

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.07.2021	Pronounced on : 09.07.2021
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Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.S.No.247 of 2017

1. Mr.M.Balakrishnan,
No.19A, Jalan Lang Hitam Kepong Baru, 52100,
Kuala Lumpur, W.Persekutuan (KL),
Represented by his power of attorney Mr.J.Arun Pandian,
S/o.Mr.Jeya Pandian,
No.65, Gangai Nagar, Iyyan Jery,
Urapakkam, Chennai – 603 202.
 2. Mrs.Lingkesvari Rajaindren,
No.19A, Jalan Lang Hitam Kepong Baru, 52100,
Kuala Lumpur, W.Persekutuan (KL),
Represented by his power of attorney Mr.J.Arun Pandian,
S/o.Mr.Jeya Pandian,
No.65, Gangai Nagar, Iyyan Jery,
Urapakkam, Chennai – 603 202.
- ... Plaintiffs

/versus/

1. Mr.Settipalli Suresh,
No.1, Rutland Gate,
6th Street, Nungambakkam – 600 006.
 2. Mrs.Settipalli Vaishnavi,
No.1, Rutland Gate,
6th Street, Nungambakkam – 600 006.
- ... Defendants

Prayer: Civil Suit is filed under Order IV Rule 1 of O.S.Rules read with order VII Rule 1 of C.P.C.

(a). For a sum of Rs.2,28,75,000 [Two Crore Twenty Eight Lakhs and Seventy Five Thousand], comprising the principal sum of Rs.1,50,00,000/- [One Crore Fifty Lakhs only] and Rs.78,75,000/- [Seventy Eight Lakhs and Seventy Five Thousand] representing the interest on the principal sum @18% p.a., till the date of filing of the suit.

(b). For further interest at 18% p.a on the principal sum of Rs.1,50,00,000/- from the date of filing of the suit till the date of realisation.

(c). For the costs of the above suit.

For Plaintiffs : Ms. Preeti Mohan

For Defendants : No appearance

JUDGMENT

The suit is filed for recovery of Rs.2,28,75,000/- comprising a principal sum of Rs.1,50,00,000/- and interest for a sum of Rs.78,75,000/- along with 18% interest on the principal sum, from the date of filing of the suit till the date of realisation.

2. According to the plaintiffs, the defendants herein approached the plaintiffs and sought loan for their business and personal purposes. A sum of Rs.1,50,00,000/- was advanced by the plaintiffs to the defendants at various point

of time. The defendants failed to repay the loan amount, within three months, as they promised. On 23.04.2013, the plaintiffs and the defendants entered into memorandum of understanding, wherein, they quantify the total sum payable by the defendants including the interest. As per the memorandum of understanding for a sum of Rs.1,50,00,000/- was payable by the defendants. As security to the said loan, the original title deeds of the 2nd defendant's property at Hobli, Karnataka was deposited with the plaintiffs. The defendants promised to redeem the title deeds on payment of Rs.1,50,00,000/- within 12 months. Later, on assurance of the defendants that they would substitute another property situated at Mahbubnagar, Andhra Pradesh, with the title deeds relating to the property in Bangalore, a loan agreement was executed on 15.11.2013. The defendants promised to pay the dues by raising loan from the bank mortgaging their Bangalore property. Believing their promise, the title deeds to the Bangalore property was returned to the defendants. The plaintiffs also agreed to reduce their claim from Rs.1,50,00,000/- to Rs.1,00,00,000/- in terms of the agreement entered on 15.11.2013. The plaintiffs gave two cheques for Rs.50,00,000/- each in discharge of the loan and third cheque for Rs.3,00,000/- to cover the interest on the loan amount at 18% from 15.11.2013 i.e., Date of agreement till 16.01.2014 from the date of cheques. These three cheques, on presentation was not honoured

for want of funds. Then again, the defendants came forward to give a single cheque dated 19.07.2014 for a sum of Rs.1,03,00,000/- drawn on ICICI Bank, T.Nagar, Chennai. This cheque was also returned with endorsement “Funds Insufficient”.

3. The defendants, to avoid criminal prosecution gave an unconditional written apology letter on 29.08.2014 and assured to repay the loan amount, as per the following schedule.

a). 1st payment would be on 01.09.2014 for a sum of Rs.70,00,000/-, vide cheque No.521199.

b). 2nd payment would be on 15.09.2014 for a sum of Rs.10,00,000/-, vide cheque No.521200.

c). 3rd payment would be on 30.09.2014 for a sum of Rs.70,00,000/-, vide cheque No.673651.

4. Suit summons was served on the defendants and the defendants entered appearance through counsel. The defendants came forward to settle the dispute for a sum of Rs.80,00,000/- and therefore, this Court, on 24.09.2019

recorded the same and adjourned the suit to 01.10.2019 for reporting settlement. On 08.11.2019, a joint memo was filed by the plaintiffs and the defendants, stating that the defendants agreed to pay a sum of Rs.82,50,000/- towards satisfaction of entire sum due payable by the defendants and the defendants agreed for a sum of Rs.15 lakhs on or before 28.11.2019, either by way of demand draft or Bank transfer and another sum of Rs.10 lakhs will be paid by the defendants on or before 08.12.2019 and balance sum of Rs.57,50,000/- will be paid on or before 20.01.2020. Taking the joint memo on record, this Court adjourned the matter to 29.11.2019 to ensure whether the defendants have paid the 1st instalment of Rs.15 lakhs as agreed under the joint memo of compromise.

5. The defendants or their Counsel thereafter had not appeared before this Court. The plaintiff's Counsel reported to this Court that the defendants have failed to honour the commitment as per the joint memo. Believing the words of the defendants and the progress in the settlement talk, to facilitate level playing field, this Court which earlier passed interim order in O.A.No.450 of 2017, restraining the respondents/defendants from alienating or dealing in any manner whatsoever, the property at Yelankanka Hobli, Bangalore North Taluk, morefully described in the schedule "A" of the application in O.A.No.450 of 2017 was

closed. But after that, the defendants have not turned up to this Court, hence, they were set exparte. The exparte evidence was recorded by the Master.

6. The 2nd plaintiff was examined as P.W.1. The original memorandum of understanding dated 23.04.2013, wherein, the defendants deposited the original title deeds relating to the property at Yelankanka Hobli, Bangalore North Taluk. The loan agreement dated 15.11.2013, wherein, in continuation of the Ex.P.1 (memorandum of understanding), the defendants agreed to pay Rs.1,00,00,000/- and given three cheques, as under:-

<i>Sl.Nos.</i>	<i>Cheque No.</i>	<i>Cheque Dated</i>	<i>Drawn on</i>	<i>Amount</i>
1.	462478	16.01.2014	ICICI Bank, T.Nagar Branch	Rs.50,00,000/-
2.	550016	16.01.2014	ICICI Bank T.Nagar Branch	Rs.50,00,000/-
3.	462477	16.01.2014	ICICI Bank T.Nagar Branch	Rs.3,00,000/-

7. Ex.P.3 is the letter of apology for dishonouring these three cheques and promise to repay the money on a revised schedule. The three exhibits Ex.P.1 to Ex.P.3 clearly proves that the defendants owes Rs.1,50,00,000/- to the plaintiffs with interest and to discharge the said loan, they initially entered into a memorandum of understanding Ex.P.1 and thereafter, the loan agreement (Ex.P.2) gave cheques to discharge the amount, but failed. Later, gave an apology letter

dated 29.08.2014 (Ex.P.3) with promise to repay the money in three instalments. The defendants have failed to pay the money as per this letter.

8. The plaintiffs has established their case through Ex.P.1 to Ex.P.3.

The liability to pay not been controverted by the defendants. In fact, pending suit, they have agreed to repay the money and the plaintiffs has also agreed to receive the lesser amount towards full quit and settlement. However, after taking advantage of the closure of the injunction application, the defendants had willfully abstained from attending the Court.

9. In the light of the above facts and circumstances, this Court holds that the plaintiffs have proved beyond doubt that the defendants are liable to pay the suit claim of Rs.2,28,75,000/- and interest at the rate of 18% from the date of filing the suit till the date of realisation on the principal sum of Rs.1,50,00,000/-. In the result, the Suit is decreed as above with costs.

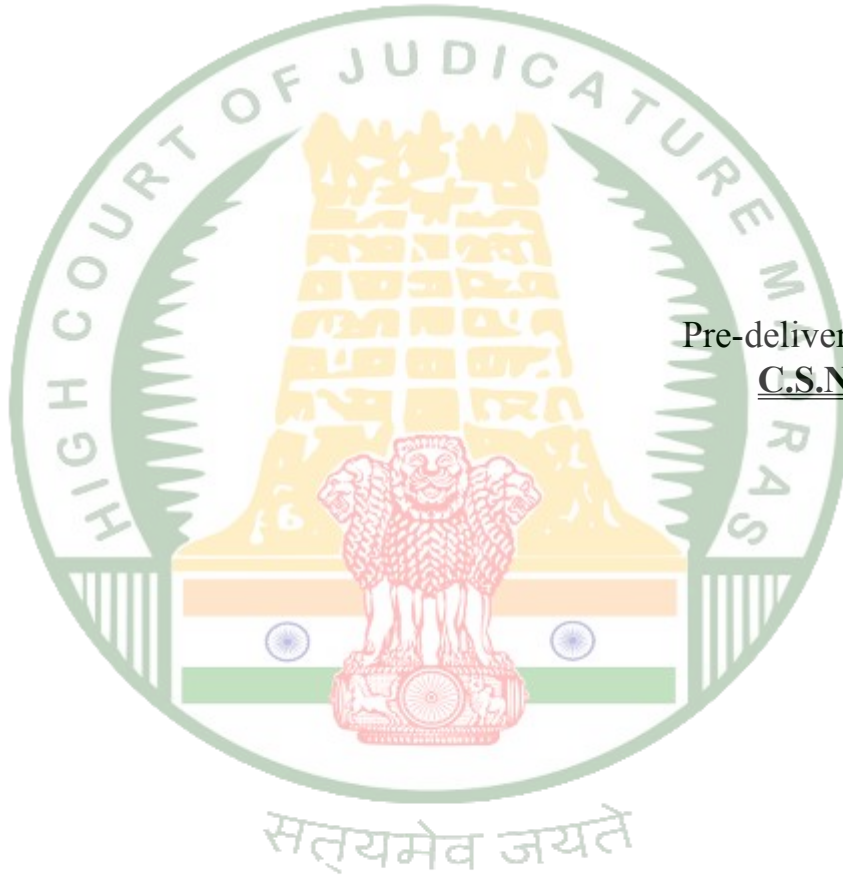
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Dr.G.Jayachandran,J.

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Pre-delivery Judgment in
C.S.No.247 of 2017

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