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C.S.No.123 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2022

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

C.S.No.123 of 2017

1. Badam Kavar, (Deceased)
W/o. Late Laduram Chhaged,
represented by her Power of Attorney Agents,
1. Gumanmal Jain
2. Varun Jain,
Office at "Rain Forest", Flat No.A-1,
No.57, Rems Street, Taylors Road,
Kilpauk, Chennai – 600 010.
 2. Deepak Jain
 3. VarunJain ... Plaintiffs
[Plaintiffs 2 and 3 are brought on record as L.R's of
Sole Plaintiff as per order dated 31.03.2015 in
A.No.2438 to 2440 of 2015 and time extended as per
order dated 23.04.2015 in A.No.2952 of 2015.]
- ..VS..
1. N.S.Rathinam & Sons,
Partnership firm rep. by its Partner,
R.Chandrasekaran,
No.32 & 34, Vijaya Narayana Doss Road,
Anna Salai, Chennai – 600 002.



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2. R.Chandrasekaran

3. R.Akkammal

... Defendants

This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC praying to pass the judgment and decree,

(a) For a sum of Rs.44,07,500- directing the defendants 1 to 3 herein to pay the plaintiff the aforesaid sum together with interest at 24% p.a. from the date of plaint till the date of actual payment within such time as may be granted by this Court;

For Plaintiff : Ms.A.L.Gandhimathi

JUDGMENT

This suit is filed for recovery of a sum of Rs.44,07,500/- together with interest at 24% per annum.

2. The case of the plaintiffs is that the first defendant is a partnership firm, and second and third defendants are the partners in the first defendant's firm. For business needs of first defendant's firm, the defendants had borrowed a sum of Rs.10,00,000/- from the plaintiffs on



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14.11.2003 and executed a Demand Promissory Note. On 20.04.2005, second defendant has received a further amount of Rs.10,00,000/- as loan and executed a Demand Promissory Note undertaking to repay the amount with interest at 24% per annum. The second defendant in his capacity as partner of the first defendant, by his letter dated 07.02.2006 confirmed that the loan of Rs.10,00,000/- borrowed by him in his independent capacity on 20.04.2005 for the purpose of business of the first defendant. He made a repayment of Rs.1,00,000/- and promised to arrange for the balance amount. The cheques issued by the first defendant on 31.01.2009 for a sum of Rs.19,00,000/- in favour of the first plaintiff was returned dishonoured on 02.02.2009 for the reason “opening balance insufficient”. The two cheques issued by the first defendant for Rs.5,00,000/- on 23.01.2009 and for Rs.13,03,000/- on 31.01.2009 were also returned dishonoured for the reason “opening balance insufficient”. Therefore, the plaintiffs have been constrained to initiate proceedings under Section 138 of the Negotiable Instruments Act against the first to third defendants. The defendants had made certain payments that is Rs.10,000/- each on 29.04.2010 and Rs.10,00,000/- and Rs.3,00,000/-



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on 12.05.2010 and 15.05.2010 respectively. After giving credit to all the payments, the defendants are liable to pay Rs.43,07,290/-. The legal notice was duly received by the defendants on 12.03.2013. However, no payment was made by them. Therefore, the suit.

3. The learned counsel for the plaintiffs submitted that the defendants in this case was set *ex-parte* and thereafter PW1 was examined and exhibits P1 to P9 have been marked in proving the case of the plaintiffs about borrowals made by the defendants and thereafter failure to repay the loan amount. Therefore, he prays for decree as claimed by the plaintiffs.

4. Considered the submissions and perused the records.

5. Exhibit P1 is the photocopy of the power of attorney dated 03.05.2005 in favour of the PW1. Exhibits P2 and P3 are the certified copy of the promissory note dated 14.11.2003 and 20.04.2005 respectively. It is submitted by learned counsel for the plaintiffs that



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original promissory notes have been filed before the criminal Court in proceedings initiated under Section 138 of the Negotiable Instruments Act. Exhibit P4 is the certified copy of the letter sent by second defendant to the power agent of the first plaintiff. It is seen from this letter that he confirmed the borrowal of Rs.10,00,000/- for the business of first defendant. It is also seen from the letter, he paid a sum of Rs.1,00,000/- from the first defendant account. Exhibit P5 is the office copy of the notice issued under Section 138 of the Negotiable Instruments Act by the plaintiff to the defendants. Exhibit P6 is the certified copy of the acknowledgment cards. Exhibit P7 is also a copy of notice issued under Section 138 of the Negotiable Instruments Act by the plaintiff to the defendants. Exhibit P8 is the office copy of original notice issued in this case. Exhibit P9 is the copy of the original ledger.

6. The perusal of documents P1 and P2 shows that the defendants borrowed a sum of Rs.10,00,000/- each on 14.11.2003 and the second defendant borrowed a sum of Rs.10,00,000/- for the business purpose of the first defendant on 20.04.2005. The cheques issued



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towards part payment of these loan amounts were returned for lack of funds . In this regard, criminal proceeding has been initiated by the plaintiff under Section 138 of the Negotiable Instruments Act. The legal notice issued by the plaintiffs demanding the payments was received by the defendants and it appears that no reply was sent. From the consideration of the entire oral and documentary evidence produced in this case, this Court comes to the conclusion that the plaintiffs have proved the borrowal of loan amounts by the defendants and non-payment.

7. In the result, the suit is decreed for a sum of Rs.44,07,500/- and with interest at 6% per annum from the date of the plaint till the date realization on the principal amount of Rs.20,00,000/- with proportionate costs.

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List of witness examined on the side of the plaintiffs:-

PW.1 - Mr.Deepak Jain

List of Exhibits marked on the side of the plaintiffs:-

<i>Exhibit</i>	<i>Date</i>	<i>Document</i>
Ex.P1	03.05.2005	Photocopy of the notarised copy of power of attorney, executed by 1 st plaintiff in favour of Gumanmal Jain, 2 nd plaintiff and 3 rd plaintiff.
Ex.P2	14.11.2003	Certified copy of the promissory notes executed by the 2 nd defendant in favour of the 1 st plaintiff.
Ex.P3	20.04.2005	Certified copy of the promissory note executed by the 2 nd defendant in favour of the 1 st plaintiff.
Ex.P4	07.02.2006	Certified copy of the letter sent by the 1 st defendant to 2 nd plaintiff power agent of the 1 st plaintiff.
Ex.P5	09.02.2009	Office copy of the notice issued by the plaintiffs to the defendants.
Ex.P6	11.02.2009	Copy of the acknowledgment cards for the notice dated 09.02.2009.
Ex.P7	11.02.2009	Certified copy of the notice issued by the plaintiff to the defendants along with acknowledgment cards.
Ex.P8	08.03.2013	Office copy of the notice issued by the plaintiffs to the defendants along with postal receipts and 3



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<i>Exhibit</i>	<i>Date</i>	<i>Document</i>
		acknowledgment cards.
Ex.P9		Extract of original ledger, relating to 2 nd defendant.

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Internet: Yes
Index : Yes/No
Speaking/Non speaking order

G.CHANDRASEKHARAN, J.,



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