IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 12TH DAY OF OCTOBER 2018

THE MASTER

C.S. No.606 of 2017

K.Sendil Vellan,
S/o.Mr.N.R.Kumaraguru,
No.14/25, Murali Street,
Mahalingapuram, Chennai-600 034. ... Plaintiff

-Versus-

S.Basker,
S/o.Mr.Subramani,
2/4, EVR Street, Elite Homes,
Vinayakapuram, Ambattur,
Chennai-600 053. ... Defendant

Civil Suit praying that this Hon'ble Court be pleased to pass a judgment and decree directing the defendant to pay the plaintiff a sum of Rs.35,67,000/- together with interest @ 18% per annum of the sum of Rs.30,00,000/- from date of plaint till the date of realization of the said sum.

This Suit coming on this day before this court for hearing,the Court made the following order:

This suit has been filed under Order VII Rule 1 of Original Side Rules r/w. Order XXXVII Rule 1 of CPC to try as a summary suit and to pass a judgment and decree directing the Defendant to pay the Plaintiff a sum of Rs.35,67,000/- together with interest @ 18% per annum of the sum of Rs.30,00,000/- from the date of plaint till the date of realization.

The special summon was duly served to the defendant. As per the Original Side Rules the defendant have to file the application within 10 days seeking leave to defend the suit. In this case the defendants have not filed leave to defend application.

Heard the plaintiff side and suit documents are perused.

The Plaintiff states that he is a business man and is also engaged in real property dealings. The Defendant herein was a tenant under the Plaintiff in respect of an industrial shed owned by the Plaintiff and that pursuant to such relationship, the Plaintiff has known the Defendant for over a decade. The Defendant is engaged in the business of dealing with plastic scrap and has discussed, his business developments with the Plaintiff from time to time. The parties have also known one another's families and there was an element of trust in their relationship. The Plaintiff has also discussed his business and financial position with the Defendant, not in depth though.

The Plaintiff states that the Defendant has on many occasions in the past borrowed small sums of monies from the Plaintiff, expressing certain family difficulties. The Plaintiff would trust the Defendant on his needs and had come forward to bail him out of claimed financial necessities on many occasions. The Defendant had, on all occasions repaid the sums so borrowed, albeit with some delay. The sums having been lent as hand loans with assurance to repay the same in a day or two till payments due to the Defendant were repaid, no interest was charged thereon, anytime earlier.

The Plaintiff further submits that since February/March 2016, the Defendant had been sharing with the Plaintiff his plans of augmenting his business. He also represented to the Defendant that he had planned to purchase a property and shift his business into such property, which he believed would help him cut costs in the long run. Stating so, he later informed the Plaintiff that he had even identified a property and paid a substantial sum as advance for the same. In and around April, 2016, the Defendant approached the Plaintiff contending that monies expected from his clients remained unpaid and consequently, he could not muster a portion of the balance consideration. Stating so, he requested the Plaintiff to lend him Rs.30,00,000/- promising to repay the sum within 6-8 months. The Plaintiff was initially hesitant and nonetheless, did believe in the Defendant's representation that his advance sums would be forfeited if he did not complete the sale withing the stipulated time and on that basis came forward to lend the money as requested. However, the Plaintiff himself needed some time to liquidate funds to lend the Defendant. It is relevant to mention that the borrowal being a substantial sum and for commercial purpose, the Defendant offered to pay interest @ 18% on the said sum, which the Plaintiff agreed to. Pursuant thereto, the Plaintiff, lent the

Defendant, a total sum of Rs.30,00,000/-. The Plaintiff states that the said sums were paid in cash and against each of the borrowing the Defendant executed a promissory note for the sum borrowed. The Defendant had undertaken to pay an interest of 18% per annum on the sum lent. Each of the promissory notes were duly witnessed. All sums were lent to him at the residence of the Plaintiff and the promissory notes were also signed at the Plaintiff's residence within the jurisdiction of this Hon'ble Court.

However, when receiving the last payment, the defendant suggested that the loan be consolidated as total sum of Rs.30,00,000/- and one promissory note for the total sum be executed. This did seem to make practical sense to the Plaintiff and hence, he returned to the Defendant 5 original promissory notes acknowledging receipt of monies on the dates specified herein above. The Plaintiff then obtained from the Defendant one promissory note for the entire sum of Rs.30,00,000/- on 18.07.2016, being the last date of payment of the last tranche of loan. This was also duly witnessed. The Plaintiff further submits that even while he was disbursing sums for the Defendant's benefit, the Defendant started effecting random ad hoc payment towards interest. He paid a sum of Rs.20,000/- on 30.05.2016 and a further sum of Rs.25,000/- on 02.07.2016. However, the accumulated interest on the date of execution of the consolidated promissory note was Rs.72,258/- of which only Rs.45,000/- was paid. The Defendant promised to clear the interest due in less than a week and suggested that the same need not be included in the principal amount and in the promissory note. It is apposite to mention that there was interest due as of 18.07.2016 and you promised to pay up the same by 30.07.2016 and hence the same was not included in the promissory note. When the Plaintiff did manage to meet the Defendant in early July 2017, the Defendant challenged the Plaintiff to recover the monies, if he could, through legal means. Irked by his audacious response and compelled by his acts and omissions, the Plaintiff caused on the Defendant a notice dated 06.07.2017, calling upon the Defendant to repay the borrowed a sum, together with interest. Despite receipt of the same, the Defendant has not come forward to repay any monies. He has, to the contrary, started making feverish attempts to leave the city, disposing away all his assets. Market information, gathered recently, reveals that the Defendant has borrowed monies from various other third parties and has failed and neglected to repay them too. As of this day, the Defendant is due and payable a sum of Rs.30,00,000/- towards principal and a sum of Rs.5,67,000/- towards interest, after giving due credit to the ad hoc sum of Rs.45,000/- paid by the Defendant.

From the above averments and the documents filed on behalf of the Plaintiff, it is seen that the Plaintiff has established the case against the defendant. Moreover, the defendant has not filed leave to defend application and so adverse inference is drawn against the defendant. Hence the Plaintiff is entitled to the relief as prayed for.

In the result, the suit is decreed directing the Defendant to pay the Plaintiff a sum of Rs.35,67,000/- together with interest @ 18% per annum of the sum of Rs.30,00,000/- from the date of plaint till the date of realization along with cost.

Sd./-MASTER
12.10.2018

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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

jj 23/11/2021