

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2021

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

**C.S.(Comm. Div) No.551 of 2018
and A.No.6153 of 2018**

Mr.G.Rajendran

... Plaintiff

-Versus-

1. M/s.Rathna Stores (Firm),
Rep. by its Managing Director P.S.Sivaperumal,
Having Registered Office at
No.91, Old No.47, Siva Complex,
Pondy Bazaar,
Chennai 600 017.

2.M/s.Hotel Sivapriya,
Rep. by its Managing Director P.S.Sivaperumal,
Having Office at
No.45, Convent Road,
Kodaikanal,
Tamilnadu.

3.Mr.P.S.Sivaperumal,
Managing Partner,
M/s.Rathna Ssotes (Firm) and Hotel Sivapriya,
residing at No.2, Lakshmi Narasimhan Street,
T.Nagar,
Chennai 600 017.

4.Mr.S.Ravishankar,
son of Mr.P.S.Sivaperumal,
Partner,
M/s.Rathna Ssotes (Firm) and Hotel Sivapriya,
residing at No.2, Lakshmi Narasimhan Street,
T.Nagar,

Chennai 600 017.

5.Mr.S.Sivasundar,
son of Mr.P.S.Sivaperumal,
Partner,
M/s.Rathna Ssotes (Firm) and Hotel Sivapriya,
residing at No.2, Lakshmi Narasimhan Street,
T.Nagar,
Chennai 600 017.

6.Mr.Ganesh,
son of Mr.P.S.Sivaperumal,
Partner,
M/s.Rathna Ssotes (Firm) and Hotel Sivapriya,
residing at No.2, Lakshmi Narasimhan Street,
T.Nagar,
Chennai 600 017.

... Defendants

Prayer: Civil suit filed under Order VII Rule 1 of Civil Procedure Code, 1908 with Order IV Rule 1 of O.S.Rules, praying for the following judgment and decree

a) directing the defendants to pay jointly and severally the sum of Rs.2,04,00,000/- together with interest at the rate of 12% per annum on Rs.1,50,00,000/- from the date of plaint till realization and

b) for costs.

For Plaintiff : Mr.S.S.Swaminathan

For Defendants : Exparte

J U D G M E N T

The money suit filed under the Commercial Courts Act, since the plaintiff has advanced loan of Rs.1,50,00,000/- to the first defendant for his commercial purpose.

2.It is the case of the plaintiff that the first defendant is running business at Kodaikanal, Tamilnadu and also running business of household articles, stainless steel and brass utensils and other home related appliances at Chennai. Being a friend for a long time, for business purpose, he gave a hand loan of Rs.1,50,00,000/- through cheque on his promise that the money will be repaid within a month. The first defendant encashed the cheque on 10.11.2014. To ensure the repayment of the hand loan, a post dated cheque signed by the third defendant bearing No.948878 dated 08.12.2004 drawn on Uco Bank, T-Nagar, Chennai, was issued to the plaintiff. But on presentation of the said cheque on 19.01.2015, the same got returned with an intimation 'funds insufficient'. The same was brought to the notice of the third defendant for which the third defendant promised that he will repay the cheque amount in cash and requested not to represent the same. Since

the third defendant failed to honour his promise and repay the hand loan, after exchange of notice, the present suit is filed for recovery of Rs.1,50,00,000/- along with 12% interest.

3. The suit summon was served on all the defendants but they remained exappte. To ensure, the learned Master also ordered paper publication and that was effected on 24.03.2021 in one issue of local daily. Since there was no representation inspite of paper publication, exparte evidence was recorded by the Advocate Commissioner on 08.10.2021. Six exhibits were marked and the same was presented before this Court along with proof affidavit by the Advocate Commissioner.

4. Heard the learned counsel for the plaintiff and the evidence perused.

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5. The case of the plaintiff that he gave a loan of Rs.1,50,00,000/- to the first defendant is proved through Ex.A1, which is photocopy of the cheque issued by the plaintiff and his partners in favour of the first defendant, Rathna Stores Firm, which is represented by its

Managing Partner, P.S.Sivaperumal, who is the third defendant herein. It is the case of the plaintiff that to discharge the said loan, the cheque signed by the third defendant as the Managing Partner of Hotel Sivapriya for Rs.1,50,000/- was issued and the said cheque is marked as Ex.A2. The further case of the plaintiff is that Mr.P.S.Sivaperumal, who is the third defendant herein is the Managing Partner of Hotel Sivapriya which is the second defendant and also the Managing Partner of Rathna Stores Firm, the first defendant. Therefore for the loan borrowed from the plaintiff through cheque drawn in the name of Rathna Stores Firm, the third defendant issued cheque of his other firm Hotel Sivapriya.

6. Ex.A2 is the cheque drawn in favour of the plaintiff by the second defendant as the third defendant the signatory of the cheque, this cheque is dated 08.12.2014. From Ex.A3, the Court finds that the said cheque was presented for collection by the plaintiff on 19.01.2015 but the same was returned on 20.01.2015 for the reason insufficient fund and same intimated to the plaintiff. This has prompted the plaintiff to issue notice to the defendants and others on 17.06.2017. The copy of the legal notice marked as Ex.A4. The defendants have received the notice and the postal acknowledgment cards are marked as Ex.A5 series.

7.To prove that the cheque issued by the plaintiff as a joint holder of the account maintained in Karur Vysya Bank, the plaintiff has filed the statement of account Ex.P6 issued by his Bank. This exhibit reveals that the cheque issued by the plaintiff as a joint holder of the said account in favour of the Rathna Stores, was cleared on 10.11.2014.

8.From Exs.A1 to A6 and from the chief examination of the plaintiff which is part of the proof affidavit, the Court finds that the loan of Rs.1,50,00,000/- given by the plaintiff to the first defendant firm represented by the Managing Partner, Sivaperumal, the third defendant not discharged and the cheque given by the third defendant to discharge the loan in the capacity as Managing Partner of the second defendant Company bounced for want of fund. In the said circumstances, the claim of the plaintiff is held to be proved and the suit is decreed as prayed for with costs. The connected application is closed.

22.10.2021

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List of documents marked as exhibits on the side of the plaintiff:

1. Ex.A1 - xerox copy of cheque dated 08.11.2014 give by the plaintiff to the defendant.
- 2.Ex.A2 - Cheque (original) dated 08.12.2014 given by defendant to the plaintiff.
- 3.Ex.A3 - Bank Return Memo
- 4.Ex.A4 - Legal Notice (off.copy) with acknowledged receipts dated 17.06.2017.
- 5.Ex.A5- Acknowledgment cards (6)
6. Ex.A6 – Statement of Accounts.



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DR.G.JAYACHANDRAN,J.
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