



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 17TH DAY OF AUGUST 2021

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.S. No.43 of 2002

M/s. Industrial Venture,
Capital Limited.
Having its registered office at
"Vairams", No.112,
Thyagaraya Road,
T.Nagar, Chennai-600 017.

... Plaintiff

Versus

S.S.Rajkumar,
S/o.S.P.Subbusamy,
residing at No.12,
7th Street, Tatabad,
Coimbatore-641 012.

... Defendant

Civil suit praying that this Hon'ble Court be pleased to pass a decree and judgement against the Defendants:

(a) for a sum of Rs.1,29,16,964.79 together with interest thereon at the rate of 24% on Rs.45,00,000/- from date of plaint till realisation.

(b) for costs of the suit.

This suit along with the C.S.No.417 of 2002 having been heard on 02.08.2021 in the presence of Mr.Prakash Goklaney for M/s.P.J.Georage, Advocates for the plaintiff herein and Mr.H.Karthik Seshadri for M/s.Iyer & Thomas, Advocates for the defendant herein and upon reading the pleadings



evidence adduced therein and having stood over for consideration till this date and coming on this day before this court for orders in the presence of said advocates for the parties hereto and this court having observed that the transaction is a complete commercial transaction and the borrowing was for the purposes of business, this court is of the considered opinion that the defendants could be directed to pay interest at 7% per annum on the principal amount, **it is ordered an decreed as follows:-**

That the defendant herein, due pay to the plaintiff herein, a sum of Rs.1,29,22,438/- (Rupees One Core Twenty Nine Lakhs Twenty Two Thousand Four Hundred and Thirty Eight Only) with further interest at he rate of 7% per annum on the sum of Rs.45,00,000/- (Rupees Forty Five Lakhs Only) from this date till the date of realisation.

2) That the defendant herein, do pay to the plaintiff herein, the proportionate costs of this suit, as and when taxed by the taxing of this court, and noted in the margin thereof.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
17TH DAY OF AUGUST 2021.

Sd./-

ASSISTANT REGISTRAR (Comm.Cases)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)



VSP

02/09/2021

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C.S. No.43 of 2002

DECREE

DATED : 17.08.2021

THE HON'BLE MR.JUSTICE
R.SUBRAMANIAN

FOR APPROVAL: 03/09/2021

APPROVED ON: 07/09/2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Reserved on 02.08.2021	Delivered on 17.08.2021
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CORAM**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN****C.S.Nos.43 and 417 of 2002****in CS No.43 of 2002**

M/s. Industrial Venture Capital Limited ... Plaintiff

Vs

S.S.Rajkumar ... Defendant

Prayer : Complaint filed under Order IV Rule 1 of the Original Side Rules 1956, read with Order VII Rule 1 of the Code of Civil Procedure, praying for the following judgment and decree:-

(a) for a sum of Rs.1,29,16,964.79 together with interest thereon at the rate of 24% on Rs.45,00,000/- from date of complaint till realisation;

(b) for costs of the suit

in CS No.417 of 2002

M/s. Industrial Venture Capital Limited ... Plaintiff

Vs

1. M.S.Rajaram

<https://hcservices.ecourts.gov.in/hcservices/>

2. Girija Rajaram

... Defendants



Prayer (in CS No.417/2002): Complaint filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure, praying for the following judgment and decree:-

- (a) for a sum of Rs.45,49,019.16 together with interest thereon at the rate of 24% on Rs.18,00,000/- from date of complaint till realisation;
- (b) for costs of the suit

For Plaintiff : Mr. Prakash Goklaney
(in both the petitions) for M/s. P.J.George

For Defendants : Mr.H.Karthik Seshadri
(in both the petitions) for M/s. Iyer & Thomas

COMMON JUDGMENT

The Summary of the complaint in CS No.43 of 2002:

1. The plaintiff is a Registered Company engaged in venture capital investments and advancing of loans to various industries. According to the plaintiff, the defendant promoted a Company known as Muthur Murugan Mills along with M/s.S.P.Subbusamy, S.P.Chinnaraj and R.Nanjukutty in Coimbatore. The business of the Company was manufacture of cotton, polyester viscose and other related items with an authorized and subscribed share capital of Rs.2,25,00,000/- made up of 22,50,000 equity shares of value of Rs.10/- each.



1.1. The defendant sought for a personal loan of Rs.76,00,000/- from the plaintiff for purchase of 7,60,000 equity shares in the said Company.

Upon sanction of the said loan, the Agreement dated 21.11.1994 was executed between the plaintiff and the defendant. As per clause 3 of the said Agreement the loan was repayable on demand. Under the said Agreement, the defendant had agreed to pledge the 7,60,000 equity shares to be purchased by the defendant as security for the amount borrowed. Accordingly the shares purchased were also pledged with the plaintiff and are still in custody of the plaintiff. The defendant did not come forward to repay the loan despite demands. On 06.03.1996 a Supplemental Agreement was entered into under which the defendant agreed to sell 3,10,000 equity shares out of the 7,60,000 shares pledged with the plaintiff at the face value i.e. Rs.10/- per share.

1.2. The transfer was effected and consequently the loan amount was reduced to Rs.45,00,000/-. The plaintiff would claim that the defendant though admitted liability under letter dated 22.02.1999, did not repay the sum of Rs.45,00,000/- with interest. Therefore, the plaintiff had sued for repayment of the sum of Rs.45,00,000/- with interest at 24% per annum.

The interest is claimed at 24% on the ground that the suit transaction is a commercial transaction.



The Summary of the Written Statement:

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2. The defendant would resist the suit contending that the agreement dated 21.11.1994 is not a loan agreement. While admitting the fact that he was a promoter of the Company called Muthur Murugan Mills Ltd. The defendant would claim that the plaintiff Company being a venture capitalist made an investment in the Company promoted by the defendant. According to the defendant, though the Agreement dated 21.11.1994 is termed as a loan agreement, it is only an investment agreement. Reliance is placed by the defendant on various clauses of the agreement dated 21.11.1994 to contend that the agreement itself is only a venture capital agreement by which the plaintiff had invested in the defendant's venture and therefore, the plaintiff is not entitled to seek recovery of money. The fact that no interest is made payable under the agreement is projected as a factor to buttress the claim of the defendant that the actual transaction is an investment transaction and not a loan transaction. The defendant would also claim that such a camouflage was adopted to get over the prohibition contained in Section 372 of the Companies Act 1956, which prohibits investment of more than 30% of the authorized capital of a Company by a venture capitalist. The fact that the plaintiff was given a right to sell the shares pledged and claim the balance amount is also projected as a factor in determining the very nature of the agreement. The defendant would also



contend that the plaintiff not only took pledge of the shares, but also took a Power of Attorney from the defendant authorizing it to alienate the shares to third parties. Such being the case, according to the defendant, the present suit for recovery of money treating the transaction as a simple loan transaction is not maintainable. The sum and substance of the written statement is that though the transaction is styled or termed as a loan transaction, the same is actually an investment transaction by the plaintiff which is a venture capitalist.

3. On the above pleadings, the following issues were framed by this Court.

- 1. Whether the defendant availed any personal loan from plaintiff through the agreement dated 21.11.1994;*
- 2. Whether the 7,60,000 equity shares are backed as pledge of shares for the alleged personal loan to the defendant;*
- 3. Whether the sum of Rs.45,00,000/- (Rupees Forty Five Lakhs only) remains due and is payable by the defendant to the plaintiff;*
- 4. Whether the plaintiff is entitled to suit claim of Rs.1,29,16,964.79 (Rupees One Crore Twenty Nine Lakhs sixteen thousand nine hundred and sixty four and seventy nine paise);*



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5. *Whether the plaintiff has a right to claim any interest on the transaction if so whether the plaintiff is entitled to pendentilite interest @ 24% per annum on the balance of Rs.45,00,000 (Rupees Fourty Five Lakhs only) as claimed;*
6. *Whether the suit claim is within limitation;*
7. *To what relief, the plaintiff is entitled for?*

4. At trial one Mr.R.Kalyanaraman, the Company Secretary of the plaintiff at the relevant point of time was examined as P.W.1 and Exhibits P1 to P6 were marked on the side of the plaintiff. The defendant was examined as D.W.1 and Exs.D1& D2 were marked on the side of the defendant.

The Summary of the plaint in CS No.417 of 2002:

5. The plaintiff is a Registered Company engaged in venture capital investment and advancing of loans to various industries. According to the plaintiff, the defendants, who are the promoters of a Spinning Mill known as Archana Spinners Limited with an authorised share capital of Rs.2 crores and a subscribed share capital of Rs.1,40,00,000/- made up of 1,40,000 equity shares of Rs.10/- each, applied to the plaintiff for a personal loan of



Rs.12,00,000/- each to enable them to purchase 2,40,000 equity shares at Rs.10/- each in the Company that is to be promoted by them.

5.1. Upon sanctioning of the loan, an Agreement dated 02.11.1995 was executed between the plaintiff and the defendants. The loans are repayable on demand as per clause 3 of the said agreements. The defendant also agreed to pledge the 2,40,000 equity shares purchased by them as security for the amounts borrowed by the defendants and the same would be kept pledged till the amount is repaid. The shares so pledged are still in the custody of the plaintiff. Since the defendants did not repay the loan as agreed to, a supplemental agreement was entered into between the parties on 10.02.1996, in and by which, the defendants agreed to sell 60,000 equity shares valued at Rs.6,00,000/- to the plaintiff, upon transfer of the shares, the outstanding under the loan account was reduced to Rs.18,00,000/-. Since the defendants did not repay the money borrowed, the plaintiff had sought for recovery of the said sum of Rs.18,00,000/- with interest at 24% per annum. The claim of interest at 24% is justified on the ground that the transaction is a commercial transaction.

The summary of the written statement is as follows:

6. While admitting the fact that the defendants had promoted the

Company Archana Spinners Limited, which was to have engaged in



production of Cotton and Polyester Yarn, the defendants would deny the factum of borrowing. According to the defendants, though the Agreement dated 21.11.1994 is termed as a loan agreement, it is only an investment agreement. Reliance is placed by the defendant on various clauses of the agreement dated 21.11.1994 to contend that the agreement itself is only a venture capital agreement by which the plaintiff had invested in the defendant's venture and therefore, the plaintiff is not entitled to seek recovery of money. The fact that no interest is made payable under the agreement is projected as a factor to buttress the claim of the defendant that the actual transaction was an investment transaction and not a loan transaction. The defendant would also claim that such a camouflage was adopted to get over the prohibition contained in Section 372 of the Companies Act 1956, which prohibits investment of more than 30% of the authorized capital of a Company by a venture capitalist. The fact that the plaintiff was given a right to sell the shares pledged and claim the balance amount is also projected as a factor in determining the very nature of the agreement. The defendant would also contend that the plaintiff not only took pledge of the shares, but also took a Power of Attorney from the defendant authorizing it to alienate the shares to the third party. Such being the case, according to the defendant, the present suit for recovery of money



sum and substance of the written statement is that though the transaction is styled or termed as a loan transaction, the same is actually an investment transaction by the plaintiff which is a venture capitalist.

7. On the above pleadings, the following issues were framed by this Court on 28.07.2010.

- 1. Whether the plaintiff had advanced any money as loan to defendants;*
- 2. Whether the arrangement between plaintiff and defendants entered separately by virtue of arrangements dated 02.11.1995 and 10.12.1996 are sham and nominal ones;*
- 3. Whether the suit is properly framed;*
- 4. Whether there has been misjoinder of cause of action;*
- 5. Have not the defendants acknowledged liability vide letter dated 03.02.1999?*
- 6. Whether the plaintiff is entitled to claim for interest;*
- 7. To what other reliefs is the plaintiff entitled to?*

Thereafter this suit was directed to be tried along with CS No.43 of 2002.

Simultaneous trial took place and evidence was recorded in both the suits.



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8 After hearing the arguments of the counsel, I had reserved orders on 15.07.2021, during the course of the judgment it was found that the issues in the suits were not identical. Hence the suits were listed on 02.08.2021 and upon hearing the counsel for the parties the issues in CS No.417 of 2002 were recast as follows:

- i. *Whether the defendants availed any personal loan from the plaintiff under the Agreement, dated 02.11.1995;*
- ii. *Whether there was a pledge of 2,40,000 equity shares as a security for the alleged personal loan obtained by the defendants;*
- iii. *Whether a sum of Rs.18,00,000/- remains due and payable by the defendants to the plaintiff as principle;*
- iv. *Whether the plaintiff is entitled to the suit claim of Rs.45,49,019.16;*
- v. *Whether the plaintiff has got a right to claim interest if so, whether the plaintiff is entitled to pendent lite interest at 24% per annum on the principle amount of Rs.18,00,000;*



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vi. Whether the suit claim is within limitation; and

vii. To what relief is the plaintiff entitled for?

9. At trial one Mr.R.Kalyanaraman, the then Company Secretary of the plaintiff was examined as P.W.1 and Exhibits P1 to P40 were marked on the side of the plaintiff. The first defendant was examined as D.W.1 and Exhibit D1 was marked on the side of the defendants.

10. I have heard Mr.Prakash Goklaney, learned counsel appearing for M/s.P.J.George, appearing for the plaintiff in both the suits and Mr.Karthik Seshadri learned counsel appearing for M/s.Iyer & Thomas, for the defendants in both the suits.

Issue Nos.1 to 3 in both the suits:

11. These issues were taken up together for discussion, as they are interlinked and a decision in one issue will have a bearing on the other.

11.1. It is the case of the plaintiff that the defendants in both the suits approached the plaintiff seeking Financial Assistance in the form of venture capital and the plaintiff was also willing to provide such assistance. However, in view of the prohibition contained in Section 372 of the Company Act, 1956, preventing a venture capitalist from investing more



transaction was so designed that the promoters would take a personal borrowing and buy shares in the Company to be promoted by them. Those shares were made subject matter of a pledge as a security for the borrowing made by the individual Directors. The actual transaction therefore was a simple loan transaction secured by a pledge of shares. The plaintiff was also authorised by way of a Power of Attorney document to transfer the shares, as and when necessary in its favour or in favour of its nominee or nominees. The Agreement between the parties also prohibits the defendants from claiming any appreciation in the value of the shares, if the plaintiff exercises its option to sell the shares using the Power of Attorney.

11.2. It is the contention of Mr.Karthik Seshadri, learned counsel appearing for the defendants that the fact that the Agreements do not provide for payment of interest on the loan amount coupled with the fact that the plaintiff had taken Powers of Attorney from the defendants enabling it to sell the shares of the plaintiff or to effect transfer of the shares to the plaintiff to itself or others would by itself demonstrate that the suit Agreements dated 21.11.1994 and 02.11.1995 were not simple loan Agreements, but they were, in fact, investment Agreements and therefore, the plaintiff is not entitled to sue upon them for recovery of money. While



the requirements of law particularly Section 372 of the Companies Act, 1956, Mr. Prakash Goklaney, learned counsel appearing for the plaintiff would contend that the defendants were aware that the Financial Assistance is being provided to them only as a loan and the same would not constitute an investment through venture capital.

11.3. As regards the contention that the Agreements cannot be termed as loan agreements because they do not provide for payment of interest, Mr. Prakash Goklaney would submit that the mere non-provision of the rate of interest would not convert a simple loan agreement into investment agreement. He would also point out that the provisions of the Interest Act, would apply and the Court can require the defendants to pay interest at Bank rates. He would also contend that in view of Section 92 of the Evidence Act, it is not open to the defendants to claim that the loan agreements subject matter of the suit marked as Ex.P1 in both the suits are not loan agreements but are investment agreements.

11.4. Mr. Prakash Goklaney, would submit that Section 92 of the Evidence Act, prohibits oral evidence being let in for the purpose of contradicting, varying, adding to, or subtracting from, the terms of a written



based on Section 92, Mr.Karthik Seshadri, would submit that the case on hand would fall under proviso 6 to Section 92, which enables a party to prove a fact which shows in what manner the language of the document is related to the existing facts. Therefore, according to him, the defendants are not attempting to contradict, vary, add to, or subtract from the terms of the document.

11.5. According to Mr.Karthik Seshadri, the case of the defendants is that parties intended to provide finance through venture capital, since there was a legal prohibition the same was taken in a different form as a personal loan by the promoters of the Company and therefore the plaintiff cannot seek repayment of the amount advanced as a loan. Since the loan was secured by the pledge of the shares and as a pledgee the plaintiff was entitled to hold the shares till it realise the money. The fact that the plaintiff had transferred to itself about 3,10,000 equity shares of the defendant in CS No.43 of 2002 and 60,000 equity shares of the defendants in CS No.417 of 2002 would demonstrate that the transaction is only an investment transaction and not a loan transaction as claimed by the plaintiff. The moot question that would therefore arise is whether the defendants could be allowed to raise a plea that the transaction though structured as a personal loan transaction was in fact an investment venture and lead evidence to that effect.



11.6. Section 92 of the Evidence Act, prohibits a party to a document from letting in oral evidence which contradicts, varies, add to or subtracts the terms of the instrument. Provisos 1 to 6 carve out exceptions to the Rule enunciated in Section 92. Proviso 6, which is invoked by Mr.Karthik Seshadri, in support of his contention, reads as follows:

“6. Any fact may be proved which shows in what manner the language of a document is related to existing facts.”

11.7. The execution of the documents, the borrowing and the purchase of shares by the defendants in their respective companies are all admitted facts. The one and the only defence that is projected is that the transaction was not a mere loan transaction as claimed by the plaintiff but it was an investment transaction and the plaintiff took the risk of investing monies in the venture of the defendants. Therefore, it is contended that if the ventures suffers a loss as a venture capitalist, the plaintiff should also take that loss it cannot seek to recover the money from the promoters of the Company on the ground that the monies were not invested in the Company but they were advanced to them as loan for purchase of shares in the Company. The parties admit that the transaction was so structured as a loan transaction in view of the prohibition contained in Section 372 of the



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11.8. The defendants therefore want to demonstrate before the Court that the parties attempted to circumvent a statutory prohibition by entering into the contract of this nature, I do not think that a Court could accept a defence of this nature. No doubt Courts have held that tax planning as opposed to tax evasion is not a crime, but getting around a prohibition imposed by an enactment cannot be recognised by the Courts as a valid defence in an action for recovery of money. Mr.Karthik Seshadri, learned counsel would also point out that the plaintiff could have transferred the shares in its favour as it has a right to do so as a pledgee.

11.9. The right of a pawnee to sue upon the debt and to retain the goods pledged as a collateral security is recognised under Section 176 of the Contract Act. Therefore, the plaintiff has the right to retain the shares pledged and seek payment of the debt due, apart from having a right to sell the shares pledged after giving reasonable notice of sale to the pawnor. Section 176 also make the pawnor liable for the difference, if the proceeds of the sale are less than the amount due. It is an admitted fact that both the Companies did not do well and the shares prices of the Companies did not escalate. The non-prescription of interest was on the understanding that the defendants would not claim the difference if the shares of the defendants



appreciated in value. Unfortunately the business did not take off and the shares of the defendants almost became a liability of nil value. The defendants cannot be heard to contend that the plaintiff as a pawnee cannot retain the shares and sue for recovery. Section 176 itself provides that the plaintiff can retain the pledged goods as a security and sue for recovery of money.

11.10. Mr.Karthik Seshadri, learned counsel would draw my attention to the provisions of the loan agreements which has been marked as Ex.P1 to contend that the plaintiffs have retained a right to purchase the shares, as per class 3 of the loan agreement, the plaintiff has agreed not to charge interest on the amount of the loan on the condition that the defendants would not claim any portion of the appreciated value of the shares. Clause 3 confers a right on the plaintiff to purchase the shares of the defendants at the face value of Rs.10/- and the loan amount shall be reduced by the value of the shares transferred. Clause 4 provides that the plaintiff had agreed not to charge interest on the condition that the defendants would not claim the difference, if the value of the shares of the defendants appreciates. Clause 5 provides that so long as the pledged shares appreciate in value, the defendants are prohibited from liquidating the loan and claiming redemption of the appreciated shares and the lender will always be entitled to the benefits accruing from appreciation in the value of the pledged shares.



WEB COPY 11.11. Heavily relying upon the above three Clauses, Mr.Karthik Seshadri, learned counsel, would contend that these three Clauses make the intention of the parties very clear that they had intended the agreements to be investment agreements and not loan agreements. Proviso to Section 92 of the Evidence Act, no doubt allows a party to lead evidence to show in what manner the language of a document related to existing facts. I find that the defendants are not admitting to do what is provided in proviso (6) of the Evidence Act. The defendants are attempting to demonstrate that the transaction itself is different from the recitals in Ex.P1 contract. I am afraid that the defendants cannot demonstrate that the parties intended the agreement to be something else than what is available on the face of the loan agreements which are marked as Exs. P1 and P2. Proviso 6 to Section 92 may not come to the aid of the defendants in the given circumstances as the defendants were very well aware of the intention of the parties and they were also parties to the structuring of the Financial Assistance in a particular manner. Having agreed to the structuring of the Financial Assistance in a particular manner, I do not think that the defendants can now contend that what was intended was an investment contract and not a loan transaction.



11.12. Apart from the above, it is also seen that the defendants in CS No.417 of 2002 have executed acknowledgments of debts which are marked as Exs.P6 & P7 and the defendant in CS No.43 of 2002 has also executed a separate acknowledgment on 22.02.1999 which has been marked as Ex.P5. These acknowledgments, in my opinion, would operate against the defendants and estop them from contending that the transaction was not a borrowing but was an investment of venture capital by the plaintiff. Once the claim of the defendants that the loan agreements marked as Ex.P2 in CS No.43 of 2002 and Ex.P2, P3, P4 and P5 in CS No.417 of 2002 were not simple loan transactions secured by the pledge of the shares, but were actually venture capital investment is rejected, the defendants would be liable to repay the monies borrowed as loan along with allowable interest.

11.13. In the light of the above, issues 1 to 3 are decided in favour of the plaintiff concluding that the defendants had availed personal loans and the loan agreements marked as Exs.P2 and P3 in CS No.43 of 2002 and Exs. P2, P3, P4 and P5 in CS No.417 of 2002 are only loan agreements simplicitor and not agreements for investment as contended by the defendants.

**Issue No.5 in both the suits:**

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12. This issue relates to the claim for interest. As already adverted to the agreements do not provide for payment of interest, in fact the plaintiff has agreed not to claim interest on condition it realises by way of net profits an amount which is in excess of what is due under the loan account. From the above Clause, it is clear that so long as the price of the shares increased the plaintiff would not claim interest. It is an admitted fact that the price of the shares of the defendants never increased above the face value. They could not be sold in the open market also by the plaintiff exercising its right under Section 176 of the Contract Act, as a pledgee or pawnee. It is therefore to be seen what is the rate of interest that could be claimed by the plaintiff. The plaintiff has claimed 24% interest on the ground it is a commercial transaction. Section 34 of the Code of Civil Procedure empowers the Court to grant interest at such rate as the Court may deem reasonable.

12.1. In the absence of a contract between the parties regarding payment of interest, the provisions of Interest Act 1978, could provide a safe guide for the Court to award interest. Section 3 of the interest Act, 1978, provides that the Court may grant interest at a rate not exceeding the

current rate of interest. The term current rate of interest has been defined as



follows in Section 2(b) of the Interest Act, 1978:

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2 (b): “Current rate of interest” means the highest of the maximum rates at which interest may be paid on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions) by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949 (10 of 1949).

Explanation.—In this clause, “scheduled bank” means a bank, not being a co-operative bank, transacting any business authorised by the Banking Regulation Act, 1949 (10 of 1949);

12.2. The current rate of interest on fixed deposits by Banks is hovering around 6 to 6.5% per annum. In case of senior citizens some of the scheduled Banks are offering 6.75 to 7%. However taking into account, the fact that the suit transaction is a complete commercial transaction and the borrowing was for the purposes of business, I am of the considered opinion



that the defendants could be directed to pay interest at 7% per annum on the principal amount of Rs.45,00,000/- in CS No.43 of 2002 and Rs.18,00,000/- in CS No.417 of 2002 from the date of the agreements i.e. 21.11.1994 in CS No.43 of 2002 and 02.11.1995 in CS No.417 of 2002 till date of payment.

12.3. In the light of the above conclusion, the issue No.5 is decided to the effect that the plaintiff would be entitled to interest at 7% per annum and not at 24% per annum on the balance amount viz. Rs.45,00,000/- and Rs.18,00,000/- in the suits.

Issue No.4 in both the suits:

13. In the light of the above conclusions reached issue No.4 is decided against the plaintiff to the effect that the plaintiff is not entitled to claim a sum of Rs.1,29,16,964.79 in CS No.43 of 2002 and a sum of Rs.45,49,019.16 in CS No.417 of 2002.

Issue No.6 in both the suits:

14. This issue relates to the question of limitation. The suits in CS No.43 of 2002 was filed on 17.01.2002 and CS No.417 of 2002 was filed on 04.02.2002. The defendant in CS No.43 of 2002 has acknowledged the debt

in writing under Ex.P5 on 22.02.1999 and the defendants in CS No.417 of



2002 have acknowledged the debt in writing on 03.02.1999. The plaint in CS No.43 of 2002 has been presented on 17.01.2002 that is within three years from the date of the acknowledgement. The suit in CS No.417 of 2002 has been presented on 04.02.2002. The last day for filing of the said suit is 03.02.2002, as the defendants therein have acknowledged the liability on 03.02.1999. 03.02.2002 happens to be a Sunday and hence the suit filed on 04.02.2002 is within time. Therefore, issue No.6 is answered against the defendants.

15. In fine the suits are decreed partly. The plaintiff in CS No.43 of 2002 is entitled to recover a sum of Rs.45,00,000/- with interest at 7% per annum from 21.11.1994 till date of realisation. The plaintiff in CS No.417 of 2002 is entitled to a decree for recovery of sum of Rs.18,00,000/- with interest at 7% per annum from 02.11.1995 till date of recovery. The plaintiff would be entitled to proportionate costs in both the suits.

Sd./-R.S.M.J

17.08.2021

in CS No.43 of 2002

List of Witness examined on the side of the plaintiff:

**List of Exhibits marked on the side of the Plaintiff:**

<i>S. No.</i>	<i>Exhibits</i>	<i>Description of Documents</i>	<i>Date</i>
1	Ex.P1	Original Authorization Letter	06122010
2	Ex.P2	Original Loan Agreement	21/11/1994
3	Ex.P3	Original Supplementary Agreement	06031996
4	Ex.P4	Copy of the statement of account	
5	Ex.P5	Original letter acknowledging liability	22/02/1999
6	Ex.P6	Office copy of the legal notice sent to the defendant along with acknowledgment	14/09/2001

List of Witness examined on the side of the Defendant:

DW1 – Mr.S.S.Rajkumar

List of Exhibits marked on the side of the Defendant:

<i>S. No.</i>	<i>Exhibits</i>	<i>Description of Documents</i>	<i>Date</i>
1	Ex.D1	Original notice to produce issued by the defendant to the plaintiff	21/09/2012
2	Ex.D2	Reply to notice to produce	10012013

in CS No.417 of 2002**List of Witness examined on the side of the plaintiff:**

PW1 – Mr.R.Kalyanaraman

**List of Exhibits marked on the side of the Plaintiff:**

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S. No.	Exhibits	Description of Documents	Date
1	Ex.P1	Original Authorization Letter	06022010
2	Ex.P2	Original Loan agreement executed by the 1 st defendant in favour of the plaintiff	02111995
3	Ex.P3	Original Loan agreement executed by the 2 nd defendant in favour of the plaintiff	02111995
4	Ex.P4	Original supplementary Agreement between plaintiff and 1 st defendant	10021996
5	Ex.P5	Original supplementary agreement between plaintiff and 2 nd defendant	10021996
6	Ex.P6	Original letter acknowledging liability by the 1 st defendant to the plaintiff	03021999
7	Ex.P7	Original letter acknowledging liability by the 2 nd defendant to the plaintiff	03021999
8	Ex.P8	Copy of the legal notice by the plaintiff's counsel to the 1 st defendant along with the acknowledgment card	21/09/2001
9	Ex.P9	Copy of the legal notice by the plaintiff's counsel to the 2 nd defendant along with the acknowledgment card	21/09/2001
10	Ex.P10	Office copy of the statement of accounts pertaining to the 1 st defendant and the plaintiff	
11	Ex.P11	Office copy of the statement of accounts pertaining to the 2 nd defendant and the plaintiff	
12	Ex.P12	Original reply notice issued by the counsel for defendants to the counsel for plaintiff	29/10/2001
13	Ex.P13 and Ex.P14	Memorandum and articles of association and also certificate of registration issued by SEBI are the	



S. No.	Exhibits	Description of Documents	Date
		two documents with reference to plaintiff company	
14	Ex.P15	Copy of the application	17/11/1994
15	Ex.P16	Copy of the application letter	25/02/1995
16	Ex.P17	Copy of the company petition No.52/2008 filed by the plaintiff before the Company law board	
17	Ex.P18	Coy of the proof of share holding of the plaintiff in Archana Spinners Private Limited.	
18	Ex.P19	Copy of the letter of pledge by the 1 st defendant of Rs.1,20,000/- shares	
19	Ex.P20	Copy of the general power of attorney executed by the 2 nd defendant in favour of the plaintiff	
20	Ex.P21	Copy of the share purchase agreement between the plaintiff and Archana Spinners Private Limited.	08111995
21	Ex.P22	Copy of the letter written by Archana Spinners Private Limited to the plaintiff	08111995
22	Ex.P23	Copy of the letter written by the plaintiff to Archana Spinners Private Limited asking for financial statement	26/12/1995
23	Ex.P24	Copy of the letter written by Archana Spinners Private Limited to the plaintiff	06011996
24	Ex.P25	Copy of the letter written by the plaintiff to Archana Spinners Private Limited	08011996
25	Ex.P26	Copy of the letter written by the plaintiff to Archana Spinners Private Limited	
26	Ex.P27	Copy of the letter written by the plaintiff to Archana Spinners Private	21/01/1997



S. No.	Exhibits	Description of Documents	Date
		Limited	
27	Ex.P28	Copy of the letter written by the Archana Spinners Private Limited to the plaintiff	04021997
28	Ex.P29	Copy of the letter written by Archana Spinners Private Limited to the plaintiff	10021997
29	Ex.P30	Copy of the letter written by the plaintiff to Archana Spinners Private Limited	07081997
30	Ex.P31	Copy of the letter from plaintiff to Archana Spinners Private Limited regarding appointment of nominees on board of Archana Spinners Private Limited	20/12/1997
31	Ex.P32	Copy of the letter written by Archana Spinners Private Limited to the plaintiff	23/12/1997
32	Ex.P33	Copy of the letter from plaintiff to Archana Spinners Private Limited	31/12/1997
33	Ex.P34	Copy of the letter written by the plaintiff to Archana Spinners Private Limited	30/01/1998
34	Ex.P35	Copy of the letter written by the plaintiff to Archana Spinners Private Limited	25.03.1998
35	Ex.P36	Copy of the letter written by the plaintiff to Archana Spinners Private Limited	24/06/1998
36	Ex.P37	Copy of the letter written by the plaintiff to Archana Spinners Private Limited	16/11/1999
37	Ex.P38	Copy of the letter written by the plaintiff to Archana Spinners Private Limited	16/11/1999
38	Ex.P39	Copy of the Form No.32 of Archana	



<i>S. No.</i>	<i>Exhibits</i>	<i>Description of Documents</i>	<i>Date</i>
		Spinners Private Limited	
39	Ex.P40	Copy of the letter issued by the plaintiff to the 1 st defendant	12102000

List of Witness examined on the side of the Defendants:

DW1 – M.S.Rajaram

List of Exhibits marked on the side of the Defendants:

<i>S. No.</i>	<i>Exhibits</i>	<i>Description of Documents</i>	<i>Date</i>
1	Ex.D1	Notice to produce documents	04022012

Sd./-R.S.M.J

17.08.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.