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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 19TH DAY OF JANUARY, 2021

THE HON'BLE MS. JUSTICE R.N.MANJULA

C.S. No.70 of 2010

Mr.A.M.Gopalan,
Proprietor,
M/s SREE GOKULAM INVESTMENTS
No:66, Arcot Road,
Kodambakkam
Chennai - 600 024 .... Plaintiff

-Versus-

Mr.M.Sivaram
S/o P.Maruthai Pillai,
Aged about 62 years,
No:145, Streling Road,
Nungambakkam,
Chennai - 600 034 .... Defendant

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

(a) Directing the defendants to pay a sum of Rs.55,00,000.00 (Rupees Fifty Five Lakhs Only) towards the outstanding amount and Rs.51,70,000/- (Rupees Fifty One Lakhs and Seventy Thousand Only) towards interest for the period from 13.02.2006 to 13.01.2010 less a sum of Rs.1,00,000/- (Rupees One Lakh Only) on 04.02.2008 paid by the defendant

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in all amounting to a sum of Rs.1,05,70,000/- (Rupees One Crore Five

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Lakhs and Seventy Thousand Only).

(b) award an interest at the rate of 24% per annum on Rs.55,00,000/- (Rupees Fifty Five Lakhs Only) from the date of the plaint to the date of realization.

(c) directing the defendant to pay the cost of the suit.

The suit having been heard on 23/12/2020 in the presence of Mr.L.Rajasekar, Advocate for the plaintiff herein and M/s Preethi S.Arasu for M/s S.R.Raghunathan and V.Anil Kumar, Advocates for the defendant 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 evidence on record would prove that Ex.P.2 promissory note dated 13.02.2006 has been executed by the defendant as claimed by the plaintiff and that the defendant did not discharge the same, and the plaintiff has not produced any statement of accounts in order to show how much of amount paid by the defendant towards interest was in excess of 12% p.a., so in all fairness the plaintiff is not entitled to get any interest above 6% p.a.from the date of the suit till the date of decree and from the date of the decree till the date of the realization,

**it is ordered and partly decreed as follows:-**

That the defendant herein, do pay to the plaintiff herein, a sum of Rs.1,17,24,041/-(Rupees One Crore Seventeen lakhs twentyfour thousand and forty one only) with further interest at the rate of 6% p.a on the sum of Rs.55,00,000/- (Rupees Fifty five lakhs Only) from this date till the date of

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realisation and the aforesaid amount shall be paid within 6 months from this date.

2)That the suit in C.S.No.70 of 2010, be and is hereby partly dismissed with regard to the rest of the claim made by the plaintiff on the basis of 24% p.a.

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

WITNESS THE HONBLE MR.JUSTICE SANJIB BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID THIS THE 19TH DAY OF JANUARY, 2021.

Sd/-

ASSISTANT REGISTRAR (O.S I)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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02.03.2021

C.S. No.70 of 2010

ORDER:
DATED: 19-01-2021

THE HON'BLE MS.JUSTICE

R.N.MANJULA

FOR APPROVAL: 02/03/2021

APPROVED ON: 03/3/2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 23.12.2020

PRONOUNCED ON : 19.01.2021

CORAM

**THE HON'BLE MS.JUSTICE R.N.MANJULA**

C.S.No.70 of 2010

A.M. Gopalan
Proprietor, M/s. Sree Gokulam Investments
No.66, Arcot Road, Kodambakkam,
Chennai - 600 024. ... Plaintiff

vs

M.Sivaram ... Defendant

**Prayer:**

(a) To direct the defendant to pay a sum of Rs.55,00,000/- (Rupees Fifty Five Lakhs Only) towards the outstanding amount and Rs.51,70,000/- (Rupees Fifty One Lakhs and Seventy Thousand Only) towards interest for the period from 13.02.2006 to 13.01.2010 less a sum of Rs.1,00,000/- (Rupees One Lakh Only) on 04.02.2008 paid by the defendant in all amounting to a sum of Rs.1,05,70,000/- (Rupees One Crore Five Lakhs and Seventy Thousand Only).

(b) To award an interest at the rate of 24% per annum on Rs.55,00,000/- (Rupees Fifty Five Lakhs Only) from the date of the plaint to the date of realization.

(c) To direct the defendant to pay the cost of the suit.

For Plaintiff : Mr.L. Rajasekar

For Defendant : M/s. Preethi S. Arasu
For M/s.S.R. Raghunathan & V.Anilkumar

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# J U D G M E N T

**1.Brief facts set out in the plaint are as follows:-**

The defendant availed a loan of Rs.50,00,000/- from the plaintiff and agreed to pay interest at the rate of 24% p.a. He executed a demand promissory note for Rs.50,00,000/- in favour of the plaintiff on 14.12.2001. Despite repeated request and demands the defendant did not pay the interest regularly. The defendant has also executed a fresh promissory note on 10.12.2004 for the outstanding sum of Rs.52,56,103/- The total outstanding as on 13.02.2006 is Rs.55,00,000/- and the defendant executed a fresh promissory note for Rs.55,00,000/- on 13.02.2006 and agreed to repay the same with interest at the rate of 24% p.a. Since the defendant failed to repay the loan amount. Hence, this suit is filed by the plaintiff for recovery of the same along with interest and costs.

**2. Brief facts set out in the written statement are as follows:-**

The suit is not maintainable and it is time barred. During December 2001, the defendant had borrowed loan of Rs.50,00,000/- from the plaintiff as an unsecured loan. During that time, the plaintiff obtained signatures of the defendant in blank papers and blank cheques. The defendant suffered huge financial loss. However, he continued to make their payments and repaid the entire loan amount of Rs.50,00,000/- to the plaintiff. All of a sudden, the defendant started to claim an exorbitant interest at the rate of

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36% p.a. According to Section 7 of the Tamil Nadu Money Lenders Act, 1957, the plaintiff could charge interest at the rate of 9% p.a. to 12 % p.a. The defendant filed a petition under Section 5 of the Tamil Nadu Prohibition Charging Exorbitant Interest Act, 2003 in O.P.No. 262 of 2007 before the IX Assistant City Civil Court, Chennai. Even during the pendency of the said proceedings, the defendant continued to make payments and the petition was dismissed and against which the defendant has preferred a revision petition in CR.No.2322 of 2009. And that has been referred to Lok Adalat on 21.01.2015. The plaintiff sent a legal notice dated 10.01.2002 by making false allegations. It is denied that the demand promissory note was executed by the defendant. The interpolations in the promissory note would show that it is false one and the signature on the demand promissory note was not affixed by the defendant. There is no consideration for the execution of the promissory note dated 13.02.2006 and it cannot be considered as an acknowledgment for the loan amount borrowed in the year 2001. The defendant has not liable to pay any amount to the plaintiff. Hence the suit has to be dismissed with costs.

**3.** By considering the contentions made by both parties to the suit, the following issues were framed on 15.06.2017 and the same reads as follows **:**

*i. Whether the promissory note dated 13.02.2006 has been executed by the defendant ?*

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*ii. Whether the interest claimed by the plaintiff is exorbitant ?*

*iii. Whether the plaintiff is entitled to the suit claim as prayed for ?*

After framing of the above issues, an additional issue was framed on 20.01.2020 as follows **:**

*i) Whether the plea of discharge made by defendant is valid ?*

**4. Issue No.1 and Additional Issue No.1** :-

This suit is based on the promissory note dated 13.02.2006 executed by the defendant by acknowledging his liability arose through the earlier promissory note dated 14.12.2001 and the consequential renewed promissory note dated 10.12.2004. It is alleged that the defendant had availed a loan of Rs.50,00,000/- from the plaintiff on 14.12.2001 and executed a promissory note for the said sum on the said day and he agreed to repay the same with interest at the rate of 24% p.a and on demand. The defendant has admitted that he has borrowed the loan of Rs.50,00,000/- from the plaintiff on 14.12.2001 and executed a promissory note. The said loan is an unsecured loan and for which the defendant has agreed to pay the interest at the rate of 24% p.a.

**5.** According to the plaintiff, the defendant was not regular in repaying the interest also. It is submitted that the defendant received a total sum of Rs.24,81,250/- only from the defendant on various remittance and on various dates between the period between 01.01.2003 to 10.12.2004. After

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giving credit to the said amount, the total outstanding as on 10.12.2004 is said to be Rs.52,56,103/-and the defendant has executed a fresh promissory note on 10.12.2004 for the said sum and agreed to repay the same along with interest at the rate of 24% p.a.

**6.** Though the defendant made some repayment occasionally, he continued to commit default in paying the interest and the principal. Hence the total outstanding continued to increase. The defendant executed a promissory note on 13.02.2006 for the consolidated outstanding of Rs.55,00,000/- as on 13.02.2006. The said promissory note is the suit promissory note and it has been marked as Ex.P2.

**7.** The power agent of the plaintiff was examined as PW1 and he stated all these facts in his evidence. A power of attorney was executed in favour of PW.1 on 09.10.2015 by authorising him to depose evidence and it is marked as Ex.P1. The defendant denied the execution of the suit promissory note and contended that he has already repaid the entire loan of Rs.50,00,000/- availed by him from the plaintiff on 14.12.2001 and there is no outstanding and hence Ex.P2 is not supported by consideration. However, during his cross examination he has stated that he did not file any documents to show that he had repaid the abovesaid sum borrowed by him from the plaintiff on 14.12.2001.

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**8.** Even after the suit was filed by the plaintiff, there were efforts to

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settle the issue through negotiation and on the request of the defendant the matter was referred to Lok Adalat. The memo filed by the defendant to that effect is marked as Ex.P5. In the said memo, the defendant has stated that without prejudice to the negotiation with the plaintiff he has remitted Rs.1,00,000/- by way of cheque dated 04.02.2008**.** Further he has submitted in Ex.P5 also that the dispute is only with regard to the interest and there was likelihood of arriving at a settlement. When the facts are being so, the defendant cannot say that he had paid the entire loan amount of Rs.50,00,000/-. It has been already pointed out that the defendant has not filed any supporting documents to substantiate the said claim**.**

**9.** During the cross examination of the plaintiff some specific questions were put to him whether he has produced the earlier promissory notes dated 14.12.2001 and 10.12.2004 and for which he replied that the earlier promissory notes have been returned to the defendant as and when the defendant executed the new promissory note for the pending outstanding as on the dates of executing the new promissory notes. Since, the plaintiff has been updating the outstanding by getting fresh promissory notes from the defendant the old promissory notes become superfluous. So there is a possibility to return the promissory notes to the defendant himself.

**10.** The defendant has submitted that he did not execute Ex.P2 promissory Note and there is a variation in the signature found in Ex.P2.

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The defendant accepted his availing of loan of Rs.50,00,000/- from the plaintiff on 14.12. 2001 and he has not proved that he had discharged the same. Taking into consideration of the outstanding as on 13.02.2006 and that the loan was also an unsecured one, the plaintiff has safeguarded his interest by getting a fresh promissory note for the outstanding. During the cross examination of the defendant he was asked whether the signature in Ex.P2 was affixed by him. To the said question the defendant did not answer in the negative. But stated that there are certain variations in the signature. Once again when an another specific suggestion was made to DW.1 that Ex.P2 was executed by him for a sum of Rs.55,00,000/-, he answered diplomatically that the contents in the promissory note were not written by him and there is a slight variation in his signature. However, he did not outrightly deny his signature in Ex.P2.

**11.** In fact he has filed a petition in O.P.No.262 of 2007 before the V Assistant City Civil Court, Chennai by claiming that the interest charged by the plaintiff for the said loan was exorbitant. The copy of the petition is marked as Ex.P3. So the defendant has been continuously raising objection only to the rate of interest charged by the plaintiff and he did not deny the loan availed by him from the plaintiff. During the pendency of O.P.No.262 of 2007 the defendant paid Rs.1,00,000/- to the plaintiff on 04.02.2008 through cheque. It is stated in the memo filed by the defendant dated

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03.04.2008 and the copy of the memo is marked as Ex.P5. The same was agreed by the defendant during his cross examination also. Since the suit is filed on 19.01.2010 itself the suit is not barred by limitation.

**12.** The variation in the signature of the defendant is noticed in the written statement and his deposition. Both the signatures are his admitted signatures. So the variation pointed out by the defendant and as seen in Ex.P2 is the natural variations of a person's signature from time to time. These facts have been admitted by the defendant himself in his evidence. When the defendant was confronted with his signature in Ex.P9 letter, he admitted that there are variations in his signature. However, he admitted that the said signature in Ex.P9 letter is his signature only. Despite pleading denial of execution of the promissory note and liability, the defendant has admitted during his cross examination that there is an outstanding but the the rate of interest was high. The relevant evidence DW.1 on this aspects reads as follows **:**

> *Q : I put it to you that out of the amount borrowed from the plaintiff, there is still outstanding towards principal and interest?*
> *A : Yes. There is outstanding, but they are charging exorbitant interest.*
> *Q : I put it to you that in order to defeat the case of the plaintiff, you have falsely stated that you have paid the entire amount borrowed from the plaintiff.*
> *A : I deny.*
> *Q : I put it to you that you are liable to pay the amount mentioned in the plaint ?*

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*A : I deny. The interest rate charged is exorbitant and I am ready to pay the outstanding principal amount with reasonable interest.*

**13.** The above evidence of the defendant would show that he has admitted his liability and he had objected to the rate of interest alone. Though, it was suggested by the learned counsel for the defendant during the cross examination of PW.1 that in Ex.P2 they were some matierial alterations in the dates, it is actually seen that there is no such material alterations.

**14.** The defendant submitted that the plaintiff had obtained signed blank cheques and blank promissory notes at the time when he executed the promissory note dated 14.12.2001 itself, and he concocted the same. When a specific question was posed to the defendant whether he demanded to return those blank promissory notes and the cheques, after the alleged repayment of the entire loan amount of Rs.50,00,000/- to the plaintiff, he replied that he did not take any such efforts**.** Had really the defendant repaid the entire loan amount, he would not have allowed the plaintiff to make use of his alleged signed blank papers and make fresh demands to him.

**15.** Even after the legal notice was sent by the plaintiff through Ex.P7, the defendant did not choose to send any reply. In the absence of any acceptable evidence produced by the defendant to show that he had repaid

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the entire loan amount of Rs.50,00,000/-, it cannot be accepted that he had

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discharged the entire loan amount and that Ex.P2 promissory note is not supported by consideration.

**16.** Though the defendant has stated that he has discharged the loan amount as found in Ex.P2, he did not produce any documents to show the same. It has been already recorded that Ex.P2 does not have any material alterations and the plaintiff has proved that the same was executed by the defendant for the accumulated outstanding in the loan amount of Rs.50,00,000/- availed by him in the year 2001. Even during the cross examination DW.1 admitted that he did not produce any documents to substantiate this plea that he has repaid the loan amount.

**17.** From the evidence available on record and on perusal of Ex.P2, I find no reason to reject that Ex.P2 promissory note that it was not executed by the defendant. In fact, the evidence on record would prove that Ex.P2 promissory note dated 13.02.2006 has been executed by the defendant as claimed by the plaintiff and that the defendant did not discharge the same. **Thus Issue No.1 and Additional Issue No.1 are answered in favour of the plaintiff**

**18. Issue Nos. 2 and 3 :**

It has been already proved that Ex.P2 promissory note was executed by the defendant and the same was not discharged as contended by him. Even during his evidence, the defendant has admitted his liability but

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claimed that the interest was high. Before the suit was filed, the defendant has filed an Original Petition before the City Civil Court, Chennai under Section 5 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act and submitted that the defendant cannot charge interest at the rate of 24% p.a. However, the said petition was dismissed subsequently, for the reason that the defendant did not comply the condition under Section 5(1) of the said Act and paid the admitted amount. However, the City Civil Court has not recorded any finding as to whether the interest charged at the rate of 24% was exorbitant or not. These proceedings would show that the defendant has admitted his liability, though, he objected the rate of interest. Even during the pendency of the said O.P.No.262 of 2007 on the file of the City Civil Court, Chennai, the defendant has filed a memo (Ex.P5) and requested the Court to refer the matter to Lok Adalat. However it was not settled. The plaintiff has filed this suit for recovery of money. The plaintiff has proved that Ex.P2 promissory note was executed by the defendant by acknowledging his liability accrued through the loan dated 14.12.2001.

**19.** Though the liability of the defendant is beyond doubt, the interest charged on the loan was no doubt exorbitant. As per Rule 7 of the Money Lenders Act, it would make it obligatory on the part of the money lenders to charge interest not above the rate of interest fixed by the Government. The

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said rate would be correlated to the rate of interest fixed by Reserve Bank of

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India. The money lenders are prevented to demand and take from the debtor any interest more than what is due to him. That means a money lender can recover the principal amount along with the interest as fixed by the Government only. However, the defendant did not deny the authenticity of the money lending business carried out by the plaintiff. The plaintiff in his capacity as a money lender have lent a loan of Rs.50,00,000/- on 14.12.2001. Thereafter, he had updated the outstanding amount and got fresh promissory note each time by cancelling the old promissory notes. Whenever a promissory note is executed, the loan gets renewed on the same terms and conditions. However the rules for money lending will be applicable only as per the law in force at that time.

**20.** Though there is a specific bar under Section 7 of Money Lending Act, the practice of charging the exorbitant interest did not end. So in order to alleviate the difficulties of the debtors who were falling prey to such exploitation, a special legislation was enacted to punish those who charge exorbitant interest. And it has come into the effect from $9^{th}$ June 2003. Even according to the Money Lenders Act which was in force at the time when the original loan of Rs.50,00,000/- availed by the defendant on 14.12. 2001, the plaintiff was precluded to charge interest at the rate of 24% p.a. At no point of time, the Government has fixed the rate of interest for such loans at

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the rate of 24% p.a. The plaintiff did not produce any orders/regulation of

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the Government to show that he was entitled to charge 24% in the year 2001. However, the plaintiff continued to make his claim for interest only at the rate of 24% .

**21.** According to the law in force in the year 2006 when Ex.P2 promissory note was obtained from the defendant also, the plaintiff is not entitled to charge interest at the rate of 24% p.a. As per the Government norms the money lenders can charge interest at the maximum of 9% p.a for the secured loan and 12% p.a for the unsecured loan. Since, the loan amount availed by the defendant from the plaintiff was an unsecured loan, the plaintiff can at the best charge interest at the rate of 12% p.a. and not beyond that. The excess amount collected due to excessive interest should have been appropriated towards the principal amount payable by the defendant. In this case, the plaintiff has not produced any accounts to show how much of amount was paid towards the interest and how much towards the principal, during the period between 2001-2006. Neither the defendant produced those accounts to show that how much of the excessive interest amount paid by the plaintiff. Had it been produced the excess interest could have been adjusted towards the principal amount. In any case the plaintiff cannot continue to claim interest above 12% p.a.

**22.** It is submitted by the plaintiff that the loan amount was availed

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by the defendant for the purpose of his business. The defendant also did not

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deny the same. Even in O.P.No.262 of 2007 filed by the defendant in the City Civil Court, Chennai, the defendant claimed that the interest chargeable could be only at 12% p.a and not 24% p.a. Since, the loan amount was availed by the defendant for the purpose of business and it was an unsecured loan, as per the Government norms, the plaintiff is entitled to charge the rate of interest at 12% p.a from 13.02.2006 till the date of filing of the suit.

**23.** As per Section 34 of CPC, the subsequent interest allowed on the decree amount shall not exceed 6% p.a. But if the liability has arisen out of commercial transaction then the rate of subsequent interest can be awarded at the contractual rate of interest or the rate above 6%. Even the contractual rate of interest shall not exceed the rate of interest fixed by the Government. In this case, the plaintiff and the defendant did not have any commercial transaction between themselves. The one and only transaction the defendant had with the plaintiff was the availing of the loan of Rs.50,00,000/- for the purpose of his own business.

**24.** It has already been observed that the plaintiff has not produced any statement of accounts in order to show how much of amount paid by the defendant towards interest was in excess of 12% p.a. Had it been produced the excess amount of interest thus paid, could have been appropriated towards principal. So in all fairness the plaintiff is not entitled to get any

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interest above 6% p.a. from the date of the suit till the date of decree and from the date of the decree till the date of the realization. In fine the plaintiff is entitled to get a decree for recovery of a sum of Rs.55,00,000/- from the plaintiff with interest at the rate of 12% p.a from 13.02.2006 to till the date of filing of the suit and at the rate of 6% p.a from the date of filing of the suit till the date of realization of the decree amount. **Thus, Issue Nos. 2 and 3 are answered.**

**25.** In the result, the suit is partly decreed for recovery of a sum of Rs.55,00,000/- from the defendant with interest at the rate of 12% p.a from 13.02.2006 to the date of filing of the suit and at the rate of 6% p.a from the date of filing of the suit to till the date of realization and with costs. And the suit is partly dismissed with regard to the rest of the claim made by the plaintiff on the basis of 24% p.a. Time for payment 6 months.

19.01.2021
(RNMJ)

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Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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**List of Witness examined on the side of the plaintiff**

N.K.Shanmugham - PW1

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**List of documents marked on the side of the plaintiff**

| Sl.No | Exhibits | Description of documents | Date |
|---|---|---|---|
| 1 | P1 | Original Deed of Power of Attorney | 09.10.2015 |
| 2 | P2 | Demand Promissory Note executed by the Defendant in favour of the Plaintiff | 13.02.2006 |
| 3 | P3 | Petition in O.P.No.262 of 2007 filed by the defendant | - |
| 4 | P4 | Counter filed by the plaintiff in O.P.No.262 of 2007 | - |
| 5 | P5 | Memo filed by the defendant in O.P.No.262 of 2007 | - |
| 6 | P6 | Certified copy of the order and decreetal order in O.P.No.262 of 2007 | 31.08.2009 |
| 7 | P7 | Legal notice issued by the plaintiff | 10.11.2009 |
| 8 | P8 | Acknowledgment Card | 12.11.2009 |
| 9 | P9 | Letter sent to plaintiff by the defendant | 25.11.2005 |

**List of Witness examined on the side of the Defendant**

M.Sivaram - DW1

19.01.2021
(RNMJ)

//Certified to be true copy//

Dated at Madras this the day of 2021.

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