IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.10.2019

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.S.NO.61 of 2018 and
A.No.652 of 2018

V.Jegan Babu,
S/o S.Veeraiya,
No.252, Lenin Street,
V.G.P.Layout, Uthandi part I,
East Coast Road, Chennai 600 119. ... Plaintiff

Vs.

1. Design UNO,
   Rep by its Proprietor,
   T.Udayakumar,
   No.27, Saravana Street, T.Nagar,
   Chennai 600 017.

2. T.Udayakumar,
   No.27, Saravana Street, T.Nagar,
   Chennai 600 017.

3. M/s Landmark Housing Project Chennai,
   Represented by its Managing Director,
   T.Udayakumar,
   No.27, Saravana Street, T.Nagar,
   Chennai 600 017. ... Defendants

PRAYER Civil Suit filed under Order VII Rule 1 of the Original Side Rules read with Order XXXVII of Civil Procedure Code 1908 to pass a decree and judgment for direction to the defendants to pay a sum of Rs.1,95,23,494/- together with interest at 24% per annum on principal amount of Rs.1,20,00,000/- from the date of plaint till the date of realization and for costs.

For Plaintiff : Mr.R.Krishna Prasad

For defendants : Ms. Mr.Malamannan
for M/s S.Ramesh

JUDGMENT

The civil suit has been filed for recovery of a sum of Rs.1,95,23,494/- together with interest at 24% per annum on principal amount of Rs.1,20,00,000/- from the date of plaint till the date of realization.

2. **The case of the plaintiff in nutshell is as follows.**

The 3rd defendant, who is engaged in the business of real estate and allied business had approached the plaintiff to extend a loan for meeting their business needs. The plaintiff had extended a loan of Rs.1,20,00,000/-

to the first defendant through cheques dated 09.02.2015 for a sum of Rs.1,00,00,000- and another cheque dated 01.07.2015 for a sum of Rs.20,00,000/-. As security, the 2nd defendant executed two promissory notes dated 06.06.2015 for a sum of Rs.1,00,00,000/- and dated 01.07.2015 for a sum of Rs.20,00,000/- . The defendants 1 and 2 agreed to pay interest at the rate of 30% p.a. In addition to that, the 2nd defendant had also given two cheques bearing No.009583 and 009732 for a sum of Rs.1,00,00,000/- and Rs.20,00,000/- respectively drawn on the Karur Vysya Bank, T.Nagar, Chennai.

2.2 The defendants 1 and 2 had paid interest only for two times that too with a delay and thereafter stopped paying interest. After several demands, the first defendant had issued the following cheques drawn on the ICICI Bank, T.Nagar branch.

S.No.	*Date*	*Cheque No.*	*Amount*
1	06.09.2017	016933	Rs.10,00,000
2	05.12.2017	016934	Rs.10,00,000
3	05.12.2017	016935	Rs.10,00,000
4	05.12.2017	016936	Rs.10,00,000
5	05.12.2017	016937	Rs.10,00,000
6	05.12.2017	016938	Rs.10,00,000
7	05.12.2017	016939	Rs.10,00,000
8	05.12.2017	016940	Rs.10,00,000

S.No.	Date	Cheque No.	Amount
9	05.12.2017	016941	Rs.10,00,000
10	05.12.2017	016942	Rs.10,00,000

When the plaintiff presented the cheques, every one of them were returned on 06.12.2017. Hence the plaintiff issued a legal notice dated 18.12.2017 to the defendants. However, they neither repaid amount nor sent reply. As on the date of plaint the outstanding amount, including interest, payable by the defendants is Rs.1,95,23,494/-. Hence the suit.

3. **<u>The brief content of the written statement filed by the defendants is as follows.</u>**

The plaintiff has received a sum of Rs.25 Lakhs on 29.05.2013 from the defendants as loan and agreed to repay the same with interest at the rate of 24% per annum. The loan and the outstanding interest to be paid by the plaintiff is Rs.75 Lakhs. However, the plaintiff has not disclosed about this fact in the plaint. The promissory notes have been filled up by the plaintiff on his own, without any consent of the defendants with regard to payment of interest. The defendants never agreed to pay interest at 30% pa. The defendants are entitled to set off the loan of Rs.25 Lakhs paid to the plaintiff on 25.09.2013. The cheques which are stated in the plaint were not issued for the purpose to secure the suit loan. There are several transactions between the parties, apart from the suit transaction. The plaintiff has not approached the court with clean hands. Hence, the suit is liable to be dismissed.

4. Though the defendants contended that there were other transactions between the plaintiff and the defendant, the factum of execution of pronotes and the cheques given by the defendants are not disputed. The only contention of the defendants is that they never agreed to pay interest at the rate of 30% p.a.

5. Inview of the admission of execution of the pronotes and the cheques given by the defendants, the suit can be disposed of as per Order XII Rule 2(A) of the Code of Civil Procedure, which is extracted hereunder.

Order XII Rule 2(A): Document to be deemed to be admitted if not denied after service of notice to admit documents.

(1) *Every document which a party is called upon to admit, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents, shall be deemed to be admitted except as against a person under a disability.*

6. At this juncture, the learned counsel appearing for the defendants prayed that, if the interest portion is reduced to 10% per annum

on the principal amount, from the date of borrowal, the defendants are ready to pay the principal amount with accrued interest to the plaintiff.

7. Considering the above submission made by the learned counsel appearing for the defendants and also taking into account the change in the interest rate due to economic reforms, the suit can be decreed with interest at the rate of 10% per annum on the principal amount.

8. In the result, the suit is decreed for a sum of Rs.1,20,00,000/- with interest at the rate of 10% per annum from the date of borrowal till the date of realization with costs. The connected application is closed.

18.10.2019

Index: Yes/No
Internet: Yes/No
Speaking/Non Speaking order
mst

N.SATHISH KUMAR, J.

mst

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