

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2020

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.100 of 2000

Manipal Sowbhagya Nidhi Limited
Rep. by its Sub Manager,
Mr.B.Srinivasan

...Plaintiff

Vs.

1.Mr.A.Dhanapalan alias A.Thanapal
2.A. Brahmaraj
3.P.K.S.Sambandhan
4.Mr.R.Balachadran
5.Mr.G.Sudhangkaran (Deceased)
6.Mr.A.Ranjitham
7.Mr.R.Nagendran
8.Mrs.S.Jayakodi
9.Mr.S.Sriram Prabhu
*(Defendant 8 & 9 are brought on record as LRs
of the deceased 5th defendant as per order
dated 13.3.2017 in I.A.No.1660 of 2017)*

...Respondents

Prayer: Plaint under order XXXVII Rule 1 of O.S. Rules read with order XXXIV Rule 1 of CPC, (a) for a sum of Rs.1,62,60,641.50 together with interest at the rate of 26.5% p.a., with monthly rests from the date of plaint till date of realisation, on or before a date fixed by this Court, (b) in case of default in payment on or before the date fixed by this Court, the said mortgaged property described in Schedule 'A' hereunder may directed to be sold and sale proceeds after defraying the expenses

incurred in the conduct of the sale, be applied in and towards the payments of principal interest and costs, as determined in prayer (a); (c) in the event of the sale proceeds not being sufficient for the payments in full of the claim in prayer (a) the defendants may be ordered to pay the plaintiff the amount of deficiency together with interest till the date of realisation; (d) directing the defendants to pay to the plaintiff the costs of this suit.

For Plaintiff : Mr.Kuberan
for M/s.Rank Associates

JUDGMENT

The suit has been filed seeking for the following reliefs:

(a)a sum of Rs.1,62,60,641.50 together with interest at the rate of 26.5% p.a., with monthly rests from the date of plaint till date of realisation, on or before a date fixed by this Court.

(b)in case of default in payment on or before the date fixed by this Court, the said mortgaged property described in Schedule 'A' hereunder may directed to be sold and sale proceeds after defraying the expenses incurred in the conduct of the sale, be applied in and towards the payments of principal interest and costs, as determined in prayer (a);

(c)in the event of the sale proceeds not being sufficient for the payments in full of the claim in prayer (a) the defendants may be ordered to pay the plaintiff the amount of deficiency together with interest till the date of realisation;

(d)directing the defendants to pay to the plaintiff the costs of this suit.

2.It is the case of the plaintiff that the defendants 1 to 5 availed a loan of Rs.1,00,00,000/- from the plaintiff in the month of April 1996. Later, during July 1996, once again they sought for another loan of Rs.1,00,00,000/-. Defendants 4, 6 and 7 agreeing to offer their properties as security, the plaintiff granted a sum of Rs.1,00,00,000/- as loan. The defendants also agreed to repay the above amount together with interest. Defendants executed a Demand Promissory Note and other documents to secure the above loan and received a sum of Rs.1,00,00,000/- at Chennai. Defendants also executed the necessary receipt evidencing the receipt of the above amount. At request of the defendants 1, 3, 4, 5, 6 and 7, the

cheque was drawn in the name of the second defendant. Besides defendants 4, 6 and 7 deposited title deeds towards loan, as the defendants defaulted in repayment, the suit. Except 5th defendant and others remained exparte.

3.It is the case of the 5th defendant that he was working in a mill owned by the 1st defendant and he has signed the document as the instruction of employee. Therefore, he is not liable to pay amount.

4.On the side of the plaintiff 12 documents were marked as exhibits and on the side of the defendants no evidence adduced. The learned counsel for the plaintiff submitted that the defendants having received the amount have not disputed the document whereas evidence of PW1 clearly shows that the loan amount was defaulted. Besides the deposit of title deed is also executed by defendants 4, 6 and 7.

5.This Court perused the following exhibits on record that Ex.P1 is an authorisation Letter, Ex.P2 is an application by defendants to plaintiff, Ex.P3 is an undertaking given by defendants 4, 6 and 7 to the plaintiff,

Ex.P4 is a demand promissory note executed by defendants to plaintiff, Ex.P5 is a delivery letter by defendants to plaintiff, Ex.P6 is a receipt issued by defendants to plaintiff, Ex.P7 is an undertaking given by defendants 3 to 5 to plaintiff, Ex.P8 is an authorisation given by defendants 3 to 5 to plaintiff, Ex.P9 is a Legal notice issued by plaintiff counsel to defendants, Ex.P10 is returned covers issued, Ex.P11 is a reply given by defendants to plaintiff and Ex.P12 is Statement of Accounts from 31.07.1996 to 24.09.1998. Evidence of PW1 is remain unchallenged and the documents is also not challenged. No pleadings made except by the fifth defendant. Fifth defendant also admitted signing of the documents, whereas his only contention that as per the instruction of employer he signed the documents. Having taken such plea, evidence of PW1 is not even challenged. No cross examination done by the fifth defendant. No oral evidence adduced on his side. Therefore, his contention has no legs to stand. Ex.P2 is an application and Ex.P3 is an undertaking given by the defendants 4, 6 and 7 to plaintiff and receipt issued by defendants to plaintiff is Ex.P6 and statement of accounts filed by plaintiff is Ex.P12. Above documents coupled with the evidence of the PW1. Plaintiff has proved his claim.

6. Accordingly, preliminary decree is passed for a sum of Rs.1,62,60,641.50 and the defendants are directed to deposit the suit claim, within a period of four (4) months with interest at the rate of 9% p.a. from the date of suit, till the date of judgment and decree thereafter 6% p.a. from the date of decree till the date of realization. In the event of failure to deposit the amount plaintiff is at liberty to apply for final decree for sale of mortgaged properties to realise the decree amount.

7. With the above observation, this suit is disposed of. No costs.

13.03.2020

Index : yes/no

Internet : yes/no

Speaking Order/Non-Speaking Order

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C.S.No.100 of 2000

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13.03.2020