IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON: 21.12.2020
ORDER PRONOUNCED ON: 22.12.2020

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

**C.S.No.392 of 2016**

K.N.Raghupathy
S/o.Late R.Narayanan .. Plaintiff

Vs.

G.Anbhalaggan .. Defendant

**PRAYER :** Civil Suit filed under Order VII Rule 1 of CPC read with Order IV Rule 1 of the Madras High Court Original Side Rules and Order XXXIII Rule 1 of CPC, prays for the following judgment and decree against the defendant.

(a) directing the defendant to make payment to the plaintiff the sum of Rs.1,21,00,000/- together with interest @ 24% p.a., on Rs.1,21,00,000/- from the date of plaint till date of realisation;

(b) to pay the costs of this suit.



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|---|---|---|
| For Plaintiff | : | Mr.C.P.Sivamohan |
| For Defendant | : | No appearance |

**J U D G M E N T**

Plaintiff filed a suit for recovery of money claim of Rs.1,21,00,000/- together with interest at 24% per annum from the defendant arising out of Memorandum of Understanding (MoU) executed between them on 13.10.2011.

2. Notice served on the defendant. Defendant called absent and set ex-parte. Plaintiff examined himself as P.W.1. To prove his claim, he relied the documents Exs.P1 to P6 and evidence to P.W.1.

3. The learned counsel for the plaintiff submits that he proved his claim through both orally and documentally evidence, and prayed to decree the suit as prayed for.



4. Perused the evidence and documents.



5. As per the evidence of P.W.1, it reveals that he signed deed of guarantee for the loan availed by M/s.Sree Ambal Expo Inc., along with other

partners in or about 2001 in favour of Indian Overseas Bank. The defendant G.Anbhalaggan is the Managing partner of M/s.Sree Ambal Expo Inc., with other partners with S.Senthilnathan and B.Sivaramakrishnan and by way of depositing the title deeds of the property belonging to the plaintiff P.W.1, stood as guarantee in favour of the Indian Overseas Bank for the loan availed by the said M/s.Sree Ambal Expo Inc., but as agreed, the defendant along with the other partners, failed to pay the loan due to the Bank, so the Bank initiated DRT proceedings in O.A.No.342 of 2003 before the DRT No.I, Chennai.

6. Besides, the said company played fraud by depositing their forged title deeds belongs to one Rajendran, thereby, the Bank initiated case before CBI police and the same ended in conviction of the defendant to undergo imprisonment.



7. Since the title deeds of the plaintiff's property was in the hands of Indian Overseas Bank, he entered into negotiation with M/s.Sree Ambal Expo Inc., and on behalf of the defendant, he offered to pay a sum of Rs.1.15 Crores out of Court settlement on 15.09.2011 as the outstanding of M/s.Sree

Ambal Expo Inc., and the Bank also agreed to issue 'No Due Certificate' after the said full payment.

8. Accordingly, the plaintiff remitted Rs.1.15 crores to the bank and got 'No Due Certificate'. His family members sold their property and pledged their jewels with the help of those amounts the due was paid to the bank. He has also given up his share in the family property in favour of his family members through family arrangements.

9. As per the evidence of P.W.1, within 90 days from the date of MoU, he paid Rs.1.15 Crores to the Bank and got 'No Due Certificate' from the Bank. But the Bank refused to handover the title deeds for various reasons. As per the terms between plaintiff and the defendant, the defendant has to pay the said Rs.1.15 Crores to the plaintiff as per the terms agreed in Paragraph Nos.8, 9 and 10 of the said Memorandum of Understanding.



10. Accordingly, the plaintiff paid the entire amount on 31.12.2011 itself. But the defendant repaid only Rs.1 lakh to P.W.1, thereafter, he has not made the payment as he agreed as per the MoU. So, the plaintiff issued notice

Ex.P6, but the said notice returned as 'unserved'. So the plaintiff approached this Court again for recovery of his money due from the defendant based upon the said MoU.

11. As per the documents MoU Ex.P3, it clearly reveals the terms between the parties, in Paragraph 8,9 and 10 as follows:

> *"8. Whereas the second party had undergone all business turmoil and turbulence and ended with Heart Bye Pass Surgery and started working for the past four months and it is mutually agreed that the amount in the OCS to be paid by Mr.K.N.Regupathy the First Party and will be reimbursed by Mr.Anbhalaggan to the First party as time is the essence of this OTS.*
>
> *9. Whereas the both parties agrees to pay the amount jointly with out making the ratio and once the due is paid to IOB the amount paid by the First Party, the Second Party will pay back to First Party in parts considering the health and financial position of the party of the Second.*
>
> *10. Whereas the Second Party had agreed to make good the payment made by the First party to IOB and also the expenses incurred within a 90 day period from the date of agreement and in case any amount pending then can amicably discuss and extend the tenure by the First Party during the period as per below:*

| | |
|---|---|
| *OTS amount* | *: Rs.1,15,00,000/-* |
| *Legal expense* | *: Rs.1,24,600/-* |
| *DRT-1 Written Statement, legal exp* | *: Rs.55,000/-* |

| | |
|---|---|
| *High Court Stamp* | *: Rs.15,000/-* |
| *Family Decree* | *: Rs.1,65,000/-* |
| *SA-58/SA-282* | *: Rs.1,15,000/-* |
| *CRP* | *: Rs.60,000/-* |
| *CS* | *: Rs.65,000/-* |
| ***Total*** | ***:Rs.1,20,99,600/-*** *(Rounded 1.21 Crores) "* |

12. As per MoU the plaintiff agreed to pay the Bank a sum of Rs.1.15 Crores. Accordingly, the plaintiff paid amount to the bank on various dates. To that effect, he filed the documents. Ex.P3 which clearly proves that he paid the Rs.1.15 Crores to the Bank within 90 days from the date of MoU. The Bank also issued 'No Due Certificate' in favour of the plaintiff in Exs.P4 and P5. With the help of these documents, the plaintiff clearly proved as per the MoU with defendant that he paid Rs.1.15 crores to the Indian Overseas Bank. He also entitled for other charges arising of out the legal proceedings.

13. But the defendant not repaid the amount to the plaintiff as he agreed, inspite of the legal notice Ex.P6 issued by the plaintiff. Hence, the plaintiff approached this Court, and proved his claim as prayed for. Inspite the summons, the defendant not appeared nor raised any objection to the plaintiff's claim.

14. Accordingly, the suit is decreed to the extent that the defendant is directed to pay a sum of Rs.1.20 Crores with interest at the rate of 24 % from the date of execution of MoU till the date of decree, thereafter, subsequent interest is at the rate of 6 % till the date of realization with Costs.

**22.12.2020**

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Index : Yes/No
Speaking Order: Yes/No

**T.V.THAMILSELVI,J.**

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