IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.12.2022**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

C.S.No.214 of 2021
and A.No.2276 of 2021

M/s.United Overseas Finance Limited,
having its Registered Office at
Chopra Chamber, No:160, Ramanaicken Street,
Nungambakkam, Chennai-600 034,
rep. By its Authorised Signatory,
Mr.G.N.Bhuvaneswaran ... Plaintiff

vs.

1.Mr.P.S.Suresh (Since deceased)
Son of late Subburam Naidu.

2.Mrs.S.Anitha
Wife of Mr.Suresh

3.Mr.E.Pandian,
Son of Mr.Ethiraj

4.Ms.S.Eswini (minor)
Rep.by her mother and natural guardian
Mrs.Anitha, wife of Mr.Suresh

5.Mrs.Shantha
W/o.Mr.Subburam Naidu

(Defendants 4 and 5 are brought on record as legal heirs of the deceased 1st defendant as per order dated 17.09.2021 in A.No.3131 of 2021) ... Defendants

PRAYER: Plaint filed under Order IV Rule 1 andOrder XXXVII Rule 1 of the Rules of the High Court Madras in its Original Side read with Order XXXIV of the Code of Civil Procedure, 1908 prayed to pass a jdugment and decree:-

(a) directing the first, second and the third defendants to pay to this Plaintiff a sum of Rs.10,,043,721/- (comprising a sum of Rs.36,63,000/- towards the Principal; a sum of Rs.63,80,721/- towards interest and other charges till 29.02.2020) being the amount due and payable under the Loan Agreements cited supra within the time stipulated by this Hon'ble Court;

(b) Pay further interest @ 18% P.A. From 01.03.2020 till date of realisation;

(c) in the event of failure of the first, second and the third defendants to pay th amount in compliance of the orders of this Hon'ble Court, permit the Plaintiff to sell the mortgaged properties more fully described in the Schedule hereunder so as to realize the amount due;

(d) If the sale proceeds are not sufficient to satisfy the decree, to pass personal decree against the first, second and the third defendants;

(e) directing the contesting defendants to pay to the plaintiff the cost of this action.

For Plaintiff : Mr.R.Umashankar for
M/s.Sri & Shankar Associates

For Defendants : Set *Ex parte*

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JUDGMENT

The plaintiff is a financial institution. The first defendant availed of credit facilities from the plaintiff under multiple loan agreements. Defendants 2 and 3 were the guarantors in relation to such credit facilities. Upon default by the defendants in servicing obligations under the loan agreements, notices were issued by the plaintiff to defendants 1 to 3 on 16.12.2016 and 30.10.2019. Upon defendants 1 to 3 failing to make payments demanded under the said notices, the present suit is filed.

2. After the institution of the suit, the first defendant passed away. His class I legal heirs are the second, fourth and fifth defendants. Consequently, the fourth and fifth defendants were impleaded since the wife of the deceased was already the second defendant in the suit.

3. Summons was served on all the defendants. Since the defendants did not enter appearance in spite of receipt of suit summons, by order dated 01.04.2022, the defendants were set *ex parte*. Thereafter, the matter was posted before the learned Master for recording the *ex parte* evidence of the plaintiff.

4. The plaintiff examined Mr.G.N.Bhuvaneswaran, authorized signatory, as PW1. In course of the examination-in-chief of PW1, 10 documents, which are listed at the foot of the judgment, were exhibited as Exs.P1 to P10.

5. Learned counsel for the plaintiff invited my attention to the loan agreements, which were exhibited as Exs.P1, P3 to P6. With specific

reference to the schedule thereto, he pointed out that the agreed rate of interest was 13% p.a. in the loan agreement dated 19.08.2013 and 18% p.a. in all subsequent loan agreements. With reference to clause C (18) thereof, he submitted that additional financial charges at 36% p.a. compounded monthly is chargeable in case of default. He also invited my attention to the security created by the deceased first defendant in the form of the memorandum of deposit of title deeds dated 30.09.2013 (Ex.P2). He pointed out that the statement of account in respect of each loan account was exhibited as Ex.P9. By drawing reference to paragraph 12 of the proof affidavit of Mr.Bhuvaneswaran, he pointed out that the amount due and payable, inclusive of interest, as on 29.02.2020, was a sum of Rs.1,00,43,721/-. The said sum consists of the principal sum of Rs.36,63,000/- and a sum of Rs.63,80,721/- towards interest. Since the aggregate sum was computed as on 29.02.2020, he submits that further interest is payable on the principal sum. As on date, he submits that the aggregate amount due and payable is a sum of Rs.1,36,96,283.95.

6. The plaintiff has placed on record the multiple loan agreements. These loan agreements contain a schedule. The rate of interest specified in such schedule is 13% in the loan agreement dated 19.08.2013 and 18% in the subsequent loan agreements. In addition, clause C (18) of the loan agreements provides as under:

> *"18. Without prejudice to the other rights of UOFL<, if the borrower defaults in making any payment to UOFL of any monthly installments due under this agreement and detailed in the Schedule, the borrower shall pay to UOFL additional Financial Charges @ 36% p.a. compounded month on the amount due from time to time in arrears until payment thereof, but this clause shall not in any way prejudice UOFL's rights under this agreement to take possession of the asset or to determine the agreement as otherwise."*

7. From the above, it is clear that parties agreed to the rate of interest as also the additional finance charges in case of default. The notices dated 16.12.2016 and 30.10.2019, along with acknowledgment cards, are on record as Exs.P7 and P8. This establishes default on the part of the defendants.

8. In view of the evidence adduced by the plaintiff, the suit claim has been duly proved. Accordingly, C.S.No.214 of 2021 is decreed as prayed for. Consequently, the defendants are directed to pay a sum of Rs.1,36,96,283.95 on or before 06.02.2023. In the event of default, the plaintiff is permitted to sell the mortgaged property described in the schedule to the plaint and realise the dues from the sale proceeds, including interest from 08.12.2022 until realisation. As the successful party, the plaintiff is entitled to costs. Unless paid, the plaintiff is entitled to realise the costs also from the sale proceeds. Since the fourth and fifth defendants are arrayed in their capacity as legal heirs of the first defendant, they are liable to make payments only from and out of the estate of the deceased first defendant. Consequently, A.No.2276 of 2021 is closed.

07.12.2022

Index : Yes / No

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Plaintiff's witness:

P.W.1 – G.N.Bhuvaneswaran

Documents exhibited by the plaintiff:

Exhibit No.	***Description***
Ex.P1	The original loan agreement entered into the defendants with the plaintiff dated 19.08.2013.
Ex.P2	The photocopy of the memorandum of deposit of title deed dated 30.09.2013.(compared with original)
Ex.P3	The original loan agreement entered into the defendants with the plaintiff dated 01.10.2013.
Ex.P4	The original loan agreement entered into the defendants with the plaintiff dated 17.02.2014.
Ex.P5	The original loan agreement entered into the defendants with the plaintiff dated 14.03.2014.
Ex.P6	The original loan agreement entered into the defendants with the plaintiff dated 22.05.2014.
Ex.P7	The office copy of the advocate notice dated 16.12.2016.
Ex.P8	The office copy of the advocate notice dated 30.10.2019 along with 3 acknowledgment cards
Ex.P9	The printout of the statement of account dated 30.10.2010.
Ex.P10	The printout of the encumbrance certificate dated 21.10.2020.

SENTHILKUMAR RAMAMOORTHY,J

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and A.No.2276 of 2021

07.12.2022