

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2021

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.S. No.654 of 2014

M/s.**Shree** Vari Villas Private Limited,
(Amended as per order dated 12.08.2020 in A.No.1620 of 2020)
Regd. Office at G-3, 9/6,
Pasumarthi Street, Kodambakkam,
Chennai 600 024,
Rep. by its Managing Director,
Mr.P.Sukumaran.

... Plaintiff

-Versus-

1.Nalini Sundararaman
Flat No.3, Shoba Regency,
Old No.58, M.G.Ramachandran Road,
Kalashetra Colony, Besant Nagar,
Chennai 600 090.

2.S.Sundararaman,
Flat No.3, Shoba Regency,
Old No.58, M.G.Ramachandran Road,
Kalashetra Colony, Besant Nagar,
Chennai 600 090.

3.Madan Chander,
Flat No.3, Shoba Regency,
Old No.58, M.G.Ramachandran Road,
Kalashetra Colony, Besant Nagar,
Chennai 600 090.

... Defendants

Prayer: Civil suit filed under Order 37 Rule 2 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 to the plaintiff a sum of Rs.8,06,32,065/- (Rupees Eight Crores Six Lakhs Thirty Two Thousand and Sixty Five only) together with contractual rate of interest thereon at the rate of 30% p.a. as agreed upon by the defendants from the date of plaint till the date of realization.

b) for costs of the suit.

For Plaintiff : Mr.G.B.Sabari Das

For Defendants : Exparte

JUDGMENT

The suit for recovery of money based on the promissory note executed by the defendants. The suit is filed as summary suit under Order 37 Rule 2 of C.P.C.

2.The defendant though entered appearance through counsel sought leave to defend and the same was granted. Thereafter, they did not show any interest in filing written statement and contest the matter and therefore, on 16.10.2020, after nearly three years for the defendant to file his statement and 6 years after institution of the suit, the defendants were set exparte and exparte evidence recorded. Before the learned Master, Mr.V.Karthick, the Chief Accountant of the plaintiff Company

has been examined as P.W.1, 30 documents were marked as Exs.P1 to P30.

3.The gist of the plaintiff case as stated in the plaint is that the plaintiff is in the business of promoting real estate. Mr.S.Ravichandran, who was the Managing Director of the plaintiff Company in his individual capacity entered into agreement with the first defendant for purchase of a landed property at Kumbakonam for developing the same as apartment. Since the Encumbrance Certificate from the Sub Registrar Office, Kumbakonam did not reflect any encumbrance, he entered into an agreement bonafidely with the first defendant on 15.05.2010 for purchase of the said land for a sale consideration of Rs.4.27 crores and paid Rs.2.40 crores as advance to the first defendant. Later, when he intended to get the property registered in his name, he came to know that the first defendant had already created mortgage in favour of M/s.Raja Holdings, Financiers and Merchants of Kumbakonam and others in respect of a property at Kumbakonam and Sriperumpudhur and got mortgage deed registered at Sriperumpudur, Sub Registrar Office. This fact was not disclosed by the first defendant to Mr.Ravichandran when he entered into agreement on 15.05.2010. Thereafter, to get the property

cleared from mortgage and to get along with the project at Kumbakonam, the plaintiff has come forward to clear the mortgage debt created in favour of M/s.Raja Holdings and another. Accordingly, a sum of Rs.9.75 crores was paid to the mortgagee and the encumbrance was cleared. Not stopping with that, it was later brought to the notice of the plaintiff that the first defendant has also created another encumbrance over the property by entering into an MOU for joint venture with one Radhakrishnan and had received Rs.2 crores. In such circumstances, mediation took place between the parties and all other stake holders. The value of the property at Karaikal Road, Kumbakonam was fixed as Rs.4.50 crores and Radhakrishnan, who had already advanced Rs.2 crores agreed to get back his money and release the encumbrance in that property. The defendants in turn agreed to execute the sale deed in favour of the plaintiff and requested to sell the property to any third for settling the dues to Mr.Radhakrishnan and others. In the said course of the transaction and as the result of the mediation, consensus was arrived at between the parties. Minutes of the meeting dated 19.08.2011 was reduced in writing to the effect that there would be regular interest waiver of Rs.25 lakhs of the outstanding Rs.9.75 crores payable to M/s.Raja Holdings, Financiers and Merchants of Kumbakonam and G.

Kalpana of Chennai. The other landed properties of the defendants which was also encumbered by way of mortgage were supposed to be made over in favour of the plaintiff besides release of Dr.Besant Road properties and Karaikal Road properties at Kumbakonam.

4. It is the case of the plaintiff that after carrying out the terms of the compromise and MOU entered between the defendants and the plaintiff, a sum of Rs.6,41,42,231/- and Rs.1,64,89,834/- remains payable as per the memo of calculation shown in paragraph 19 of the plaint. For clarity, the same is extracted below:

MEMO OF CALCULATION

SCHEDULE-"A"

<u>DATE</u>	<u>DESCRIPTION</u>	<u>DEBIT</u>	<u>CREDIT</u>
01.09.2011	PRINCIPAL AMOUNT	40000000	
30.09.2011	INTEREST FOR SEPTEMBER 2011	1000000	
	INTEREST PAID FOR SEPTEMBER 2011		1000000
30.09.2011	INTEREST FROM 1.10.2011 TO 30.09.2012	12483466	
08.10.2012	INTEREST FROM 1.10.2012 TO 08.10.2012	266666	
08.10.2012	REMITTED BY KOTAGIRI PROPERTY		

	SALES	8000000
	TOTAL	53750132
	BALANCE AS ON 08.10.2012	44750132
	INTEREST FROM 09.10.2012 TO	
08.08.2013	08.08.2013	12533820
	INTEREST FROM 09.08.2013 TO	
18.08.2013	18.08.2013	372917
18.08.2013	REMITTED BY KOVALAM	
	PROPERTY SALES	12222000
	Total	57656869
	BALANCE AS ON 18.08.2013	45434869
	INTEREST FROM 19.08.2013 TO	
18.08.2014	18.08.2014	15669968
	INTEREST FROM 19.08.2014 TO	
27.08.2014	27.08.2014	492221
	EXPENSES FOR MORTGAGE DEED ETC	184897
	COMMISSION FOR KOVALAM	
	PROPERTY	1000000
	BALANCE AS ON 27.08.2014(Sch-"A")	62781955
	INTEREST FROM 28.08.2014 TO	
	22.09.2014	1360276
	Total claim of schedule "A"	64142231

SCHEDULE-B

01.09.2011	BALANCE TO RAJA HOLDINGS	60000000
01.09.2011	PAID FOR BESANT ROAD PROPERTY	18700000
01.09.2011	PAID FOR KARAIKAL ROAD	

PROPERTY		21000000
Total	60000000	39700000
BALANCE AMOUNT	20300000	
INTEREST FROM 01.09.2011		
14.06.2012 TO 14.06.2012	4660541	
14.06.2012 REMITTED BY THODKADU		
PROPERTY SALES		17000000
Total	24960541	17000000
BALANCE AS ON 14.06.2012	7960541	
INTEREST FROM 15.06.2012 TO		
14.08.2014 14.08.2014	7166816	
INTEREST FROM 15.08.2014 TO		
27.08.2014 27.08.2014	112774	
COMMISSION FOR THODUKADU		
PROPERTY	800000	
EXPENSES FOR MORTGAGE		
DEED ETC	100000	
BALANCE AS ON 27.08.2014(Sch."B")	16140131	
INTEREST FROM 28.08.2014 TO		
22.09.2014	349703	
<u>Total Claim of Schedule "B"</u>	16489834	
TOTAL CLAIM FROM THE DATE OF		
PLAINT ["A"+"B" TOGETHER WITH		
INTEREST @ 30% P.A]	80632065	

5.It is further case of the plaintiff that the cause of action has arisen within the jurisdiction of this Court in the following manner:

“21.The cause of action arose within the jurisdiction of this Hon'ble Court at Chennai, where the defendants resides, on 11.05.2009 the date on which the defendants executed and registered two simple mortgage deeds in favour of M/s.Raja Holdings and G.Kalpana (which was suppressed by the defendants later on and also not revealed in the encumbrance certificate), on 15.05.2010 the date entered agreement of sale for the Besant Road property on 19.01.2011 the date on which the said Mr.S.Ravichandran given undertaking to clear the Besant Road property from the mortgage besides the advance payments, which was accepted by the defendants, on 09.03.2011 the date on which the said Mr.S.Ravichandran nominated the plaintiff for getting sale deed for the Besant Road, Kumbakonam property, on 11.03.2011, the date on which the plaintiff company was incorporated, on 03.06.2011 the date on which M/s.Raja Holdings sent legal notice to the defendants, on 19.08.2011 the date on which the mediation talk was finalized among the Raja Holdings and the 2nd defendant before the plaintiff's director, on 24.08.2011 the date on which the defendants owes to the Plaintiff a sum of Rs.4 crores/- (Rs.3.5 Crore directly paid to Raja Holdings and G.Kalpana and Rs.50 lakhs paid to the defendants to clear the equitable mortgage of two

properties with third parties), on 24.08.2011 the date on which the defendants executed letter to the mortgagees to hand over the title deeds and release of four properties, on 25.08.2011 the date on which the MOU entered between 3rd defendant and the plaintiff, on 29.08.2011 the date on which the defendants entered MOU with the plaintiff, on 29.08.2011 the defendant 1 and 2 registered simple mortgage deed to the plaintiff, on the very same date 29.08.2011 the date on which the defendants executed Power of Attorney in favour of one Mr.Babu Krishnan for the mortgaged properties, 08.09.2011 the date on which MOU was entered between the plaintiff and M/s. Raja Holdings & G.Kalpana, on 12.09.2011 the date on which the said M/s. Raja Holdings & G.Kalpana released four properties and executed a registered receipt of discharge upon payment of Rs.3.5 Crores through the plaintiff, on 24.11.2011 the date on which the said M/s. Raja Holdings & G.Kalpana had executed a registered receipt of discharge for Karaikal Road, Kumbakonam property, on 14.06.2012 the date on which the said M/s. Raja Holdings & G.Kalpana had executed a registered receipt of discharge from mortgage for the Thodukadu property, on 08.10.2012 the date on which the plaintiff executed a registered receipt of discharge for the Kotagiri properties upon payment Rs.80,00,000/-, on 18.08.2013 the date on which the plaintiff executed a registered receipt of discharge for the Kovalam property upon payment of Rs.

1,22,22,000/-, on 27.08.2014 the date on which the plaintiff demanded for the monies due and given notice to the defendants and on 28.08.2014 the date on which the defendants admit their liabilities and executed promissory notes to that effect and continues to commit default in repayment and as the cause of action for the suit arises at Madras, within the limit of this Hon'ble Court Chennai, the suit before this Hon'ble Court is maintainable and entertainable.”

6.The suit is filed as summary suit based on two promissory note which are marked as Ex.P29 and Ex.P30, wherein the defendants 1 and 2 has executed a pronote dated 28.08.2014 in favour of the plaintiff for a sum of Rs.6,27,81,955/- repayable with 30% interest and the third defendant has executed pronote dated 28.08.2014 for a sum of Rs.1,61,40,131/- repayable with 30% interest.

7.The pronote Exs.P.29 and P30 were executed by the defendants on 28.08.2014. The plaintiff has come to the Court and presented the plaint on 23rd September 2014. Though opportunity was granted to the defendants to contest the suit they have chosen not to contest inspite of leave granted to the defendants. Therefore, the pronotes which are marked as Exs.P29 and P30, remains unchallenged.

Since the suit is filed within the period of limitation and consideration for the pronote been explained by the plaintiff through the evidence let in by the plaintiff, this court is of the view that the plaintiff is entitled for the decree as prayed for as far as the principal amount exhibited in the pronotes Ex.P29 and Ex.P30. However, though the rate of interest of 30% is agreed and shown as such in the pronote, this court is of the view that the rate of interest cannot be so exorbitant contrary to statute, therefore restricted to be 12% p.a. from the date of plaint till the date of decree. Therefore at the rate of 12% for the decretal amount till realisation.

8.The suit is decreed as above with costs.

26.10.2021

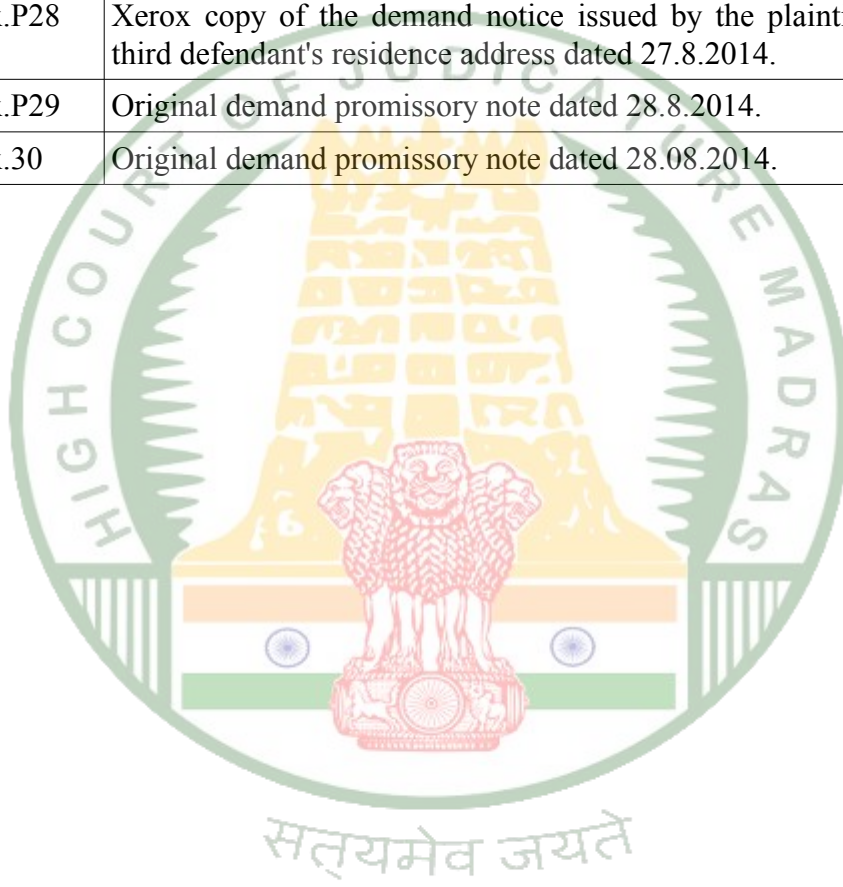
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List of documents marked as exhibits on the side of the plaintiff:

<i>S.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>
1.	Ex.P1	Authorisation Letter for P.W.1 Original dated 04.12.2020
2.	Ex.P2	Xerox copy of Incorporation Certification of the plaintiff dated 11.03.2011
3.	Ex.P3	Xerox copy of the E.C. For Besant Road Kumbakonam property dated 4.5.2010
4.	Ex.P4	Xerox copy of the agreement of sale between S.Ravichandran with the first defendant dated 15.05.2010

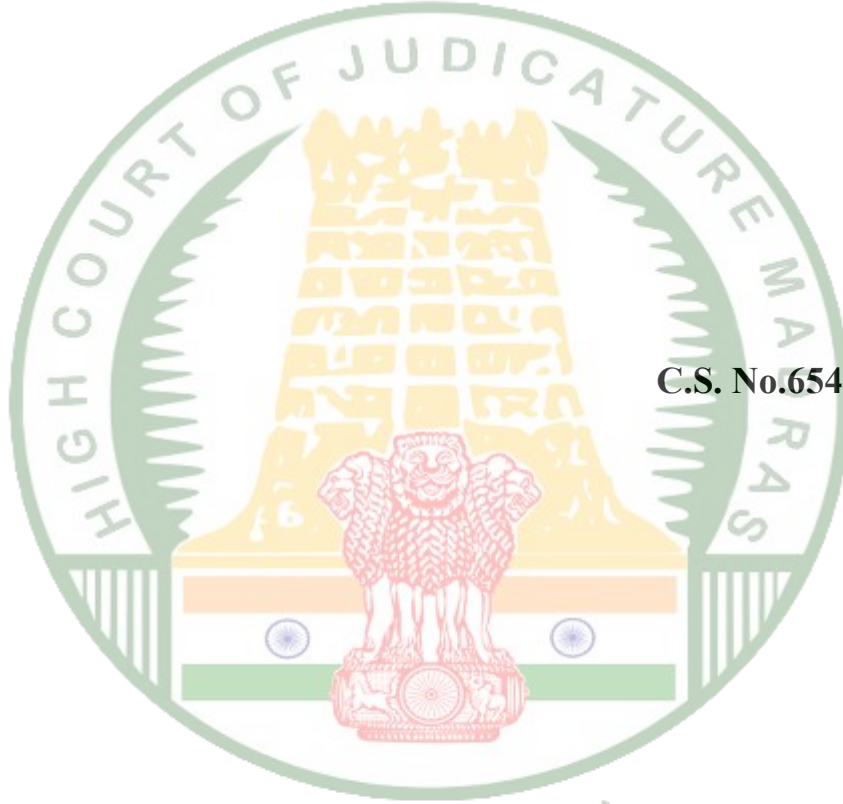
S.No.	Exhibits	Description of documents
5.	Ex.P5	Xerox copy of the simple mortgage dated 11.05.2009
6	Ex.P6	Xerox copy of the simple mortgage dated 11.05.2009
7	Ex.P7	Xerox copy of the consent letter executed by S.Ravichandran and accepted by the first defendant dated 19.01.2011.
8.	Ex.P8	Xerox copy of the General Power of Attorney executed by the first defendant dated 21.01.2011.
9.	Ex.P9	Xerox copy of the letter from S.Ravichandran to plaintiff dated 09.03.2011.
10.	Ex.P10	Xerox copy of the sale deed executed by the first defendant dated 6.4.2011.
11.	Ex.P11	Xerox copy of the MOU between the defendants 1 and 2 and R.K.Radhakrishnan dated 12.06.2010.
12.	Ex.P12	Xerox copy of the EC for Karaikal Road, Kumbakonam property dated 25.05.2010.
13.	Ex.P13	Xerox copy of the letter for seeking redemption of mortgage dated 24.8.2011.
14.	Ex.P14	Xerox copy of the simple mortgage deed executed by the first and second defendants dated 24.08.2011.
15.	Ex.P15	Xerox copy of the MOU entered between the plaintiff and the first and second defendants dated 25.8.2011.
16.	Ex.P16	Xerox copy of MOU entered between the plaintiff and the first and second defendants dated 29.8.2011.
17.	Ex.P17	Xerox copy of the General Power of Attorney dated 29.08.2011.
18.	Ex.P18	Xerox copy of the sale deed between the plaintiff and the first defendant dated 7.9.2011.
19.	Ex.P19	Xerox copy of the MOU between plaintiff and Raja Holdings and G.Kalpana dated 8.9.2011.
20.	Ex.P20	Xerox copy of the receipt issued by Raja Holdings and G.Kalpana to the first and second defendants dated 12.09.2011.
21.	Ex.P21	Xerox copy of the receipt issued by Raja Holdings and G.Kalpana to the first and second defendants dated 24.11.2011.
22.	Ex.P22	Xerox copy of the receipt issued by the Raja Holdings and G.Kalpana to 1 st and 2 nd defendants dated 14.06.2012.
23.	Ex.P23	Xerox copy of the receipt issued by the plaintiff to 1 st and 2 nd defendants dated 08.10.2012.
24.	Ex.P24	Xerox copy of the receipt issued by the plaintiff to 1 st and 2 nd defendants dated 18.8.2013

<i>S.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>
25.	Ex.P25	Xerox copy of the demand notice issued by the plaintiff to 1 st and 2 nd defendant's residence address dated 27.8.2014.
26.	Ex.P26	Xerox copy of the demand notice issued by the plaintiff to 1 st and 2 nd defendants office address dated 27.8.2014.
27.	Ex.P27	Xerox copy of the demand notice issued by the plaintiff to the third defendant office address dated 27.8.2014.
28.	Ex.P28	Xerox copy of the demand notice issued by the plaintiff to the third defendant's residence address dated 27.8.2014.
29.	Ex.P29	Original demand promissory note dated 28.8.2014.
30.	Ex.30	Original demand promissory note dated 28.08.2014.



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DR.G.JAYACHANDRAN,J.
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