IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.12.2016

PRONOUNCED ON : 23.03.2018

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CS.No.585 of 2001

M/s.RKAY Marketing
rep. by its Partner S.Saradha
313, T.T.K.Road,
Royapettah, Chennai-14. .. plaintiff

v.

1.Asian Capital Consolidated Holdings
Private Limited rep by its Director,
A.Manohar Prasad

2.A.Ravishankar Prasad

3.A.Manohar Prasad
All having office at Old.No.2,
New No.3, Sarangapani Street,
T.Nagar, Chennai-17. .. defendants

PRAYER : Civil suit is filed under Order 4 Rule 1 of OS Rules read with Order VII Rule 1 CPC :- (1)directing the defendants to pay to the plaintiff jointly and severally a sum of Rs.94,20,000/- together with interest at 36%p.a. On the principal amount of Rs.40,00,000/- from the date of the plaint till date of realisation; (ii)directing the defendants to pay the cost of this suit.

For Plaintiff	:	Mr.A.Chidambaram
For Respondents	:	Mr.N.Balasubramanian

J U D G M E N T

The civil suit is filed by the plaintiff for a sum of Rs.94,20,000/- with interest at the rate of 36%p.a. for the sum of Rs.40,00,000/-.

2. The gist of the plaint filed by the plaintiff is as follows :-

(i) The case of the plaintiff is that the plaintiff advanced a loan of Rs.40lakhs to the defendant company under the promissory note dated 25.05.1995 and the said pro-note had been executed by the 3rd defendant herein who is the Director of the 1st defendant company and counter signed by N.Gopalakrishnan, Officer of the Company thereby agreeing to repay the said sum of Rs.40lakhs together with interest at 36%p.a. As per terms and conditions of the advance of Rs.40lakhs, the Directors of the 1st defendant company viz., the defendants 2 and 3 should stand as personal guarantors. The plaintiff submits that the defendants had also furnished the extract from the minutes of the meeting of the Board of Directors held on 25.05.1995 evidencing the fact that the defendants had agreed to the specific terms and conditions contained in the letter dated 23.05.1995, the 1st defendant company and the defendants 2 and 3 after accepting all the terms and conditions stipulated in the said letter dated 23.05.1995, the plaintiff advanced a sum of Rs.40,00,000/- under the pronote dated

25.05.1995 executed by the 3rd defendant and countersigned by Officer of the first defendant company.

(ii)The plaintiff states that the defendant company had paid a sum of Rs.7,00,000/- towards interest upto 11.07.1998 vide cheque dated 09.05.1997 for Rs.3lakh, cheque dated 11.05.1997 for Rs.3lakh and cheque dated 11.07.1998 for Rs.1lakh, but failed to pay the interest from 12.07.1989 onwards. The said payments were made through the subsidiary company of the first defendant viz., M/s.Gemini Industries and Imaging Ltd., of which the defendants 2 and 3 herein are Directors.

(iii)Inspite of repeated demands, the defendant failed and neglected to settle the loan amount to the plaintiff and issued a demand notice dated 11.12.2000, thereby calling upon the defendant company to settle the dues to the plaintiff and the said demand had been received by the defendants, the defendants had not evinced any interest in settling the dues to the plaintiff. Therefore, the defendants failed and neglected to pay the principal amount of Rs.40,00,000/- and the interest of Rs.54,20,000/- till 20.06.2001 altogether to a sum of Rs.94,20,000/-. Hence, the plaintiff filed the present suit for the relief as prayed for.

3 (i)The defendants filed the written statement submitting that the above suit is liable to be dismissed on the grounds of limitation and fraud. The defendants submit that the plaintiff is represented by its Partner S.Saradha who is mother of one S.Ramesh, Chartered Accountant by profession. The said S.Ramesh acted as a finance broker, the defendants 2 and 3 are the Directors on the Board of the first defendant as well as to many other companies. The said S.Ramesh organized several loans for many of the companies in which the defendants 2 and 3 are the Directors, including that of the first defendant company. During the said course of transaction and in good faith, the defendants 2 and 3 signed blank papers including blank papers, printed forms, blank cheques, letter heads and pronotes. The said Ramesh was not a successful Chartered Accountant by profession and used to organize and obtain several loans for various companies and received service charges for crores of Rupees.

(ii) The defendants submits that the plaintiff company is called upon to prove the said payment of Rs.40,00,000/-, the pronote dated 25.05.1995 and the letter dated 23.05.1995 are the documents manipulated by the said S.Ramesh and handed over to his mother S.Saradha for filing the present suit with vexatious allegations. On 25.05.1995, no such meeting of the Board of

Directors was held and the said minutes is a handy work of the said Ramesh and the counter signature of the Gopalakrishnan is denied and the said Gopalakrishnan is not an Officer of the Company but he is working as an accountant in the defendant company.

(iii) It is stated that a payment of Rs.7,00,000/- was made by M/s.Gemini Industries and Imaging Limited for the services rendered by the said S.Ramesh and denied that the said payment was towards interest for the alleged loan of Rs.40,00,000/-. The plaintiff attempts to connect the payments made by the third parties only with the illegal design of getting over the law of limitation. In this case, the plaintiff has not made out any details of payment for Rs.40,00,000/- and no document obtained from the first defendant to acknowledge the liabilities. It is denied that the first defendant and the M/s.Gemini Industries and imaging limited are two different legal entities and they are not subsidiary companies. The alleged loan of Rs.40,00,000/- was purported to have been given on 25.05.1995, the plaintiff filed the present suit only on 05.06.2001, alleging that the interest was paid upto 11.07.1998 was only to file the suit within the period of limitation. As stated earlier, the plaintiff has not filed any document of the first defendant at the time of filing the suit.

(iv)Further, it is submitted that the plaintiff conveniently sent the letter of demand notice dated 11.12.2000 through courier service and not through Registered post with acknowledgement. The promissory note dated 25.05.1995, the letter dated 23.05.1995, extract of resolution of the meeting of the Board of Directors of the first defendant company dated 25.05.1995 and the letter of demand dated 11.12.2000 have been fraudulently prepared only in the year 2001 for the purpose of filing the present suit. The defendants denied that there is no question of paying a sum of Rs.54,20,000/- as interest on the alleged sum of Rs.40,00,000/- as claimed by the plaintiff. Hence, the defendants prays for dismissal of the suit with cost.

4. Based on the pleadings of both the parties documents filed by both parties and submission made by both the Counsel the following issues have been framed by this Court on 20.12.2010 :-

1. Whether the son of the plaintiff S.Ramesh has obtained signatures of 2nd and 3rd defendants in various loan documents including blank papers, blank printed forms, blank cheques, blank letterheads and blank pronotes, as alleged in written statement?

2. Whether the suit pronotes dated 25.05.1995 and 23.05.1995 are created by S.Ramesh?
3. Whether the suit claim is barred by limitation?
4. To what reliefs is the plaintiff entitled to?

5.After completion of pleadings, during trial, on the side of the plaintiff PW1 was examined and marked Exs.P1 to P6. On the side of the defendants DW1 was examined and no documents were marked.

6. Heard the rival submissions made on both sides and perused the material records.

7. The case of the plaintiff is that the defendants by a letter dated 22.05.1995 requested sanction of credit facility as bill discounting facility for a sum of Rs.40,00,000/- and executed Ex.P1/promissory note for availing the said loan. The defendant company passed a resolution and given an authorisation letter to avail the loan facility. The defendant company had paid a sum of Rs.7,00,000/- towards interest upto 11.07.1998 and failed to pay the interest from 12.07.1998 onwards. Inspite of repeated demands the defendants failed to settle the loan amount.

Therefore, the plaintiff issued a legal notice dated 11.12.2000 thereby calling upon the defendants company to settle the principal amount of Rs.40lakh alongwith interest of Rs.54,20,000/- altogether to a sum of Rs.94,20,000/-. Even after receiving the said notice the defendants neither sent a reply nor repaid the amount. Hence, the plaintiff filed the suit for recovery of money.

8. The defendants state that they never availed loan facility for Rs.40lakhs purported to have been alleged promissory note date 25.05.1995 and the defendants 2 and 3 are the Directors of the first defendant availed loan through S.Ramesh, during the course of business transactions the said Ramesh obtained signatures of the defendants 2 and 3 in blank papers, printed forms, blank cheques, letter heads and pronotes. The said Ramesh has been successfully organising loans to defendants 2 and 3 by availing service charges. The defendants denied the Minutes of the Board meeting of the first defendant company held on 25.05.1995 as alleged by the plaintiff. The defendants denied the alleged loan transaction. The plaintiff has not sent notice through registered post and conveniently sent notice through courier service. The defendants denied that there is no question of paying a sum of Rs.54,20,000/- as interest on the alleged loan for a sum of Rs.40,00,000/- as claimed by the plaintiff. Hence, prays for dismissal of the suit.

Issue No.1

9. In order to prove the case of the plaintiff PW1 has been examined and marked Ex.P1/promissory note dated 25.05.1995, Ex.P2/letter dated 23.05.1995 of the first defendant company accepting the terms and conditions for the loan and Ex.P3/Board Resolution of the first defendant dated 25.05.1995. In Ex.P2/letter dated 23.05.1995 wherein both the plaintiff and the first defendant had signed and accepted the terms and conditions for the loan transaction. The plaintiff had clearly pleaded that the defendants availed the loan and executed necessary documents and to prove the same the plaintiff had produced the documents. The defendants denied the loan transaction in the written statement and in proof affidavit stating that they have not availed any loan from the plaintiff. However, admitted the signatures found in the document and states that one Ramesh obtained signatures in the pronotes, blank letter heads etc., and utilised the same for filing the present suit. The plaintiff utilised the signatures of the defendants with the help of Ramesh who acted as a finance broker for the defendants company. The defendant in the proof affidavit denied the borrowal and admitted the signatures found in the Ex.P1/promissory note and Ex.P3/resolution of the defendants company. Once, the plaintiff proved the valid loan transaction with the defendants company by

producing the Ex.P3/Board Resolution dated 25.05.1995, the same was produced before this Court. In which the name of the plaintiff is also mentioned, the relevant portion of Ex.P3 is extracted hereunder :-

> "Resolved to avail revolving Bill discounting facility from M/s.RKAY Marketing having their office at 313 Mowbrays Road, Madras 600 014 for a sum of Rs.40,00,000/- (Rupees Forty Lacs only).
>
> Resolved to authorise Shri A.Ravishankar Prasad /Shri A.Manohar Prasad Directors of the Company to accept the terms and conditions details in the offer letter received from M/s.RKAY Marketing and they are hereby further authorised to modify, change and negotiate interest rates, securities and other terms and conditions for availing the above facility".

However, the signatures found in the Ex.P1 is admitted by the defendants and it is duty of the defendants to prove that the content of the document has not been executed as stated in the written statement, the onus shifted on the defendants and the defendants are duty bound to discharge their onus. Once signatures in the documents are admitted the presumption goes in favour of the plaintiff. It is no doubt the said presumption is rebuttable presumption and it is the duty of the defendants to rebut the presumption. But, in this case the defendants have not rebut the statutory presumption in the manner known to law. Hence, the issue is answered accordingly.

Issue Nos.2, 3 and 4.

10. The defendants have stated that one Ramesh obtained signatures in blank papers and pronotes etc., but the defendant has not taken any steps to examine or even made attempt to summon the said Ramesh. As already held in the earlier issue, the signatures of the defendants are admitted by them and not discharged their onus, the defendants have not produced any materials to prove that the documents marked in this case are utilised by the plaintiff with the connivance of Ramesh and the defendants failed to prove their defence that the signed Blank papers and pronotes etc were handed over to the said Ramesh and not to the plaintiff. Further, the defendant had neither issued any notice to the said Ramesh nor preferred any criminal complaint and also not filed any document to prove that the said Ramesh was organising loan to the Ramesh and the defendants by availing service charges. According to the plaintiff, the defendant availed

loan and executed pronotes, the bank statement would reveal that the defendants had paid a sum of Rs.7lakhs by way of three cheques from the date of repayment the suit was filed within three years from the date of payment of interest, the defendants state that they had not paid any amount to the plaintiff towards interest. The plaintiff sent demand notice dated 11.12.2000/Ex.P4 to the defendant and the courier acknowledgment is marked which is as Ex.P5, which shows the demand notice was duly received by the 3rd defendant personally. After receipt of the demand notice, the defendants had not replied the said notice. Though they have denied the receipt of notice but on a perusal of the Ex.P6 courier receipt the notice was received by the 3rd defendant but he has not come to the witness box and established that he has not received the notice. Further, defendants have not taken any steps to examine the courier men to disprove the service of notice. The plaintiff has proved the case through pleadings, oral and documentary evidence, the plaintiff has proved the initial burden and onus on the defendants, to discharge the onus as defended in the written statement. Therefore, this Court holds that after receiving the said notice the defendants have not sent any reply and denied the payment of interest by way of sending reply. Hence, these issues are answered accordingly.

11. In the above said circumstances, the suit is decreed with cost. Insofar as the interest is concerned, the defendants availed loan for commercial purposes at the rate of 36%p.a., hence, the plaintiff is entitled to get contractual rate of interest as on 11.07.1998 till the date of filing of the suit i.e, on 06.07.2001 as claimed in the plaint. However, the plaintiff is entitled to get interest at 12%p.a. on suit claim from the date of filing the suit till the date of realisation.

23.03.2018.

Index : Yes/No

Internet : Yes/No

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<u>List of Witness examined on the side of the plaintiff</u>

K.Sasikumar - PW1

<u>List of documents marked on the side of the plaintiff</u>

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	P1	Original Promissory note	25.05.1995
2.	P2	Original letter	23.05.1995
3.	P3	Original Board resolution letter	25.05.1995
4.	P4	Copy of the statement of accounts	
5.	P5	Office copy of the letter	11.12.2000
6.	P6	Original acknowledgment	11.12.2000

List of Witness examined on the side of the defendant

C.S.Ganesan	-	DW1

List of documents marked on the side of the defendant

NIL

23.03.2018.

(P.V.J.)

P. VELMURUGAN, J.

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Pre Delivery Judgment in

CS.No.585 of 2001

23.03.2018.