

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2019

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.416 of 2014

R.Alagu Solai Malai

... Plaintiff

Vs.

1.M/s.Jeevan Jewel Tech Partnership Firm,
No.24/1 sabari Complex First Floor,
Selvi Nagar 1st Main Road,
Kolathur, Chennai-99.

2.M.Saravanan

3.P.Ganesh

4.M.Manoharan

5.S.Balasubramanian

6.M.Vasudevan

7.Bank of India,
Overseas Branch,
Erabalu Chetty Street,
Chennai-1.

... Defendants

PRAYER:- The Civil Suit filed under Order VII Rule 1 of the Code of Civil
Procedure read with Order IV Rule 1 of the Original Side Rules.

For Plaintiff : M/S.Giridhar & Sai
For defendants : set ex-parte

J U D G M E N T

The suit has been filed for recovery of a sum of Rs.1,43,24,274/- from
the defendants with subsequent interest at 12% per annum.

2. According to the plaintiff, first defendant is a Partnership Firm and defendants 2 to 6 are the partners. In the course of the business, the defendants borrowed a sum of Rs.1,15,00,000/- from the plaintiff on 20.01.2013 for manufacture of gold ornaments. It was also agreed the finished gold ornaments will be handed over in three months and in the event of failure the defendants agreed to return the money. The defendants did not hand over the finished gold ornaments and failed to repay the money also to the plaintiff. In the first week of November 2013 the defendants issued two post dated cheques for Rs.65,00,000/- dated 02.12.2013 and Rs.50,00,000/- dated 30.01.2014, but the both cheques were returned on presentation with a memo stating that the "Drawers Signature Differs" and the bankers informed that the two signatories were not authorized signatories of the Firm's account.

3. The Plaintiff informed the same to the defendants, but even then the defendants did not come forward to repay the money. A notice was issued on 11.02.2014 calling upon the defendants to pay a sum of Rs.1.15,00,000/- along with interest to the plaintiff. The notice was duly served. Since the acknowledgment was signed by a stranger, the plaintiff issued second notice dated 24.02.2014, demanding the amount due under the two dishonoured cheques. The second notice was received by the defendants. By the reply dated 25.02.2014, the defendants acknowledged the fact that they had transactions with the plaintiff and also stated that some of the partners had retired from the Firm and it was converted in to a company and the

defendants were the Directors of the company. It was also stated falsely that the plaintiff had been informed about the formation of the company. The said reply notice also disclosed that the defendants availed of a gold loan from the Bank of India and returned one kilogram of gold to the plaintiff on 31.10.2013 and the plaintiff had promised to return the document along with cheques but did not return the same.

4.It is also stated in the reply notice that the wife of the deceased Manager of the first defendant Firm had lodged a complaint against the defendants holding them responsible for the death of her deceased husband. Thereafter, that the plaintiff has come forward to file the suit. The defendants did not appear despite notices and hence they were set exparte on 14.09.2018 and the case was posted before the learned Additional Master No.III, for recording exparte evidence.

5.The Plaintiff was examined as P.W.1, who filed a proof affidavit along with the documents. The dishonoured cheques dated 02.12.2013 and 21.01.2014 are Exs.P1 and P2, the return memorandum were marked as Exs.P3 and P4; Exs.P5 and P6 are office copy of legal notice and file along with acknowledgment; Exs.P7 and P8 are the reply notice issued by the counsel for the defendants; The original Encumbrance Certificate has been marked as Ex.P9 shown documents produced as well as the proof of affidavit of the plaintiff.

R.SUBRAMANIAN, J.

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6.I find that the plaintiff has established the case. Even in the reply to the notice sent by the plaintiff the defendants, after acknowledging the borrowing, stated that they had returned one kilogram of gold to the plaintiff and the plaintiff had promised to return the document. The stand taken defendants unbelievable. The defendants have not chosen to defend the suit and let in evidence regarding their claim. The plaintiff has proved his claim and he is entitled to the decree as prayed for.

7.Therefore, the suit is decreed as prayed for with costs. A second charge shall stand created over the property morefully described in the schedule to the plaint. The Registry shall inform the concerned Sub Registrar to enable him to enter in the records the fact that a second charge has been created.

WEB COPY 11.04.2019

Index : Yes/No
Internet : Yes/No
Speaking Order/ Non-Speaking Order

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