court to the letter dated 19.03.1997 which is marked as Ex.D11. Relying upon the note made by the concerned branch Manager Mr.K.S.V.Prasad would submit that what was sanctioned was only a temporary specific overdraft facility. He would also point out that the entry shown as miscellaneous in the list of payables

appended to the letter dated 19.03.1997 has been circled and the request to include it as amounts payable has been rejected by the Bank. Mr.K.S.V.Prasad would also contend that the cheque was returned only on the ground that it exceeds arrangement.

30. Mr.M.Sridhar, learned counsel appearing for the plaintiff would however point out that the defendant bank had infact honoured various cheques issued by the plaintiff to various persons who are not shown in the list submitted to the Bank on 19.03.1997. According to Mr.M.Sridhar, the statement of accounts of the current account No.6157 filed by the defendant Bank as Ex.D44 would show that the defendant Bank had cleared various inward cheques between 25.03.1997 and 31.03.1997. This conduct would by itself show that the overdraft sanctioned was not a specific overdraft but it was a temporary general overdraft. Therefore, according to him, the Bank was clearly in error in refusing to honour the cheque issued by the plaintiff on 26.03.1997 in favour of Mr.S.Venkataraman.

31. The evidence of DW1 in this regard is as follows:

> *"As far as the defendant bank's practice, we considered 50% of receivables for Temporary Overdraft limit and as per*

the payable list the defendant bank immediately released the funds to the tune of Rs.29 lakhs but one entry of Rs.48,727.80 was not released since the name of the beneficiary was not given by the account holder. It is mentioned as miscellaneous in Ex.D11. So the said specific TOD limit was exhausted on the same day itself. The defendant bank has given to the account holder, demand drafts and bankers cheque amounting Rs.28,52,976.20 favouring the persons in the list under payables. The matter of miscellaneous payment mentioned in payables was discussed with the account holder and the same was not allowed since he has taken the demand drafts and bankers cheque for the remaining persons listed in the payable list. He is well aware of this miscellaneous amount not being allowed. "

32. DW1 has also spoken to the fact that no document has been taken for the specific overdraft facility sanctioned to the plaintiff on 19.03.1997, inasmuch as the same was only for a short period. DW1 has also explained the circumstances under which the cheques issued by the plaintiff came to be honoured on various dates after the dishonour of the cheque issued to Mr.S.Venkataraman on 27.03.1997.

33. To the specific suggestion put by the counsel for the plaintiff in his cross examination, DW1 has said that those cheques were honoured for 3 reasons. (i) The amount is very small and the customers names will be spoiled, (ii) Customers have requested the cheque to be passed on a day to day basis by oral request and (iii) Customer had another account where he had balance in the account which gave comfort to the Manager to pass small amount cheques of this account.

34. The honouring a cheque for Rs.1,59,427.75/- issued in favour of M/s.Raji Share Consultants is also explained by DW1 and it is stated that it was pursuant to a specific request and the pay order issued in the name of M/s.Raji Share Consultants was cancelled earlier and upon request by the plaintiff the said cheque for Rs.1,59,427.75/- has been passed by the defendant Bank.

35. Therefore, according to Mr.K.S.V.Prasad, once it is shown that the sanction accorded on 19.03.1997 was only a specific overdraft covering certain items of amounts that were due and payable by the plaintiff to 3rd parties who were named in the letter dated 19.03.1997, the defendant cannot be faulted for dishonouring the cheque dated 26.03.1997. The documents produced by the defendant particularly the letter dated 03.07.1997 marked

as Ex.D17, letter dated 01.03.1997 marked as Ex.D19, letters dated 06.08.1997 marked as Ex.D20, 01.09.1997 marked as Ex.D22, 26.08.1997 marked as ex.D21, 04.08.1997 marked as Ex.D23, letter dated 19.08.1997 marked as Ex.D24, letter dated 04.09.1997 marked as Ex.D26,letter dated 14.10.1997 marked as Ex.D27, letter dated 14.10.1997 marked as Ex.D27 would show that the relationship between the plaintiff and the Bank was very cordial and the defendant Bank had been accepting requests for sanctioning of temporary overdraft facilities by the plaintiff almost at the drop of the hat. Several requests made by the plaintiff with reference to his other account viz., Account No.5158 have been honoured by the Bank in the regular course of business even after the plaintiff having caused legal notice to be issued for dishonour of cheque issued to Mr.S.Venkataraman dated 26.03.1997. This conduct, in my considered opinion, would only show that the dishonour of the cheque issued to Mr.S.Venkataraman on 26.03.1997 cannot be treated as either negligent or malafide. The evidence available on record would certainly lead us to the conclusion that what was sanctioned was only a specific overdraft facility and not a general overdraft facility. As already pointed out, if it had been a general overdraft facility the entire amount that is sanctioned would have been debited to the account of the plaintiff and the plaintiff would be allowed to draw whatever amounts it requires over a period of time. But in the case on hand, as could be seen from Ex.D44, the amount debited to the account of the plaintiff is exactly the amount for which pay orders were issued to the defendant on 20.03.1997 and the debit balance has been reduced when certain amount came in by way of cash as well as by way of cancellation of pay orders.

36. Therefore, I am unable to countenance the contention of Mr.Sridhar, learned counsel for the plaintiff that what was sanctioned was a general TOD and not a specific TOD. Therefore, issue Nos.1 and 3 are answered against the plaintiff and in favour of the defendant holding that dishonour of the cheque dated 26.03.1997 issued by the plaintiff in favour of the Mr.S.Venkataraman cannot be said to be erroneous or negligent with a malafide intention of damaging the plaintiff's intention into the eye of any person.

Issue Nos. 2 and 4:

37. Even at the outset, I must point out that there is absolutely no evidence on the side of the plaintiff for the claim of damages. The entire claim of the damages is on the assumption that if only the defendant had not dishonoured the cheque dated 26.03.1997 for a sum of

Rs.18,000/- Mr.S.Venkataraman would have got M/s.Jaishankar Associates to invest a sum of Rs.42.5 lakhs on or before 31.03.1997 in the plaintiff concern thereby the plaintiff concern would have become richer by 42.5 lakhs. Except the interested oral testimony of the plaintiff, there is not even a scrap of paper to even evidence such an arrangement between the plaintiff and Mr.S.Venkataraman or M/s.Jaishankar Associates. The only evidence that could possibly lead to an inference that M/s.Jaishankar Associates had infact agreed to invest in the plaintiffs concern is Ex.D12 by letter dated 27.03.1997 written by Mr.S.Venkataraman, wherein, it is stated that there will be some delay in remitting the sum of Rs.42.5 lakhs as promised by M/s.Jaishankar Associates in Bombay to the account of the plaintiff bearing account No.6157 at Bank of Baroda.

38. Considering the time at which the transaction said to have taken place ie., 1997 the investment of Rs.42.5 lakhs was definitely a huge sum and it is the claim of the plaintiff that there was no written understanding between the parties evidencing such an agreement. This in my considered opinion is wholly unbelievable. Even in the letter dated 27.03.1997 marked as Ex.D13 Mr.S.Venkataraman has said that he is requesting M/s.Jaishankar Associates to remit a certain

amount by local cheque payable at Madras i.e., for sum of Rs.30 lakhs directly to the Account No.6157 at Bank of Baroda. Admittedly this sum has not come into the account. No doubt Mr.Sridhar, learned counsel appearing for the plaintiff would contend that if only the defendant Bank had not dishonoured the cheque the plaintiff would have had the benefit of Rs.42.5 lakhs from M/s.Jaishankar Associates and that inturn would have enabled the plaintiff to become a corporate entity and do flourishing business. This argument is not supported by any evidence. Except a stray reference in Ex.D13, there is nothing on record to show that M/s.Jaishankar Associates had infact agreed to invest a certain amount of money in the plaintiff's concern.

39. In the absence of such evidence to assume that if the defendant had not dishonoured the cheque Mr.S.Venkataraman would have been able to get a investment of Rs.42.5 lakhs from M/s.Jaishankar Associates, the existence or otherwise of which is seriously questioned by the Bank, and the plaintiff would have made great strides in the business would be to assume something which is fortuitous. I do not think a court of law can grant a decree on assumptions. Of course, the plaintiff would claim that the value of membership ticket in Madras stock exchange was Rs.42.50

lakhs and he should be atleast entitled to that value.

40. It is not the case of the plaintiff that there was an agreement for sale of the membership ticket to M/s.Jaishankar Associates. M/s.Jaishankar Associates had not come forward to invest money by 31.03.1997. It is not shown in evidence that M/s.Jaishankar Associates were in fact ready with the money and they did not pursue the transaction because of the dishnour of the cheque issued in favour of Mr.S.Venkataraman. In fact, letter of Mr.S.Venkataraman dated 27.03.1997 marked as Ex.D30 would show that M/s.Jaishankar Associates were not in a position to remit funds as desired by the plaintiff.

41. Therefore, I am constrained to conclude that the plaintiff has not established that it had suffered losses due to the return of the cheque and the quantum of the said loss was about Rs.50 lakhs and the defendant is liable to make out the said loss. Hence, issue Nos.3 and 4 are decided against the plaintiff. Though the defendant Bank had raised the question of jurisdiction I do not think the same need to be gone into inasmuch as no issue has been framed the said question in the suit.

42. In the result, it is found that the plaintiff is not entitled to any relief in the suit and hence, the suit is dismissed, but, however, without costs.

List of the Witnesses examined on the side of the Plaintiff:

PW1 - Mr.G.V.Ramakrishnan

List of Exhibits marked on the side of the Plaintiff:

Sl.No.	*Exhibits*	*Description of documents*	*Date*
1	Ex.P1	The original confidential letter	17.03.1997
2	Ex.P2	The original letter	19.03.1997
3	Ex.P3	The original letter	26.03.1997
4	Ex.P4	The office copy of the letter	29.07.1997
5	Ex.P5	The original letter	27.03.1997
6	Ex.P6	The office copy of the cheque covering letter along with the receipt	27.03.1997
7	Ex.P7	The photocopy of the legal notice	28.03.1997
8	Ex.P8	The original letter	29.03.1997
9	Ex.P9	The original of reply notice	17.11.1997
10	Ex.P10	The copy of the rejoinder	12.12.1997
11	Ex.P11	The original of the legal notice	15.12.1999
12	Ex.P12	The office copy of the reply	15.03.2000

List of the Witnesses examined on the side of the Defendant:

DW1- Mr.K.Govindarajan

List of Exhibits marked on the side of the Defendant:

Sl.No.	*Exhibits*	*Description of documents*	*Date*
1	Ex.D1	The copy of the application filed in DRT by the defendant in O.A.No.874/2000.	--
2	Ex.D2	The copy of reply statement filed by the defendant in the DRT	--

Sl.No.	Exhibits	Description of documents	Date
3	Ex.D3	The pronote filed by the defendant in the DRT	--
4	Ex.D4	The certified copy of letter of continuing security filed by the defendant in the DRT	12.12.1994
5	Ex.D5	The certified copy of the letter	12.12.1994
6	Ex.D6	The certified copy of the letter of undertaking	12.12.1994
7	Ex.D7	The certified copy of the letter of undertaking	12.12.1994
8	Ex.D8	The certified copy of the letter of undertaking	12.12.1994
9	Ex.D9	The certified copy of the letter of undertaking	08.10.1997
10	Ex.D10	The certified copy of letter	17.03.1997
11	Ex.D11	The certified copy of letter	19.03.1997
12	Ex.D12	The certified copy of letter	27.03.1997
13	Ex.D13	The certified copy of letter	27.03.1997
14	Ex.D14	The certified copy of letter	28.03.1997
15	Ex.D15	The certified copy of letter	28.03.1997
16	Ex.D16	The certified copy of letter	16.04.1997
17	Ex.D17	The certified copy of the letter	03.07.1997
18	Ex.D18	The certified copy of the letter	07.07.1997
19	Ex.D19	The certified copy of the letter	01.03.1997
20	Ex.D20	The certified copy of the letter	06.08.1997
21	Ex.D21	The certified copy of the letter	26.08.1997
22	Ex.D22	The certified copy of the letter	01.09.1997
23	Ex.D23	The certified copy of the letter	04.08.1997
24	Ex.D24	The certified copy of the letter	19.08.1997
25	Ex.D25	The certified copy of the letter	04.09.1997
26	Ex.D26	The certified copy of the letter	04.09.1997
27	Ex.D27	The certified copy of the letter	14.10.1997
28	Ex.D28	The certified copy of the letter	04.11.1997
29	Ex.D29	The certified copy of the letter	17.11.1997
30	Ex.D30	The certified copy of the letter	17.12.1997

Sl.No.	Exhibits	Description of documents	Date
31	Ex.D31	The certified copy of the letter	08.11.1997
32	Ex.D32	The certified copy of the letter	08.11.1997
33	Ex.D33	The certified copy of the letter	11.11.1997
34	Ex.D34	The certified copy of the letter	22.11.1997
35	Ex.D35	The certified copy of the letter	10.03.1998
36	Ex.D36	The certified copy of letter	30.03.1998
37	Ex.D37	The certified copy of letter	27.07.1998
38	Ex.D38	The certified copy of letter	20.08.1998
39	Ex.D39	The certified copy of defendant's lawyer's notice	15.12.1999
40	Ex.D40	The certified copy of returned cover	--
41	Ex.D41	The certified copy of returned cover	07.03.2000
42	Ex.D42	The certified copy of acknowledgment due card	07.03.2000
43	Ex.D43	The certified copy of reply	15.03.2000
44	Ex.D44	The certified copy of statement of account in respect of dues in current A/c.No.6157	14.08.2000
45	Ex.D45	The certified copy of statement of account in respect of dues in current A/c.No.5158	14.08.2000
46	Ex.D46	The certified copy of statement of account in respect of dues in current A/c.No.1355	14.08.2000
47	Ex.D47	The certified copy of final order passed by DRT in O.A.No.1896/2001	26.05.2008

sd./-R.S.M.J
06.04.2018

//Certified to be true copy//
Dated at Madras this the day of 2018
R.s/22.06.2018

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.