IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2019

Coram

The Honourable Mr.Justice N.SATHISH KUMAR

C.S.No.284 of 1999

M/s.Electronics Corporation of
Tamilnadu Ltd., represented by its
Chairman & Managing Director

...Plaintiff

Versus

1.M/s.Telematics Systems Ltd.,
Rep. by its Managing Director Mr.R.Devadoss

2.Mr.R.Devadoss

3.The Official Liquidator,
High Court, Madras,
Kuralagam Building,
Chennai – 101.

...Defendants

(Third Defendant was impleaded as per order dated 11.01.2008 made in A.No.1531 of 2008)

This suit is filed under Order IV Rule 1 of the O.S.Rules and Order VII Rule 1 of C.P.C for the following reliefs:

(i) directing the defendants jointly and severally to pay the plaintiff a sum of Rs.1,42,82,693.65 together with further interest at the rate of 22.5% per annum cumulative with annual rests on the principal amount of Rs.35,00,000/- from the date of plaint till date of realization;

(ii) directing the defendants jointly and severally to the plaintiff the costs of the suit.

For Plaintiff	:	Mr.R.Mukundan
For Defendant - 1	:	Mr.K.Rajasekaran
Defendant – 2	:	Vakalat returned
Defendant – 3	:	Ms.J.Madhuri

JUDGMENT

The present suit has been filed for the reliefs morefully described in the prayer portion of this judgment.

2. The brief facts of the case reads as follows:

The plaintiff is a Government of Tamil Nadu Enterprises incorporated as a Public Limited Company. The first defendant Company is a Joint Venture Company in which, the plaintiff has also equity participation. The second defendant is the private promoter of the first defendant company. The first defendant approached the plaintiff and requested the plaintiff to sanction an unsecured loan and the sanction was accorded by the plaintiff for payment of Rs.45,00,000/- towards unsecured loan to the Joint Ventrue Company viz., M/s.Telematics Systems Ltd.,/first defendant, repayable in two years in half-yearly installments as provided in the sanction letter dated 21.04.1992. The said amount was paid by the plaintiff to the first defendant by Cheque No.134189 dated 21.04.1992 drawn on the Indian Overseas Bank, Cathedral Branch, Madras – 2. The first defendant agreed that the loan amount will be repaid in two years before 21.03.1994, in half-yearly installments of Rs.5,00,000/- to Rs.10,00,000/- Rs.15,00,000/- and Rs.15,00,000/- respectively along with interest at the rate of 22.25% per annum cumulative which was the prevailing commercial bank rate at that time. The second defendant guaranteed the repayment of the said loan by the first defendant. However, the defendants did not repay the amounts as agreed. By letter dated 20.01.1994, the first defendant acknowledged liability and promised payment and requested time for payment in view of their financial difficulties.

2.1 The defendants paid Rs.10,00,000/- within a period of two years and they failed to pay the balance of Rs.35,00,000/- towards principal and interest as per loan sanction letter on the amount advanced by the plaintiff to the first defendant. The first defendant subsequently did not make any payment. However, the loan having been advanced on personal guarantee of the second defendant, the second defendant agreed to be personally liable on the amounts due and payable by the first defendant to the plaintiff Company. The second defendant executed a personal guarantee deed dated 17.09.1996, specifically mentioning that he will be personally responsible for repayment of the amounts to the plaintiff. The first defendant also by Letter dated 15.11.1996, acknowledged liability and wanted to consider a proposal for revival of the first defendant Company.

2.2 In the meantime, the first defendant became a sick industrial company within the meaning of Sick Industrial Companies Special Provisions Act, 1985 and proceedings were initiated before the Board of Sick Industrial Finance and Reconstruction constituted under the Sick Industrial Companies Special Provisions Act, 1985. Finally, the Board has recommended winding up of the first defendant Company on the ground that the first defendant Company cannot be revived. In view of the personal guarantee given by the second defendant, the second defendant is jointly and severally liable along with the first defendant for repayment of the amounts due to the plaintiff.

3. The second defendant filed the written statement, wherein, he stated as follows:

(i) The rate of interest charged by the plaintiff is usurious and the same should not be more than the principal amount.

(ii) Due to changes in the Government Policies, the Company began to suffer loss from 1991 – 1992. The first defendant Company become a Sick Company and reference was made to BIFR. The BIFR registered the Application and asked the existing Promoters to submit a package for revival and state the relief sought for. The meetings were held on 04.05.1995 and BIFR asked IDBI to invite tender to take over the Company. BIFR asked M/s.Rajarathnam Associates to deposit Rs.600 Lacs with IDBI. But he could not mobilize the fund even after adequate time was given since there was no takeover in spite of BIFR repeated adjournments, the BIFR passed an order on 23.04.1997.

(iii) The recommendation of BIFR has been forwarded to the Registry of this Court and numbered as C.P.No.239 of 2007 and this Court had passed a winding up order on 18.07.2001 and Official Liquidator had taken control of all assets of the Company inclusive of Plant and Machinery worth Rs.15 Crores.

(iv) The second defendant denies the liability and the plaintiff has the recourse of getting the amount due settled by the Official Liquidator as the assets were already sold by the Official Liquidator. He also denied that there was no consensus ad idem between the parties in execution of the documents.

He therefore prayed for the dismissal of the suit.

4. The first defendant Company was wound up by the order of this Court dated 18.07.2001 in C.P.No.239 of 1997 and the Official Liquidator filed a Report stating that no funds are available to settle the dues of creditors after paying the secured creditors of the first defendant Company.

5. By order dated 11.06.2018, this Court framed the following

issues for trial:

(i) Whether the document dated 19.07.1997, namely, personal guarantee said to be executed by the second defendant in favour of the plaintiff is valid and enforceable in law?

(ii) Whether the personal guarantee said to be executed by the second defendant dated 30.06.1994 is valid and enforceable in law?

(iii) Whether the suit is barred by the law of limitation?

(iv) Whether the personal guarantee extended by the second defendant would be enforceable even when the first defendant had been wound up and the Official Liquidator has taken charge?

(v) Whether the plaintiff is entitled for recovery of a sum of Rs.1,42,82,693.65 and if so whether interest is also payable on the amount and if so the rate of interest to which the plaintiff is entitled to?

(vi) To what reliefs are the parties entitled to?

6. When the matter was listed before the learned Additional Master No.I, for trial, on the side of the plaintiff, P.W.1 (Mr.P.R.Nithyanandan, Deputy Manager of the plaintiff Company) was examined & 13 Documents viz., Ex.P1 to Ex.P13 were marked and on the side of the defendants, D.W.1 (Mr.Devadoss) was

examined, however, no document was marked.

7. Since the aforesaid issues are interconnected this Court is inclined to answer all the issues together.

8. The learned counsel for the plaintiff would submit that the first defendant Company was wound up by the order of this Court dated 18.07.2001 and the second defendant being the guarantor is liable to pay the amounts due to the plaintiff with interest. He therefore prayed that the present suit may be decreed as prayed for.

9. The learned counsel appearing for the first defendant submitted that the first defendant Company availed a loan of Rs.45,00,000/- from the plaintiff and repaid a sum of Rs.10,00,000/- within two years. He further submitted that every year, the commercial rate of interest keep on changing and the interest claimed by the plaintiff cannot be granted since it is usurious. He further submitted that there was no agreement entered into between the parties.

10. On perusal of the materials available on record, it is seen that the present suit has been filed by the plaintiff for recovery of money. The first defendant Company obtained a loan amount of a sum of Rs.45,00,000/- from the plaintiff, which is clearly evident from Ex.P2 (Loan Sanction Letter dated 21.04.1992 given to the first defendant by the plaintiff). However, the first defendant Company repaid only a sum of Rs.10,00,000/- to the plaintiff and they failed to repay the remaining loan amount of Rs.35,00,000/-. The dispute involved in this case is nothing but after the repayment of a sum of Rs.10,00,000/-, the defendant committed a default in repaying the remaining sum of Rs.35,00,000/- to the plaintiff. From a reading of Ex.P3 (Personal Guarantee dated 21.04.1992 executed by the second defendant), it is evident that the second defendant guaranteed the repayment of the loan amount by the first defendant to the plaintiff, within a period of two years. It is to be noted that the first defendant Company was also acknowledged the loan by issuing a Letter dated 24.04.1992, which was marked as Ex.P4. The plaintiff had also sent a Letter dated 12.01.1994, to the first

Defendant, seeking repayment of the outstanding loan amount and the same was marked as Ex.P5, for which, the first defendant Company has also sent a reply vide Letter dated 20.01.1994, which was marked as Ex.P6.

10.1 Be that as it may, the second defendant once again executed a Personal Guarantee Deed dated 30.06.1994, assuring that the first defendant will repay the outstanding loan amount to the plaintiff and the said deed was marked as Ex.P7. Thereafter, the second defendant executed one more Personal Guarantee Deed dated 17.09.1996 i.e., Ex.P11, wherein, he specifically mentioned that he will be personally responsible for repayment of the loan amount borrowed by the first defendant Company from the plaintiff.

10.2 The plaintiff filed the present suit within a period of 3 years from the Personal Guarantee Deed dated 17.09.1996, executed by the second defendant. The suit was filed well within the period of limitation. All the aforesaid Personal Guarantee Deeds were executed by the second defendant within a period of limitation. When such being the case, it cannot be said that the suit is barred by the law of limitation and it has no legs to stand. In view of the above Personal Guarantee Deeds, the second defendant is liable to pay the loan amount sanctioned by the plaintiff to the first defendant. It is the further contention of the defendant no demand has been made by the plaintiff against the first defendant Company, the surety or guarantee cannot be proceeded by the second defendant. Such contention cannot hold any worth for the simple reason that surety can be processes without principal being processes first.

10.3 It is the contention of the plaintiff since the plaintiff has proved the claim for recovery of amount the plaintiff is entitled to contractual interest as agreed under Ex.P2 at the rate of 22.25% per annum. Whereas, the learned counsel appearing for the first defendant submitted that the above contractual rate is only for 2 years from the date of loan, thereafter, what was the nature of the contractual rate of interest payable has not been proved by the plaintiff.

10.4 Admittedly, the contractual rate of interest at the rate of 22.25% per annum was agreed for a period of 2 years from 21.04.1992 which was the commercial rate of interest prevailed at the relevant time. It is also agreed that the commercial rate of interest would be calculated subsequently after the period of 2 years expired as per Ex.P2, what was the nature of rate of interest till 1999 has not been established by the plaintiff. Therefore, the same rate originally agreed under Ex.P2 cannot be granted to the plaintiff. However, considering the nature of the loan transaction, originally, the commercial rate is also agreed. Hence, this Court is inclined to fix the interest rate for 12% on the principal amount from 21.04.1992 till the date of filing of the suit and 9% from the date of suit till the date of realization with costs. All the above issues are answered accordingly.

11. Accordingly, this Court fixes the interest at the rate of 12% per annum shall be calculated on the principal amount from 21.04.1992 till the date of filing of the suit and the interest at the rate of 9% per annum shall be calculated from the date of suit till the date of realization.

12. In the result, the suit is decreed with costs as stated above.

13. Considering the fact that as per the winding up order passed by this Court on 18.07.2001 in C.P.No.239 of 1997, the Official Liquidator had taken possession of the assets of the first defendant Company and realized the said assets, for disbursing the dividend to the secured creditors, the suit is decreed as against the second defendant.

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