

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **19.06.2019**

CORAM:

The HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

C.S.No. 456 of 2016

Girish Kumar

..

Plaintiff

Vs

1.P.a.Shahul Hameed

2.Mohamed Asarutheen

..

Defendants

Prayer : Plaint under Order VII, Rule 1 & 2 of C.P.C., and Order IV Rule 1 of O.S.Rules, praying

a) to direct the defendants to jointly and severally pay a sum of Rs.61,15,200/- along with interest at 18% per annum from the date of plaint till date of payment or direct the defendants to jointly and severally return 2400 grams of pure gold to the plaintiff.

b) to pay the costs of the suit.

For Plaintiff

: Mr.C.V.Shyam Sunder

J U D G M E N T

The present suit is filed by the plaintiff for a direction to the defendant to jointly and severally pay a sum of Rs.61,15,200/-, along with interest at 18% per annum from the date of plaint to till the date of the payment or direct the defendants to jointly and severally return

2,400/- grams of pure gold to the plaintiff.

2.The plaintiff is itself a financier as well as a dealer in bulk gold business. The second defendant is also a dealer in gold, was introduced to the plaintiff by a common friend of both namely one Mr.Nathar in or around 2013. The second defendant who got introduced to the plaintiff stated that he and the first defendant are jointly carrying on their business in pure gold and started to do business with the plaintiff.

3.The learned counsel for the plaintiff would submit that under these circumstances, the plaintiff entered and starting business with the defendants. During the course of its business, the defendants have taken gold from plaintiff and the same either to return by quantity or by the value as agreeable between both the parties. He further submitted that on 03.10.2014, the second defendant had approached the plaintiff at Chennai and took 2000 grams of pure gold (worth at Rs.54,74,000/-) from the plaintiff on credit for 100 days. The parties agreed that gold of 2000 grams would be returned by the defendants to the plaintiff on or before 13.01.2015 or it prevailing market value. Upon receiving the same, the second defendant had executed an acknowledgment letter in favour of the plaintiff on

03.10.2014 and the said letter was marked as Ex.P1.

4.The learned counsel for the plaintiff further submitted that on the due date that is on 13.01.2015, the defendant could not return either the gold or its value and therefore, they requested for some more time and the plaintiff also extended time to the defendant on condition that the defendants provide security for the value of the gold lent.

5.He further submitted that the first defendant through the second defendant handed over the original title deeds of his personal property at Kadayanallore, more fully set out in the schedule as security to the plaintiff pending return of the gold or its value in money. The first defendant executed a confirmation cum undertaking letter on a stamp paper dated 08.02.2015 in favour of the plaintiff duly signed by him and the same was sent through the second defendant. It was specifically agreed that the original title deed for house, ground and premises owned by the first defendant at Kadayanallore, Thenkasi vide document dated 28.05.2012 and registered as document No.2452 of 2012 before SRO, Kadaiyanallore is security pending return of the gold at 2400 grams of pure gold or its prevailing value on or before 13.11.2015. On 12.02.2015, the second defendant had handover the

copy of original title Deeds of the first defendant i.e., document No.2452 of 2012, dated 28.05.2012, executed before SRO, Kadaiyanallore, to the plaintiff and it is marked as Ex.P2. However, at the time of passing this order, the learned counsel appearing for the plaintiff produced the original copy before the Court for verification and the same is returned after the verification done by this Court. The plaintiff also marked an undertaking and confirmation letter dated 08.02.2015 as Ex.P3. The originals of the handing over letter dated 12.02.2015 is also filed and marked as Ex.P4.

6.However, the defendants failed and neglected to return the gold of 2400 grams or its value, on or before 13.11.2015, as promised. Therefore, the plaintiff made several attempts to get 2400 grams of pure gold or its value, when the defendants failed to keep up their promise to return the gold or to pay value of said gold.

7.Under these circumstances, except further option, the plaintiff initiated the present suit for recovery of value of 2,400 grams of pure gold or prevailing its market value as on date from the defendants jointly and severally, which would amount to a sum of Rs.61,15,200/- as on 30.11.2015.

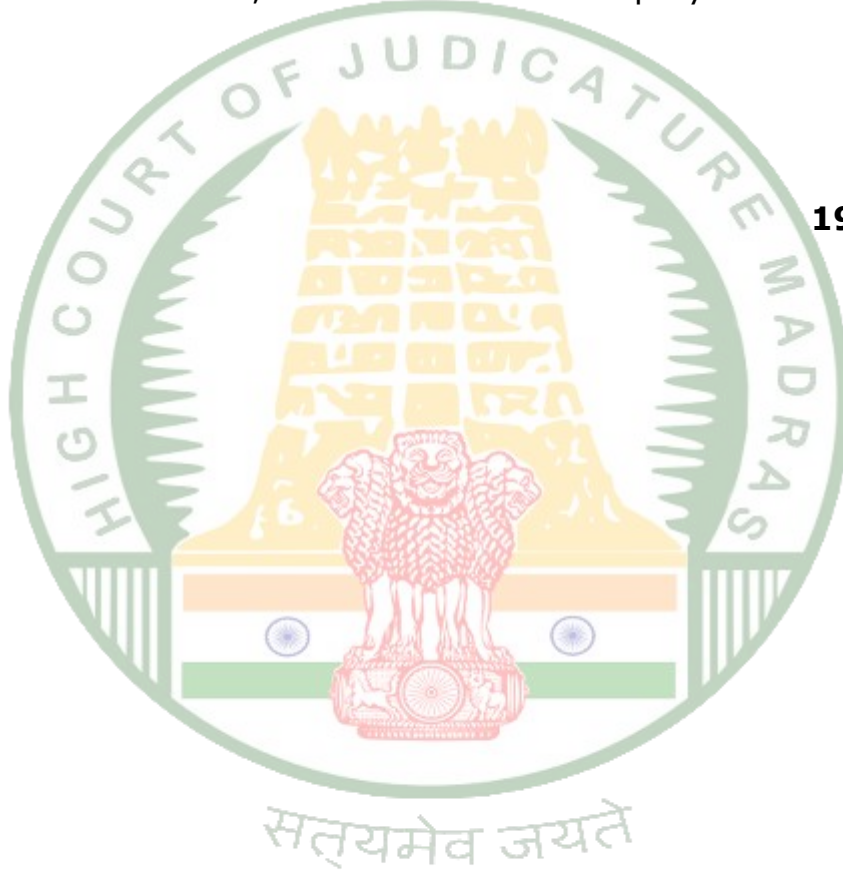
8. This Court served summons on the defendants. After the service of the summons, none appeared on behalf of the defendants. Therefore, both the defendants were set ex parte by this Court vide order dated 12.06.2019, thereafter the matter was posted before the learned Additional Master for evidence and on behalf of PW1, one Mr. Gireesh Kumar filed the proof affidavit and he was examined and marked Exs.P1 to P4.

9. This Court also perused the averments in the plaint and the Exhibits. During the course of its business, the defendants have taken gold from plaintiff on the condition that either to return by quantity or by the value as agreeable between both the parties. On 03.10.2014, the second defendant had approached the plaintiff at Chennai and took 2000 grams of pure gold (worth at Rs.54,74,000/-) from the plaintiff on credit for 100 days. Both the parties have agreed that gold of 2000 grams would be returned by the defendants to the plaintiff on or before 13.01.2015 or its prevailing market value. On receipt of the said grams of gold, the second defendant had executed an acknowledgment letter in favour of the plaintiff on 03.10.2014 and the said letter is marked as Ex.P1. However, on the due date, that is on 13.01.2015, the defendants failed to return either the gold or its value,

and even after extension of time. In view of the clear acknowledgment, by virtue of Ex.P.1, the plaintiff is entitled for the suit claim. Accordingly, the plaintiff is entitled to the decree as prayed for.

10. In the result, the Suit is decreed as prayed for with costs.

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KRISHNAN RAMASAMY, J.

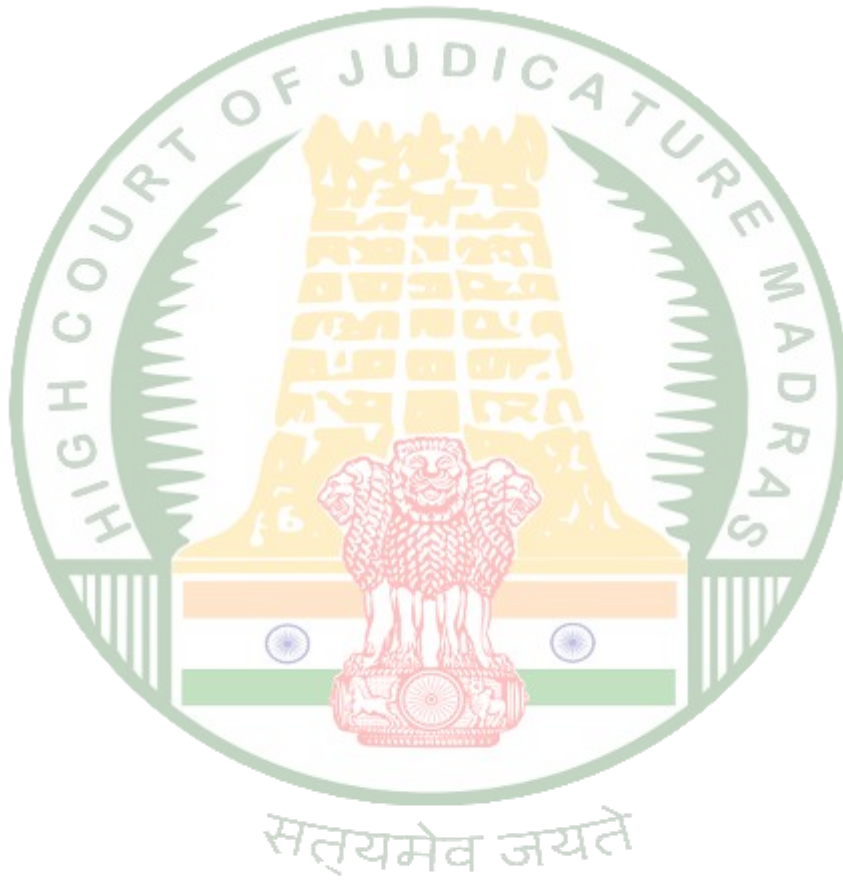
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