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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 15TH DAY OF DECEMBER 2021

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

C.S.No.637 of 2009
(Comm.Suit)

Integrated Finance Company Limited,
having Office at "Vairams",
No.112, Thyagaraya Road,
T.Nagar, Chennai - 600 017
Rep.by its Law Officer,
Mr. R.Vigneshwaran.

...Plaintiff

-versus-

1. Kasthuri Renga Ramanujam Cotton Mills (P) Ltd.,
Rep.by its Directors
 2. Mr. Kasthuri Renga Ramanujam, ***(Deceased)**
Director, Kasthuri Renga Ramanujam Cotton Mills(P) Ltd.
 3. Mr. K. Radha Krishnan,
Director, Kasthuri Renga Ramanujam Cotton Mills(P) Ltd.,
 4. Ms. R.Savithri
Director, Kasthuri Renga Ramanujam Cotton Mills(P) Ltd.,
 5. Mr.Renga Ramanujam
Director, Kasthuri Renga Ramanujam Cotton Mills(P) Ltd.,
- All at: Chithiram Patti, Kovilpatti,
Tamil Nadu - 628 502.



**No.171/2, Akraharam Street,
Nalattinpuhur,
Kovilpatti District.**

***3rd defendant is recorded as legal heir of deceased 2nd defendant and 6th defendant is brought on record as legal heir of the deceased 2nd defendant as per order dt 26/2/18 in Appln.No.783/18**

...Defendants

Civil Suit praying that this Hon'ble Court be pleased to pass a decree and judgment against the defendants:

(a) directing the defendants jointly and severally to pay the plaintiff a sum of Rs.8,17,28,388.28 together with future interest @ 36% per annum from the date of plaint along with cost of the suit within the date to be fixed by this Hon'ble Court and in default thereof, the Schedule II mentioned property be sold and the proceeds after defraying the expenses of the sale be applied towards the payment of the amount of the said principal and interest and costs;

(b) that, if the said proceeds shall not be sufficient for the payment in full of such amounts, the defendants may be ordered to pay the plaintiff the amount of deficiency with interest thereon @ 36% per annum until realization;

(c) that, for that purpose, all proper directions may be given and account taken by the Court;

(d) to direct the defendants to pay the plaintiff the cost of the suit



WEB COPY This Suit having been heard on 07.12.2021 in the presence of Mr.V.AnilKumar for M/s.Vijayalakshmi Rajagopal, Advocates for the plaintiff herein and Mr.S.Mukunth for M/s.Sarvabhannan Associates, Advocates for the defendants 1 to 6 herein and upon reading the plaint filed herein and the other exhibits therein referred to and upon perusing the 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 plaintiff has not proved the supply of the machineries to the defendants under the hire purchase agreements, that apart, there is also no proof that these agreements are supported by consideration, these agreements are highly suspicious more particularly since the defendants have raised the defense of forgery and the plaintiff never took steps to get an expert opinion, accordingly, this Court holds that the five hire purchase agreements are unenforceable in law and the mortgage deed dated 13.09.2006 is not genuine and the plaintiff company is not entitled to any relief based on the said mortgage deed and the plaintiff has not made out a case against the Defendants and the Plaintiff is not entitled for any of the reliefs sought for against the defendants, it is ordered as follows:-



2) That the plaintiff herein, be and is hereby directed to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as exemplary costs to the defendants herein.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 15th DAY OF DECEMBER 2021.

Sd/-

ASSISTANT REGISTRAR(Comm.Cases)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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



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ARS
27.01.2022

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C.S.No.637 of 2009
(Comm.Suit)

ORDER

DATED : 15.12.2021

THE HON'BLE MR. JUSTICE
N.ANAND VENKATESH

FOR APPROVAL: 10.02.2022

APPROVED ON : 11.02.2022



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 07.12.2021

PRONOUNCING ORDERS ON : 15.12.2021

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Civil Suit No.637 of 2009
(Comm. Suit)

Integrated Finance Company Limited
Rep.by its Law Officer
Mr.R.Vigneshwaran
Having Office at “Vairams”
No.112, Thyagaraya Road
T.Nagar. Chennai 600 017.

.. Plaintiff

/versus/

1.Kasthuri Renga Ramanujam Cotton Mills (P) Ltd
Rep.by its Directors.

2.Mr.Kasthuri Renga Ramanujam (Deceased)
Director, Kasthuri Renga Ramanujam Cotton Mills(P) Ltd.

3.Mr.K.Radha Krishnan
Director, Kasthuri Renga Ramanujam Cotton Mills(P) Ltd.



Director, Kasthuri Renga Ramanujam Cotton Mills(P) Ltd.

5.Mr.Renga Ramanujam

Director, Kasthuri Renga Ramanujam Cotton Mills(P) Ltd.

All at: Chithiram Patti, Kovilpatti
Tamil Nadu 628 502.

6.Mr.K.Srinivas

Son of Late Kasthuri Renga Ramanajam

No.171/2, Akraharam Street

Nalattinpathur

Kovilpatti District.

..Defendants

Prayer: Civil Suit has been filed under Order XXXVII Rule of O.S.Rules r/w Order XXXIV Rule 1 of Code of Civil Procedure, _praying to pass a decree and judgment against the defendants:

(a) directing the defendants jointly and severally to pay the plaintiff a sum of Rs.8,17,28,388.28 together with future interest @ 36% per annum from the date of plaint along with cost of the suit within the date to be fixed by this Hon'ble Court and in default thereof, the Schedule II mentioned property be sold and the proceeds after defraying the expenses for the sale be



applied towards the payment of the amount of the said principal and interest and costs;

(b) that, if the said proceeds shall not be sufficient for the payment in full of such amounts, the defendants may be ordered to pay the plaintiff the amount of deficiency with interest thereon @ 36% per annum until realization;

(c) that, for that purpose, all proper directions may be given and account taken by the Court;

(d) to direct the defendants to pay the plaintiff the cost of the suit; and

(e) pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.



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For Plaintiff : Mr.V.Anilkumar
for M/s.Vijayalakshmi Rajagopal

For Defendant : Mr.S.Mukunth
for M/s.Sarvabhauman Associates
for D1 to D6

J U D G M E N T

This mortgage suit has been filed by the Plaintiff against the Defendants for the recovery of a sum of Rs.8,17,28,388.28 along with interest and in default of the payment of the said amount, to bring for sale the mortgaged property and apply the proceeds of the sale towards the payment of the principal and interest.

2.The case of the Plaintiff is that they are carrying on with the business of hire purchase and leasing of machineries. During the course of their business, the first Defendant Company is said to have approached the



Plaintiff for financial assistance for purchase of various machineries under hire purchase facility. Pursuant to the same, the parties had entered into five hire purchase agreements and the details of the same is extracted below:

S.No.	Date	Hire Purchase Agreement No.	Amount Financed
1.	31.03.1998	HPA NO. 97MAA00353	27,40,000/-
2.	31.03.2000	HPA NO. 99MAA00265	18,17,782/-
3.	27.09.2001	HPA NO. 01MAA00089	31,00,000/-
4.	18.03.2002	HPA NO. 01MAA00151	17,25,000/-
5.	27.09.2002	HPA NO. 02MAA00023	54,32,500/-

3. The further case of the Plaintiff is that the Defendants defaulted and were irregular in the payment of the monthly installments. In order to secure the outstanding dues under the five hire purchase agreements, Defendants 2 and 5 are said to have mortgaged their property by means of a simple mortgage dated 30.09.2006 which was registered as Document No. 5563 of 2006. That apart, the Defendants also executed an irrevocable power of attorney dated 15.09.2006 and appointed the Managing Director of the Plaintiff Company as the agent. This document is also said to have been executed more in the nature of a security.

4. The further case of the Plaintiff is that the Defendants sought

for 12 months' time for repayment of the outstanding amount. However, the



amount was not repaid and hence legal notice was issued to the Defendants and in spite of the same, the repayment was not forthcoming. As a result, the present mortgage suit has been filed.

5.The case of the Defendants is that the fourth Defendant was doing a business in the name and style of M/s. Revathi Plastics at Coimbatore. At that point of time, she had entered into a lease agreement with the Plaintiff on 11.11.1994. It is alleged that some monies became due and payable to the Plaintiff and that several documents were executed by the 3rd and 4th Defendants in order to secure the repayment. The amount was not able to be repaid and in order to clear the dues, cheques were issued by the 1st Defendant, signed by the 3rd Defendant as the director and it was issued on behalf of the said Revathi Plastics. The cheques got dishonored and it resulted in initiation of criminal proceedings U/s 138 of the Negotiable Instruments Act. During the pendency of the proceedings, the 3rd Defendant issued a Demand Draft for a sum of Rs.12,50,000/- on 28.12.2004 in favour of the Plaintiff. Thus, according to the Defendants, the entire amount due and payable to the Plaintiff stood cleared and the liability was discharged. The criminal proceedings ultimately got withdrawn in the year 2006.



6. It is pleaded in the written statement that when the third Defendant was out of town, the 2nd Defendant who is the father of the 3rd Defendant was coerced by the Plaintiff and a mortgage deed was obtained as if, there was a liability in favor of the Plaintiff from the 1st Defendant Company.

7. The specific stand taken by the Defendants is that except the transaction that took place with the 4th Defendant pertaining to Revathi Plastics, there are no other transactions between the parties and all the 5 hire purchase agreements are fabricated and even the signatures found in the agreements are not that of the Defendants. The subsequent mortgage deed is also a void document. Hence, the Defendants have questioned the very validity of the hire purchase agreements and the mortgage deed and have denied the entire liability and sought for the dismissal of the suit.

8. Based on the above pleadings, the following issues were framed by this Court:



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1) Whether the hire purchase agreements, dated 31.03.1998, 31.03.2000, 27.09.2001, 18.03.2002 and 27.09.2002 in respect of the machineries listed in plaint schedule I 'A' to I 'E' respectively, allegedly executed by the first defendant in favor of the plaintiff are genuine, true, supported by consideration and valid?

2) Whether the hire purchase agreements relied on by the plaintiff are forged or fabricated, as contended by the defendants?

3) Whether the alleged acknowledgement of liability saving the limitation pleaded by the plaintiff in the plaint is true?

4) Whether the defendants 2 to 4 signed the hire purchase agreements as guarantors?

5) Whether the signature of the second defendant found in the mortgage deed dated 13.09.2006 has been forged as contended by the defendants?

6) Whether the suit is barred by limitation?

7) Whether the plaintiff is entitled to a decree on mortgage for the sale of the property described in plaint schedule II for the recovery of a sum of Rs.8,17,28,388.28



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with interest at the rate of 36% per annum?

8) To what other relief, the plaintiff is entitled?

9. During the pendency of this suit, the same was transferred to the Commercial Division and this Court determined the jurisdiction of the case to fall under the Commercial Courts Act, 2015 by an order dated 13.12.2019. Thus, the suit thereafter came to be tried before the Commercial Division.

10. The Plaintiff side examined one witness PW1 and marked exhibits P-1 to P-23. The Defendants examined one witness DW1 and marked Exhibits D-1 to D-4.

11. Heard Mr.V.Anilkumar, learned counsel for the plaintiff and Mr.S.Mukunth, learned counsel for the Defendants.

12. The Defendants have raised the issue of limitation as one of the defense and hence, issues 3 and 6 are taken up for consideration to start with.

13. The specific case of the Plaintiff is that the 5 hire purchase



agreements marked as Exhibits P-2, P-6, P-7, P-11 and P-14 were executed during the period 1998 to 2002. Pursuant to the agreements, the machineries were purchased by the Defendants and it was used in their business to convert raw cotton into yarn. The liability that was covered under the 5 agreements were taken together as consolidated dues. According to the Plaintiff, except for a payment of a sum of Rs.12,50,000/- on 29.12.2004, no other payments were made by the Defendants. Ultimately, the Plaintiff wanted to secure the entire outstanding dues under the 5 hire purchase agreements and hence, the second and fifth Defendants executed a registered mortgage deed dated 13.09.2006 marked as Ex. P-18. Even in the mortgage deed, it has been specifically stated that the second mortgagor viz., the second Defendant had liabilities towards the Plaintiff Company in respect of hire purchase facilities granted in favor of the first Defendant Company and the second Defendant in his capacity as director entered into various hire purchase agreements and a sum of Rs.5,18,32,381/- is due and payable as on 31.08.2006 to the Plaintiff Company. It is further stated in the document that the mortgagors requested for 12 months-time for the repayment of the amount and it is towards this liability, the mortgage deed was executed in favour of the Plaintiff Company. Since the amount was not repaid back even after the 12 months period expired, legal notice was issued



year 2008. Insofar as a mortgage suit is concerned, the period of limitation is governed under Article 62 of the Limitation Act which provides the period of limitation as 12 years from the time when the money sued for becomes due. The present case clearly falls within the limitation period and issues 3 and 6 are answered accordingly.

14. This Court will now proceed further to take up issues 1, 2 and 4 for consideration. These issues pertain to the validity of the hire purchase agreements. The specific stand taken by the Defendants is that all the 5 hire purchase agreements are fabricated documents and even the signatures that are found in these agreements have been denied by the Defendants. The specific case of the Defendants is that there was only one transaction with the Plaintiff pertaining to Revathi Plastics that was made by the 4th Defendant. Monies became due and payable under this transaction and cheques were issued which got dishonored. The same resulted in initiation of criminal proceedings under Section 138 of Negotiable Instruments Act. Three complaints came to be filed in C.C.Nos. 2526, 2528 and 2529 of 1998 before the Metropolitan Magistrate Court, Saidapet. In order to settle the case, the 3rd Defendant who is the husband of the 4th Defendant issued a demand draft for a sum of Rs. 12,50,000/- in favor of the Plaintiff on 28.12.2004. This payment has been given due credit by the



Plaintiff on 29.12.2004 and the same is evident from the consolidated statement of accounts marked as Ex. P-20. A close look at Ex.D-1 shows that the criminal proceedings were settled and it was withdrawn by the Plaintiff in the year 2006. In other words, the proceedings that commenced in the year 1998 ultimately was withdrawn in the year 2006.

15.The Defendants have attacked the 5 hire purchase agreements on various grounds. The first ground is that the relationship between the fourth Defendant who was running Revathi Plastics, became soar with the Plaintiff in the year 1998 itself. The Plaintiff had in fact initiated criminal proceedings in the year 1998 and it came to an end after the settlement of the amount by the third Defendant in the year 2004 and the proceedings were withdrawn in the year 2006. Therefore, according to the Defendants, when the Plaintiff was already in the process of recovering the amount from one of the Defendants, it is highly unnatural and artificial that the Plaintiff could have extended further financial facilities to the Defendants from the year 1998 up to the year 2002. The next ground of attack is that the signatures found in those agreements are not genuine. Yet another ground of attack is that the hire purchase agreements is not supported by any consideration and there is absolutely no proof for supply of machinery under the hire purchase agreement to the Defendants.



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16. At this juncture, it is necessary to look into the oral evidence adduced by PW1 and DW1 in this regard. Question numbers 11-21, 29-48, 89 and 90 and the answers given for these questions by PW1 are extracted here under:

Q.11. Do you mean to say that for all these five hire purchase agreements machines were supplied?

A: I am not aware. Witness adds:- because the sale letters and invoices were submitted by the Defendants

Q.12: Generally, you will ask for the name of the suppliers before financing?

A: Yes.

Q.13: Will you directly pay money to the suppliers for the machines supplied or to the hirer?

A: It depends upon the transactions.

Q.14: For large financial transactions what procedure the Plaintiff company will adopt?

A: If it is a sale and buy back transactions, the amount is paid to the hirer.

Q.15: Will you pay by cash for the purchase of machine or DD?

A: It is by cheque.



Q.16: If you are paying cheque to the suppliers, it will contain the name of the suppliers?

A: Yes.

Q.17: Before these machines are supplied to the hirer, will you ask for quotations ?

A: No.

Q.18: Do you mean to say that even without knowing the value of machinery, from the suppliers you will directly pay money to the hirer?

A: No, we will not. Witness adds:- Based on the invoices or sale letters we pay the money.

Q.19: In case of invoices or sale letters will it contain the name of the person to whom you pay money?

A: Yes.

Q.20: Have you received invoices or sale letters for all the five hire purchase agreements?

A: I do not remember if we have received for all the five hire purchase agreements.

Q.21: To get satisfied about the value of the machines supplied will you employ a valuer to ascertain the true value before releasing money?

A: We do not employ a valuer.



pertains?

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A: 8 numbers Raschel Knitting machines and filters.

Q.30: What is the value of this HP Agreement in Ex.P-2?

A: The total value is Rs.59,99,950/-.

Q.31: What is the amount financed and what is the interest portion in Ex.P-2?

A: The amount financed is Rs.27,40,000/- and the finance charges is Rs.32,59,940/-.

Q.32: To whom you have paid this Rs.27,40,000/-?

A: This amount is paid to the 1st Defendant's company.

Q.33: Where from the machines are supplied?

A: The machines were supplied by the 1st Defendant themselves.

Q.34: Do you mean to say that the 1st Defendant manufactures machines also?

A: I am not aware of that. Witness adds: -The first Defendant has issued invoice in their name.

Q.35: Before releasing money will you not verify from where the hirer purchases the machines?

A: Yes.

Q.36: From where they have purchased Ex.P-2 machines?



A: From the invoice Ex.P-3 not able to understand, from where the machines were purchased. But it only shows that it is sold to Plaintiff.

Q.37: Have you not taken any invoices from the actual suppliers of Ex.P-2 machines?

A: No.

Q.38: I say Ex.P-2 and P-3 are fabricated and the Defendant's had not signed the same?

A: I deny.

Q.39: I say the Plaintiff has not financed for the machines nor the machines were purchased by them.

A: I deny.

Q.40: Have you received any quotations from the suppliers to know the actual value of the machines?

A: No, we have not. Witness adds:- The Defendant has issued valuation report.

Q.41: Do you mean to say just based on a valuation report the Plaintiff will pay money, even without ascertaining the place from which the machines are to be supplied?

A: No.

Q.42: Will you not ensure that these machines are delivered to the hirer when you have financed for the same?



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A: Yes.

Q.43: Where is the delivery report/note?

A: It is not there.

Q.44: Can you say who has signed in Ex.P-3?

A: The authorized signatory of the 1st Defendant has signed.

Q.45: I say there is no such person in the Defendant's company to sign any document as the company had become defunct and closed?

A: I deny.

Q.46: I say in Ex.P-5 valuation report is not given by the Defendant and the same is fabricated by the Plaintiff.

A: I deny.

Q.47: Have you verified if there is any valuer by name, Value Chartered Engineers as mentioned in Ex.P-5?

A: I am not aware.

Q.48: When will the valuer report will be made either before HP agreement or after HP agreement?

A: It depends upon the Defendants when they submit the documents.

Q.89: Will you make physical verification to satisfy whether machine is existing before refinance?

A: Yes.



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Q.90: Is there any report to that extent?

A: We have not filed it.

17. Similarly, the question numbers 20-34, 46-54 and the answers given by DW1 are extracted here under :

Q.20: Ex. P-2 shown to the witness. This is the first of the Hire Purchase Agreements dated 31.03.1998 entered between D1 company and its directors with the Plaintiff.

A: I deny this Hire Purchase agreement and all the signatures in Ex. P-2.

Q.21: I put it to you that in is signed by Mr. Kasthuri Renga Ramanujam on behalf of D1 company. Is it not?

A: I deny.

Q.22: Likewise Mr. Kasthuri Renga Ramanujam, yourself and R. Savithri has extended guarantee and executed the agreement in the presence of the witnesses.

A: I already mentioned that I deny the whole document and the signatures.

Q.23: See the signatures in the Hire Purchase agreement and the written statement, all the signatures are look alike and similar to naked eye.



A: Obviously, they are different. We have not executed any such agreement.

Q.24: Ex.P-3 is shown to the witness. This is the invoice produced by D1 company for refinancing pollution control equipment with capacity 10000 M3/min and Raschel Knitting Machine for a total sum of Rs.27,40,000 and the same was signed by your authorized signature?

A: I deny this so-called invoice and the authorized signatory on behalf of the D1 company.

Q.25: Does D1 company conduct financial Auditing?

A: No, we don't conduct any financial Auditing.

Q.26: Ex.P-5 is shown to the witness. This is addressed by Value Chartered Engineers to D1 company stating that they have inspected D1's premises on 08.03.1998 for the purpose of Finance Auditing.

A. I totally deny this document and contents. We don't do financial auditing.

Q.27: The valuer had also estimated the fair market value of the plant and machinery at RS,27,40,000 and there is a declaration annexed to it by the approved registered values.

A. When I denied the total document and the contents shown to me, the contents in the denied document does not have any meaning.

Q.28: Ex.P-6 is shown to the witness. This is the second



HirePurchase agreement executed by you on behalf of the D1 company,you have also executed this agreement as a guarantor in the presence of the witnesses.

A: I totally deny this Hire Purchase agreement and I deny the signatures in the agreement.

Q.29: This Hire purchase agreement was executed by you for refinancing of 6 sets of Routers (55000 RPM) value of Rs.18,17,782/-

A: I deny this agreement, the signature and any such refinancing of Routers.

Q.30: Ex. P7 is shown to the witness. This is the 3rd Hire Purchase agreement dated 27.09.2001 executed by you on behalf of the D1 company, you have also executed this agreement as a guarantor in the presence of the witnesses

A: I deny this agreement, the signature and the documents.

Q.31: This agreement was executed by you for refinancing four numbers of Carding machine for a sum of Rs. 31,00,000/-.

A: I deny the documents and the contents.

Q.32: Ex.P8 is shown to the witness. This is the sale letter which was given by the 1st Defendant in respect of four no. of carding machines on 27.09.2001 and the same was duly executed by you Mr.



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A: I deny this document and I deny the signature.

Q.33: Ex.P-9 is shown to the witness. This is the valuation report given by the VALUE CHARTERED ENGINEERS after inspecting D1's premises on 1.09.2001 at your request.

A: I totally deny this document. We did not request anybody to inspect.

Q.34: Ex. P9 is addressed to. D1 company by the said VALUE CHARTERED ENGINEERS.

A: I have already told you that I deny the documents and contents.

Q.46: Ex.P-11, Hire purchase agreement dated 18.03.2002 is shown to the witness. This is the Hire Purchase Agreement executed by you on behalf of the D1 company you have also executed this agreement as a guarantor in the presence of the witnesses.

A: I deny this document and the contents wherein and the signatures said to be of mine.

Q.47: The said Hire purchase agreement was executed by you for refinancing of one number of Blow Room and one Gen set of value of Rs.17,25,000/- in the presence of the witnesses.

A: I deny the entire document and the contents therein.

Q.48: Ex.P-12 is shown to the witness. This is the valuation



report issued by VALUE CHARTERED ENGINEERS dated 25.02.2002 after inspecting one blow room and 2 gen set at the D1 company's premises on 20.02.2002.

A: I deny the entire document and the contents therein.

Q.49: Ex.P-12 is addressed to the DI's registered office at Chithirampatti, Kovilpatti.

A: I deny the entire document and the contents therein.

Q.50: Ex.P14, hire purchase agreement dated 27.09.2002 is shown to the witness. This is the Hire Purchase agreement executed by you on behalf of the D1 company, you have also executed this agreement as a guarantor in the presence of the witnesses.

A: I deny this document and the contents therein and the signatures said to be of mine.

Q.51: I put it to you that in Ex.P-14 only one person has signed on behalf of the D1 company.

A: I do not know whether it is a signature or something is scribbled in it.

Q.52: The said Hire Purchase agreements was executed by you for refinancing of 6 O.E. Machine value of Rs. 54,32,500/- in the presence of the witness.

A: I deny the entire document and the contents therein.



Q.53: Ex.P-15 is the sale letter evidencing sale of 6 OE machines by the D1 company to the Plaintiff as you said the same scribbling is found in Ex. P-14 is found in this also.

A: I deny the entire document and the contents therein.

Q.54: Ex. P-16 is shown to the witness. This is the valuation report issued by VALUE CHARTERED ENGINEERS dated 16.08.2002 after inspecting 6 OE machines at the D1 company's premises on 09.08.2002.

A: I deny the entire document and the contents therein.

18.A careful reading of the oral evidence of both the witnesses shows that there is absolutely no proof for the supply of the machineries covered under each of the hire purchase agreement. Not a single delivery chalan for the supply of machinery and/or inspection report to vouch safe the supply of machines, has been filed on the side of the Plaintiff. PW1 in the entire evidence was not able to clearly explain or justify even on one occasion as to how the Plaintiff Company ensured the supply of the machineries to the Defendant Company. This fact becomes very relevant since the finance is said to have been given at the time when the relationship between the Plaintiff Company and one of the Defendant was already under



claims to have financed to the tune of Rs.1,48,15,282/- and for such a huge amount, the minimum due diligence that is expected is to ensure the supply of machineries to the first Defendant company. That has not been done by the Plaintiff Company and the same raises a lot of doubt in the mind of this Court.

19. The Defendants' side witness was repeatedly denying the signature found in the hire purchase agreements. With already a suspicion looming large on the Plaintiff company, the minimum that was expected from the Plaintiff Company was to have sent these agreements for expert opinion to prove that the signature found in those agreements is that of the Defendants. For reason best known to the Plaintiff, they never undertook this exercise. It is not necessary that in every case where the Defendant denies the signature, the Plaintiff must resort to expert opinion. However, when there are already adverse circumstances staring at the Plaintiff, the Plaintiff ought to have taken steps to send the documents for expert opinion.

20. The Defendants have denied the receipt of a sum of Rs.1,48,15,282/- under the five hire purchase agreements. The Plaintiff, in order to prove the payment of the amount is relying upon the consolidated



that amounts are due and payable from the first Defendant company.

However, the statement of accounts is a document prepared on the side of the Plaintiff Company and it is a self-serving document. Since the very agreements have been questioned by the Defendants, the Plaintiff Company ought to have taken steps to at least file the bank statements evidencing the payment of the money to the first Defendant Company. It is curious to note that there is one entry found in the statement of accounts wherein a payment of Rs.12,50,000/- has been acknowledged on 29.12.2004. The acknowledgement of the receipt of this amount is adjusted from the amount due and payable in one of the hire purchase agreements. This amount perfectly coincides with the payment by the third Defendant through a Demand Draft dated 28.12.2004 for a sum of Rs.12,50,000/- in favor of the Plaintiff during the pendency of the criminal case initiated against the fourth Defendant who is none other than the wife of 3rd Defendant. It is even more curious that the receipt of this amount towards one of the hire purchase agreement is not even mentioned in the plaint. It is therefore obvious that the amount that was paid during the criminal proceedings in a case pertaining to Revathi Plastics has been accounted towards one of the hire purchase agreement. Yet another strange coincidence is that the hire purchase agreements were executed and the financing is said to have taken place from the year 1998 to 2002. If really the Defendants did not make



even a single payment right from the first agreement in the year 1998, it is quite strange that the Plaintiff continued to finance the Defendants up to the year 2002 at regular intervals. All this put together shows that there is absolutely no proof on the side of the Plaintiff except the self-serving statement of accounts, to show that any consideration had passed on from the Plaintiff to the Defendants by virtue of the hire purchase agreements.

21. In view of the above, this Court finds that the Plaintiff has not proved the supply of the machineries to the Defendants under the hire purchase agreements. That apart, there is also no proof that these agreements are supported by consideration. These agreements are highly suspicious more particularly since the Defendants have raised the defense of forgery and the Plaintiff never took steps to get an expert opinion. Accordingly, this Court holds that the five hire purchase agreements are unenforceable in law. Issue numbers 1, 2 and 4 are answered accordingly.

22. This Court will now take into consideration issue number 5 and 7. The mortgage deed that was marked as Ex. P-18 and the power of attorney marked as Ex. P-19 are documents which are shrouded in mystery.

The reason why this Court starts discussing this issue in such a negative tone is because of the huge discrepancy that is found between



Ex.P-18 on the one hand and Ex.D-2 and Ex.D-3 on the other. Ex.D-2 is the certified copy of the mortgage deed that was obtained in the year 2011 and Ex.D-3 is the exhibit of the very same mortgage deed which was obtained in the year 2020. To start with, this mortgage deed was executed by two parties namely, D5 and D2. D5 was represented by a power of attorney agent. The mortgage deed was executed on 13.09.2006. Very curiously on the said date, D5 was not even alive. The same is evident from Ex.D-4 which is the death certificate of D5. It is clear from the death certificate that D5 died on 10.02.2006. Obviously, the so-called power of attorney document of D5 will become non-est on the death of D5. But this document is acted upon on 13.09.2006. The story does not end here and there are some more mysteries that will unfold hereunder.

23.The mortgage deed marked as Ex.P-18 states that the property that was mortgaged is the property in Survey Number 170/2D measuring an extent of 96 cents. whereas the certified copies of the very same mortgage deed marked as Ex.D-2 and Ex.D-3 shows that the property in question is Survey Number 633/4 part measuring an extent of 96 cents. This is consistently shown in both the certified copies that was obtained in the year 2011 and 2020 respectively. That apart, the mortgage amount as found in Ex.P-18 is Rs.5,18,32,381/- Whereas the mortgage amount as



mentioned in the certified copies marked as Ex.D-2 and Ex.D-3 shows that it is Rs.51,832.38. This fact is further corroborated by the encumbrance certificate marked as Ex.P-23 wherein it is found that the mortgage amount is Rs.51,832.38. It is evident that there is discrepancy both in terms of the mortgaged property as well as the mortgage amount. When there is so much of suspicion raised on the mortgage deed, the Plaintiff did not care to examine even a single witness who stood as witnesses in the mortgage deed. There is also no clarity on the side of the Plaintiff as to why there is a discrepancy between the original mortgage deed produced by the Plaintiff and the certified copies of the same mortgage deed produced by the Defendants.

24. It is not known as to why the Plaintiff had obtained the Power of Attorney document in addition to the mortgage deed. This document also was registered on the same day when the mortgage deed was registered. The unsolved puzzle is that the power is given in favour of the Director of the Plaintiff company and if the Plaintiff Company gets a mortgage deed registered in their favour, why should there be a power of attorney document that authorizes the director of the Plaintiff Company to sell the property ? No answer is found for this puzzle.



25. In the considered view of this Court, there is a lot of suspicion with regard to the mortgage deed which forms the basis in the present suit. The first mortgagor in the mortgage deed and the first executant of the Power of Attorney document was not even alive on the date when these documents are said to have been executed and registered. There is also an added dispute with regard to the signature found in these documents. This is apart from the fact that there is a material discrepancy between the original document and the certified copies with respect to both the mortgaged property and mortgage amount. On appreciation of the available evidence, this Court finds that the mortgage deed dated 13.09.2006 is highly suspicious and cannot be relied upon. There is yet another justification to come to such a conclusion. The basis of the mortgage deed is the five hire purchase agreements which formed the basis of the liability alleged by the Plaintiff against the Defendants. This Court has already found that all the five agreements are bad in law and hence the consequential document namely, the mortgage deed must also be held to be bad and it cannot stand independently. In view of this finding, this Court holds that the mortgage deed dated 13.09.2006 is not genuine and the Plaintiff Company is not entitled to any relief based on the said mortgage deed. Issue numbers 5 and 7 are answered accordingly.



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26. The above discussion takes this Court to the final conclusion that the Plaintiff has not made out a case against the Defendants and the Plaintiff is not entitled for any of the reliefs sought for against the Defendants. In the result, the suit is dismissed and there shall be a direction to the Plaintiff to pay exemplary cost of a sum of Rs 5,00,000/- [Rupees Five Lakhs Only] to the Defendants.

Sd./-N.A.V.J.

15.12.2021

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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

List of Witness examined on the side of the Plaintiff:-

Mrs.A.Hema Jothi ----- PW.1

List of Witness examined on the side of the Defendant:-



Mr.Radha Krishnan - DW -1

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

S.No.	Exhibits	Description of Documents
1	Ex.P-1	The xerox copy of the High Court Order dated 10.02.2015 made in C.A.No.1215/2014 in C.P.No.172/2012 empowering the Law Officer with the plaintiff company to represent the company as Authority signatory for the purpose of filing any pleadings, affidavits, etc., and also to depose before court, for the benefit of the company (Marked after comparing and verifying with the certified copy and returned).
2.	Ex.P-2	The original Hire Purchase Agreement under HP No.97MAA00353 dated 31.03.1998.
3.	Ex.P-3	The Original Invoice No.M001/97-98 dated 31.03.1998.
4.	Ex.P-4	The original Extracts of the Minutes of Board Meeting dated 01.03.1998.
5.	Ex.P-5	The original Valuation Report along with Annexure dated 10.03.1998.

S.No.	Exhibits	Description of Documents
6.	Ex.P-6	The original Hire Purchase Agreement under HP No.99MAA00265 dated 31.03.2000.
7.	Ex.P-7	The original Hire Purchase Agreement under HP No.01MAA00089 dated 27.09.2001.



S.No.	Exhibits	Description of Documents
8.	Ex.P-8	The original Sale letter dated 27.09.2001.
9.	Ex.P-9	The original Valuation Report along with Annexure dated 05.09.2001.
10.	Ex.P-10	The office copy of the Details of Hypothecation dated 03.01.2002.
11.	Ex.P-11	The original Hire Purchase Agreement under HP No.01MAA00151 dated 18.03.2002.
12.	Ex.P-12	The original Valuation Report along with Annexure dated 25.02.2002.
13.	Ex.P-13	The office copy of the details of Hypothecation dated 05.07.2002.

S.No.	Exhibits	Description of Documents
14	Ex.P-14	The original Hire Purchase Agreement under HP No.02MAA00023 dated 27.09.200.
15.	Ex.P-15	The original sale letter dated 27.09.2002.
16.	Ex.P-16	The original Valuation Report along with Annexure



S.No.	Exhibits	Description of Documents
		dated 16.08.2002.
17.	Ex.P-17	The office copy of the Details of Hypothecation dated 25.11.2002.
18.	Ex.P-18	The original Deed of Simple Mortgage dated 13.09.2006.
19.	Ex.P-19	The original Power of attorney dated 15.09.2006.
20.	Ex.P-20	The office copy of the consolidated statement of accounts dated 31.03.2008.

S.No.	Exhibits	Description of Documents
21.	Ex.P-21	The office copy of the Lawyer's notice dated 17.11.2007.
22.	Ex.P-22	The original Returned Covers dated 19.11.2007.
23.	Ex.P-23	The original Encumbrance Certificate dated 08.07.2008.



S.No.	Exhibits	Description of Documents
1	Ex.D-1	The certified copy of the “A” Diary extract of XXIII Metropolitan Magistrate Court from 29.08.2006 to 22.11.2006.
2	Ex.D-2	The certificate copy of the Mortgage deed document No.5563/2006 dated 13.09.2006 obtained on 05.12.2011.
3	Ex.D-3	The certified Web copy of the Mortgage deed doc.5563/2006 taken in the year 2020 obtained on 11.02.2020 along with sec.65B certificate.
4	Ex.D-4	The online web copy of the Death Certificate of Renga Ramanujam along with Sec.65B certificate.