IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15.02.2023
Pronounced on	24.05.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.S.No.535 of 1999
(Comm. Suit)

Airports Authority of India
rep. by its Regional Executive Director,
National Airports Division,
Meenambakkam,Chennai – 600 027. ... Plaintiff

Vs.

1.M/s.Skyline NEPC Ltd.,
rep. by its Managing Director,
36, Wallajah Road,
Opp. to Kalaivanar Arangam,
Chennai – 600 002.

2.M/s.NEPC India Ltd.,
rep. by its Managing Director,
36, Wallajah Road,
Opp. to Kalaivanar Arangam,
Chennai – 600 002.

3.The Official Liquidator,
O/o. Official Liquidator,
High Court Buildings, Chennai. ... Defendants

(Third defendant impleaded vide order dated 07.04.2021 in A.No.1369 of 2018]

Civil Suit filed under Order IV Rule 1 of the Madras High Court Original Side Rules read with Order VII Rule 1 of CPC, to pass a Judgment and Decree against the defendants:-

a) directing the first defendant to pay a sum of Rs.1,91,90,868.00 to the plaintiff together with future interest at the rate of 18% per annum on Rs.1,01,94,583.00 from the date of Plaint till date of realisation or in default permitting the plaintiff to sell 45.97 Acres of lands more fully described in the Schedule hereunder covered under the Original Title Deeds deposited by the second defendant and adjust the same towards the amount due to the plaintiff;

b) in case the Sale proceeds are found to be insufficient to satisfy the amount due to the plaintiff, liberty may be given to the plaintiff to recover the same from the assets of the first defendant;

c) directing the defendants to pay to the plaintiff the cost of the Suit; and

d) such other reliefs as this Court may deem fit and proper to this case.

For Plaintiff : Mr.A.Maheshnath

For D2 : Mr.V.Anil Kumar
and Manjunath Kathikeyan
for Mr.S.R.Raghunathan

JUDGMENT

The present Civil Suit has been filed by the plaintiff for the following relief:

(a) directing to the first defendant to pay a sum of Rs.1,91,90,868.00 to the plaintiff together with future interest at the rate of 18% per annum on Rs.1,01,94,583.00 from the date of Plaint till date of realisation or in default permitting the plaintiff to sell 45.97 Acres of lands more fully described in the Schedule hereunder covered under the Original Title Deeds deposited by the second defendant and adjust the same towards the amount due to the plaintiff;
(b) in case the Sale proceeds are found to be insufficient to satisfy the amount due to the plaintiff, liberty may be given to the plaintiff to recover the same from the assets of the first defendant;
(c) directing the defendants to pay to the plaintiff the cost of the Suit; and
(d) such other reliefs as this Court may deem fit and proper to this case.

2. The plaintiff is the Airports Authority of India constituted under Airports Authority of India Act, 1994 merging Interenation Airports Authority of India and National Airports Authority.

3. The first defendant is M/s.SKYLINE NEPC Ltd., represented by its Managing Director. The first defendant has been ordered to be wound

up by an order dated 09.08.2005 by the Bombay High Court in C.P.No.948 of 1997. The third defendant is the Official Liquidator impleaded to represent the interest of the first respondent. The second defendant is M/s.NEPC India Limited represented by its Managing Director.

4. The second defendant had *vide* Ex.P1 Letter dated 20.10.1997 had deposited the Original Title Deeds of a property measuring an area of 45.97 Acres in Panneerkulam village to secure the amounts allegedly due from the first defendant to the plaintiff.

5. The dispute in the present case arises on account of alleged outstanding dues of the first defendant to the plaintiff for a sum of Rs.1,01,94,583/- towards the “Traffic” and “Non-Traffic” charges and interest thereon amounted to Rs.89,67,198/- calculated at 18% per annum on Rs.1,01,94,583/-.

6. The plaintiff submits that the first Defendant had approached the Civil Aviation Department, Government of India, New Delhi for issue of

Air Taxi Operators' Permit. The Civil Aviation Department by Proceedings dated, 20.11.1994 issued a permit to the first defendant for a period one year from 20.11.1994 to provide "Air Taxi Services (ATS)". The permit was extended latter from time to time to the first defendant by the Civil Aviation Department, Government of India, New Delhi.

7. The first defendant has availed the facilities offered by the plaintiff in the Aerodromes of the plaintiff in connection with its business. The first defendant was bound to pay both the "Traffic" and "Non-Traffic" charges to the plaintiff for the facilities or services availed of in various Airports.

8. Landing charges, Route Navigation facility and terminal navigation landing charges were charged as per the Circular dated 27.01.1994. The plaintiff submits that the charges for extension of watch hours was collected as per the Circular of the Year 1991. X-Ray baggage inspection, Service charges were collected as per the Circular of the Year 1994.

9. Charges that were payable were fixed and revised from time to time. Accordingly, bills were raised on the first defendant to settle the same

by taking Demand Draft and/or Cheque drawn in favour of plaintiff Airports Authority of India payable at various Regional Head Quarters.

10. The first defendant appears to have defaulted in making payments. The first defendant had earlier offered Security in the form of fixed Deposits to secure the payments to the plaintiff. These Security Deposits have been adjusted towards the amounts due from the first defendant. Later, the second defendant secured the interest of the plaintiff by offering collateral security of Suit Schedule Properties by depositing Ex.P2 & P3 Title Deed of its property. It is sought to be liquidated by the plaintiff to recover the outstanding of the first defendant after adjusting and appropriating of amounts from and out of the Security Deposits.

11. The plaintiff has claimed Air Taxi Service charges in this Suit for the period ending with 28.02.1999. The plaintiff *vide* Ex.P4 Legal Notice dated 19.05.1999 called upon the defendants to settle the dues along with interest. The first defendant has however *vide* ExP5 Reply dated 31.05.1999 raised untenable contentions.

12. The plaintiff submits that originally interest was collected at 12% for the delayed payment. Later, the rate of interest was revised to 18% *vide* Circular, dated 06.05.1996. It is the case of the plaintiff that the first defendant has also failed to pay the interest on the amounts that were paid belatedly. Thus, according to the plaintiff, the first defendant was liable to pay a sum of Rs.1,91,61,781/- to the plaintiff as on 28.06.1999 as per Ex.P9 Statement of Accounts filed along with the Plaint. The plaintiff submits that the first defendant paid only a sum of Rs.10 lakhs by Cheque towards amount due on 31.01.1998.

13. The plaintiff has valued the suit for the purpose of Court Fee and jurisdiction at Rs.1,91,90,868/- as detailed in the Memo of Valuation attached to the Plaint.

14. As mentioned above, the first defendant has been wound up by an order of the Bombay High Court in C.P. No. 948 of 1997. The interest of the first defendant is represented by the third defendant as a Official Liquidator.

15. No Written Statement was filed by the third defendant. Both the first and third defendants have forfeited their rights to file Written Statement. The second defendant had also failed to file Written Statement. After the suit summons was served on the second defendant, A.No.1575 of 2020 was filed to condone a delay of 739 days in filing the Written Statement. However, A.No.1575 of 2020 was dismissed on 31.08.2020 and OSA.No.257 of 2020 is said to be pending against the order dated 31.08.2020 in A.No.1575 of 2020 and no further order has been passed.

16. In terms of the decision of the Hon'ble Supreme Court in **M/s.SCG Contracts India Ltd.** Vs. **Ks Chamankar Infrastructure Pvt. Ltd. and others**, 2019 2 SCC 210, both the defendants, i.e. second and third defendants have lost their rights to file Written Statement.

17. The case was thereafter directed to be listed before the learned Master for recording evidence. Accordingly, evidence of the plaintiff was recorded. Mr.E.R.Ramesh, Assistant General Manager (Finance & Accounts) of the plaintiff was examined P.W.1. P.W.1 was also cross-examined. The following documents were marked as Exhibits on behalf of

the plaintiff through P.W.1:-

Table No.1:-

Sl.No.	Date	Ex. No.	Nature of Documents
1	20.10.1997	EX. P1	Letter dated 20.10.1997 from the second defendant to the plaintiff depositing Title Deeds as security
2	19.09.1994	EX. P2	Sale Deeds of the second defendant deposited with the plaintiff
3	19.09.1994	EX. P3	Sale Deeds of the second defendant deposited with the plaintiff
4	19.05.1999	EX. P4	Legal Notice issued to the defendant by the plaintiff
5	31.05.1999	EX. P5	Reply notice of the first defendant defendant
6	22.03.2016	EX. P6	Proposal to form an Inspection Committee
7	12.04.2016	EX. P7	Report of the Inspection Committee
8	03.05.2016	EX. P8	Proceedings of the plaintiff based on the Inspection Committee Report
9	23.06.1999	EX. P9	Printout of the Statement of Accounts Statement
10	-	EX. P10	Statement of accounts

18. I have considered the arguments advanced by the learned counsel for the plaintiff and the learned counsel for the second defendant.

19. The suit is of the year 1999. The plaintiff has filed this suit to

recover a sum of Rs.1,91,61,781/- being the amount allegedly due from the first defendant (since wound up). Pursuant to the notification constituting Commercial Division, the above suit was transferred to the Commercial Division of this High Court as the dispute involved is a "commercial dispute" within the meaning of Section 2(1)(c) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. The dispute pertains to recovery of "Traffic" and "Non-Traffic" charges which were not allegedly paid by the first defendant to the plaintiff and imposing of penal interest.

20. As per Section 22 of the Airports Authority of India Act, 1994, the plaintiff was empowered to collect charges for the landing, housing or parking of aircraft or for any other service or facility offered in connection with aircraft operations at any airport, heliport or airstrip.

21. Rule 82 of the Aircraft Rules, 1937 empowers the plaintiff to collect the traffic charges. The plaintiff has also levied fixed charges for the the landing, housing or parking of aircraft under Schedule V to the Aircraft Rules, 1937.

22. The the first defendant had allegedly committed defaults in paying the "Traffic" and "Non-Traffic" charges to the plaintiff which were allegedly payable in terms of Section 17 of the National Airports Authority Act, 1985. According to the plaintiff, the amounts were allegedly due from the first defendant to the plaintiff towards "Traffic" and "Non-Traffic" charges upto 28.06.1999 which had remained unpaid.

23. It appears that since the first defendant was in arrears of amounts, the second defendant offered Ex.P2 & P3 Sale Deed dated 19.09.1994 registered as Document Nos.1064/1994 & 1065/1994 respectively as a collateral security *vide* Ex.P1 Letter dated 20.10.1997 for the amounts to be paid by the first defendant so as to allow the first defendant to use the facility of the plaintiff for commercial operation.

24. This security was offered by the second defendant to the plaintiff pursuant to the Meeting held between the plaintiff and the first and second defendants.

25. Ex.P4 Legal Notice dated 19.05.1999 was issued to both the first

and second defendants, wherein, it was stated that both the defendants collectively owed an amount of Rs.3,31,88,519/-. Ex.P4 Legal Notice dated 19.05.1999 included the amounts that was allegedly due from both the first and second defendants for their operations. The aforesaid amount included the principal due towards "Traffic" and "Non-Traffic" charges and the interest thereon till 28.02.1999.

26. Amount mentioned in Ex.P4 Legal Notice dated 19.05.1999 is the consolidated amount due both from the first and second defendants. The Ex.P4 Legal Notice dated 19.05.1999 accompanied two Statement of Accounts for the first and second defendants for the period upto 28.02.1999. As per the Statement of Accounts, the first and second defendants owed the amount of Rs.3,31,88,519 upto 28.02.1999 as follows:-

Division	***First defendant***	***Second defendant***
	Dues	
National Airports Division	Rs.1,79,34,897.00	Rs.63,69,534.00
International Airports Division	Rs.95,58,428.00	Rs.1,21,90,239.00

Division	***First defendant***	***Second defendant***
Total (A)	**Rs.2,74,93,325.00**	**Rs.1,85,59,773.00**
Credits Available & Amounts paid by Cheque		
National Airports Division	# Rs.90,78,639.00	Rs.32,96,412.00
International Airports Division	* Rs.3,87,290.00	Rs.1,02,238.00
Total (B)	**Rs.94,65,929.00**	**Rs.33,98,650.00**
Grand Total (A-B)	**Rs.1,80,27,396.00**	**Rs.1,51,61,123.00**

* [Rs.3,34,960.00 + Rs.52,330.00]

[Rs.75,78,639.00 + Rs.15,00,000.00 paid by cheque]

27. The plaintiff called upon both the first and second defendants to pay the aforesaid amount of Rs.3,31,88,519/- [Rs.1,80,27,396.00 + Rs.1,51,61,123.00].

28. In Ex.P4 Legal Notice dated 19.05.1999, a demand has been made for Rs.3,31,88,519/- which is allegedly due from the first and second defendants. This Court is not concerned with the balance amount of Rs.1,40,26,738/- [Rs.3,31,88,519 - Rs.1,91,61,781]. Rs.1,40,26,738/-

presumably represents the balance amount which is allegedly due from the second defendant which was mentioned in Ex.P4 Legal Notice dated 19.05.1999 and in the Statement of Account annexed therewith.

29. In this case, the Court is not concerned with the amounts that are allegedly due from the second defendant. This Court is only concerned with the amounts that were allegedly due from the first defendant.

30. *Vide* Ex.P5 Reply Notice 31.05.1999, the first defendant replied to the Ex.P4 Legal Notice dated 19.05.1999. In Ex.P5 Reply Notice 31.05.1999, it was stated that the aforesaid amount of Rs.3,31,88,519/- was not due and payable. In Ex.P5 Reply Notice 31.05.1999, it was also stated that the plaintiff was liable to pay back a sum of Rs.14,05,967/- and that the plaintiff had forced loss on the first defendant by detaining the Aircraft by refusing permission to the first defendant to deal with Aircraft. Though it was mentioned NEPC Airline was division of the second defendant, no separate reply was given for the second defendant.

31. Along with Ex.P5 Reply Notice 31.05.1999, the first defendant

also enclosed a Statement of Account. It has been marked by the plaintiff as Ex.P10. The first defendant called upon the plaintiff to pay a sum of Rs.14,05,967/-. On the other hand, the plaintiff has filed Ex.P9 Statement of Account as on 28.06.1999 in respect of amount due from the first defendant together with penal interest.

32. The present suit is confined only to the amount of Rs.1,91,61,781/- from the first defendant, out of which, Rs.1,01,94,583/- represents the principal amount allegedly due from the first defendant. Balance amount of Rs.89,67,198/- [Rs.1,91,61,781 - Rs.1,01,94,583] represents the penal interest at 18% per annum as per Ex.P1 Letter dated 20.10.1997 issued based on the Circular dated 30.04.1993 bearing reference No.AV.20036/3/91-S. Clause 2 of the said Circular dated 30.04.1993 reads as under:-

> 2. It is observed that in all Commercial Undertakings, there is a provision for charging interest for delayed payments at 18% or in some cases even 24%. It is also observed that most of our Field Offices are not promptly charging deterent interest for delayed payments and in cases where it is still charged, in view of the low rate of interest of 12%, parties continue to make delayed payments as lending rates are much higher. In order to protect loss of revenue to NAA and

> discourage delayed payments, it has been decided to charge interest at 18% per annum w.e.f. 1.6.1993 in all above cases. All the bills may reflect the revised rate of interest and the agreements to be entered into afresh with the parties and various tender documents should also be amended showing the revised rate of interest at 18%. ...
>
> 3. In existing contract, rate of interest could be as per agreement signed with the party
>
> 4. Where Regions are charging higher rate of interest above the rate of 18%, now prescribed, Hqrs. may be intimated of the details for further instructions in the matter.

33. The fact of the matter is that both the first and second defendants have not filed their Written Statement. The plaintiff has not also filed copies of the Invoices raised based on which it has quantified the aforesaid amount of Rs.1,91,61,781/- as suit claim in Ex.P9 Statement of Account.

34. The fact on record also indicates that due to torrential rain and flood during November & December, 2015, the records of the plaintiff were lost. *Vide* Ex.P6 Note dated 22.03.2016, it was recorded that the records relating to RAU kept in the Record Room at the basement of ATS

Complex and in one of the quarters B142 got submerged due to the flood for about 2 to 3 days and were fully washed out.

35. Ex.P7 Report of the Inspection Committee dated 12.04.2016 indicates that it was concluded that all the records were beyond recovery and were fit to be burnt. *Vide* Ex.P8 Proceedings of the plaintiff dated 03.05.2016, the plaintiff has asked for a approval of RED/SR for burning out of the damaged records as decided by the Committee. The plaintiff thus could not file the copy of the Invoices which had remained unpaid.

36. Ex.P9 is a Statement of Account upto 28.06.1999 is supported with an Affidavit under Section 65B of the Indian Evidence Act, 1872 although Section 65B of the Indian Evidence Act, 1872 came into force on 17.10.2000 after the suit was filed on 02.07.1999. A reading of the said Affidavit filed by the plaintiff indicates that the Affidavit has complied with the requirements of law in terms of the decision of the Hon'ble Supreme Court in **Anvar P.V.** Vs. **P.K.Basheer and others**, (2014) 10 SCC 473, wherein, the Hon'ble Supreme Court has clearly given conditions to be followed while filing a Certificate under Section 65B of the Indian

Evidence Act, 1872 as follows:-

> "*15.Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:-*
>
> a) *There must be a certificate which identifies the electronic record containing the statement;*
>
> b) *The certificate must describe the manner in which the electronic record was produced.*
>
> c) *The certificate must furnish the particulars of the device involved in the production of the record.*
>
> d) *The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and*
>
> e) *The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.*"

37. The Hon'ble Supreme Court in **Arjun Panditrao** Vs. **Kailash Kushanrao Gorantyal and others**, (2020) 7 SCC 1 has further held that "so long as the hearing in a trial is not yet over, the requisite certificate can be directed to be produced by the learned Judge at any stage, so that information contained in electronic record form can then be admitted and relied upon in evidence". These Statements in Exs.P9 & P10 are long

before the incorporation of Section 65B to the Indian Evidence Act, 1872.

38. The amounts culleded out from Ex.P10 Statement of Accounts which form part of Ex.P5 Reply Notice dated 31.05.1999 to Ex.P4 Legal Notice dated 19.05.1999 indicate that there are no major differences between the amounts that are stated to be due from the first defendant to the plaintiff in Ex.P9 Statement of Account as on 28.06.1999 and Ex.P10 Statement of Account of the first defendant enclosed along with Ex.P5 Reply Notice dated 31.05.1999. The following Table prepared out of the amounts mentioned in Ex.P9 Statement of Account demonstrates that there were outstanding dues from the first defendant to the plaintiff for a sum of Rs.1,01,94,583/- and further a sum of Rs.89,96,285/-:-

<u>Table No.2</u>:

	National Airport Division			***International Airport Division***		
PART – 1 Dues						
Region	***Station***	***Traffic Dues (in Rs.)***	***Non-Traffic Dues (in Rs.)***	***Station***	***Traffic Dues (in Rs.)***	***Non-Traffic Dues (in Rs.)***
Southern Region	Madras	32,23,591	29,31,435	New Delhi	9,08,792	9,97,459
	Coimbatore	-	62,461	Mumbai	16,06,140	8,83,966

	National Airport Division			*International Airport Division*		
	Vishakapatnam	-	5,238	Chennai	10,73,760	10,04,134
	Bangalore	52,058	11,99,935	Calcutta	1,86,373	1,37,196
	Sub Total (A)	**32,75,649**	**41,99,069**			
Eastern Region	Calcutta	13,24,568	**5,03,812**			
	Sub Total (B)	**13,24,568**	**5,03,812**			
Northern Region	New Delhi	35,59,594	-			
	Sub Total (C)	**35,59,594**	**-**			
Total (1)		**81,59,811**	**47,02,881**		**37,75,065**	**30,22,755**
Total (2)		**1,28,62,692**			**67,97,820**	
Grand Total		**Rs.1,96,60,512/-**				

PART – 2 Penal Interest @ 18%

Region	***Station***	***Consolidated Interest for both Traffic and Non-Traffic Dues (in Rs.)***	***Station***	***Consolidated Interest for both Traffic and Non-Traffic Dues (in Rs.)***
Southern Region	Madras	25,62,949	New Delhi	6,77,985
	Coimbatore	17,770	Mumbai	16,52,722
	Vishakapatnam	992	Chennai	7,74,035
	Bangalore	6,35,209	Calcutta	58,148
	Sub Total (A)	**32,16,929**		
Eastern Region	Calcutta	6,86,698		
	Sub Total (B)	**6,86,698**		

	National Airport Division		*International Airport Division*	
Northern Region	New Delhi	19,29,777		
	Sub Total (C)	**19,29,777**		
Total (A + B + C)		**58,33,395**		**31,62,890**
Grand Total		**Rs.89,96,285/-**		

PART – 3 Credits Available/Adjust

Particulars	**Amounts (in Rs.)**	**Particulars**	**Amounts in (Rs.)**
Fixed Deposit Receipt at Chennai	1,55,335	Fixed Deposit Receipt at New Delhi	2,84,990
Fixed Deposit Receipt at Chennai	1,75,911	Security Deposit at New Delhi	44,970
Security Deposit at Western Region	51,90,127	Security Deposit at Kolkata	5,0000
Security Deposit at Bangalore, Southern Region	14,38,787	Security Deposit at Trivandrum	12,670
Security Deposit at Palam, Northern Region	6,18,479	Fixed Deposit Receipt at Trivandrum	39,660
Amount received by Cheq.	15,00,000		
Total	**90,78,639**		**3,87,290**
Grand Total	**Rs.94,65,926/-**		

39. Thus, the following position emerges:-

Principal amount for both National Airports Division & International Airport Division	*Penal Interest @ 18% for both National Airports Division & International Airport Division*	*Securities/amount paid for both National Airports Division & International Airport Division*
Rs.1,96,60,512/-	Rs.89,96,285/-	Rs.94,65,926/-

40. Thus, after adjusting the Security Deposits/Fixed Deposit Receipts and amount received by Cheque, the principal outstanding as per Ex.P9 Statement of Account is Rs.1,01,94,583/- [Rs.1,96,60,512.00 – Rs.94,65,926.00].

41. Without adjusting security deposits and without penal interest, according to the first defendant in Ex.P10 Statement of Account attached to the Ex.P5 Reply Notice dated 31.05.1999, the principal outstanding is Rs.1,36,54,728/-, whereas, the principal outstanding according to the plaintiff in Ex.P9 Statement of Account without adjusting security deposits and the amount paid by Cheque is Rs.1,96,60,512/-. Ex.P10 Statement of the defendant attached to the Ex.P5 Reply Notice dated 31.05.1999 is explained as under:-

Table No.3:

National Airports Division			*International Airport Division*		
Station	Dues (in Rs.)	S.D (in Rs.)	Station	Dues (in Rs.)	S.D (in Rs.)
Northern Region	33,02,956	3,89,048	Delhi	14,49,626	0
Southern Region	52,56,594	31,34,385	Bombay	2,32,944	11,49,730
Eastern Region	15,02,589	0	Calcutta	4,11,383	0
Western Region	67,843	54,96,830	Madras	14,30,793	11,14,250
North-East Region	0	0	-	-	-
Total	1,01,29,982	90,20,263		35,24,746	22,63,980

Outstanding Dues as per Table No.6
(1,01,29,982 + 35,24,746) = Rs.1,36,54,728/-

Less : Credits available as per Table No.6
(90,20,263 + 22,63,980) = Rs.1,12,84,243/-

Total = Rs. 23,70,485/-

42. Though the total value of the security deposits for both National and International Division as per Ex.P10 was **Rs.1,12,84,243/-** as stated above, the first defendant has wrongly stated it as **Rs.1,20,85,259/-** to arrive at the balance total at **Rs.15,69,469/-** in Ex.P10 as follows:-

Total Outstanding Rs.1,36,54,728
Less : Security Deposit Rs.1,20,85,259

Balance Payable		Rs. 15,69,469
Less: Refund of Excess Parking Charges from IAD		
Skyline Bombay	24,35,316	
Skyline Chennai	5,40,120	Rs. 29,75,436 (-)
	------------	----------------------
Balance due to Skyline from the Airports Authority of India		Rs. 14,05,967

43. On the aforesaid amount of **Rs.15,69,469/-** which has been arrived by the defendant in Ex.P10, a further deduction of **Rs.29,75,436/-** was made allegedly collected by the plaintiff in excess towards parking charges from the National Airport Division at Bombay and Chennai. However, there is no explanation or any supporting documents available to contradict the same.

44. The fact remains that the amounts were not paid in time and difference in the principal amount that was due towards "Traffic" and "Non-Traffic" charges for both the National and International Division is not much.

45. As per Ex.P9 Statement of Account as on 28.02.1999, the

principal outstanding that was made was Rs.1,96,60,512.00 whereas, as per Ex.P10 Statement of Account enclosed along Ex.P5 Reply Notice dated 31.05.1999, the principal amount that was made was Rs.1,36,54,728.00. The difference between the principal outstanding in Ex.P9 Statement of Account and Ex.P10 Statement of Account is Rs.60,05,784/- [Rs.1,96,60,512.00 – 1,36,54,728.00].

46. Exs.P9 & P10 Statement of Accounts show that the first defendant had delayed in making payments, as a result of which, a portion of the amount was adjusted from the Security Deposits (SD) and Fixed Deposit Receipt (FDP) that were offered as security for National and International Airport Division. Thus, the interest was payable at 18% per annum as per Ex.P1 Letter dated 20.10.1997 issued based on the Circular dated 30.04.1993 bearing reference No.AV.20036/3/91-S. This is what the plaintiff has done in Ex.P9 Statement of Account.

47. Therefore, even though the Invoices have not been filed as the Invoices were lost due to the torrential rain which led to flooding, the plaintiff can be said to have proved that the amounts were due and amounts

were not paid in time. Ex.P5 Reply Notice dated 31.05.1999 has not given the particulars of invoice and payment made to show that Rs.60,05,784/- was not due from the first defendant. The Statement attached to Ex.P4 Legal Notice dated 19.05.1999 on the other hand has explained the position.

48. The first defendant has not filed the Written Statement even though the suit is of the year 1999. The second defendant had offered securities for the amount that were remaining unpaid and were outstanding as on 28.06.1999. Ex.P9 Statement of Account has to be construed as a Statement based on the records that were maintained by the plaintiff. Otherwise, the question of offering Ex.P2 & P3 Sale Deed both dated 19.09.1994 as a security *vide* Ex.P1 Letter dated 20.10.1997 would not have arisen.

49. Therefore, applying the principle of preponderance of probability, it has to be construed that the amounts were lying unpaid and were outstanding, for which, the plaintiff issued Ex.P4 Legal Notice dated 19.05.1999. The first defendant though has replied to Ex.P4 Legal Notice dated 19.05.1999 *vide* Ex.P5 Reply Notice dated 31.05.1999, has neither

given a clear reply nor filed Written Statement after the suit came to be filed before this Court in the year 1999.

50. There is also no effective cross-examination to content of Statement of Account in Ex.P10. It was open for the second defendant who offered Exs.P2 & P3 as securities and is expousing the interest of the first defendant to have established the case.

51. Therefore, the plaintiff is entitled to recover amounts from first defendant towards penal interest as per Ex.P1 Letter dated 20.10.1997 issued based on the Circular dated 30.04.1993 bearing reference No.AV.20036/3/91-S.

52. Therefore, the plaintiff deserves to succeed and accordingly succeeds. Accordingly, this suit is decreed as prayed for. Parties to bear their own cost.

24.05.2023

Internet : Yes/No
Index: Yes/ No
jen

Plaintiff's witness:

E.R.Ramesh : P.W.1

Documents exhibited by the Plaintiff:

Sl.No.	*Date*	*Ex. No.*	*Nature of Documents*
1	20.10.1997	EX. P1	Letter dated 20.10.1997 from the second defendant to the plaintiff depositing Title Deeds as security
2	19.09.1994	EX. P2	Sale Deeds of the second defendant deposited with the plaintiff
3	19.09.1994	EX. P3	Sale Deeds of the second defendant deposited with the plaintiff
4	19.05.1999	EX. P4	Legal Notice issued to the defendant by the plaintiff
5	31.05.1999	EX. P5	Reply notice of the first defendant defendant
6	22.03.2016	EX. P6	Proposal to form an Inspection Committee
7	12.04.2016	EX. P7	Report of the Inspection Committee
8	03.05.2016	EX. P8	Proceedings of the plaintiff based on the Inspection Committee Report
9	23.06.1999	EX. P9	Printout of the Statement of Accounts Statement
10	-	EX. P10	Statement of accounts

C.S.N., J.
24.05.2023

C.SARAVANAN, J.

Jen

Pre-Delivery Judgment made
in
C.S.No.535 of 1999
(Comm. Suit)

24.05.2023