

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.01.2021

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Civil Suit No.993 of 2016

M/s.Sree Gokulam Chits & Finance Co., (P) Ltd.,
Represented by its Executive Director,
G.Baiju,
No.66, Arcot Road,
Kodambakkam,
Chennai - 600 024.

Plaintiff

versus

1.Mohammed Ickbal C.,
S/o.Cholayil Mohammed

2.Mymoona,
W/o.Mohammed Ickbal,
Both residing at
Amarambalam Amsom Decom,
Karulai (PO), Near Health Centre,
Malappuram, Kerala - 679 330.

Defendants

PRAYER: Civil Suit filed under Order IV Rule 1 of the High Court Original Side Rules read with Order VII Rule 1 of Code of Civil Procedure, (i) to direct the defendants to pay to the plaintiff a sum of Rs.1,02,42,165/-

(Rupees One Crore Two Lakhs Forty Two Thousand One Hundred and Sixty Five Only) towards principal and the interest at the rate of 18% compounded as on 31.10.2016; (ii) award an interest at the rate of 18% per annum on Rs.1,02,42,165/- (Rupees One Crore Two Lakhs Forty Two Thousand One Hundred and Sixty Five Only) from the date of the plaint to the date of realization; (iii) and to direct the defendants to pay the cost of the suit.

For Plaintiff : Mr.L.Rajasekar

For Defendants : Set *Ex parte*

JUDGMENT

This Civil Suit has been filed for recovery of a sum of Rs.1,02,42,165/- together with interest at 18% per annum from the date of filing of this plaint till date of payment and for costs.

2. The plaintiff Company is a Private Limited Company registered under Companies Act, 1956. The first defendant is the husband of the second defendant. They approached the plaintiff Company for financial assistance to augment their business requirements. On 14.01.2011, both the defendants have jointly borrowed a sum of Rs. 50,00,000/- from the plaintiff

Company and executed a Promissory Note in favour of the plaintiff Company. The loan was disbursed on 14.01.2011. Both the defendants have agreed to repay the said amount on demand together with interest @ Rs.18% per annum compounded. Though the defendants have agreed to pay the interest every month they did not make the said interest amount. On 25.10.2012, a sum of Rs,1,17,837/- was adjusted from their chit account to their loan account on the instructions of the defendants. In the month of December 2013, the defendants have approached the plaintiff and agreed to execute a fresh Promissory Note as on 14.12.2013 for the outstanding amount together with interest thereon. Further, they submitted an undertaking letter on 14.12.2013 confirming the outstanding loan together with interest. Subsequently, inspite of repeated demands and requests made by the plaintiff, the defendants have failed and neglected to repay the borrowed sum together with interest thereon. Hence, the suit.

3. Though the defendants 1 and 2 are served with notice on 14.03.2017, they have not appeared before this Court. Therefore, they were set *ex parte*.

4. The Co-ordination Manager of the plaintiff company was examined as P.W.1 and 6 documents were marked as Ex.P.1 to Ex.P.6.

P.W.1 - Mr.N.K.Shanmugam

<i>Sl.No.</i>	<i>Date</i>	<i>Description of documents</i>	<i>Exhibit</i>
1.	01.12.2020	Board resolution in favour of P.W.1	P-1
2.	14.12.2013	Undertaking Letter of the defendants	P-2
3.	14.12.2013	Demand Promissory Note	P-3
4.	31.10.2016	Statement of accounts	P-4
5.	08.11.2016	Legal Notice	P-5
6.	18.11.2016	Returned Covers (2 Nos)	P-6

5. P.W.1 in his evidence has spoken about the borrowal of the loan by the defendants. Ex.P.2 is the original undertaking letter of the defendants dated 14.12.2013. Ex.P.3 is the original Demand Promissory Note dated 14.12.2013 to substantiate that the defendants are borrowed Rs.50,00,000/- on 14.01.2011. Ex.P.4 is the true copy of the statement of accounts dated 31.10.2016, which is evident that the defendants are liable to pay the suit amount to the plaintiff. Further, before filing of the suit on 08.11.2016, the plaintiff issued legal notice to the defendants under Ex.P.5 wherein the plaintiff demanded the defendants to repay the loan together

with interest immediately after the receipt of the notice. The evidence of the P.W.1 remain unchallenged. The evidence of the P.W.1 and documents marked on the side of the plaintiff clearly prove the case of the plaintiff.

6. Accordingly, the Civil Suit is decreed as prayed for with cost with subsequent interest at the rate of 7.5% from the date of suit till the date of realization.

07.01.2021

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

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