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C.S.No.692 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.12.2022

PRONOUNCED ON : .03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.S.No.692 of 2013

1.George Edison

2.Catherine Mathew

... Plaintiffs

VS

V.Saravanan@ V.Ravanan

... Defendant

Prayer: Civil Suit is filed under Order IV Rule 1 of the Original Side Rules, 1956 , praying to,

(i) the sum of Rs.1,26,44,030/- with interest at 12% per annum on Rs.1,06,50,000/- from the date of plaint till the date of realization;

(ii) costs of the suit;

(iii) Passing such other order or orders as this Court may deem fit in the circumstances of the case.

For Plaintiffs

: Mr.S.Raghavan



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J U D G M E N T

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The present suit is filed by the plaintiff seeking a direction to defendant to pay the plaintiffs a sum of Rs.1,26,44,030/- with interest at the rate of 12% per annum on principal amount of Rs.1,06,50,000/-from the date of plaint till the date of realization.

2. Plaint Averment:

According to the plaintiff, the first plaintiff is the brother of the second plaintiff and they used to buy and sell property out of sale proceeds realized from sale of their family property in Kerala. The defendant represented to the first plaintiff that he owned 54 cents of land at Vaipur Village and the first plaintiff evinced interest in purchase of the said property. Accordingly, the plaintiffs paid an advance of Rs.10,00,000/- to the defendant and collected the copies of title deeds relating to the said property. Two days thereafter, the defendant informed the plaintiff that yet another purchaser by name Ramadas was willing to complete the sale transaction within a week and he would prefer to sell the property to said Ramadas. The defendant returned Rs.2,00,000/- to the plaintiffs and he promised to return the balance



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of Rs.8,00,000/- within 5 days. Two days thereafter, the defendant had taken the plaintiffs to Kelambakkam Village and had shown a piece of land measuring 27 cents. Since the plaintiffs expressed interest in purchase of the said property, the defendant had handed over a photo copy of Power of Attorney executed by one Kumar, owner of the said property in favour of the defendant. The defendant further represented that the property was purchased by Kumar under sale deed dated 01.11.2010 and handed over the photo copy of the sale deed to the plaintiffs. Thereafter, the price was negotiated and the plaintiffs agreed to purchase the said property for 2 ½ Crores. The plaintiffs also paid an advance of Rs.42,00,000/- to the defendant. The amount of Rs.8,00,000/- already owed by the defendant to plaintiffs was also treated as part of the advance amount for the purchase of the property at Kelambakkam. Therefore, it was agreed between the plaintiff and defendant that the plaintiff paid an advance amount of Rs.50,00,000/-. It was also represented by the defendant that he was producing a film by “Sengadu” and if the plaintiffs could finance for the production of the said movie, the entire amount paid by the plaintiffs would be returned on release of said movie together with 40% of the share in the profits realized from the movie.



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3. The plaintiffs on being carried away by persuasive skills of defendant arranged for further fund from his friends and paid the defendant Rs.56,50,000/- on 09.03.2012. At the request of the plaintiffs, the defendant executed a declaration on 09.03.2012 acknowledging the receipt of Rs.1,06,50,000/- and also promised to pay the said amount with interest upon the release of movie “Arjunan Ratham” produced by him under the name and style of H.M.T Pictures. It is also averred by the plaintiff that though no interest rate was mentioned in the documents executed by the defendant on 09.03.2012, it was agreed between the plaintiffs and the defendant that the minimum rate of interest would be 12% per annum.

4. Later on, it was found by the plaintiffs that the power of attorney produced by the defendant as if one Kumar had given power to him was a bogus document. The plaintiffs were also not able to contact the defendant in any means and therefore, the plaintiffs were constrained to file a criminal complaint against the defendant before the crime branch, Kancheepuram, on 15.02.2013. On plaintiff's complaint, the police registered FIR No.11 of 2013 against the defendant under Sections 420 and 34 of IPC. Later on, the



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defendant and his associate one Chartered Accountant were arrested and released on bail. It is also averred by the plaintiffs that the defendant had completed the production of the movie “Arjunan Ratham”. The negatives and the prints of the above said movie are presently in the custody of Prasad Laboratories, Saligramam, Chennai. It was also stated that the defendant was attempting to take print from the laboratory and release the movie. Since the defendant cheated the plaintiffs and failed to return the amount due to them as agreed by him, the plaintiffs were constrained to file a suit for recovery of the above said sum with interest.

5. It is seen from the records that substituted service was effected and the defendant was called ex-parte by order of this Court dated 21.01.2021, thereafter the ex-parte evidence was taken. The first plaintiff was examined as PW.1 and through him four documents were marked as Exs.P1 to P4. The original declaration deed executed by the defendant agreeing to repay a sum of Rs.1,06,50,000/-on release of his film “Arjunan Ratham” was marked as Ex.P1. The copy of the FIR No.11 of 2013, on the basis of the complaint filed against the defendant by the plaintiff to crime



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branch, Kancheepuam was marked as Ex.P2. The news item reported in Tamil daily “Dina Thanthi” dated 17.02.2013 and Dinakaran dated 07.07.2013 regarding the arrest of defendant were marked as Exs.P3 and P4.

6. The suit is laid by the plaintiffs seeking recovery of above said amount based on the bond executed by defendant agreeing to pay a sum of Rs.1,06,50,000/- on release of his film “Arjunan Ratham”. The 1st plaintiff was examined as PW.1, he deposed in support of his averments found in the plaint. The plaintiffs relied on Ex.P1 for recovery of money. Ex.P1 is a bond executed by the defendant obliging himself to pay a sum of Rs.1,06,50,000/- to plaintiff even before release of his film “Arjunan Ratham”. The said Ex-P1 was attested by one witness namely G.Chellachi. The plaintiffs has not examined any independent witness to prove execution of Ex.P1 by defendant. Though Ex.P1 was attested by one witness for the reasons best known to the plaintiffs, she was not examined to prove proper execution of Ex.P1. Under Section 5(b) of Indian Stamp Act, bond is an instrument, which requires attestation by a witness. In the case on hand, though Ex.P1 was attested by one witness, he was not examined to prove



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due-execution of Ex.P1. This Court is unable to accept Ex.P1 based on the interested testimony of plaintiffs alone.

7. The plaintiffs claim that they paid an amount Rs.1,06,50,000/- to defendant. Ex.P1 is not a Negotiable Instrument and therefore, the presumption regarding passing of consideration available to Negotiable Instruments Act is not available for Ex.P1. Absolutely, there is no evidence available on record either oral or documentary to support the passing of huge consideration to the tune of Rs.1,06,50,000/- under Ex.P1. Therefore, this Court is unable to accept the claim of the plaintiffs, regarding due execution and passing of consideration.

8. The learned counsel for the plaintiffs by relying on FIR registered in the name of defendant and the news paper items which were marked as Exs.P2 to P4 submitted that the case of the plaintiffs stands



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S.SOUNTHAR, J.

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proved. Ex.P2 is an FIR registered by the police based on the complaint made by the plaintiffs that the defendant received money from the plaintiffs and cheated them. From that we cannot come to any conclusion regarding the due execution and passing of consideration. Exs.P3 and P4 are news paper items and the same cannot be relied on to prove the suit claim.

9. Hence, the suit claim is not proved. Consequently, the suit is dismissed. There shall be no order as to costs.

.03.2023

Index : Yes / No
NCC : Yes / No
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Pre-delivery order made in
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