IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On :	02.12.2022
Pronounced On:	12.01.2023

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

C.S.No.730 of 2013

M/s.Sree Balaji Logicons Private Ltd.,
A company incorporated under the
Indian Companies Act 1956 having registered
Office at K Sons complex, No.163/1,
Chennai – 600 108.
Represented by its,
Director,
Anand Garg,
S/o,(Late) Madanlal Garg. ...Plaintiff

Vs.

1.The Manager
The South Indian Bank Ltd.,
George Town Branch,
Chennai – 600 001.

2.M/s.Shri Mahalakshmi Metal and
Scrap processing Pvt Ltd.,
Represented herein by its Director,
Mr.Anil Ojha,
Having Office at,
No.403/D, Thiruvotriyur High Road,
Chennai – 600 019.

3.R.Srinivasan

4.The Manager,
Corporation Bank,
Kellys Branch,
Chennai – 600 010. ...Defendants

PRAYER: This is a suit filed under Order IV Rule 1 of the Original Side Rules Read with Order VII Rule 1 & 2 of the C.P.C.,

a)For a permanent injunction restraining the 1st and 4th defendants, from honouring the Demand Drafts 1.D.D.No.748510 dated 21.10.2013 for Rs.1,00,00,000/- (Rupees One Crore Only) 2.D.D.No.748509 dated in 21.10.2013 for Rs.79,17,000/- (Seventy Nine Lakhs Seventeen Thousand Only) both in favour of the 2nd defendant herein drawn on 1st defendant.

b)For mandatory injunction directing the 2nd respondent to encash the fixed deposit in FD.No.KCC/01/140002503 bearing receipt No.827800 dated 17.01.2014 stands in the name of 2nd respondent lying with the 4th respondent for a sum of Rs.1,79,17,000/- (Rupees One Crore Seventy Nine Lakhs Seventeen Thousand Only) and pay the same along with interest accrued in the above said deposit to the plaintiff herein. (Amended as per order dated 29.04.2014 in application No.1929 of 2014)

c)Costs of the suit.

For Plaintiff : Mr.M.K.Kabir Senior Advocate for
M/s.G.Krishna KUmar

For Defendants : M/s.Chitra (Senior Advocate) for
M/s.C.Jayachitra for D2
D1 – Exparte

JUDGMENT

The suit is filed for the relief of permanent injunction restraining the defendants 1 and 4 from honouring the demand drafts D.D.No.748510 and ii)D.D.No.748509 dated 21.10.2013 and for mandatory injunction directing the second respondent to encash the fixed deposit in F.D.No.KCC/01/140002503 bearing receipt No.827800 dated 17.01.2014 and pay the sum of Rs.1,79,17,000/- along with accrued interest to the plaintiff.

2.Plaintiff company is engaged in logistics. The third defendant approached the plaintiff and sought for financial assistance to meet his business requirements in 2011 and the plaintiff lent a sum of Rs.2,00,00,000/- on the basis of security given in respect of his three properties at Keelkattalai. Third defendant agreed to pay the amount with interest at the rate of 24% per annum. He agreed to repay the amount within a period of three months and executed a simple mortgage on 28.04.2011 in document No.2307 of 2011 on the file of SRO, Pallavaram. Third defendant had already executed a registered simple mortgage on 30.10.2010 in document No.4544 of 2010 on the file of SRO, Pallavaram in favour of the second defendant for availing a loan of Rs.3,00,00,000/- In October 2013, third defendant approached the plaintiff and informed him that he is in need of funds to repay the aforesaid mortgage dues and for his business purposes. He expressed his intention to sell the mortgage properties to the plaintiff after clearing and discharging the mortgage debts. After deliberations, plaintiff agreed to purchase the properties for a total sale consideration of Rs.3,83,00,000/-. Plaintiff paid Rs.1,00,00,000/- to the second defendant and Rs.1,00,00,000/- to M/s.V.S.Steels under the second simple mortgage as a part of sale consideration. After adjusting Rs.2,00,00,000/- already paid towards sale consideration, plaintiff was liable to pay the balance sale consideration of Rs.1,79,17,000/- after deducting 1% of TDS. It is subject to the discharge of aforesaid mortgage loans by the third defendant.

3.Plaintiff prepared draft sale deed and it was approved by the third defendant. It was agreed by the plaintiff and the defendants 2 and 3 to present the sale deed and receipts before SRO, Pallavaram for registration on 22.10.2013. Plaintiff arranged to get two demand drafts towards balance sale consideration of Rs.1,79,17,000/- in favour of second defendant on the first defendant Bank in pay order No.748510 dated 21.10.2013 for Rs.1,00,00,000/- and pay order No.748509 dated 21.10.2013 for Rs.79,17,000/-. Both were drawn in South Indian Bank, George Town Branch, in favour of the second defendant M/s.Shri Mahalakshmi Metal and Scrap Processing Pvt Ltd. Plaintiff along with defendants 2 and 3 were present in the office of the second defendant at Aminjikarai on 21.10.2013. Third defendant affixed his signature in the sale deed which has first sheet worth Rs.1000 stamp paper and the remaining 11 sheets typed in ordinary legal papers. It was agreed to be presented before SRO, Pallavaram, next day for registration. Plaintiff agreed to pay the difference of stamp duty of Rs.26,80,000/- in the SRO, Pallavaram office. On 22.10.2013, plaintiff, second defendant and one Manmohan Agarwal travelled in Manmohan Agarwal's car from Aminjikarai to SRO, Pallavaram. They were waiting for the arrival of third defendant at SRO, Pallavaram. But the third defendant had not turned up for registration. Meanwhile second defendant requested the plaintiff to show the demand drafts. On good faith plaintiff showed the demand drafts to second defendant Anil Ojha. On the pretext of verifying the demand drafts Anil Ojha clandestinely walked away with the demand drafts and committed theft of demand drafts without any authorisation and legal right to do so. Plaintiff tried to trace Anil Ojha and called third defendant. They wantonly and with a sole intention of cheating the plaintiff did not turn up for registration of the sale deed.

4.The second defendant in collusion with the third defendant instigated the third defendant to send e-mail to the plaintiff claiming that plaintiff agreed to purchase the properties for a sale consideration of Rs.6,92,00,000/- and the plaintiff has to pay Rs.2,64,95,011/- to the second defendant. Plaintiff never agreed for purchasing the properties for Rs.6,92,00,000/- and never agreed to pay to the second defendant Rs.2,64,95,011/-. Third defendant did not pay interest on monthly basis for the loan of Rs.2,00,00,000/-. The interest alone comes Rs.1,70,00,000/-. Considering the request of the third defendant the sale price was fixed at Rs.3,83,00,000/-. After deducting Rs.2,00,00,000/-, plaintiff was liable to pay only Rs.1,83,00,000/- towards the sale consideration. On the instructions of the plaintiff, first defendant Bank returned two demand drafts on 23.10.2013. They were represented again on 24.10.2013 and it was again returned on 25.10.2013. The second defendant may present the demand drafts again for encashment. Second defendant is not entitled for encashing the demand drafts. Therefore, this suit.

5.The case of the second defendant is that the suit filed originally and amended is not maintainable in law. The Director of the plaintiff company Anand Garg introduced the third defendant R.Srinivasan to the second defendant and requested the second defendant to provide financial assistance to the third defendant. Accordingly, second defendant provided financial assistance to the third defendant and paid him a sum of Rs.3,00,00,000/-. Third defendant mortgaged three properties for this loan by executing a simple mortgage deed dated 30.08.2010 in document No.4544 of 2010 on the file of SRO, Pallavaram. He handed over the original title deeds of the properties to the second defendant. Thereafter, third defendant did not pay any amount within the redemption period of three months. Therefore, second defendant approached Anand Garg and informed him about the non-payment of amount by third defendant. Plaintiff called the third defendant and then agreed to pay a sum of Rs.2,00,00,000/- towards the part of this loan transaction by obtaining a second mortgage in respect of the same properties from the third defendant. The second mortgage deed dated 28.04.2011 was registered as document No.2307 of 2011 on the file of SRO, Pallavaram. On behalf of the third defendant, plaintiff paid Rs.1,00,00,000/- to the second defendant and third defendant paid Rs.1,00,00,000/- to the second defendant. Thus, towards the dues of third defendant, plaintiff paid Rs.2,00,00,000/- to the second defendant. Anand Garg is the first attestor to the mortgage deed dated 30.08.2010 and that he introduced the third defendant to the second defendant. Therefore, plaintiff is morally bound to discharge the mortgage debt of the third defendant. Second defendant handed over all the title deeds at the time of execution of second mortgage. In October 2013, Anand Garg and third defendant came with some proposal and appraised Anil Ojha, Director of the second defendant that the entire amount due to the second defendant under the first mortgage will be discharged.

6.On 21.10.2013, they requested the second defendant to give the statement of accounts of third defendant. Second defendant gave loan account statement of the third defendant and as per the statement of accounts, a sum of Rs.2,64,95,011/- was due and payable by the third defendant to the second defendant as on 30.09.2013. After verifying the statement of accounts, plaintiff and third defendant handed over two demand drafts mentioned above for Rs.1,79,17,000/- as part payment towards the first mortgage loan. Third respondent received the receipt and acknowledged. It is said in the receipt that demand drafts for Rs.1,79,17,000/- were received for partial discharge of the outstanding loan amount of Rs.2,64,95,011/- and the mortgage will be cancelled on receipt of the balance amount. Anand Garg and third defendant assured that they will pay the balance amount of Rs.85,25,011/- next day at the office of Sub Registrar, Pallavaram. On 22.10.2013, second defendant deposited the two demand drafts with the fourth defendant bank in the morning. On 22.10.2013, Anad Garg came to the office of the second defendant and took Anil Ojha to the Sub Registrar Office at Pallavaram. Third defendant also came there. Anil Ojha insisted for the payment of balance mortgage amount, Anand Garg informed that his office clerk will bring the balance amount. After two hours, Anand Garg left the SRO Office for bringing the money. However, till 5.P.M. he did not return. Thereafter, second and third defendant left the SRO's office. When the second defendant deposited the two demand drafts for collection, they were returned without encashment. The Bank is not legally entitled to return the Bank drafts. Plaintiff came forward to help the third defendant to discharge the mortgage debt due to the second defendant, paid part payment of Rs.2,00,00,000/-. The claim with regard to preparation of draft sale deed is not correct. Only because of non-payment of balance loan amount, the sale could not be completed. No relief is asked against the third defendant. Therefore, the suit is not maintainable.

7.The case of the fourth defendant is that second defendant has a CBCA/01/002339 account with fourth defendant and deposited the aforesaid demand drafts on 23.01.2014. The demand drafts were returned at the request of the first defendant Bank. There is no customer and banker relationship between the plaintiff and fourth defendant and therefore no relief can be sought against the fourth defendant. Fourth defendant will abide by the orders of this Court.

8.The following issues are framed for trial:-

i)Whether the suit is maintainable against defendants 1 and 4?

ii)Whether the defendants 1 and 2 are necessary parties?

iii)Whether there is any privity of contract between the plaintiff and the second defendant?

iv)Whether the plaintiff is liable to discharge the mortgage executed by the third defendant in faovur of the second defendant?

v)Whether the third defendant had entered into an agreement to sell the properties to the plaintiff?

vi)Whether the second defendant is liable to return the sum mentioned in fixed deposits with the fourth defendant-Bank with interest?

vii)Whether the second defendant is entitled to encash the sum towards the discharge of deed of mortgage dated 30.08.2010?

viii)Whether the defendants 2 and 3 have colluded together to deprive the plaintiff of the suit property?

ix)Whether the plaintiff is entitled for permanent injunction against the first and fourth defendants as prayed for?

x)To what other reliefs, the plaintiff is entitled to?

9.Additional Issue:-

In the light of the purchase of the property in T.S.No.17 at Keezhkattalai which is an adjacent property to the property in T.S.Nos.14 and 15 concerned in the mortgage deed dated 28.03.2011 by the plaintiff from the third defendant, is there a collusion between the plaintiff and the third defendant against the interest of the second defendant?

10.P.W.1 was examined and Ex.P1 to Ex.P11 were marked on the side of the plaintiff. D.W.1 and D.W.2 were examined and Ex.D1 to Ex.D28 were marked on the side of the defendants.

Issue Nos.3, 4, 5, 6, 7, 8 & additional issue:-

11.The learned counsel for the plaintiff submitted that there were loan transaction between second and third defendant, in which third defendant borrowed money from second defendant by executing Ex.D2 and Ex.P2 mortgage deeds. Third defendant was unable to pay the amount and on his request plaintiff lent a sum of Rs.2,00,00,000/- under Ex.P3 mortgage deed. Third defendant wanted to settle all his mortgage debts by selling the property to the plaintiff for a sum of Rs.3,83,00,000/-. As a part of sale consideration Rs.2,00,00,000/- was paid to the second defendant under Ex.P3 and balance Rs.1,79,17,000/- was paid through two demand drafts. There is no privity of contract between the plaintiff and second defendant for the discharge of Ex.P2 mortgage loan. Amounts were paid by the plaintiff to the second defendant only as a part of sale consideration, in order to discharge Ex.P2 mortgage debt and thereby to facilitate the execution of sale deed. However, the defendants 2 and 3 connived with each other and Anil Ojha, the Director of the second defendant company on the guise of verifying the demand drafts clandestinely left the SRO Office, Pallavaram and committed theft of the demand drafts. The claim made by the third defendant that he agreed to sell the property for Rs.6,92,00,000/- and there was balance loan amount of Rs.2,64,95,011/-, are not correct. There is no legal or moral obligation for the plaintiff to pay

Rs.1,79,17,000/-. Plaintiff is not interested in buying the properties now and therefore he has not filed any suit for specific performance. He is interested in only getting back the amount paid to the second defendant through the demand drafts as a part of sale consideration. Under these circumstances, this suit is filed for the reliefs aforesaid.

12.In reply learned counsel for the second defendant submitted that as per the admitted case of the plaintiff the amount covered by the demand drafts is a sale consideration paid to the third defendant. Therefore, the remedy available to the buyer of an immovable property who did not get the sale deed registered, is only to sue for the money paid as per Section 55 of the Transfer of Property Act. However, plaintiff has not sought any relief against the third defendant. No relief can be asked against the second defendant for the refund of amount which was paid in discharge of the loan of third defendant. The demand drafts were handed over on 21.10.2013 itself, at the office of the second defendant. It was not illegally taken as claimed by the plaintiff on 22.10.2013. The demand drafts were presented for collection at 9.30 a.m. on 22.10.2013. If it was received on 22.10.2013 as claimed by the plaintiff, it could not have been presented for clearance on 22.10.2013. Plaintiff has failed to produce the copy of the complaint given before the Police. There are contradictory versions stated with regard to the demand drafts. It is alleged in para 6 of the plaint that Anil Ojha clandestinely walked away with the demand draft and had committed the theft of the demand draft, whereas, in para 15, it is stated that second defendant got the custody of the demand draft without consent; in the proof affidavit it is mentioned that Anil Ojha walked away with DD. In Ex.P7, it is mentioned that plaintiff had handed over the DD to the beneficiary and in Ex.P8 it is stated that "taking away the pay orders". Thus it is obvious from this contradictory positions taken, the claim of the plaintiff that Anil Ojha, on the guise of verifying the demand drafts, walked away with the demand drafts and committed theft is not correct.

13.It is further submitted that plaintiff and third defendant are colluding with each other to defraud the second defendant. Plaintiff is behind third defendant in obtaining loans from second defendant settling the loans and creation of mortgage deeds. The loan amount paid by second defendant to third defendant was transferred to plaintiffs' account. For clearing the loan of the third defendant, plaintiff transferred Rs.4,00,00,000/- to third defendant. Third defendant did not contest the suit, did not file written statement. The signature in the affidavit filed in support of application No.6797 of 2014 is third defendant's signature and it shows that he is colluding with the plaintiff. He was examined as D.W.2. During the pendency of the suit, third defendant sold his property to the plaintiff through Ex.D28 sale deed. When the dispute with reference to a sum of Rs.1,79,17,000/- paid by the plaintiff to the second defendant, on behalf of the third defendant, is not settled so far, how is that plaintiff purchased the third defendant's property under Ex.D28 sale deed. This sale transaction reaffirms that the plaintiff and third defendant are colluding with each other to deceive the second defendant's mortgage loan amount, lawfully due to it.

14.From the case set out by the parties certain facts are admitted by both the parties. They are:-

i)Borrowal of Rs.3,00,00,000/- by the third defendant from the second defendant on 30.08.2010 and execution of Ex.P2 simple mortgage deed.

ii)Borrowal of Rs.2,00,00,000/- from the plaintiff by the third defendant on 28.04.2011 and execution of Ex.P3 simple mortgage.

iii)The amount of Rs.2,00,00,000/- borrowed under Ex.P3 simple mortgage deed was paid towards the mortgage due of Rs.3,00,00,000/- under Ex.P2 mortgage deed.

iv)There was an understanding between the plaintiff and third defendant, wherein, third defendant agreed to sell his properties to the plaintiff for discharging the mortgage debts under Ex.P2 and P3.

15.However, the parties differ as to the total sale consideration of the properties agreed and the balance loan amount due to the second defendant from the third defendant. Plaintiff's case is that the sale consideration was fixed at Rs.3,83,00,000/-. On the other hand, third defendant's case is that he agreed for selling the properties for Rs.6,92,00,000/- and not for Rs.3,83,00,000/-. Plaintiff's case is that after adjusting the payment of Rs.2,00,00,000/- towards the mortgage debt of Rs.3,00,00,000/- only a sum of Rs.1,79,17,000/- was due to be paid in full discharge of mortgage loan amount of Rs.3,00,00,000/-, whereas the second defendant claims that after adjusting Rs.2,00,00,000/-, still there was a due of Rs.2,64,95,011/- from the third defendant. There is also dis-agreement between the parties as to the date on which the two demand drafts for Rs.1,79,17,000/- were given. The case of the second defendant is that these two demand drafts were given to the second defendant on 21.10.2013 itself at the office of the second defendant and the plaintiff and third defendant promised to pay the balance sum of Rs.85,25,011/- on 22.10.2013 at the Sub-Registrar's office, Pallavaram to facilitate cancellation of mortgage deed and execution of sale deed in favour of the plaintiff. It is claimed by the plaintiff that only a sum of Rs.1,79,17,000/- was agreed to be paid and plaintiff took two demand drafts for this amount and visited the Sub-Registrar office, Pallavaram along with Anil Ojha, the Director of second defendant. Anil Ojha on the garb of verifying the demand drafts clandestinely escaped from the spot and thereby committed theft of the demand drafts. In the background of these admitted and contra positions, we have to appreciate the oral and documentary evidence produced in this case.

16.Originally this suit was filed for the relief of permanent injunction restraining the defendants 1 to 4 from honouring the demand drafts and for mandatory injunction directing the second defendant to handover the demand drafts to the plaintiff. Subsequently, the prayer was amended to incorporate the prayer of mandatory injunction directing the second defendant to encash the fixed deposit in F.D.No.KCC/01/140002503 bearing receipt No.827800, dated 17.01.2014 in the name of the second defendant lying with the fourth defendant for a sum of Rs.1,79,17,000/- and pay this amount along with accrued interest to the plaintiff.

17.Ex.D17 is the copy of the affidavit and judges summons filed in O.A.No.833 of 2013 seeking interim injunction restraining the defendants 1 and 4 from honouring the demand drafts concerned in this case. Ex.D19 is the copy of the counter affidavit filed in O.A.No.833 of 2013. Ex.D20 is the copy of the affidavit and judges summons in Application No.1929 of 2014 for amending the plaint prayer as said above. Ex.D21 is the copy of the affidavit and judges summons in Application No.1658 of 2014 filed to revoke the leave granted by this Court in Application No.5007 of 2013. Ex.D22 is the copy of the affidavit and judges summons in Application No.1125 of 2016 filed for rejecting the plaint. Ex.D23 is the counter affidavit filed in Application No.1658 of 2015. However, the defendants have not produced any orders passed on these applications. The fact remains that as per order of this Court, the sum of Rs.1,79,17,000/- was ordered to be deposited in the name of the second defendant in fixed deposit with the fourth defendant and therefore, the amendment was necessitated.

18.Neither the plaintiff nor the third defendant filed any written agreement with regard to the sale agreement entered into between them. However, both agreed that third defendant agreed to sell his properties to the plaintiff. Of course, they are at variance with regard to the quantum of sale consideration. It is seen from the Ex.P9 e-mail communication from the third defendant to the plaintiff that third defendant claimed that plaintiff approached the third defendant for the purchase of the properties for a sale consideration of Rs.6,92,00,000/-. This is now strongly disputed by the plaintiff and plaintiff's case is that the sale consideration was fixed at Rs.3,83,00,000/-. As stated already there is no written agreement of sale, especially with regard to the sale consideration agreed between the parties for the purchase of the properties.

19.Ex.P2 is the mortgage deed in favour of the second defendant and Ex.P3 is the mortgage deed in favour of the plaintiff, both executed by the third defendant. Ex.P4 is the photo copy of the demand drafts for Rs.1,79,17,000/-. Ex.P5 is the photo copy of the demand draft issued in favour of SRO, Pallavaram, towards the balance stamp duty. Ex.P6 is the copy of the letter addressed to the Sub-Registrar, Pallavaram by the plaintiff with regard to the payment of deficit stamp duty. Ex.P7 is communication from the plaintiff to the South Indian Bank to stop payment on the demand drafts. Ex.P8 is the photo copy of the letter sent by the Inspector of Police, B2, Esplanade Police Station, to the Manager of South Indian Bank with a request to stop the payment of the two demand drafts. Ex.P10 is the demand draft in the name of the second defendant. Ex.P12 is the copy of notice to produce documents issued on behalf of the plaintiff to the learned counsel for the second defendant. Ex.P11 is reply to Ex.P12 notice. Except Ex.P9, other documents are not seriously disputed.

20.Second defendant has produced Ex.D1 document to show the value of the properties as Rs.6,92,00,000/- Ex.D3 and Ex.D5 documents are copies of the mortgage deeds in favour of second defendant and plaintiff, the copies of the same are already produced as Ex.P2 and Ex.P3. Ex.D2 is the copy of the mortgage deed dated 01.04.2010 executed by third defendant and his wife in favour of M/s.SLO Industries. This document is filed to show that third defendant and his wife already mortgaged the properties and obtained mortgage loan. Ex.D4 is the copy of the general power of attorney deed executed by third defendant in favour of Vinoth Kumar, Manager of the plaintiff. Ex.D7 is the copy of the cancellation of Ex.D4 power of attorney deed. Ex.D6 is the discharge receipt for discharging Ex.D2 mortgage loan. Ex.D10 and Ex.D11 are the xerox copies of the demand drafts for Rs.1,79,17,000/-. Ex.D12, Ex.D13, Ex.D14 and Ex.D15 are the return memos issued by the fourth defendant Bank. Ex.D16 is the letter from the fourth defendant Bank to the second defendant enclosing the memos of the first defendant. Ex.D18 is the copy of the valuation report. Ex.D24 is the letter issued by the fourth defendant to the second defendant with regard to the presentation of the demand drafts. Ex.D25 is the copy of the Bank statement of the third defendant. Ex.D25, Ex.D26 and Ex.D27 are the copies of Bank statements. Ex.D28 is the copy of the sale deed in favour of the plaintiff. Ex.D25 to Ex.D27 are produced to show that there are systematic money transaction between the plaintiff and third defendant and Ex.D28 is produced to show that even during the pendency of the suit third defendant sold his property to the plaintiff. Ex.D9 is mainly relied on by the defendants to show that the two demand drafts were handed over to the second defendant and on the receipt of the demand drafts and in acknowledgement thereof, Ex.D9 was issued by the second defendant and it was received by the third defendant.

21.The perusal of these documents would show that third defendant and his wife had obtained loan from the second defendant even prior to Ex.P2 mortgage loan and settled that. It is seen from the Bank documents that certain amounts had been transferred from third defendant to the plaintiff and then plaintiff to the third defendant. However, there are two independent loan transaction under Ex.P2 and Ex.P3, involving the second and third defendant under Ex.P2 and plaintiff and third defendant under Ex.P3. Ex.P3 came to be executed only for the reason that plaintiff paid Rs.2,00,00,000/- for the settlement of loan due of Rs.3,00,00,000/- under Ex.P2. It was also agreed by all parties concerned that the payment through two demand drafts for Rs.1,79,17,000/- was paid by the plaintiff towards sale consideration. This sale consideration was agreed to be apportioned towards the loan amount of Rs.3,00,00,000/- under Ex.P2. However, the sale has not gone through and not completed because of dispute with regard to quantum sale consideration and the balance amount due under Ex.P2. Whatever be the case, the sum of Rs.1,79,00,000/- paid through two demand drafts was meant only be a sale consideration. There is no legal obligation for the plaintiff to pay the loan amount due from the third defendant to the second defendant. It is submitted by the learned counsel appearing for the second defendant that plaintiff Director Anand Garg was the one who introduced third defendant to the second defendant Director Anil Ojha, recommended for giving loan to the third defendant, attested Ex.P3 mortgage deed, paid part of the loan amount and therefore plaintiff is morally bound to discharge the loan amount due from the third defendant to the second defendant. There is no question of moral binding on a person for the discharge of loan of another person. Moral binding is not legally recognized.

22.It is relevant to refer to the evidence of witnesses now. P.W.1 and D.W.1 have reiterated the averments made in their pleadings in the form of proof affidavit. During the course of cross examination, P.W.1 admitted attesting Ex.P2 mortgage deed. However, he stated that he never advised Anil Ojha to lend money to the third defendant. With regard to money transaction from the account of third defendant to his account he stated that third defendant owed money against the supplies and therefore he paid money. He admitted that Vinoth Kumar is his employee. It is stated that Anil Ojha snatched away the demand drafts from him. It is stated that he is not aware of the fact that third defendant was liable to pay Rs.2,64,95,011/- to the second defendant as on 21.10.2013. However, he denied the suggestion that sum of Rs.85,78,001/- was agreed to be paid at the time of registration. He stated that he is in possession of original documents and that was handed over to him by the third defendant. He denied that the demand drafts were handed over to the second defendant on 21.10.2013.

23.D.W.1 admitted that plaintiff has not stood as guarantor for Rs.3,00,00,000/- loan under Ex.D3. He admitted the receipt of Rs.2,00,00,000/- from the plaintiff and creation of second mortgage. He stated that he did not state in his proof affidavit that plaintiff and third defendant came to his office in the evening of 21.10.2013 with the demand drafts. He denied that Ex.D9 document was prepared in conspiracy with third defendant. He stated that he deposited the demand drafts in the Bank on the morning of 22.10.2013. It is his evidence that the demand drafts were given on 21.10.2013 towards the liability of Srinivasan. He stated that he has not taken any legal proceedings to recover the balance amount due from the third defendant. He has also not made any counter claim in this suit. When he was asked as to whether plaintiff guaranteed the amount which third defendant is liable to pay the second defendant, he answered that there is no written guarantee but there is verbal guarantee.

24.D.W.2 has given elaborate evidence with regard to the money transactions he had with the second defendant and the plaintiff. It is his evidence that the sale transaction was not completed on 22.10.2013, for the reason that Anand Garg has to pay the balance of around Rs.80,00,000/- to Anil Ojha. Though he waited with Anil Ojha, at the Sub-Registrar office till 4.P.M., Anand Garg did not come with the balance money. It is his evidence that Anil Ojha did not snatch the demand drafts from Anand Garg, but the demand drafts were handed over to Anil Ojha on the previous day at the office of Anil Ojha. He stated that in Ex.D3, there is no clause which stipulates that plaintiff will pay Rs.3,00,00,000/- along with interest at the rate of 24% per annum to the second defendant on his behalf. He admitted execution of Ex.D2 mortgage deed. He admitted his liability to pay the amount covered under Ex.D3 to the second defendant.

25.Thus, the analysis of oral and documentary evidence in this case, especially the evidence of D.W.2 and D.W.3 clearly proved that there was no legal obligation/legal liability fixed on the plaintiff to pay the loan amount due from the third defendant to the second defendant, more particularly the loan amount due under Ex.P3. Sum of Rs.2,00,00,000/- was paid as sale consideration towards part loan payment of Rs.3,00,00,000/- by plaintiff on behalf of third defendant to the second defendant. As agreed between the parties Rs.1,79,17,000/- paid through two demand drafts was adjusted towards the loan amount of Rs.3,00,00,000/- borrowed by the third defendant from the second defendant and as a part of sale consideration. Unfortunately, the sale could not be completed because of the difference of opinion with regard to quantum of sale consideration and quantum of balance amount due under the Ex.P3 mortgage deed. Now the plaintiff is not willing to buy this property and he wants only the refund of his money which was in the form of demand drafts, now in the form of fixed deposit in the name of the second defendant, deposited with fourth defendant. In the said circumstances, it is not necessary to seek any prayer against third defendant for the return of the money. When there is no legal obligation for the plaintiff to pay the third defendant's loan to the second defendant, this Court is of the considered view that plaintiff is entitled to recover that amount of Rs.1,79,17,000/- with the interest accrued thereon. When that be the case the date of handing over or taking away the demand drafts is not of any use to the case of the second defendant.

26.For the reasons stated above, this Court finds that there is no privity of contract between the plaintiff and second defendant for issue No.3; Plaintiff is not liable to discharge the mortgage executed by the third defendant in favour of the second defendant for issue No.4; Third defendant had entered into an agreement to sell the properties to plaintiff for issue No.5; second defendant is liable to return the sum mentioned in the fixed deposit with the fourth defendant Bank with interest to the plaintiff for issue No.6; second defendant is not entitled to encash the sum towards the discharge of mortgage debt dated 30.08.2010 for issue No.7;

27.It is true that third defendant has sold his property during the pendency of the suit through Ex.D28 and that there were money transactions between the third defendant and plaintiff. There were series of money transactions between third defendant and second defendant and then between plaintiff and third defendant. Monies had been transferred between the accounts of plaintiff and third defendant. Third defendant had also sold the property to the plaintiff under Ex.D28. Second defendant company can always seek to recover the mortgage debt under Ex.P2 from the third defendant. Similarly, plaintiff can seek to recover the mortgage debt under Ex.P3 mortgage deed from the third defendant. What we are concerned in this case is, whether the amount paid as a part of sale consideration can be considered as legal liability on the part of the plaintiff to pay the debt of the third defendant in favour of the second defendant. The answer is an emphatic No.

28.The issues had arisen between the parties only because of lack of understanding on the terms of sale agreement especially total amount of sale consideration, total balance amount liable to be paid by the third defendant to the second defendant. There is no written agreement executed between the parties with regard to the sale agreement specifically stating the consideration, and balance amount due under Ex.P3. This lack of understanding between the parties cannot be construed as collusion between defendants 2 and 3 against the plaintiff or plaintiff and third defendant against the second defendant. Thus, issue No.8 and additional issues are answered.

29.Issue Nos.1 and 2:-

Demand drafts were transacted through defendants 1 and 4. They are added as formal parties for the effective adjudication in this case and to enlighten the Court with regard to the demand draft' transactions. Since, their presence is useful to the Court for the purpose of adjudicating the issues involved in this case, this Court finds that they are proper and necessary parties to the suit and the suit against them is maintainable for issue Nos.1 and 2.

30.Issue Nos.9 and 10:-

In view of the findings arrived at on the aforesaid issues, this Court finds that plaintiff is entitled for the relief of mandatory injunction directing the second defendant to encash the fixed deposit in F.D.No.KCC/01/140002503 bearing receipt No.827800 dated 17.01.2014 standing in the name of the second defendant lying with the fourth respondent for sum of Rs.1,79,17,000/- with the accrued interest and to pay the total sum to the plaintiff. In view of the fact that sum of Rs.1,79,17,000/- is now available in fixed deposit and the grant of mandatory injunction relief, there is no question of grant of the relief of permanent injunction prayed in the suit. Thus, the suit is decreed for mandatory injunction as said above with the costs of the plaintiff. Accordingly, these issues are answered.

31. In the result,

(i) The suit is decreed in part for the relief of mandatory injunction directing the second defendant to encash the fixed deposit in F.D.No.KCC/01/140002503 bearing receipt No.827800 dated 17.01.2014 standing in the name of the second defendant lying with the fourth respondent for sum of Rs.1,79,17,000/- with the accrued interest, and to pay the total sum to the plaintiff.

(ii) The suit is dismissed insofar as the relief of permanent injunction.

(iii) The defendants are directed to pay the costs of the suit to the plaintiff.

12.01.2023

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Index:Yes/No

Speaking Order: Yes/No

List of Witnesses examined on the side of the plaintiff:-

Anand Garg (PW1)

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

Exhibits	Dated	Description
Ex.P1	25/10/2013	The Original authorisation letter dated 25.10.2013
Ex.P2	30/08/2010	Certified copy of the mortgage executed between third defendant in favour of second defendant.
Ex.P3	28/04/2011	Certified copy of the mortgage deed in between 3rd defendant and the plaintiff dated 28.04.2011.
Ex.P4	21/10/2013	Photocopy of the demand draft issued by the plaintiff in favour of 2nd defendant dated 21.10.2013
Ex.P5	21/10/2013	Photo copy of the demand draft issued in favour of SRO, Pallavaram.
Ex.P6	22/10/2013	Photo copy of letter addressed by the plaintiff to the SRO, Pallavaram.
Ex.P7	22/10/2013	Photo copy of the letter from the plaintiff to the 1st defendant.
Ex.P8	23/10/2013	Photo copy of the letter sent by Inspector of Police to the 1st defendant.
Ex.P9	24/10/2013	Photo copy of e-mail sent by the 3rd defendant to the plaintiff dated 24.10.2013
Ex.P10	17/01/2014	Xerox copy of the FD receipt No.KCC/01/140002503 bearing receipt No.827800 standing in the name of 2nd defendant may kindly be marked as exhibit
Ex.P11	14/03/2022	The reply notice
Ex.P12	11/03/2022	The notice dated 11.03.2022

List of Witnesses examined on the side of the Defendants:-

1)Anil Kumar Ojha (D.W.1)

2)R.Srinivasan (D.W.2)

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

Exhibits	Dated	Description
Ex.D1	01/04/2010	Copy of valuation report
Ex.D2	01/04/2010	Certified copy of the Mortgage deed document No.640 of 2010
Ex.D3	30/08/2010	Certified copy of mortgage deed document No.4544 of 2010
Ex.D4	30/08/2010	Certified copy of the general power of attorney document No.915/IV/2010
Ex.D5	28/04/2011	Certified copy of 2nd simple mortgage deed document No.2307 of 2011
Ex.D6	02/04/2013	Certified copy of the deed of receipt document No.862 of 2013 dated 02.04.2013
Ex.D7	03/10/2013	Certified copy of the cancellation of General power of attorney doc.No.7145 of 2013
Ex.D8	04/10/2013	Xerox copy of communication letter for cancellation of power of attorney by 3rd defendant to Vinoth Kumar
Ex.D9	21/10/2013	Original letter issued b y 2nd defendant to 3rd defendant dated 21.10 along with account statement as on 30.09.2013
Ex.D10	21/10/2013	Xerox copy of the demand draft No.748509, South Indian Bank, by plaintiff in favour of 2nd defendant
Ex.D11	21/10/2013	Xerox copy of the demand draft No.748510, South Indian Bank, by plaintiff in favour of 2nd defendant.
Ex.D12	23/10/2013	Original of return memo report of 4th defendant for demand draft No.748509 dated 23.10.2013
Ex.D13	23/10/2013	Original return memo report of 4th defendant for demand draft No.748510 dated 23.10.2013

Ex.D14	25/10/2013	Original return memo report of 4th defendant for demand draft No.748509 dated 25.10.2013
Ex.D15	25/10/2013	Original return memo report of 4th defendant for demand draft No.748510 dated 25.10.2013
Ex.D16	26/10/2013	Original letter issued to 2nd defendant by the 4th defendant enclosing memos of 1st defendant dated 26.10.2013
Ex.D17	28/10/2013	Xerox copy of the affidavit and judges summons filed by plaintiff in O.A.No.833 of 2013 in C.S.No.730 of 2013
Ex.D18	11/11/2013	Xerox copy of valuation report issued by Mr.C.Ramaesh Bindu – Chartered engineer
Ex.D19	-	Xerox copy of the counter affidavit of 2nd defendant filed in O.A.No.833 of 2013 in C.S.No.730 of 2013
Ex.D20	03/03/2014	Xerox copy of Affidavit and Judges summons filed by plaintiff in A.No.1929 of 2014 in C.S.No.730 of 2013
Ex.D21	12/01/2015	Xerox copy of Affidavit and Judges summons filed by 2nd defendant in A.No.1658 of 2015 in C.S.No.730 of 2013
Ex.D22	12/01/2015	Xerox copy of Affidavit and Judges summons filed by 2nd defendant in A.No.1125 of 2016 in C.S.No.730 of 2013
Ex.D23	17/03/2015	Xerox copy of counter affidavit filed by plaintiff
Ex.D24	16/08/2017	Original letter issued by 4th defendant to 2nd defendant regarding presentation of DDs dated 16.08.2017
Ex.D25	30/04/2010	Xerox copy of the bank statement of 3rd defendant in Union Bank of India
Ex.D26	30/04/2010	Xerox copy of Bank accounts statement in Union Bank of India, SSI TSK branch, for the period between 01.04.2010 and 07.04.2010 for account

		No.504405010500413
Ex.D27	-	Xerox copy of Bank account statement in Union Bank of India for the period from 01.04.2010 and 30.04.2010
Ex.D28	30/06/2021	Certified copy of the sale deed in favour of plaintiff Document No.5079 of 2021 with Section 65B certificate of Indian Evidence Act

12.01.2023

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Index:Yes/No
Speaking Order: Yes/No

G.CHANDRASEKHARAN.J.,

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To
The Section Officer,
VR Section,
High Court of Madras.

Pre-delivery Judgment in

C.S.No.730 of 2013

12.01.2023