

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 29th DAY OF JANUARY, 2019

THE MASTER

C.S.No.51 of 2016

Mr.M.K.Ganesh,
S/o.Mr.M.Kannan,
No.18/22, Canara Bank Colony,
Saligramam,
Chennai – 600 093.

..Plaintiff

Vs.

1.R.Muruges,
S/o.T.S.Raja,
No.M34, P4 Quarters,
Sathuvachari,
Vellore – 9.

2.Mr.S.Bhaskar,
S/o.S.Sekar,
No.20, Sakthi Nagar,
Sathuvachari Village,
Vellore District.

..Defendants

Civil Suit praying that this Hon'ble Court be pleased to pass a
Judgment and Decree:-

(i) directing the Defendant to pay a sum of Rs.2,00,00,000/-
(Rupees Two Crores Only) as on the date of the suit due by the Defendant to
the Plaintiff and further directing the Defendant to pay the interest thereon

Rs.2,00,00,000/- at 6% per annum from the date of Plaint till the date of realization; and

(ii) direct the Defendant to pay the costs of this suit.

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 Defendants to pay a sum of Rs.2,00,00,000/- (Rupees Two Crore Only) as on the date of the suit due by the Defendants to the Plaintiff and further directing the Defendants to pay the interest thereon Rs.2,00,00,000/- at 6% per annum from the date of plaint till the date of realization.

The special summon was duly served to the defendants. As per the Original Side Rules the defendants 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 and so, they are set exparte.

Heard the plaintiff side and suit documents are perused.

It is the case of the Plaintiff that the 1st Defendant was in need of finance to improve his business, hence, he had approached the plaintiff for availing hand loan for the purpose of his business to the tune of Rs.2,00,00,000/-. The Plaintiff had also accepted to give loan to him and

accordingly a Business Agreement was entered into between the Plaintiff and the 1st Defendant on 01.09.2012. The Plaintiff states that he had paid a sum of Rs.35,00,000/- to the 1st Defendant by cash, the receipt of which was duly acknowledged by him and the Plaintiff had handed over the original documents of his valuable properties, which clearly mentioned in the Schedule A, B & C to the said Business Agreement, worth about Rs.1,52,00,000/- to the 1st Defendant for raising finance/funds by mortgaging or sale of the said properties, for which, the Plaintiff will execute necessary deeds in favour of any third parties as identified by the 1st Defendant.

The Plaintiff states that the market value of Schedule A property is Rs.15,00,000/ Schedule B property is Rs.58.25 lakhs and the Schedule C property is RS.78.75 lakhs. The repayment of said loan is optional as per Clause 3 of the said Business Agreement, which reads as follows;-

A. Repayment of Rs.2,00,00,000/- (Rupees Two Crores) together with the three original documents of Schedule A, B and C properties, during the course of six months (or)

B. Repayment of Rs.3,00,00,000/- (Rupees Three Crores) without any original documents on the expiry of six months from the date of the said Business Agreement.

The Plaintiff states that by accepting the second option, the 1st

Defendant had given a cheque for RS.3,00,00,000/- bearing No.398179 drawn on HDFC Bank in favour of the Plaintiff towards security to honour his commitment towards repayment of the loan. Notwithstanding the above, the 2nd Defendant being the business associate of the 1st Defendant had given a guarantee to the above repayment by signing the said Business Agreement as Guarantor and accordingly, he had also issued a cheque for a sum of Rs.3,00,00,000/- bearing No.365779, drawn on Indus Ind Bank, Vellore Branch, in favour of the Plaintiff, towards discharge of his liability. The Plaintiff states that on failure to honour commitment of the Defendants towards repayment of loan, they had assured, promised and confirmed that the Plaintiff has every right to take any legal action for recovery of the loan amount and the same shall not be desisted or defended either by the 1st Defendant and the 2nd Defendant, who being the Guarantor and the business associate of the 1st Defendant.

The Plaintiff states that whileso, the 1st Defendant had insisted the Plaintiff to execute a sale deed in respect of the Schedule C mentioned property to the Business Agreement to a third party as identified by him. Accordingly, the Plaintiff had executed the sale deed in respect of Schedule C property and the 1st Defendant had received the entire sale consideration of Rs.78.75 lakhs, the receipt of which has been admitted and acknowledged by the 1st and 2nd Defendants vide Addendum Agreement

dated 01.12.2012. The Plaintiff states that the cheque issued by the 1st Defendant was returned dishonoured, when presented for realization through the Plaintiff's collecting banker, for the reasons "Insufficient Funds". Subsequently, the 1st Defendant had handed over the original documents of Schedule A and B properties to the Plaintiff. But, in pursuance of Clause 3 (A) of the repayment option, the 1st Defendant has failed and neglected to repay the amount as per Clause 3 (A) of the Business Agreement and Addendum Agreement. Hence, the 1st Defendant is due and is liable to pay a sum of Rs.2,00,00,000/- as per Clause 3 (A) of the repayment option and return the documents of "C" Schedule property to the agreement, with interest at 6% per annum on Rs.2,00,00,000/- from the date of expiry of six months i.e., from 01.04.2013 till date. The Plaintiff states that he has not presented the cheque issued by the 2nd Defendant for realization as on date. Since, the 1st Defendant had failed and neglected to repay the loan amount as per Business and Addendum Agreements, the 2nd Defendant being a guarantor to the Business Agreement and Addendum Agreement is equally and jointly liable to pay a sum of Rs.2,00,00,000/- with interest at the rate of 6% per annum from the date of expiry of six months period as per Addendum Agreement dated 01.12.2012 i.e., from 01.04.2013 and ensure to return the original documents of "C" Schedule property to the agreement.

The Plaintiff states that inspite of several requests, the Defendants have not bothered to honour their commitment or come forward to settle the amounts as per the agreements till date, which reveals their malafide intention of cheating the Plaintiff on receipt of a huge sum by way of sale of “C” Schedule property to the agreement. The act of the Defendants failure in repayment of the amount as stated above and without honouring the cheque amount towards discharge of their liability in lieu of the Business Agreement and Addendum Agreement, amounts to cheating of the Plaintiff's hard earned money, which is punishable under Section 420 of IPC. Hence, the Plaintiff was constrained to issue a legal notice to the Defendants on 04.05.2015 thereby calling upon the Defendants to pay the sum of Rs.2,00,00,000/- together with interest at 6% per annum from 01.04.2013 till date and return the original documents of “C” Schedule property to the Business Agreement, to the Plaintiff. The said legal notice was duly received and acknowledged by the 2nd Defendant herein, whereas the said legal notice to the 1st Defendant was returned unserved with and endorsement “unclaimed”, which obviously reveals, the malafide intention of the 1st Defendant, in avoiding and evading the demand in writing.

The Plaintiff further states that the 1st Defendant has received a sum of Rs.35,00,000/- from the Plaintiff, which has been duly acknowledged by him in the Business Agreement and also received the entire sale

consideration of Rs.78,75,000/- towards sale of Schedule C property to the Business Agreement, which is duly acknowledged in the Addendum Agreement, totaling Rs.1,13,75,000/- However, as per Clause 3 (A) of the Business Agreement and Addendum Agreement, the 1st Defendant is liable to pay a sum of Rs.2,00,00,000/- with interest and on his failure to repay the said sum, the 2nd Defendant being the guarantor to the said agreements, he is equally and jointly liable to pay a sum of Rs.2,00,00,000/- with interest. The Plaintiff further states that though he is entitled for interest on Rs.2,00,00,000/- from the date of expiry of the six months period of the agreements, the Plaintiff hereby restricts his claim only for Rs.2,00,00,000/-. Hence, he has filed the present suit for recovery of a sum of Rs.2,00,00,000/- with interest at 6% per annum from the date of plaint till the date of realization, which sum is due and liable from the Defendants to the Plaintiff. The Plaintiff states that though the Defendants are residing outside the jurisdiction of this Hon'ble Court, it has been mutually agreed between the parties in Clause 7 of the Business Agreement dated 01.09.2012 that if any disputes or differences or claims arising or appearing during pre or post transactions, then jurisdiction for filing Civil/Criminal/any other proceedings shall be at Chennai Jurisdiction only. Hence, this Hon'ble Court has ample jurisdiction by way of consent and Clause of the Agreement. Hence the suit.

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 defendants. Moreover, the defendants have not filed leave to defend application and so adverse inference is drawn against the defendants. Hence the Plaintiff is entitled to the relief as prayed for. In the result, the suit is decreed directing the Defendants to pay a sum of Rs.2,00,00,000/- (Rupees Two Crore Only) as on the date of the suit due by the Defendants to the Plaintiff and further directing the Defendants to pay the interest thereon Rs.2,00,00,000/- at 6% per annum from the date of plaint till the date of realization along with cost.

Sd./-MASTER
29.11.2019

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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JJ 18/11/2021