IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 04th DAY OF FEBRUARY 2022

THE HON'BLE MR. JUSTICE N.SESHASAYEE

C.S.No.103 of 2008

1.M/s M.M.Finance Corporation,
Previously No.12, Lakshmi Narashiman Street,
T.Nagar, Chennai – 600 017
At present 14 Jagadeeswaran Street,
T.Nagar, Chennai – 600 017.
Represented by its Partner Goutham Chand Dhoka.

2.M/s Motorline Finance,
Previously No.12, Lakshmi Narashiman Street,
T.Nagar, Chennai – 600 017.
At present 14 Jagadeeswaran Street,
T.Nagar, Chennai – 600 017.
Represented by its Partner Mahaveer Chand Dhoka.

3.M/s M.G.Enterprises,
Previously No.12, Lakshmi Narashiman Street,
T.Nagar, Chennai – 600 017.
At present 14 Jagadeeswaran Street,
T.Nagar, Chennai – 600 017.
Represented by its Partner Abbay Kumar Dhoka. : Plaintiffs

Vs

1.Mr.T.R.Pachamuthu,
No.4 and 5 Prakasam Street,
Valasaravakkam, Chennai – 600 087.

2.Mr.P.Ravi,
S/o Mr.T.R.Pachamuthu,
No.4 and 5 Prakasam Street,
Valasaravakkam, Chennai – 600 087.

3.P.G.Enterprises,
represented by its sole proprietor P.Ravi,
No.4 and 5 Prakasam Street,
Valasaravakkam, Chennai – 600 087.

4.Geetha Constructions,
represented by its sole proprietor P.Ravi,
No.4 and 5 Prakasam Street,
Valasaravakkam, Chennai – 600 087.

5.Mr.K.Subramanian,
S/o Mr.K.Krishnamurthy,
No.23, 5th Main Road, Raja Annamalaipuram,
Chennai – 600 028.

6.Inspector of Police,
Central Crime Branch – team III,
Egmore, Chennai – 600 008.

7.The Commissioner of Police,
Greater Chennai, Egmore,
Chennai – 600 008. ... Defendants

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

(1) Directing the defendants to pay a sum of Rs.1,01,19,956/- together with interest at 18% per annum on the principal amount of Rs.60,00,000/- from the date of plaint till date of realization.

(2) Directing the defendant to pay the costs of the suit.

This Suit having been heard on 07.12.2021 in the presence of Mr.P.R.Raman, Senior Counsel assisted by Mr.A.Uma Shankar, Advocates for the Plaintiff herein and Mr.V.Raghavachari for Mr.R.Rajarajan, Advocates for the defendants 1 to 4 herein and Dr.S.Suriya, Additional Government Pleader, appearing for defendants 6 and 7 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 before this court for orders in the presence of said advocates for the parties hereto and this court having observed that the first five transactions dated 24.01.2004, 26.07.2004, 10.06.2004, 29.06.2004 and 10.06.2004 are barred by limitation, and the last of the transaction dated 02.08.2004 is not proved, **it is ordered as follows:**

That the suit in C.S.No.103 of 2008 be and is hereby dismissed.

2. That the Plaintiffs herein, do pay to the defendants 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 HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI, ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 04th DAY OF FEBRUARY 2022.

Sd/-
ASSISTANT REGISTRAR (O.S.I)
//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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12.04.2022

C.S.No.103 of 2008

ORDER :-

DATED: 04.02.2022

THE HON'BLE MR. JUSTICE
N.SESHASAYEE

FOR APPROVAL: 13.04.2022

APPROVED ON: 18.04.2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 07.12.2021

Judgment Pronounced on : 04.02.2022

CORAM : JUSTICE N.SESHASAYEE

C.S.No.103 of 2008

1.M/s.M.M.Finance Corporation
Previously at : No.12, Lakshmi Narasimhan Street
T.Nagar, Chennai – 600 017.
At present : No.14, Jagadeeswaran Street
T.Nagar, Chennai – 600 017.
Represented by its Partner Mr.Gautham Chand Dhoka

2.M/s.Motorline Finance
Previously at : No.12, Lakshmi Narasimhan Street
T.Nagar, Chennai – 600 017.
At present : No.14, Jagadeeswaran Street
T.Nagar, Chennai – 600 017.
Represented by its Partner Mr.Mahaveer Chand Dhoka

3.M/s.M.G.Enterprises
Previously at : No.12, Lakshmi Narasimhan Street
T.Nagar, Chennai – 600 017.
At present : No.14, Jagadeeswaran Street
T.Nagar, Chennai – 600 017.
Represented by its Partner Mr.Abay Kumar Dhoka .... Plaintiffs

Vs

1.T.R.Pachamuthu
2.P.Ravi

3.M/s.P.G.Enterprises
Represented by its sole Proprietor P.Ravi
No.4 & 5, Prakasam Street
Valasaravakkam
Chennai – 600 087.

4.M/s.Geetha Constructions
Represented by its sole Proprietor P.Ravi
No.4 & 5, Prakasam Street
Valasaravakkam
Chennai – 600 087.

5.K.Subramanian

6.The Inspector of Police
Central Crime Branch – Team III
Egmore, Chennai – 600 008.

7.The Commissioner of Police
Greater Chennai, Egmore
Chennai – 600 008. .... Defendants

Prayer : Civil Suit filed under Section Order VII Rule 1 of CPC read with Order IV Rule 1 of O.S.Rules praying for a decree and judgment :

(a) to direct the defendants to pay a sum of Rs.1,01,19,956/- together with interest at 18% per annum on the principal amount of Rs.60,00,000/- from the date of plaint till the date of realization;

(b) to direct the defendants to pay the costs of the suit;

(c) to pass such further order or orders as this Court deems fit and proper under the circumstances of the case.

For Plaintiffs : Mr.P.R.Raman, Senior Counsel
Assisted by Mr.A.Umasankar

For Defendants : Mr.V.Raghavachari
for Mr.R.Rajarajan [D1 to D4]
Dr.S.Suriya
Additional Govt. Pleader for D6 & D7

JUDGMENT

The suit is for recovery of a sum of Rs.1,01,19,956/-, which comprised of principal amount of Rs.60,00,000/- with interest at 18% on the said amount throughout.

2. The brief facts are :

- There are three plaintiffs, all of which are partnership firms. The business of these firms is essentially money lending.
- The first defendant is an educationalist, and he is running promoter/partners of various concerns and also heads many educational institutions The second defendant is the son of the first defendant, who besides assisting his father, runs 3rd and fourth defendants' businesses as proprietary concerns.,, the first defendant in his activities. The fifth defendant is the internal auditor of defendants 1 to 4, and is also the trusted lieutenant of the first and second defendants. He is also authorised by defendants 1 and 2 to liason with the plaintiffs. Indeed, the first and second defendants run the entire businesses of third and fourth defendants.
- While so, sometime in January 2004, the defendants 1 and 2 approached Gautham Chand Dhoka, the Managing Partner of the first plaintiff and his brothers for certain loan facilities. Since the

amounts required by these defendants were huge, Gautham Chand Dhoka and his brothers chose to advance the same through their family concerns, either through cheques or drafts. Following are the various loans advanced by the plaintiffs :

Sl. No.	*Lender*	*Borrower*	*Mode of payment*	*Date of payment*	*Amount (in Rs.)*
1.	1st Plaintiff	3rd Defendant	Cheque	24.01.2004	5,00,000
2.	1st Plaintiff	1st Defendant	Cheque	26.07.2004	15,00,000
3.	2nd Plaintiff	1st Defendant	Cheque	10.06.2004	10,00,000
4.	2nd Plaintiff	4th Defendant	Pay order	29.06.2004	10,00,000
5.	3rd Plaintiff	1st Defendant	Pay order	10.06.2004	10,00,000
6.	3rd Plaintiff	1st Defendant	Pay order	02.08.2004	10,00,000

- In all, the plaintiffs have advanced a total sum of Rs.60,00,000/-. The defendants have agreed to repay the same within six months with interest at 18% per annum from the respective dates on which the amounts were advanced to them.
- Sometime in August 2004, the plaintiffs demanded repayment of the amounts advanced. The defendants 1 to 4 would then hand over a cheque dated 16.08.2004 for Rs.50.0 lakhs, drawn on the Tamil Nadu Mercantile Bank Limited, T.Nagar Branch, Chennai, in favour of the first plaintiff, towards part discharge of the amount due to them.
- The fifth defendant, the auditor of the defendants 1 to 4 also met

the plaintiffs and conveyed that defendants 1 to 4 had undertaken to repay the loan amount. He also promised to settle the loan dues in case the defendants 1 to 4 defaulted in paying it. In other words, he stood guarantee for the debts incurred by the defendants 1 to 4.

- Though the defendants 1 to 4 have issued the cheque dated 16.08.2004, they kept requesting the plaintiffs not to present the same for encashment. The plaintiffs however, insisted the defendants 1 to 4 to repay the debts, and in these circumstances, on 04.01.2005, the first defendant executed a promissory note for a sum of Rs.50,00,000/- and delivered the same to the plaintiffs.
- In the meantime, based on the instructions of the defendants 1 to 4, the first plaintiff presented the cheque dated 16.08.2004, sometime in February 2005. But the same was dishonoured on the grounds of insufficiency of funds in the accounts of the first defendant. This was intimated to the defendants concerned through a letter of the first plaintiff dated 26.02.2005.
- The first defendant replied to it vide a letter dated 03.3.2005, denying the liability and refused to pay the loan amount with interest. It now became apparent that the defendants 1 to 4 in collusion with the fifth defendant are attempting to defraud the

plaintiffs of their monies.

- In furtherance of this fraud, the defendants 1 to 4 had preferred a police complaint against the fifth defendant with a view to create a ground for them to wriggle out of the loan liability. There was an enquiry by the Central Crime Branch, Egmore at about 6.30 a.m., on 28.03.2005. During the course of interrogation, Gautham Chand Dhoka, the Managing Partner of the first plaintiff-firm was coerced by the sixth defendant, the then Inspector of Police, CCB, to hand over the original promissory note and the cheque executed by the first defendant. These documents are now in the custody of the sixth defendant.
- Thereafter, the defendants 1 to 4 would file a criminal complaint against the fifth defendant as an accused, and this was taken on record by the XI Metropolitan Magistrate Court, Saidapet in C.C.No.6439/2005. This has created a situation where the plaintiffs were disabled from initiating a criminal prosecution against the defendants 1 to 4, for an offence under Section 138 of N.I. Act.
- The plaintiffs vide their letters dated 26.02.2005, 28.3.2005, 09.9.2005, 15.9.2005, 19.9.2005, 24.9.2005 and 03.10.2005

demanded the repayment of loan amount with interest from the defendants. The defendants 1 to 4 on their part replied vide their letters dated 03.3.2005, 10.9.2005, 19.4.2005 and 05.10.2005, raising false and untenable contentions. Thereafter, the plaintiffs issued a suit notice dated 29.11.2005 to the defendants, which was replied by the defendants 1 to 4 vide notice dated 22.12.2005. There however was no change in their position that they had assumed.

- On 15.09.2005, the plaintiffs wrote a letter to the seventh defendant requiring him to return the original cheque and promissory note.

Since the plaintiffs' efforts to recover the amount advanced to the defendants 1 to 4 are in vain, the suit is laid for recovering it.

3. The fifth defendant remained exparte and others have filed their written statements. In their written statement, the defendants 1 to 4 have alleged that :

- The suit is bad for misjoinder of multiple causes of action.
- These defendants had not nominated or authorised the fifth defendant to liaison for them for obtaining the loans from the plaintiffs. So far as the business relationship these defendants had with the plaintiffs is concerned, it might be true that they have

obtained loans earlier. However, there is no truth in the allegation of plaintiffs about the loan transactions on which they have laid the suit. They are denied as these defendants had never obtained it.

- The alleged payments of various loan amounts amounting to a sum of Rs.60.0 lakhs was without the knowledge or consent of any of the defendants 1 to 4, and all alleged payments were falsely caused to reflect in the accounts of these defendants and this is a *modus operandi* that the plaintiffs have devised to extract amount from these defendants which is conceived by the fifth defendant to cheat these defendants. It is surprising how the defendants proceeded to advance a huge amount without even confirming the same either personally or through any telephonic chat with the defendants 1 or 2.
- Defendants 1 to 4 are running a few educational institutions and there won't be any shortage of funds for them from the month of March to August every year, as there would be substantial income in view of the admissions to various courses offered in their institutions.
- The allegation that the plaintiffs were insisting for repayment of loan and that the first defendant had executed a promissory note dated 04.01.2005 for Rs.50.0 lakhs is absolutely false and

misleading. Secondly, so far as the cheque referred to by the plaintiffs are concerned, neither its issuance nor its presentation for encashment were ever known to these defendants. It is only when the plaintiffs issued a notice intimating the dishonour of cheques, the defendants 1 to 4 came to know of the fraud played on them, and it prompted them to issue a reply notice to that effect.

- Sometime in 1990, the first defendant appointed the fifth defendant as its auditor. Since then he was working in the institution of the first defendant over a period of time, the first defendant had implicitly trusted the fifth defendant, and he was given the responsibility of the entire accounts section. The fifth defendant thus was engaged in managing the finance for the institutions, dealings with the banks, operations and arrangements of funds from banks and private financiers. The fifth defendant also used to obtain the signatures of the first defendant on blank promissory notes and blank cheques for obtaining loans for the institutions, however they were utilised for its purposes only after the fifth defendant discussed about it with the first defendant. Now it is apparent that the fifth defendant has misused his position and committed breach of confidence and trust and was actively colluding with the plaintiffs to defraud the defendants of their money.

- On 23.02.2005, while the first defendant was in his office, he heard Gautham Chand Dhoka and the fifth defendant quarrelling. On enquiry, the first defendant came to know that the fifth defendant is denying Gautham Chand Dhoka to meet the first defendant on several days, and that the fifth defendant however was not responsive when he enquired it with him. Subsequently, when the first defendant enquired the fifth defendant in private, the fifth defendant conceded to certain acts of financial impropriety that he has engaged in to the tune of Rs.3.35 crores. The fifth defendant had also conceded that he has misused the signed blank cheques and title deeds and also created promissory notes of the first defendant and his sons, and raised loans from the private financiers. He has also given a written confession to his misdeeds vide his letter dated 25.02.2005. He also promised that he would collect the funds and settle the dues. Even after submission of the written confession, the fifth defendant continued to work in the same position in the office of the first defendant, but the first defendant realised that the fifth defendant did not take any serious efforts to recover the amount.

- The issuance of a cheque and execution of a promissory note by the first defendant as alleged by the plaintiffs are false and fabricated documents. Hence, these defendants are not liable to pay any amounts.

- Even if the plaintiffs case is presumed to be true, four out of six transactions dated 24.01.2004, 10.6.2004, 29.6.2004 and 26.7.2004, are barred by limitation. The suit was signed on 27.7.2007, but was presented to the Court only on 10.12.2007. Even if the suit was presented on 01.8.2007, still the suit claim is barred. The alleged promissory note and cheque are fabricated and cannot aid the plaintiffs in enlarging the period of limitation.
- These defendants understand that the fifth defendant along with the plaintiffs had conspired to defraud them. The suit is of a product of this attempted fraud. It is in this circumstances, on 07.03.2005, the first defendant preferred a police complaint detailing the indifferences.
- It is in this circumstances, these defendants came to know that the family members and partners of the plaintiffs' firms seem to have purchased the fifth defendant's house property on 07.2.2005, and that on 27.6.2005, the fifth defendant had filed a suit in O.S.No.4001/2005 for an injunction against the plaintiffs' seeking

to restrain the latter from force evicting him.

- Thereafter, the fifth defendant laid a suit in C.S.No.889 of 2006 against the plaintiffs for a declaration that the sale deed executed by him was null and void and that the same was obtained under duress and coercion. In both the suits, the first defendant herein was impleaded as fifth defendant with an ulterior motive. It is of interest to note that the fifth defendant, the plaintiff in that suit, has admitted that the first plaintiff herein had given drafts and cheques in the name of his chartered accountant firm M/s.K.S.&Co., to the tune of Rs.45.0 lakhs and another payment of Rs.5.0 lakhs in his name. Thus, the fifth defendant is said to have received Rs.50.0 lakhs from first plaintiff soon after the completion of the fraudulent transaction involved in that suit. These defendants understand that this amount was paid as commission or share of the booty to the fifth defendant for his involvement in fraudulent transactions in these defendants' companies.
- So far as the issuance of cheque dated 16.08.2004 and promissory note dated 04.01.2005 are concerned, in any of the earlier notices or letters, was there any mention by the plaintiffs about them, and these documents are fabricated.

3.2 In the written statement of the sixth defendant, the Inspector of Police, it is alleged that in the detailed complaint which the first defendant has preferred against the fifth defendant, the amount so alleged and some of the facts which the defendants 1 to 4 have disclosed in their written statement, are stated. This defendant denies the statement that the cheque and promissory note are in their custody, and according to this defendant, the documents seized by them have been produced in the Court. He further prays leave of this Court to consider the written statement submitted by him is one, which may be adopted by the seventh defendant too.

4. On the pleadings, the following issues are framed :

1) *Whether the plaintiff is entitled for recovery of a sum of Rs.1,01,19,956/- (Rupees one crore one lakh nineteen thousand and nine hundred and fifty six only) together with interest at 18% per annum on the principal sum of Rs.60 lakhs from the date of the plaint till the date of realization from the defendants 1 to 5?*

2) *Whether the defendants 1 to 5 are liable to repay the loan obtained on different dates from the plaintiffs?*

3) *Is not the plaintiffs colluded with the 5th defendant and fraudulently created the plaint loan transaction with a view to obtain unjust enrichment?*

4) *Is not the suit bad for misjoinder of causes of action and the misjoinder of parties?*

5) *Whether the claim is within the period of limitation?*

6) *To what relief are the parties entitled to?*

5. The matter went to trial. The second defendant examined himself as P.W.1 and he has produced Ext.P1 to Ext.P30. For the defendant, the first defendant was examined as D.W.1. Of the various documents produced Ext.P-5 is the cheque, dated 16-08-2004 for Rs.50.0 lakhs that the first defendant is alleged to have issued to the first plaintiff and Ext.P-6 is the certified copy of the promissory note between the same parties.

6. The lis is all about three plaintiffs lending Rs.60.0 lakhs, not jointly, but severally to defendants 1 to 4, again not jointly but severally. According to the plaint, the first plaintiff had advanced a sum of Rs.15.0 lakhs to the first defendant, the second plaintiff had lent Rs.10.0 lakhs and the 3rd plaintiff had advanced Rs.20.0 (in two separate transactions of Rs.10.0 lakhs each). Each of the aforesaid transactions are separate and independent, and the only common thread is that a total sum of Rs.45.0 lakhs was advanced by the three plaintiffs to the first defendant. The other two transactions pertain to one loan of Rs.5.0 lakhs which the first plaintiff is alleged to have advanced to the 3rd defendant and the remaining last one relates to a loan of Rs.10.0 lakhs that the second defendant claims to have advanced to the 4th defendant. To state it differently, each of the three plaintiffs are involved in

at least two transactions.

7.1 The case of the plaintiffs is that all the amounts were advanced either by way of cheques or pay orders, and the amounts were credited into the bank account of the borrowers. This is not disputed by the defendants 1 to 4. The plaintiffs would allege that these loan amounts were organised through the 5th defendant, who was the internal auditor cum a trusted lieutenant of the defendants 1 and 2, and this was conceded in the written statement as well. When once the contesting defendants admit that the amounts advanced were credited into their bank accounts, then the burden is on them to establish why they were not liable to repay it.

7.2 The defendants however, would contend that they trusted the 5th defendant immensely, but the latter had committed breach of trust, joined hands with the plaintiffs, withdrew amounts from the bank accounts into which the amounts which the plaintiffs claimed to have advanced were credited and hence they are not liable. But what the fifth defendant was alleged to have done to the defendants 1 to 4 is, assuming it is true, is internal to the defendants 1 and 2 and the 5th defendant, unless they could establish that the plaintiffs and the 5th defendant have conspired to defraud them and that the transactions involved in this case is a product of fraud.

8.1 With initial burden on them, the counsel for the defendants 1 to 4 argued:

- There are three plaintiffs and four defendants and each one's cause of action are separate and independent and hence the suit is therefore bad for misjoinder of cause of action, and is hit by the vires of multifariousness.
- This apart, the alleged total liability of the 1st defendant is Rs.45.0 lakhs, whereas his alleged liability to the the 2nd plaintiff firm is only Rs.10 lakhs. To prove each of the independent claim of each of the plaintiffs, only a partner of the 2nd plaintiff examined himself as P.W.1 and the cause of action of others has not been proved.
- The suit is laid as on the date shown in the plaint on 13.08.2007. This implies that the entire suit claim is barred by limitation. However to get over the aspect of limitation, plaintiffs bring in a certain Ext.P-5 cheque dated 16.08.2004 for Rs.50 lakhs, which according to them is issued by the 1st defendant in favour of the first plaintiff firm as well as Ext.P-6 promissory note dated 04-01-2005.
- So far as Ext.P-5 is concerned, its original was not produced. While the signature of the drawer of the cheque is not disputed, it is a blank cheque which the first defendant had left with the fifth

defendant, but it was misused by the 5th defendant and he had played fraud. Indeed P.W.1 admits that this cheque was filled up only by the 5th defendant.

- So far as xt.P-6 promissory note goes, it is dated 04.03.2005. While the signature of the 1st defendant who is alleged to have executed is not disputed, the issuance of the promissory note had occasioned only as part of the fraudulent strategy of the 5th defendant. Ext.P-6 also shows that there is a co-promissor along with the first defendant, that this defendant did not know who this co-promissor was, and hence this has to be explained by the plaintiff.
- To establish that there was a collusion between the 5th defendant and the plaintiffs in the course of exchange of notice before suit, this defendant has imputed collusion between the 5th defendant and the plaintiffs in Ext.P17 has not rebutted it immediately. The allegation of collusion between defendants 1 to 4 and the 5th defendant is first stated only in the plaint, which P.W.1 has vouchsafed.
- The complaint before the police was given only on behalf of the 1st defendant, and in the course of enquiry by the police, the plaintiffs have produced some documents and this is evident from the fact in Ext-P6, the column intended for filling up the rate of interest was left blank.

9. Responding to the same, learned counsel for the plaintiffs submitted that:

- It is not that the plaintiffs only rely on Exts.P5 and P6 for addressing the plea of limitation, but also rely on Ext.P19 dated 19.09.2005. In this document, the 1st defendant has categorically admitted that the amounts advanced by the plaintiffs have been credited into his account. Even though he has clarified that statement, as if these amounts were credited to his account without his knowledge by his auditor, still the fact remains that the 1st defendant has admitted that the amounts have come into his account.
- So far as co-promissor in Ext.P6 is concerned, the same co-promissor has signed Ex.P3. And this co-promissor, which only the defendants knew, has also a co-signatory to Ext.P22. Now, the burden is on the 1st defendant to explain who this co-promissor is. And, on this aspect, there is no pleading in the written statement.

Of Discussion & Decision

All the issues:

10. Is the suit bad for multifariousness – for misjoinder of causes of action? Yes, it is. There are three plaintiffs and effectively three defendants, and

there are six transactions. Each of the plaintiff, all of which are partnership firms, is involved in two transactions. Each these firms are different business entities, and so is they are in law. On the other side, there are three defendants – defendants1,3 and 4 with whom these firms have transacted loans.

11.1 The plaint asserts that all those involved in the constitution of the plaintiff firms are relatives, and so far as the defendants go, defendants 3 and 4 are proprietary concerns which the second defendant, the son of the first defendant heads. The plaintiffs are told, something that they ought to have known when they laid the suit that law does not recognise relationship to convert two separate individuals into one, nor two separate entities such as the firms into one. It cannot also telescope the group-companies principles to bring an inter-relationship between the plaintiff firms. After all, each of the loan pleaded by the plainitff, assuming for the present that they are true, would figure only in the separate books of account of the respective firms. At any rate the plaintiffs did not trouble the Court showing any unity in their identity either to convert six different and unrelated transactions as one involving different individuals or entities, as the case may be. Surely, a single suit involving multiple unrelated transactions involving different and separate individuals or entities is bad

for misjoinder of cause of action – for multifariousness under Order II Rule

7 CPC.

11.2 However, that does not give any edge to the defendants to have the plaintiffs non-suited on that solitary ground, for under Order II Rule 7 CPC, in all suits affected by the vires of multifariousness, the Court may have to put the plaintiffs on election, and should only direct separate trial. While it is not evident if the plaintiffs were put on election in this suit, still it cannot be disputed that they were definitely put on notice by the defendants 1 to 4 when they raised this issue in paragraph 3 of their written statement. This, at the least should have alerted the plaintiffs in a suit that was instituted in 2008 and went to trial even in 2010. They missed it.

11.3 The suit cannot be non-suited now, for both sides have participated in the trial. Therefore, to the extent facts are proved a decree may still be granted. Sec.99 CPC.

12. Here the plaintiffs have created a problem for themselves when they chose to examine only one witness, who is associated only with the second plaintiff firm. Necessarily that which he speaks for other two firms will be hearsay, and this court cannot countenance his evidence for the other two.

13.1 Turning to merit of the action, the first primary concern is bar of limitation. The necessary details are as below:

Date of loan	***Date on which limitation expires***	***Date of suit (as from the date stamp in the plaint)***
24.01.2004	24.01.2007	01-08-2007
26.07.2004	26.07.2007	
10.06.2004	10.06.2007	
29.06.2004	29.06.2007	
10.06.2004	10.06.2007	
02.08.2004	02.08.2007	

The table above indicates that only the last transaction dated 02.8.2004, in which the third plaintiff asserts that he had advanced Rs.10.0 lakhs to the first defendant alone is saved by limitation. Given the fact that each of the transactions is denied as a fraudulent transaction, which all the plaintiffs have colluded with the 5th defendant to defraud the first defendant, it is important the third defendant enters the witness box at least to prove the only transaction saved by time. This was not done. Therefore, this claim stands not proved.

13.2 Turning to first five transactions, the plaintiffs rely on Ext.P5 cheque and Ext.P6, promissory note, both of which are for value of Rs.50.0 lakhs, each dated respectively 16.08.2004 and 04.01.2005. Both these instruments are alleged to have been executed by the first defendant in favour of the first plaintiff, and both thee documents are mere xerox copies of the originals. It is true that in the plaint it is alleged the original of Ext.P-5 and P-6 are in the custody of the 6th defendant Police Inspector, but the 6th defendant in his written statement has alleged that he had produced them before the concerned Metropolitan Magistrate. In fitness of things, the plaintiffs should have taken steps to send for those documents from the concerned Court, mark them in evidence and should have substituted them with their certified copies and should have returned the documents to the Court concerned. That was not done.

14.1 Even if the fact that original of Ext.P-5 and P-6 are kept aside, there other aspects that dissuades this Court from relying on them. They are:

- Since only the signatures of the drawer / promissor of Ext.P-5 and Ext.P6, as the case may be, are admitted and the rest of the attending circumstances surrounding them are denied, some partner from the first plaintiff alone is competent to speak to it. The cheque and the promissory note, were after all issued in the name of the first plaintiff firm. But none has been so examined.
- Secondly, as on the date of Ext.P5 and Ext.P-6, in terms of the plaint the first plaintiff had advanced only Rs.15.0 lakhs to the first

defendant. Inasmuch as the cause of action has been found to be separate and individual for each of the plaintiffs, the first plaintiff owes a duty to explain why Ext.P5 and Ext.P6 are executed for Rs.50.0 lakhs.

- Thirdly, even if the remainder has to be considered as interest portion which is two-fold more than the principle sum, there is no indication on the rate of interest payable in Ext.P-6.
- Fourthly, there is an co-executant to Ext.P6, and the defendants allege that they do no know who this co-executant of Ext.P6 is. The plaintiffs through P.W.1 tried to explain this by referring to Ext.P3 and Ext.P22, in both of which the same person has counter signed. Of them, Ext.P3 is yet another photostat copy of a certain document wherein the alleged co-executant of Ext.P6 is available. Ext.P22 is the communication of the second defendant in the letter-head of the first defendant, but in this, this Court does not find any such signature of certain unknown co-executant. Ext.P-6 is the document which the plaintiff relies on, and when the contesting defendants argue that they did not know who he was, the burden becomes the plaintiffs' to explain it. It is surprising that a firm whose business is essentially money-lending would accept a promissory note without knowing who the promissor is. It is apparent that the first plaintiff knows the co-executant and the failure of the one who represents the first plaintiff

firm in the suit to examine himself to speak to the facts attending Ext.P-6, leaves it under a shade of suspicion.

14.2 Given the circumstances, this Court holds that Ext.P5 and Ext.P6, if at all they can be used for enlarging the period of limitation, it is available only for the first plaintiff firm and not for other plaintiffs. And, as already found inasmuch as they are not proved by the first plaintiff, it can grant little advantage even to the first plaintiff.

15. Accordingly, this Court holds that the first five transactions dated 24.01.2004, 26.07.2004, 10.06.2004, 29.06.2004 and 10.06.2004, are barred by limitation, and the last of the transactions dated 02.8.2004 is not proved. Consequently the suit is liable to be dismissed.

16. In conclusion, the suit is dismissed with costs to the defendants.

Sd./-N.S.S.J.
04.02.2022

APPENDIX

I. Witnesses :

Plaintiffs :	
PW1	Mahaveer Chand Dhoka (second plaintiff)
Defendants :	
DW1	T.R.Pachamuthu alias Pareiventhar (1st defendant)

II. Exhibits :

Ex.P1	29.06.2004	Xerox copy of the pay order of for Rs.10,00,000/- drawn in favour of M/s.Geetha Constructions, 4th defendant
Ex.P2	26.07.2004	Xerox copy of the pay order bearing No.302407 for Rs.15,00,000/- drawn in favour of Mr.T.R.Pachamuthu, the first defendant
Ex.P3	26.07.2004	Letter addressed to the first defendant by the 1st plaintiff enclosing the pay order bearing No.302407 dated 26.7.2004 for Rs.15,00,000/-.
Ex.P4	02.08.2004	Xerox copy of the pay order bearing No.459094 for Rs.10,00,000/- drawn in favour of Mr.T.R.Pachamuthu, the first defendant
Ex.P5	16.08.2004	Certified copy of the cheque bearing No.208775 for Rs.50,00,000/- drawn on Tamilnad Mercantile Bank issued to the 1st plaintiff by the first defendant
Ex.P6	04.01.2005	Certified copy of promissory note dated 04.01.2005 for Rs.50,00,000/- issued by the first defendant in favour of the 1st plaintiff.
Ex.P7	16.02.2005	Memo issued by Tamil Nad Mercantile Bank for return of Ch.No.208775 for Rs.50,00,000 for 'insufficient funds'.
Ex.P8	17.02.2005	Challan given by City Union Bank to the first plaintiff that his account has been debited by Rs.50,00,015/-
Ex.P9	26.02.2005	Original Letter addressed to the first defendant by the first plaintiff informing the return of cheque bearing No.208775 for Rs.50,00,000/- drawn on Tamilnad Mercantile Bank
Ex.P10	03.03.2005	Reply Letter given by the first defendant to the first plaintiff.
Ex.P11	28.03.2005	Notice issued by the Inspector of Police, CCB Team-II, Egmore under Sec.160 & 91 Cr.P.C., to the first plaintiff for production of certain documents based on the complaint given by the first defendant.
Ex.P12	28.03.2005	Acknowledgement letter by the Inspector of Police, CCB, Egmore to the first plaintiff
Ex.P13	28.03.2005	Letter addressed to the first defendant by the second plaintiff with acknowledgement card.
Ex.P14	24.09.2005	Statement of Accounts provided by City Union Bank as

		concerning the payments made to the 1st defendant by the plaintiffs through cheques & DDs
Ex.P15 (series)	09.09.2005	Letter addressed to the first defendant by the first plaintiff to make payment towards the outstanding dues with acknowledgement cards
Ex.P16	10.09.2005	Reply letter to the letter dated 09.9.2005 (Ext.P15) by the first defendant
Ex.P17	15.09.2005	Letter addressed to the first defendant by the Partner of the first plaintiff-company with acknowledgement card
Ex.P18	15.09.2005	Letter by 2nd plaintiff to the Commissioner of Police requesting to deliver certain original documents
Ex.P19	19.09.2005	Letter addressed to Mr.P.M.Dhoka, Partner of the first plaintiff-company by the first defendant in reply to letter dated 15.09.2005 (Ext.P17)
Ex.P20	24.09.2005	Letter addressed to the first defendant by the first plaintiff regarding remittance of outstanding loan amounts
Ex.P21	03.10.2005	Letter addressed to the first defendant by the first plaintiff regarding remittance of outstanding loan amounts
Ex.P22	05.10.2005	Letter addressed to Mr.P.M.Dhoka, Partner of first plaintiff-company by the second defendant in reply to letter dated 03.10.2005
Ex.P23	29.11.2005	Legal notice sent to the first defendant on behalf of the plaintiffs.
Ex.P24	22.12.2005	Legal notice sent to the plaintiffs' advocate by the defendants counsel
Ex.P25`	11.09.2007	Legal notice sent to the police officials (defendants 6 & 7) by the plaintiffs' counsel
Ex.P26		Postal acknowledgements
Ex.P27	05.03.1971 & 04.02.1987	Certified copy of the Acknowledgement of Registration of first plaintiff company & Certified copy of the partnership deed of the first plaintiff firm
Ex.P28	19.03.1982 & 04.02.1987	Certified copy of the Acknowledgement of Registration of second plaintiff company & Certified copy of the partnership deed of the second plaintiff firm
Ex.P29	19.03.1982 & 04.02.1987	Certified copy of the Acknowledgement of Registration of third plaintiff company & Certified copy of the partnership deed of the third plaintiff firm

Ex.P30	05.05.2006	Complaint filed by the first plaintiff against the first defendant under Sec.138 & 141 of N.I.Act before the XVII Metropolitan Magistrate Court, Saidapet

Sd./-N.S.S.J.
04.02.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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