

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 23rd DAY OF FEBRUARY 2022

THE MASTER

C.S.No.331 of 2020

1.Mr.Rajesh Jaggi,
B-2, Oakwood Apartments,
No.25, Anderson Road,
Chennai – 600 006.

2.Mrs.Neeru Jaggi,
W/o Rajesh Jaggi,
B-2, Oakwood Apartments,
No.25, Anderson Road,
Chennai – 600 006.

3.Manav Jaggi,
S/o Rajesh Jaggi,
B-2, Oakwood Apartments,
No.25, Anderson Road,
Chennai – 600 006
Currently residing at
2069E, Harvard Oaks Cir,
Salt Lake City, U.T.84108,
United State of America
Rep. By POA Mr.Rajesh Jaggi.

... Plaintiffs

-Versus-

1.Mr.Vijay Kumar Bhasin,
B-3, Oakwood Apartments,
No.25, Anderson Road,
Chennai – 600 006.

2.Mrs.Vijay Kumari Bhasin,
B-3, Oakwood Apartments,

No.25, Anderson Road,
Chennai – 600 006.

3.Mr.Vivek Nidhi Bhasin,
B-3, Oakwood Apartments,
No.25, Anderson Road,
Chennai – 600 006.
Currently residing at
C-6, Malinga Apartments,
34, Pycrofts Garden Road,
Nungambakkam, Chennai 600 034.

4.Mr.Anupam Bhasin,
B-3, Oakwood Apartments,
No.25, Anderson Road,
Chennai – 600 006.

... Defendants

Civil Suit praying that this Hon'ble Court be pleased to pass
judgement and decree against the defendants as follows:

a. Directing the Defendants to jointly and severally pay the
Plaintiffs a sum of Rs.3,75,10,000/-

b. Directing the Defendants to pay the Plaintiffs interest on the
sum of Rs.3,75,10,000/- at the rate of 18% p.a. from the date of filing of the
suit till the date of realization.

c. Costs of the suit.

This suit coming on this day before this Court for hearing in the
presence of Ms.M.Sheela, Advocate for the Plaintiffs herein, and
Mr.Kaviananthan, for M/s Nathan and Associates, Advocates for the
defendants herein, and upon reading the plaint filed herein, **it is ordered**

and decreed as follows:-

That the defendants herein, jointly and severally do pay to the plaintiffs herein, a sum of Rs.4,68,45,365/- (Rupees Four Crore Sixty Eight Lakhs Forty Five Thousand Three Hundred and Sixty Five only) with further interest at the rate of 18% per annum on the sum of Rs.3,75,10,000/- (Rupees Three Crore Seventy Five Lakhs and Ten Thousand only) from this date till the date of realisation.

2. That the defendants herein, do pay to the plaintiffs 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, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 23rd 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.

MU

11.04.2022

C.S.No.331 of 2020

ORDER

DATED: 23.02.2022

THE MASTER

FOR APPROVAL: 12.04.2022

APPROVED ON : 13.04.2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 23rd DAY OF FEBRUARY 2022

THE MASTER

C.S.No.331 of 2020

1.Mr.Rajesh Jaggi,
B-2, Oakwood Apartments,
No.25, Anderson Road,
Chennai – 600 006.

2.Mrs.Neeru Jaggi,
W/o Rajesh Jaggi,
B-2, Oakwood Apartments,
No.25, Anderson Road,
Chennai – 600 006.

3.Manav Jaggi,
S/o Rajesh Jaggi,
B-2, Oakwood Apartments,
No.25, Anderson Road,
Chennai – 600 006
Currently residing at
2069E, Harvard Oaks Cir,
Salt Lake City, U.T.84108,
United State of America
Rep. By POA Mr.Rajesh Jaggi.

... Plaintiffs

-Versus-

1.Mr.Vijay Kumar Bhasin,
B-3, Oakwood Apartments,
No.25, Anderson Road,
Chennai – 600 006.

2.Mrs.Vijay Kumari Bhasin,
B-3, Oakwood Apartments,

No.25, Anderson Road,
Chennai – 600 006.

3.Mr.Vivek Nidhi Bhasin,
B-3, Oakwood Apartments,
No.25, Anderson Road,
Chennai – 600 006.
Currently residing at
C-6, Malinga Apartments,
34, Pycrofts Garden Road,
Nungambakkam, Chennai 600 034.

4.Mr.Anupam Bhasin,
B-3, Oakwood Apartments,
No.25, Anderson Road,
Chennai – 600 006.

... Defendants

Civil Suit praying that this Hon'ble Court be pleased to pass
judgement and decree against the defendants as follows:

a. Directing the Defendants to jointly and severally pay the
Plaintiffs a sum of Rs.3,75,10,000/-

b. Directing the Defendants to pay the Plaintiffs interest on the
sum of Rs.3,75,10,000/- at the rate of 18% p.a. from the date of filing of the
suit till the date of realization.

c. Costs of the suit.

This Civil Suit coming on this day before this court for hearing

the court made the following order:-

1. This summary suit has been filed under Order VII Rule 1 of
Original Side Rules read with Order XXXVII of CPC to pass a judgment

and decree directing the defendants jointly and severally to pay the plaintiffs a sum of Rs.3,75,10,000/- with subsequent interest on the sum of Rs.3,75,10,000/- at the rate of 18 % p.a. from the date of filing of the suit till the date of realization.

2.1. The case of the plaintiffs is that,

The plaintiffs and the defendants reside in the same apartment complex. Defendants approached the plaintiffs for availing personal loans for various purposes. The plaintiffs had initially disbursed a sum of Rs.40,00,000/- from 15.08.2016 to 16.12.2016 to the Defendants in various transactions. The defendants had repaid the entire amount with interest without defaulting on the same. Subsequent to the said transactions, the defendants had once again approached the plaintiffs in May 2017 for availing personal loans. A total sum amounting to Rs.2,76,50,000/- from 19.05.2017 to 20.08.2018 was disbursed to the defendants through the bank accounts maintained with HDFC Bank, G.P.Road Branch by issuing cheques to the defendants.

2.2. The defendants had undertaken to pay the same jointly and severally and also executed promissory notes in favour of the plaintiffs and the same was acknowledged in writing on stamp paper dated 08.12.2017. The defendants initially made part payments in various transactions towards principal and interest. However, after a period of time, the defendants had

failed and neglected to make any payments. On 10.06.2019, a reconciliation of accounts was carried out between the plaintiffs and the defendants and it was ascertained that a sum of Rs.3,75,10,000/- was payable to the plaintiffs. The defendants admitted liability in writing on stamp paper and acknowledged the sum payable by them to the plaintiffs. A total sum of Rs.3,75,10,000/- was payable by the defendants to the plaintiffs as on 15.05.2019.

2.3. Despite acknowledging the same in writing, the defendants did not come forward to effect any payment. The plaintiffs once again approached the defendants for payment of Rs.3,75,10,000/-. The defendants once again acknowledged liability in writing on stamp paper dated 15.07.2019 and issued 12 post dated cheques on various dates totalling to a sum of Rs.3,75,10,000/-. After issuing the cheques and promissory notes for a sum of Rs.3,75,10,000/- and despite admitting liability, the defendants once again sought time from the plaintiffs to clear the outstanding sum and further requested the plaintiffs not to deposit the cheques citing financial crisis. The defendants further acknowledged liability in writing on 02.12.2019 and confirmed the balances payable to the plaintiffs.

2.4. On account of non-payment by the defendants, the plaintiffs once again contacted the defendants giving them a final chance to clear outstanding payments. A joint memorandum of understanding dated

09.01.2020 was also entered into by the family members of both the plaintiffs and defendants wherein it was unequivocally acknowledged by the defendants that a total consolidated sum of Rs.3,75,10,000/- was jointly and severally payable by them to the plaintiffs. The defendants further issued fresh cheques and the same were recorded in the MOU dated 09.01.2020. The defendants further agreed to give a charge on the properties belonging to their partnership firm on default of loan.

2.5. After issuing the said cheques, in view of the lockdown measures announced by Government of India due to Covid-19 pandemic situation on 24.03.2020, the defendants had contacted the plaintiffs and requested to keep the deposit of aforementioned cheques in abeyance until the situation normalized. After easing down of lockdown restrictions, the plaintiffs had deposited the cheques with their bankers HDFC Bank Ltd, G.P.Road Branch on 01.06.2020. Much to the shock and surprise of the plaintiffs, all the 12 cheques were returned by the defendant's banker.

2.6. On account of dishonor of cheques, the plaintiffs through their advocates had issued notices all dated 17.06.2020 addressed to the defendants under Section 138 of the Negotiable Instruments calling upon the defendants to pay the outstanding sum admitted by them. The defendants through their advocates had issued reply notices all dated 02.07.2020 making false and frivolous claims that the loan was an interest

free and cheques and acknowledgments issued by them were given under coercion and undue influence. The defendants on numerous occasions i.e., vide written acknowledgments dated 10.06.2019; 15.07.2019 and 02.12.2019; MoU dated 09.01.2020 had confirmed the balances payable to the plaintiffs.

2.7. Despite unequivocally admitting liability, the defendants have not come forward to pay the sum of Rs.3,75,10,000/- to the plaintiffs. Hence the plaintiffs are constrained to lay the present suit for recovery of its legitimate dues jointly and severally against all the defendants. The plaintiffs pray that this Hon'ble Court may be pleased to pass a Judgment and Decree in favour of the plaintiffs and against the defendants.

3. After registration of plaint summons was ordered to be issued to the defendants. The defendants entered appearance on 04.02.2021 by serving notice of appearance on the plaintiffs. After service of notice of appearance by the defendants, the plaintiffs herein in compliance of Order XXXVII Rule 3 (4) had served the Summons for Judgment on the defendants on 12.02.2021 and the affidavit of service was filed before this Hon'ble Court on 26.02.2021. The defendants filed application seeking leave to defend the suit in A.No.2282 of 2021 and it was dismissed on 10.02.2022 on merits.

4. At this juncture, it is useful to point out the relevant provisions of the procedure laid in **Madras High Court Original Side Rules** to try summary suits.

Order VII Rule 1 runs as under

R.1. A suit to recover a debt or a liquidated demand in money, evidenced by a document, or any money payable by the defendant with or without interest, arising on a negotiable instrument or on a bond or a contract for payment of a liquidated amount of money evidenced by a document, or on a guarantee where the claim arises against the principal in the manner aforesaid, may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed.

For the purpose of this order “Liquidated demand” means a demand for the amount stated or so expressed that the ascertainment of the amount is a mere matter of calculation.

Order VII Rule 5 runs as under

R.5. In any case in which the plaint and summons are in the form prescribed in this order, the defendant shall not defend the suit unless he obtains leave to defend from the Master as hereinafter provided. In default of the defendant obtaining such leave, or if he fails to defend in pursuance of such leave, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for the sum claimed in the plaint, and in cases where interest is payable either by contract or statute, interest till the passing of the decree and further interest at six percent per annum from the date of the decree to the date of payment, and such sum for costs as may be prescribed.

Order VII Rule 6 runs as under

R.6. (1) An application for leave to defend the suit shall be made to the Master supported by such evidence by way of affidavit as the defendant desires to place before the Court.

(2) Leave to defend may be given unconditionally or subject to such terms and directions as the Master thinks fit.

(3) The Master shall, (a) if the defendant does not appear, on proof by affidavit of service of the summons on the defendant, or (b) if leave to defend is not granted, pass a decree for the amount claimed and costs.

5. In this case, the defendants filed application seeking leave to defend the suit in A.No.2282 of 2021. In the leave to defend application this Court has decided that the defendants have no bonafide, probable, plausible or valid defence and there is no triable issue in this suit. Hence, this Court ordered accordingly in the leave to defend application and dismissed the application. As a consequence, as per Order VII Rule 6 (3) of Madras High Court Original Side Rules, the plaintiff is entitled to Decree and Judgment as prayed for.

6. In the result, the suit is decreed directing the defendants jointly and severally to pay the plaintiffs a sum of Rs.3,75,10,000/- with subsequent interest on the sum of Rs.3,75,10,000/- at the rate of 18 % p.a. from the date of filing of the suit till the date of realization and the costs of this suit as fixed by the taxing officer.

Sd./-The Master
23.02.2022

//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.