

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.S.No.266 of 2019
and Appln.No.2942 of 2019

1. M/s.Fast Finance Pvt. Ltd.
Represented by its Director Mr.Jawaharlal Nichani
No.29, Pycrofts Garden Road,
Flat No.1, First Floor,
Ambrosia Apartments,
Chennai-600 006.
 - 2.Jawaharlal Nichani (Hindu Undivided Family),
Represented by its Karta, JAWAHARLAL NICHANI,
 3. Mohini Nichani
Represented by her Power of Attorney holder
Mr.Jawaharlal Nichani.
 4. Akshaya Nichani,
Represented by her Power of Attorney holder
Mr.Jawaharlal Nichani.
 5. Sonam Nichani,
Represented by her Power of Attorney holder
Mr.Jawaharlal Nichani.
 6. Kamal Shroff,
represented by her Power of Attorney holder
Mr.Jawaharlal Nichani
- ... Plaintiffs

..Vs..

Mr.M.A.Salim
Sole Proprietor of Civil Engineering Enterprises,
No.22-A, K.K.Salai,
Kaveri Rangan Nagar,
Saligramam,
Chennai-600 006.

... Defendant

PRAYER: Plaint under Order XXXVII, Rule 2 of the Code of Civil Procedure-1908 r/w Order VII Rule 1 of the Original Side Rules, praying for a Judgment and Decree against the defendant (a) directing the Defendant to pay a sum of Rs.1,61,09,003 (Rupees One Crore Sixty-One Lakhs Nine Thousand and Three Only) towards the outstanding amount of Rs.1,39,89,453/- (Rupees One Crore Thirty Nine Lakhs Eighty Nine Thousand Four Hundred and Fifty Three Only) along with interest of 25.2% amounting to Rs.21,19,550/- (Rupees Twenty One Lakhs Nineteen Thousand Five Hundred and Fifty Only) to Plaintiff No.1; (C) directing the Defendant to pay a sum of Rs.71,19,362/- (Rupees Seventy One Lakhs Nineteen Thousand three Hundred and Sixty Two only) towards the outstanding amount of Rs.61,35,937/- (Rupees Sixty One Lakhs Thirty Five Thousand Nine Hundred and Thirty Seven only) along with interest of 25.2% amounting to Rs.9,83,425/- (Rupees Nine Lakhs Eighty Three Thousand Four Hundred and Twenty Five only) to Plaintiff No.3; (d) directing the Defendant to pay a sum of Rs.1,03,95,697/- (Rupees One Crore Three Lakhs Ninety Five Thousand Six Hundred and Ninety Seven only) towards

the outstanding amount of Rs.89,60,937/- (Rupees Eighty Nine Lakhs Sixty Thousand Nine Hundred and Thirty Seven only) along with interest of 25.2% amounting to Rs.14,34,760/- (Rupees Fourteen Lakhs Thirty Four Thousand Seven Hundred and Sixty only) to Plaintiff No.4; (e) directing the Defendant to pay a sum of Rs.1,03,23,606/- (Rupees One Crore Three Lakhs Twenty Three Thousand six Hundred and six only) towards the outstanding amount of Rs.89,06,874/- (Rupees Eighty Nine Lakhs Six Thousand Eight Hundred and Seventy Four only) along with interest of 25.2% amounting to Rs.14,16,732/- (Rupees Fourteen Lakhs Sixteen Thousand Seven Hundred and Thirty Two only) to Plaintiff No.5; (f)directing the Defendant to pay a sum of Rs.34,86,851/- (Rupees Thirty Four Lakhs Eighty Six Thousand Eight Hundred and Fifty One only) towards the outstanding amount of Rs.30,08,750/- (Rupees Thirty Lakhs Eight Thousand Seven Hundred and Fifty only) along with interest of 25.2% amounting to Rs.4,78,101/- (Rupees Four Lakhs Seventy Eight Thousand One Hundred and One only) to plaintiff no.6; (g) directing the Defendant to pay further interest of 25.2% per annum from the date of plaint till date of realization of the sum of Rs.1,61,09,003/- (Rupees One Crore Sixty One Lakhs Nine Thousand and Three Only) to Plaintiff No.1; (h) directing the Defendant to pay further interest of 25.2% per annum from the date of plaint till the date of realization of the sum of Rs.1,23,81,502/- (Rupees One Crore Twenty-Three Lakhs Eighty-One Thousand Five Hundred and Two only) to Plaintiff No.2;(i) directing the defendant to pay further interest of 25.2% per annum from the date of plaint till the date of realization of the sum of

Rs.71,19,362/- (Rupees Seventy One Lakhs Nineteen Thousand and Three Hundred and Sixty Two Only) to Plaintiff No.3; (j) directing the Defendant to pay further interest of 25.2% per annum from the date of plaint till the date of realization of the sum of Rs.1,03,95,697/-(Rupees One Crore Three Lakhs Ninety Five Thousand Six Hundred and Ninety Seven only) to Plaintiff No.4; (k) directing the Defendant to pay further interest of 25.2% per annum from the date of the plaint till the date of realization of the sum of Rs.1,03,95,697/- (Rupees One Crore Three Lakhs Ninety Five Thousand Six Hundred and Ninety Seven only) to Plaintiff No. 5; (l) directing the Defendant to pay further interest of 25.2% per annum from the date of plaint till the date of realization of the sum of Rs.34,86,851/- (Rupees Thirty Four Lakhs Eighty Six Thousand Eight Hundred and Fifty One only) to Plaintiff No.6; (m) directing the Defendant to pay costs of this suit (n) passing any other or further orders which this Hon'ble Court may deem fit in the facts and circumstances of the present case, in favour of the Plaintiffs and against the Defendants.

For Plaintiffs : M/s.Sheetal Srikanth

J U D G M E N T

The suit has been filed for recovery of a sum of Rs.5,16,91,951/-(Rupees Five Crores Sixteen Lakhs Ninety-One Thousand Nine Hundred and Fifty One Only) i.e, the admitted dues from the Defendant to the Plaintiff, along with interest @25.20%.

2. The case of the plaintiffs is that the first plaintiff is the private limited company engaged in the business of lending money to small and medium size business enterprises, and individuals. The Plaintiffs 2, 3, 4, 5 and 6 are the members of the second plaintiff family. Further, the second plaintiff is the Director of the first plaintiff company.

3. The Defendant is the sole proprietor of Civil Engineering Enterprises, engaged in the business of developing housing projects in Chennai. As the defendant requires regular financial support for running his business, he approached the plaintiff collectively in order to avail a sum of Rs.5,98,16,024/- as loan from them. It is further stated that for the amounts borrowed by the defendant from the plaintiffs, promissory notes were issued as stated in paragraph 17 of the Plaint, in their favour which is filed as Sl.Nos.1 to 6. In respect of the sums borrowed, the respondent/defendant also issued post dated cheques in favour of each of the plaintiffs corresponding to the sums borrowed. However, around October 2017, the defendant began default on his payments. The post-dated cheques issued by the Defendant when it was deposited, the same were dishonoured by the bank and the Plaintiffs were unable

to recover the outstanding sum of Rs.5,98,16,024/- from the Defendant, as stated in paragraph 28 of the Plaint. When the Plaintiffs approached the Defendant personally and enquired with him regarding the defaults, the Defendant admitted his liability and stated that he would repay the outstanding sums. Further, the defendant began to renew the promissory note since October 2017. It is further stated that when the defendant failed to make timely payments and fell in breach of some of the promissory notes, he renewed the same promissory notes for the later dates. Further, in respect of payments due under some of the promissory notes, several cheques were issued in favour of the plaintiffs. When the same were presented before the bank, the said cheques were returned and dishonoured on account of insufficiency of funds. The said Cheques have been filed as Document Nos.7 to 12 and the return memo pertaining to said cheques have been filed as Serial Nos.13 to 18. Due to serious breach on the part of the Defendant after a series of discussions between the second plaintiff and the defendant, the parties worked out a withdrawal plan for the defendant's loan account. The Defendant on the other hand undertook to start with an initial payment of a lumpsum of Rs.50,00,000/- (Rupees Fifty Lakhs only) and Rs.25,00,000/-

(Rupees Twenty Five Lakhs only) each during the first fifteen days and the last fifteen days of every month thereon. The understanding was recorded in letter dated 16.03.2018 addressed to the second plaintiff by the Defendant, which is filed as Serial No.19. Since the defaults in payment continued even after this, on behalf of the plaintiffs legal notices were sent via registered post to the Defendant by the plaintiffs separately. The said legal notices have been filed as Sl.Nos.20 to 25 and the acknowledgement cards have been filed as Serial Nos.26 to 31. In response to the above notices, the Defendant sent a common reply dated 16.09.2018, to the plaintiffs, wherein in paragraph 5, the defendant has admitted his liability to the plaintiffs, which is reproduced hereunder for ready reference:

"Sir, our intention is very very clear that our company should pay even the last one rupee arrear to Mr.Jawaharlal Nichani and Associates and we have no other intentions to drag the payment proceedings either through civil disputes or in any other form and for the same we have adopted necessary methods to bring out the income from our various projects and the same arrangements are on... Whatever it may be, we assure you sir, that we will be

commencing the payment to Mr.Jawaharlal Nichani in various instalments based on the income coming from the sites as explained above."

"Finally, I assure you sir, that my payments to Mr.Jawaharlal Nichani will be commenced without fail from the first week of October 2018 and I will try my level best to bring his account to normal at the earliest."

5. After having promised to commence the payments from October, which itself was a one year delay from the date of default in payment, the defendant failed to make even a single payment to the plaintiffs thereafter. Hence, the Plaintiffs, left with no alternative have filed the present suit under Order XXXVII Rule 2 of the Code of Civil Procedure 1908 Read With Order VII Rule 1 of the Original Side Rules, seeking for the aforesaid relief.

6. From the records, it is seen that suit summons in respect of the sole defendant was served as early as on 22.04.2019. Despite the sole defendant being served and his name printed in the causelist, there is no representation on his behalf when the matter is called.

7. Order XXXVII Rule 2(3) of the Civil Procedure Code reads hereunder:

"The defendant shall not defend the suit referred to in sub-rule (1) unless he enters appearance and in default of his entering an appearance the allegations in the plaints shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, upto the date of decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith."

8. By virtue of the documents Nos. 1 to 6, promissory notes executed by the defendant in favour of the plaintiffs; document Nos.7 to 12, viz., the cheques issued by the defendant in favour of the plaintiffs and also by virtue of Document No.19, i.e. the letter dated 16.03.2018, sent by the defendant to the plaintiffs,

it is clear that the defendant admitted the liability to the plaintiff to the sum of Rs.5,98,16,024/-. Therefore, this Court is of the view that the plaintiff is entitled to the suit claim. Accordingly, the suit filed under Order 37 Rule 2 CPC is decreed in terms of Order 37 Rule 2 (3) CPC with costs. Consequently, connected Application is closed.

11.07.2019

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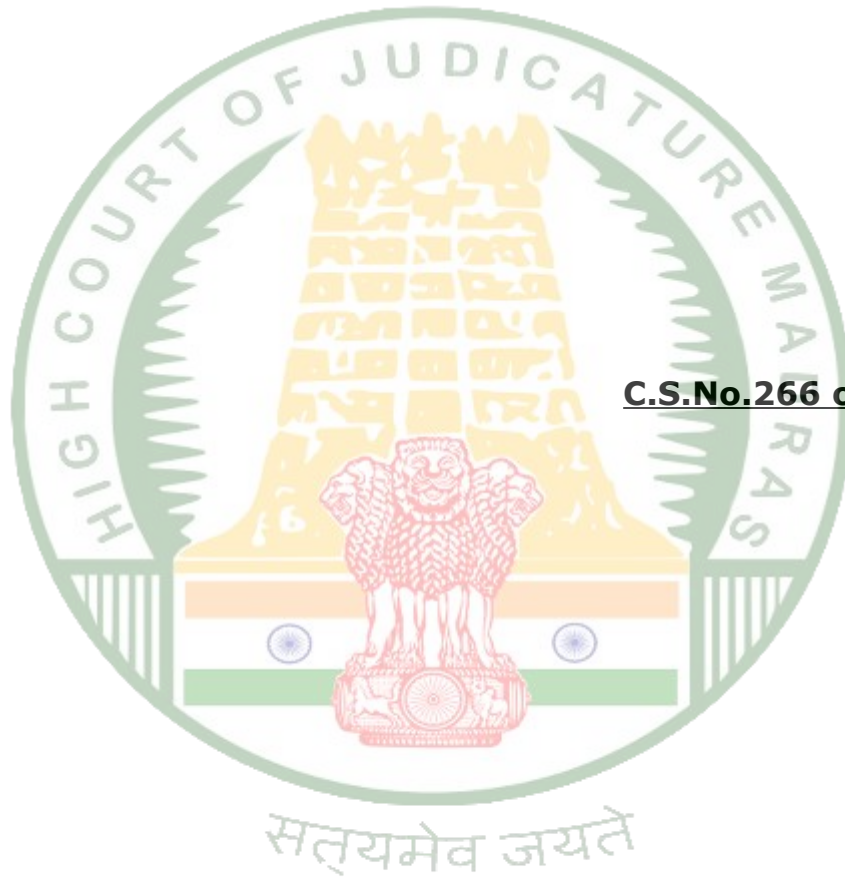
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KRISHNAN RAMASAMY, J

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