

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2020

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.S.No. 652 of 2004

1. Mr.Mukunchand Bothra (deceased)
 2. M.Karishma Bothra
 3. M.Gagan Bothra
 4. M.Sandeep Bothra
- (plaintiffs 2 to 4 are brought on record of the deceased sole plaintiff as per order dated 18.12.2019 in A.No. 5586 of 2019)

... Plaintiffs

Vs.

1. Rajiv Gandhi Memorial Educational Charitable Trust
Rep. by its Managing Trustee
36, Anjaneyar Koil Street,
Chennai – 600 056.
2. Mr.R.Anbarasu (deceased)
3. Mr.P.Mane
4. Mrs.A.Kamala (deceased)
5. Mrs.S.Paramasivam Pillai
6. Mr.T.K.T. Nathan
7. Mr.M.Shanmuga Selvi

8. Mr.M.Paramasivam
9. M/s. Udayam Engineering College
Nemilli Road, Chowkkanthangal Village
Valarpuram Post,
Sriperumbudur.
10. Mrs. Sumathy
11. A.Ashokan
12. A.Arul Anbarasu ... Defendants

{defendants 10 to 12 are brought on record as legal heirs of the deceased 4th defendant as per order dated 17.12.2018 in A.No. 9883/2018)

PRAYER: This Civil Suit filed under Order XXXVII Rule 1 O.S. Rules read with Order VII Rule 2 CPC, praying for the following reliefs:

(a) directing the defendants to pay a sum of Rs.20 lakhs as principle amount along with interest of Rs.8,06,795/- at the rate of 18% p.a., on Rs.20 lakhs from 3/4/02 to 30/6/04;

(b) direct the defendants to pay the future interest at the rate of 18% p.a., on Rs.20/- lakhs from the date of plaint till the date of realisation of the amount to the plaintiffs;

(c) direct the defendants to pay the cost of the suit to the plaintiffs.

For Plaintiffs : Mr. Gagan Bothra
party-in-person

For Defendants 1 & 9: Mr. R.Anandha Babu

JUDGMENT

This suit has been filed for recovery of a sum of Rs.20/- lakhs from the defendant, based on the pro-note dated 03.04.2002.

2. It is the case of the plaintiff that the plaintiff is the financier and the first defendant, Rajiv Gandhi Memorial Educational Charitable Trust, represented by the Managing Trustee, has approached the plaintiff for a loan of Rs.15 lakhs and executed a pro-note dated 05.07.2002 and also for Rs. 20/- lakhs and executed a pro-note dated 03.04.2002. According to the plaintiff that several other amounts have been given to the defendant Trust on various dates. The suit has been filed only as against the pro-note dated 03.04.2002 only since the defendant/Trust failed to repay the same.

3. The defendants 1 & 9 have filed a Written Statement and taken on file to the effect that the third defendant has borrowed the amount in the personal capacity for the benefit of the trust and not paid the said amount.

4. None of them has advanced any evidence either oral or documentary on behalf of the defendants and therefore, the evidence has been closed by this Court.

5. PW-1 was examined. PW-1 in his evidence spoken about the execution of the pro-note and advanced loan amount of Rs.20/- lakhs. Ex.P-1 pro-note has been marked. Ex.P-1, which makes it very clear that the first defendant represented by the third defendant, Managing Trustee has borrowed the amount of Rs.20/- lakhs and executed the pronote Ex.P1 which is not in dispute.

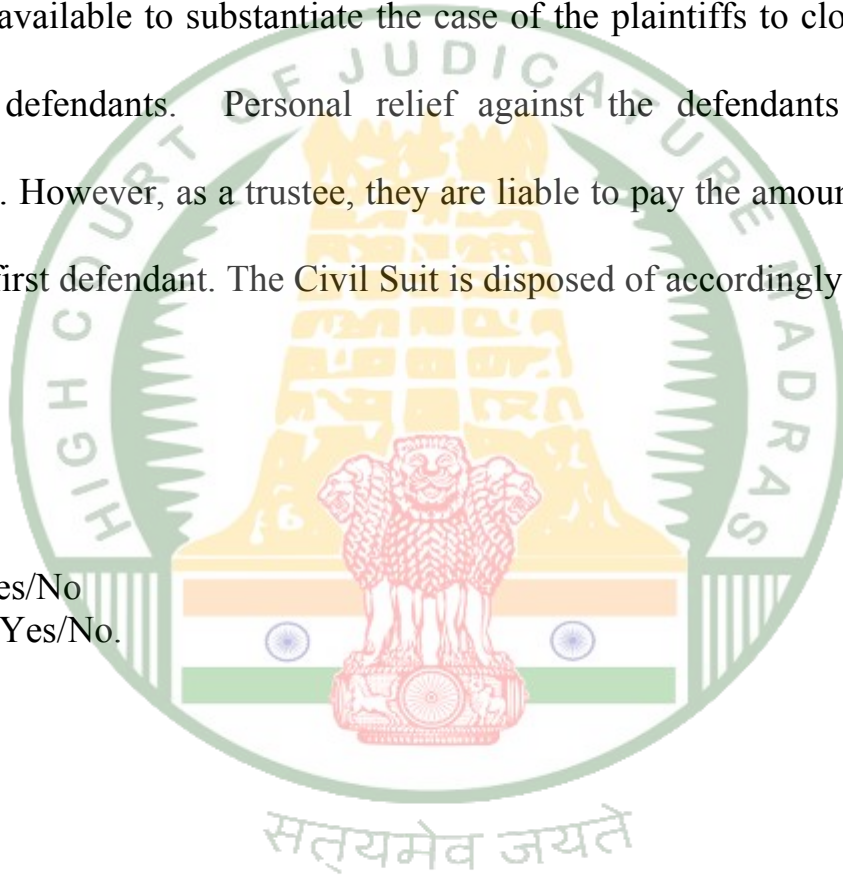
6. The main contention of the defendants 1 & 9 that the amount has been borrowed only in the individual capacity and not by the Trust. Since the execution is not seriously disputed and the evidence of the plaintiff/PW-1 has substantiated the execution of pronote and loan amount. The defendants having filed Written Statement, no rebuttable evidence has been let in to disprove the case of the plaintiff.

7. In such view of the matter, since the plaintiff proved the case, the first defendant, being the Trust having executed a pro-note on borrowing the amount, is liable to pay the suit amount with subsequent interest at the rate of 7.5% p.a. from the date of suit till the date of realisation. As no evidence available to substantiate the case of the plaintiffs to clothe liability of other defendants. Personal relief against the defendants 3, 5 to 12 dismissed. However, as a trustee, they are liable to pay the amount out of the assets of first defendant. The Civil Suit is disposed of accordingly.

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Index: Yes/No
Internet: Yes/No.

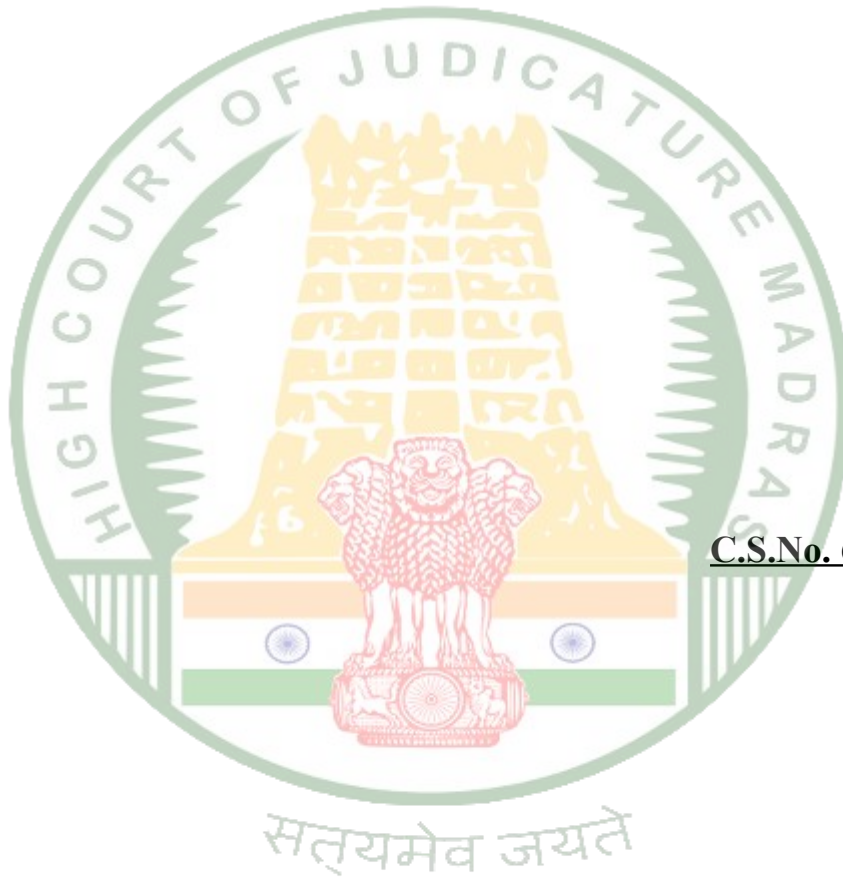
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