

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 15.03.2019	Delivered on 26.03.2019
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CORAM:

THE HONOURABLE MR.**JUSTICE R.SUBRAMANIAN****C.S.No.116 of 2015**

S.Mohankumar

... Plaintiff

Vs

1. M/s. Green Avenue Homes & Gardens
Rep. By its Proprietor,
Mr.D.Dinakaran

2. Mr.D.Dinakaran

3. Mrs.D. Megala

... Defendants

Prayer : Complaint filed under Order VII Rule 1 of the Original Side Rules read with Order XXXVII Rule 1 of the Code of Civil Procedure, praying for the following judgment and decree:-

- (a) Directing the defendants to pay the sum of Rs.1,42,00,000/- (Rupees One Crore Forty Two Lakhs only) to the plaintiff.
- (b) Interest at 18% per annum of Rs.1,00,00,000/- (Rupees One Crore only), from the date of Complaint till date of realisation, Hon'ble Court;
- (c) Award cost of the Suit;

For Plaintiffs : Mr.A.Damodaran

For Defendants : Set Ex-parte

J U D G M E N T

The Suit is for recovery for a sum of Rs.1,42,00,000/- with interest at 18% per annum due on a loan agreement dated 29.09.2012.

According to the plaintiff, the 2nd defendant represented to the plaintiff that he is the owner of an extent of 19027sq.ft. of land in Unamancherry Village, Chengalpattu Taluk, Kancheepuram District, and he sought for financial assistance to develop the same by putting up construction there on after developing the same as house sites. The 2nd defendant requested to the plaintiff to advance a sum of Rs.1,00,00,000/- towards the cost of the said development. It is further averred that the 2nd defendant also undertook not to sell, or alienate or mortgage or encumber the property till the entire sum of Rs.1,00,00,000/- is repaid with interest at 18% per annum.

2. Based on the said representation, the plaintiff advanced a sum of Rs.1,00,00,000/- to the 2nd defendant. The 2nd defendant as the sole proprietor of the 1st defendant and the 3rd defendant was a co-borrower, executed a loan document admitting the receipt of a sum of Rs.1,00,00,000/- on 29.09.2012 and agreeing to repay the same with

interest at 18% per annum. According to the plaintiff, the defendants defaulted in payment of the interest as well as the principal. Despite several demands made by the plaintiff, the defendants did not come forward to repay the money. The plaintiff also came to know that the 2nd defendant has been carrying on business in the name and style of M/s.Green Avenue Homes Private Limited, of which, the 2nd defendant himself is the Managing Partner from the very same address, where the 2nd defendant is carrying on his sole proprietorship business. Since the defendants did not come forward to repay the loan, the plaintiff visited the property in question and found to his shock and surprise that the property has been clubbed with the other property and has been developed and sold as unapproved house sites. Hence the plaintiff has come forward with the above suit seeking a recovery of a sum of Rs.1,42,00,000/- with subsequent interest on Rs.1,00,00,000/- at 18% per annum.

3. The defendants were served with suit summons on 04.03.2015. Since they did not appear either in person or through counsel to defend the suit, they were set ex-parte on 16.11.2018, the matter was referred to the learned Master for recording evidence.

4. Before the learned Master P.W.1 was examined, he has filed a proof affidavit and also produced Exs.P1 to P3. Ex.P1 is the loan agreement dated 29.09.2012, signed by the 2nd and 3rd defendants. The loan agreement evidences borrowing of Rs.1,00,00,000/- and the agreement to pay interest at 18% per annum. Ex.P2 is the encumbrance certificate let into the property and Ex.P3 is the Power of Attorney executed by the 2nd defendant as the proprietor of the 1st defendant in favour of M/s.Bennett Property Holdings Company Limited, with reference to the property which is sought to be dealt with.

5. In the proof affidavit of P.W.1, P.W.1 has reiterated the averments in the plaint. The execution of the loan agreement is not denied by the defendants. A perusal of Ex.P1, with the evidence of P.W.1 would prove that the defendants had in fact borrowed a sum of Rs.1,00,00,000/- from the plaintiff agreeing to pay interest at 18% per annum.

6. In view of the above, I find that the plaintiff had established the borrowing and the agreement pay interest at 18% per annum. The suit is therefore, decreed for a sum of Rs.1,42,00,000/- with interest at 12% per

annum from the date of suit till date of decree and 6% on the principal of Rs.1,00,00,000/- with costs.

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Index: Yes/No

Internet: Yes/No

Speaking order/Non Speaking order

List of Witnesses examined on the side of the plaintiffs:

PW1 - S.Mohan Kumar

List of Witnesses examined on the side of the Defendants: Nil

List of Exhibits marked on the side of the Plaintiffs:

Sl. No.	Exhibits	Description of Documents
1	Ex.P1	The certified copy of the loan document dated 29.09.2012
2	Ex.P2	The photocopy of the Encumbrance Certificate dated 17.11.2014
3	Ex.P3	The Certified copy of the Power of Attorney dated 16.08.2013

List of Exhibits marked on the side of the Defendants: Nil

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To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

R.SUBRAMANIAN,J.

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Pre Delivery Judgment
C.S.No.116 of 2015

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