IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24..11.2023

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Summary Civil Suit No.413 of 2018

1.Mrs.Shanthi Krishnan (Deceased)

2.G.S.Krishnan

3.Ms.G.K.Bhuvaneshwari

[Defendants 2 and 3 were brought on record as legal heirs of the deceased 1st plaintiff as per order dated 26.03.2021 in A.No.1362 of 2021]

... Plaintiffs

-Versus-

Arumuga Mudaliar Sornam Educational Trust (Regd.)
Rep. By its Trustees,

(1) Mr.K.Rajapiradhaban

(2) Mr.P.T.Rajan

(3) Mrs.K.Bhanumathi

(4) Mrs.R.Poonkodi

Having Registered Office
at No.16, New Street, Thittakudi,
Cuddalore District

... Defendant

Suit filed under Order VII, Rule 1 of O.S. Rules, 1994 r/w Order XXXVII, Rule 1 of the Code of Civil Procedure, 1908 praying for a judgment and decree against the defendant trust for recovery of a sum of Rs.2,27,63,585/- (Rupees Two Crore Twenty Seven Lakh Sixty Three Thousand Five Hundred and Eighty Five only) together with interest @ 24% p.a. from the date of plaint till date of realization in respect of a sum of Rs.1,00,00,000/- (Rupees One Crore only) and @ 36% p.a. from the date of plaint till date of realization in respect of a sum of Rs.82,00,000/- (Rupees Eighty Two Lakh only); and for cost of the suit.

For Plaintiff(s) : Mr.K.V.Babu for plaintiff 2 & 3
For Defendant : Mr.P.B.Sampath Kumar

JUDGEMENT

The suit is for recovery of a sum of Rs.2,27,63,585/- (Rupees Two Crore Twenty Seven Lakh Sixty Three Thousand Five Hundred and Eighty Five only) together with interest @ 24% p.a. from the date of plaint till date of realization in respect of a sum of Rs.1,00,00,000/- (Rupees One Crore only) and @ 36% p.a. from the date of plaint till date of realization in respect of a sum of Rs.82,00,000/- (Rupees Eighty Two Lakh only); and for cost of the suit.

2. It is the case of the plaintiff that in August, 2015, the defendant Trust representing its Trustees approached the plaintiff for a loan to meet the object of the trust. It was unanimously resolved by the trust to avail loan by a resolution

dated 10.08.2015. Accordingly, on 12.08.2015, the defendant trust borrowed a sum of Rs.50,00,000/- vide cheque bearing No.000218 dated 12.08.2015 drawn on Andhra Bank, Ashok Nagar Branch, Chennai favouring the defendant trust and a promissory note was executed for the same on the same day agreeing to pay interest @ 24% p.a.. Similarly, another sum of Rs.50,00,000/- was borrowed on 13.08.2015 by the defendant trust from the plaintiff vide cheque bearing No.000219 dated 13.08.2015 drawn on Andhra Bank, Ashok Nagar, Chennai and a promissory note was executed on the same day agreeing to pay interest @ 24% p.a.. Thus, a total sum of Rs.1,00,00,000/- was borrowed by the defendant trust as loan. Besides, the defendant trust has also deposited the title deeds of the immovable properties belonging to the defendant trust measuring an extent of 5 Acres and 2 cents comprised in S.No.96/1 at Vaidyanathapuram Village, Thozhudur and an extent of 3 Acres and 89 ½ cents comprised in E.Keeranur Village belonging to one K.Rajapiradhaban and measuring an extent of 1 Acre and 36 ½ cents belonging to one late A.Krishnaswamy. The defendant trust also confirmed the same by way of affidavit dated 13.08.2015 executed by the trustees authorized by the resolution as aforesaid.

3. Thereafter, the defendant trust borrowed a further sum of Rs.82,00,000/- (Rupees Eighty Two Lakhs only) and the money was transferred through RTGS

on 11.01.2016 favouring the trust account maintained with Vijaya Bank, Trichy Branch on an urgent commitment so as to avoid NPA status in respect of the loan account of the defendant trust with Vijaya Bank, Trichy Branch. There was a resolution passed by defendant trust to avail such loan. The defendant trust furnished a confirmation of balance for the loan of Rs.82,00,000/-borrowed from the plaintiff agreeing to repay the same with monthly compounded interest @ 36% p.a. Though the defendant trust agreed to return the loan amounts with interest thereon on a short term basis, they prolonged for more than a year. Further, by letter dated 29.09.2016, the defendant trust confirmed that as on 31.08.2016, the trust owe a sum of Rs.2,07,66,395/- to the plaintiff. As on 03.06.2018, the amount due and payable towards loans was Rs.2,27,63,585/- . Despite repeated demands to settle the loan dues, the loan dues were not paid off. Hence, this suit.

4. Pending suit 1st plaintiff died and hence, her husband and daughter being legal heirs of the deceased 1st plaintiff got impleaded themselves as plaintiffs 2 and 3.

5. The defendant filed his written statement denying the averments made in the plaint and *inter alia* contending that the defendant trust was established to do charitable services and to provide education to downtrodden and poor people.

The defendant trust has started carrying on Higher Secondary School, Arts and Science College, Polytechnic College and Engineering College. The deceased 1st plaintiff's husband – G.S.Krishnan, the 2nd plaintiff was an Auditor for the defendant trust and he was continued to be Auditor till the financial year 2015-16. Earlier, the defendant trust availed loan from Indian Bank. When the defendant trust was in need of further amount for the development of educational institutions, the 2nd plaintiff voluntarily offered to advance loan to the trust provided the defendant trust should execute a promissory note for the alleged amounts still due under the previous loans to the extent of Rs.82,00,000/- as on 31.08.2023. For that purpose, 2nd plaintiff opened a current account in Andhra Bank at K.K.Nagar Branch, Chennai in which the deceased 1st plaintiff, the wife of the 2nd plaintiff had an account. On 12.08.2015, 2nd plaintiff got a promissory note from the defendant trust in favour of his wife, the deceased 1st plaintiff for a sum of RS.50,00,000/- whereby the defendant trust agreed to repay the loan with interest @ 24% p.a. with monthly compounded interest. Besides promissory note, 2nd plaintiff had also obtained 20 leaves of cheque book signed on both sides of each blank cheque without putting name, date and amount.

6. It is further contended by the defendant trust that even though a sum of RS.50,00,000/- was transferred from her account to the account of the defendant

trust by cheque bearing No.000218 dated 12.08.2015 , a sum of Rs.25,00,000/- was withdrawn by 2nd plaintiff himself through his Assistant one R.Santhana Krishnan by using the self cheque given by K.Rajapiradhapan. Hence, suit promissory note dated 12.08.2015 was not supported by consideration. Similarly, insofar as suit promissory note dated 13.08.2015 obtained by the 2nd plaintiff for Rs.50,00,000/- from the defendant trust in favour of his wife agreeing to pay the amount with 24% p.a. with monthly compounded interest is concerned, this time also, the 2nd plaintiff withdrew a sum of Rs.9,50,000/- on 14.08.2015, Rs.9,50,000/- on 27.08.2015, and Rs.8,50,000/- on 28.08.2015 and in all he withdrew a total sum of Rs.27,50,000/- through Santhana Krishnan by using the signed blank cheques given by the defendant trust. Hence, a sum of RS.22,50,000/- alone was paid under the suit promissory note dated 13.08.2015 and thus it was not supported by full consideration. The defendant trust that more than Rs.52,00,000/- had already been paid towards the said promissory note to the 2nd plaintiff.

7. As far as another loan of Rs.82,00,000/-, which was transferred by the deceased plaintiff from her account maintained with Andhra Bank at K.K.Nagar Branch to Vijaya Bank at Trichy through electronic transfer, while admitting the transaction, it has been contended by the defendant trust that the 2nd plaintiff had

managed to get a letter from the defendant trust confirming that the trust owned a sum of Rs.82,00,000/- to the deceased plaintiff with an undertaking to repay the same with interest though it was not agreed by the trust to pay interest on that amount.

8. Based on the above pleadings of either party, the following issues have been framed for trial:-

(1) Whether the plaintiff is entitled to recovery of a sum of Rs.2,27,63,585/- with 24% interest on Rs.1,00,00,000/- and with interest 36% interest on Rs.82,00,000/-.

(2) Whether the claim that the husband of the plaintiff, who was the Chartered Account of the Trust, had taken the monies deposited by the plaintiff into the accounts of the Trust is true?

(3)Whether the plaintiff is entitled to interest at the rate claimed by her in the plaint?

(4)To what reliefs the parties are entitled?

9. During trial, on the side of the plaintiffs, 2nd plaintiff examined himself as P.W.1 and marked Ex.P.1 to Ex.P.17. On the side of the defendant trust, one of

its trustees viz., Rajapiradhapan was examined as D.W.1 and Ex.D.1 to Ex.D.13 were marked.

10. The learned counsel for the plaintiffs would submit that execution of the promissory notes were not disputed. The loan amounts under the suit promissory notes were transferred to the trust account only through the bank from the account maintained by the deceased 1st plaintiff, the wife of the 2nd plaintiff. These facts were also not in dispute. Thought defendant trust had set up a defence that they discharged a sum of Rs.52.00 lakh, the same has not been established by the defendant trust and unless and until plea of discharge of part payment towards loans due and payable under the suit promissory note is established, the plea of discharge cannot be said to be proved. Therefore, according to the learned counsel, the suit has to be decreed as prayed for.

11. Per contra, the learned counsel for the defendant trust would fairly conceded that a sum of Rs.82,00,000/- was transferred by way of RTGS through Andhra Bank, K.K.Nagar Branch, Chennai. The dispute is only with regard to repayment of Rs.52,00,000/-. According to the learned counsel for the defendant trust, under Ex.D.8-Cheques (series), the 2nd plaintiff had encashed monies on various dates to the tune of Rs.52,00,000/-. Therefore, the learned counsel contended that Rs.52,00,000/- has to be adjusted from the loan outstanding.

Further, according to the learned counsel, the interest charged is usurious and that the defendant trust had already paid huge amount towards interest.

12. The learned counsel for the defendant would further submit that the document has been tampered and not executed properly by the defendant trust. The 2nd plaintiff who was the Auditor for the defendant trust had managed to create the documents by abusing his position.

Issue Nos.1 to 4:

13. The suit has been laid on the basis of Ex.P.4 Promissory Note dated 12.08.2015 and Ex.P.5 Promissory Note dated 13.08.2015 and also based on Ex.P.9 confirmation of loan balance of Rs.82,00,000/- executed by the defendant trust acknowledging that they owe the said sum of Rs.82,00,000/- to the 1st plaintiff besides the amounts due and payable under the suit promissory notes. It is the specific case of the plaintiffs that under suit promissory notes Ex.P.4 and Ex.P.5, a sum of Rs.1,00,00,000/- was advanced. In this regard, Ex.P.3 resolution was passed by the defendant trust to avail loan. Ex.P.2 is the letter issued by the defendant trust requesting for loan. Besides Ex.P.6 was issued by the defendant trust confirming the borrowal of amounts. Thereafter, under Ex.P.7-Minutes of the Board of Trustees of the defendant's trust it was decided to make a further request for additional loan and a requisition was made for

additional loan under Ex.P.8. Accordingly, a sum of Rs.82,00,000/- was transferred in 2016 apart from the amounts under promissory note. This was confirmed by the defendant trust under Ex.P.9 to Ex.P.12. D.W.1 who is the son of the Managing Trustee during his cross examination admitted that at the time of transaction he was hardly 4 years old and according to him, he had gathered information about the transactions after filing of the present suit. Be that as it may, he had admitted the signatures of his father and th eother trustees found in suit promissory note Ex.P.4 & Ex.P.5-Promissory Notes and Ex.P.9 to Ex.P.10-confirmation of loan balance and also and also on other documents viz., Ex.P.6 to 8 documents which are affidavit confirming the deposit of title deeds in respect of immovable properties, minutes of the board of trustees of the defendant trust and requisition letter for additional loan. Ex.P.11 is the letter from Andhra Ban, Ashok Nagar Branch confirming the amount transferred by the 1st plaintiff to the account of the defendant trust held with Andhra Bank, Ashok Nagar Branch and also Vijaya Bank, Trichy Branch on four different dates. Ex.P.12 is the statement of accounts of the defendant trust in respect of loan account with the 1st plaintiff.

14. Plaintiff has also filed Ex.P.13 to Ex.P.16 income tax related documents to show that TDS had been deducted and also to show that 1st plaintiff

had means to advance the amounts as loan to the defendant trust. Ex.P.17 is a balance sheet prepared by the Auditor of the defendant trust wherein also it was admitted that a sum of Rs.1,64,50,000/- was due and payable to the 1st plaintiff. It is the contention of the defendant trust that since the 2nd plaintiff,the husband of the 1st plaintiff was an Audition had misused the documents. In this regard it is relevant to note that a letter from the trust would go to show that no allegation was made against the Auditor and in fact, the said letter recorded the appreciation of the valuable services rendered by the 2nd defendant as Auditor. Though the defendant trust contended that the suit documents were forged and created, there was no reason why their accounts reflected the payment of interest paid towards the loan amounts under Ex.P.12. This document was not disputed by the defendant trust.

15. When the execution of promissory note and receipt of Rs.82,00,000/- besides consideration received under the promissory notes were not disputed and when the defendant took a plea of discharge of part of amount, the onus lies on the defendant trust to establish the discharge. Much reliance was placed on Ex.D.8 -Cheuqe (series). According to the defendant trust, one Santhana Krishnan, who was acting as Liaison, for both the parties had withdrawn the amount, it is the contention of the defendant trust that those amounts had been

withdrawn only by the 2nd defendant. It is relevant to note that those cheques were encahsed by the trustees. Merely because a person who was acting liaison withdrew the amount, it cannot be presumed that those amounts had been withdrawn and paid to the 2nd plaintiff. It is relevant to note that though it is was the defence of the defendant trust that Santhana Krishnan withdrew the amount and handed over the same to the 2nd plaintiff, there was no reason assigned by the defendant trust as to why they had not chosen to examine him before the court. Therefore, no credence could be given to the oral evidence of D.W.1 for the simple reason that such a fact came to be introduced for the first time in the proof affidavit in chief examination without any pleading thereof in the plaint.

16. Considering both oral and documentary evidence, this court is of the view that the execution of negotiable instruments viz., Ex.P.4 & Ex.P.5- Promissory Notes and Ex.P.9 Letter confirming the additional loan of Rs.82,00,000/- obtained by the defendant trust and acknowledging the loans due and payable and passing of consideration have been established on record. The defendant trust had not brought any rebuttal evidence to contend that Ex.P.4 & P.5 were not supported by any consideration. Statutory presumption available under Section 118 of the Negotiable Instruments Act would automatically get attracted to Ex.P.4 and Ex.P.5 Promissory Note. That apart, subsequently

payment of Rs.82,00,000/- made through RTGS was also not disputed. It was admitted by the defendant trust in the written statement itself.

17. It is also the contention of the defendant trust that Santhana Krishnan had signed the cheques and withdrew the amounts and Santhana Krishnan was none other than the employee of the 2nd plaintiff and therefore, it has to be presumed that the entire amount of Rs.52,00,000/- withdrawn on different dates under Ex.D.8 Cheques (series) has to be taken as discharge. In this regard the evidence of P.W.1 show that Santhana Krishnan was a freelancer and was rendering service not only to the plaintiffs but also to the defendant trust. The very suggestion made to P.W.1 would clearly indicate that Santhana Krishnan was rendering his service in his individual capacity. Such being the position, infrence would arise that after receipt of withdrawal of cheque amount he must have given the amounts to the defendant trust. If the defendant trust asserts that those amounts had been given only to the 2nd plaintiff, the defendant trust ought to have examined Santhana Krishnan. That has not been done. In such view of the matter the alleged discharge of sum of Rs.52,00,000/- under Ex.D.8 cheques has not been established. Once the plea of discharge fails, the natural corollary is that statutory presumption would get attracted to the promissory notes. Execution of Ex.P.4, Ex.P.5 and Ex.P.9 and all other connected documents and the

signatures of the managing trustee and other trustees and the resolutions and letter requesting for loan have been clearly established. The signatures thereon were also not disputed by the defendants. Further, in 2016, further sum of Rs.82,00,000/- was borrowed as loan. Under Ex.P.17-balance sheet of the defendant trust would also indicate the liability of Rs.1,64,50,000/-as on 31.03.2017. Ex.P.12 would show that interests at the contractual rate were paid for some time.

18. This court is therefore of the view that the defendant has to pay at least the admitted amount of Rs.1,64,50,000/- with interest. Considering the fact that contractual interests were paid for some time this court is inclined to restrict interest from the date of plaint with simple interest @ 9% for Rs.1,64,50,000/- till date of realisation.

19. For the foregoing discussions, the plaintiffs are entitled to recover the suit amount as indicated above. The issue Nos.1 to 4 are answered accordingly.

In the result, suit is decreed with costs to the extent indicated above. The plaintiff is entitled to recover a sum of Rs.1,64,50,000/- (Rupees One Crore Sixty Four Lakh and Fifty Thousand only) together with interest thereon @ 9% p.a. from the date of plaint till date of realization.

Index : yes / no 24..11..2023

Neutral Citation: yes / no
kmk

List of witnesses examined on the side of the plaintiff:

P.W.1-G.S.Krishnan (2nd Plaintiff)

List of Witnesses examined on the side of the defendants:

D.W.2-Rajapiradhapan (One of the trustees)

List of documents marked on the side of the plaintiff:

Ex.P.1	03.10.2019	Original Letter of Authorization authorizing P.W.1 to give evidence in the case
Ex.P.2	05.08.2015	Letter issued by the defendant trust requesting for loan of Rs.1,00,00,000/-
Ex.P.3	10.08.2015	Minutes of the Board of Trustees of the defendant Trust authorizing the Managing trustee Mr.A.Krishnasamy and or the Member Trustee Mr.K.Rajapiradhaban to represent on behalf of the defendant Trust
Ex.P.4	12.08.2015	Demand Promissory Note for Rs.50,00,000/- executed by the trust in favour of the 1st plaintiff
Ex.P.5	13.08.2015	Demand Promissory Note for Rs.50,00,000/- executed by the trust in favour of the 1st plaintiff
Ex.P.6	13.08.2015	Affidavit of confirmation of deposit of title deeds by the defendant trust with the 1st plaintiff
Ex.P.7	04.01.2016	Minutes of Board of Trustees of the defendant trust
Ex.P.8	05.01.2016	Letter from the defendant trust requesting additional loan
Ex.P.9	11.01.2016	Confirmation of Loan Balance by the defendant trust
Ex.P.10	29.09.2016	Confirmation of Loan Balance by the defendant trust
Ex.P.11	05.05.2018	Letter of Confirmation of Loan Transactions issued by Andhra Bank for the transfer of loan amount from the 1st plaintiff's account to the defendant trust
Ex.P.12	-	Statement of Accounts showing the outstanding dues payable as on 03.06.2016

Ex.P.13	-	Photocopy of computation of Income with Acknowledgment issued by the Income Tax Department for the Assessment Year 2017-18.
Ex.P.14	-	Photocopy of TDS Certificate in Form-16A for the period for the period from 01.04.2016 to 30.06.2016
Ex.P.15	-	Photocopy of TDS Certificate in Form-16A for the period for the period from 01.07.2016 to 30.09.2016
Ex.P.16	-	Photocopy of TDS Certificate in Form-16A for the period for the period from 01.10.2016 to 31.12.2016
Ex.P.17	-	Balance Sheet as on 31.03.2017 pertaining to the defendant trust

List of documents marked on the side of the Defendant(s):

Ex.D.1	21.06.2022	Letter of Authorization issued by the defendant trust authorizing DW1 to give evidence in the case
Ex.D.2	-	Online Printout copy of Email (series – 9 Nos.) along with Certificate issued under Section 65-B of the Evidence Act.
Ex.D.3	-	Statement of Accounts relating to the defendant trust for the account held with Axis Bank
Ex.D.4	-	Statement of Accounts relating to the defendant trust held for the account held with Bank of Bank of Borada (Vijaya Bank)
Ex.D.5	-	Online Printout copy of Email communication dated 12.07.2017 with interest statement along with Certificate under Section 65B of the Evidence Act
Ex.D.6	-	Online Printout copy of Mail Communication dated 12.07.2017 along with interest statement with Certificate under Section 65B of the Evidence Act
Ex.D.7	-	Statement of Accounts issued by Andhra Bank
Ex.D.8	-	Photocopy of the cheques attested by the bank (series –

		10 Nos.)
Ex.D.9	-	Printout of Email Communication dated 27.01.2018 along with letter dated 24.08.2017 with a Certificate under Section 65-B of The Evidence Act
Ex.D.10	11.06.2019	Legal Notice issued by the plaintiff with postal Acknowledgment Card
Ex.D.11	11.06.2019	Reply Notice addressed to the counsel for the plaintiff along with acknowledgment card
Ex.D.12	21.06.2022	Statement of Account of the defendant trust
Ex.D.13	-	Printout of Email communication dated 18.12.2017 along with bills containing 3 sheets with a certificate issued under Section 65B of the Evidence Act

24..11..2023

N.SATHISH KUMAR.J.,

kmk

Summary Civil Suit No.413 of 2018

`

24..11..2023