



C.S.(Comm.Div.) No.548 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

CORAM

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

C.S. (Comm. Div.) No.548 of 2018

C.Sulochana

... Plaintiff

Vs.

P.V.R.Murthy

... Defendant

Civil Suit (Commercial Division) is filed under Order VII Rule 1 of the Civil Procedure Code, 1908 r/w. Order IV Rule 1 of Original Side Rules, praying to pass a Judgment and Decree:-

- (a) for directing the defendant to pay a sum of Rs.1,44,57,671/- (Principal amount of Rs.55,00,000/- along with interest of Rs.89,57,671/- at 24% per annum on the principal amount from 27.09.2009 to 10.07.2016) and further interest at 24% per annum on the principal amount of Rs.55,00,000/- from the date of the plaint till the date of realization,
- (b) to grant such other suitable reliefs that the case may deem fit and proper,
- (c) to pay the costs of the suit to the plaintiff.



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For Plaintiff : Mr.C.Umashankar

For Defendant : No appearance

J U D G M E N T

The plaintiff has filed this suit for a direction to the defendant to pay a sum of Rs.1,44,57,671/- (Principal amount of Rs.55,00,000/- + interest of Rs.89,57,671/- calculated at 24% per annum on the principal amount from 27.09.2009 to 10.07.2016) and to pay further interest at 24% per annum on the principal amount of Rs.55,00,000/- from the date of the plaint till the date of realization.

2. The plaint was originally presented on 11.07.2016 by the plaintiff along with A.No.2418 of 2018 filed under Clause 12 of the Letter Patent for leave to sue as the defendant was residing outside the jurisdiction of this Court. A.No.2418 of 2018 was allowed *vide* order dated 11.04.2018 and thus, the leave was granted to sue the defendant. The suit thus was directed to be numbered. Thereafter, the present suit was numbered.

3. However, the Suit Summons remained unserved. Therefore, a paper publication was ordered *vide* order dated 26.08.2021 to be



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published in any vernacular daily paper in circulation in Hyderabad, Telangana State. The paper publication was effected by the plaintiff.

Thereafter, an affidavit of service was filed before this Court. Despite deemed service of summons, the defendant failed to enter appearance and was set *exparte*.

4. Thereafter, the case was directed to be listed before the Additional Master – I for evidence *vide* order dated 10.11.2021. The plaintiff has marked Exs.P1 to P6 as detailed below:-

Sl. No.	Exhibit	Date	Description of Documents
1	Ex.P1	21.10.2013	Notice issued by the plaintiff to the defendant.
2	Ex.P2	23.04.2016	Legal Notice issued by learned counsel for the plaintiff to the defendant.
3	Ex.P3	30.01.2013	Notice issued by the plaintiff to the defendant.
4	Ex.P4	09.05.2016	Reply Notice sent by the defendant to the plaintiff
5	Ex.P5	27.09.2009	Receipt executed by the defendant in favour of the plaintiff along with interest
6	Ex.P6	25.04.2016	Web Copy of India Post Acknowledgment for delivery of Legal Notice to the defendant on 23.04.2016

5. The case of the plaintiff is that the defendant requested financial assistance from the plaintiff and her husband Mr.C.Gopal Reddy to invest



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in real estate business and assured monthly returns to the plaintiff.

Therefore, the plaintiff lent a total amount of Rs.55,00,000/- in two instalments to the defendant as detailed below:-

<i>Sl. No.</i>	<i>Date</i>	<i>Mode of Payment</i>	<i>Amount</i>
1	12.08.2009	RTGS	Rs.25,00,000/-
2	27.09.2009	Cash	Rs.30,00,000/-
Total			Rs.55,00,000/-

6. The above transaction is said to have been acknowledged by the defendant *vide* Ex.P5 Receipt dated 27.09.2009. It is further case of the plaintiff that the defendant defaulted in repaying the aforesaid amount of Rs.55,00,000/-. The defendant issued a Cheque bearing reference No.109637, dated 31.08.2012 for Rs.5,00,000/- as a part payment. The above Cheque No.109637, dated 31.08.2012 was dishonoured. Thereafter, the defendant issued two Cheques, i.e. Cheque No.040684, dated 28.12.2012 for Rs.2,50,000/- and Cheque No.040685, dated 05.01.2013 for Rs.2,50,000/-. Both the Cheques were dishonoured on account of “insufficient funds”. The above facts were acknowledged in Ex.P5 Receipt dated 27.09.2009.



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7. Thereafter, the plaintiff sent Ex.P3 Notice dated 30.01.2013 and called upon the defendant to pay an amount of Rs.5,00,000/- by a Demand Draft as all the Cheques given by the defendant were dishonoured. However, the defendant again given two Cheques bearing reference Nos.109615 & 109616, both dated 20.08.2013 which was also acknowledged in Ex.P5 Receipt dated 27.09.2009. These two Cheques were also dishonoured. It appears that there was no further development in repayment of the amount due.

8. The plaintiff thereafter sent Ex.P1 Notice dated 21.10.2013, whereby, the defendant was also called upon to send a demand draft for an amount of Rs.5,00,000/- relating to the 'two dishonoured cheques'. However, there was no response from the defendant.

9. Finally, the plaintiff sent Ex.P2 Legal Notice dated 23.04.2016, whereby, the defendant was also called upon to repay an amount of Rs.55,00,000/- together with interest at the rate of 24% per annum being the commercial transaction.



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10. In response to the above Ex.P2 Legal Notice dated 23.04.2016, the defendant has sent Ex.P4 Reply dated 09.05.2016. It is submitted that in Ex.P4 Reply dated 09.05.2016, the defendant has accepted having received an amount of Rs.55,00,000/- and has stated that he is willing to refund the amount of Rs.55,00,000/- to the plaintiff after deducting the re-registration charges along with legal expenses for the properties executed deeds in favour of the plaintiff and her husband to and in favour the defendant's name. Thereafter, the present suit has been filed for recovery of Rs.55,00,000/- from the defendant.

11. I have considered the arguments advanced by the learned counsel for the plaintiff. I have perused the exhibits marked by the plaintiff. The suit is based on Ex.P5 Receipt dated 27.09.2009.

12. In Ex.P5 Receipt dated 27.09.2009, it is stated that the plaintiff was investing in connection with real estate business of the defendant and that the amount would not carry any interest. However, Ex.P5 Receipt dated 27.09.2009 is an unstamped documents and therefore, it cannot be



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admitted. It is liable to be confiscated and subjected to payment of appropriate stamp duty together with penalty under Section 33-A read with Section 48 of the Indian Stamp Act, 1899. The plaintiff is required to pay necessary stamp duty and the penalty, failing which, Ex.P5 Receipt dated 27.09.2009 is liable to be construed as inadmissible document in terms of Section 35 of the Indian Stamp Act, 1899.

13. Ex.P5 Receipt dated 27.09.2009 is liable to be impounded. Registry is directed to transmit the Ex.P5 Receipt dated 27.09.2009 to the jurisdictional Collector for collection & payment of stamp duty and penalty. The Collector, thereafter, shall assess the stamp duty that is payable by the plaintiff and the penalty for default in paying the stamp duty under the Act.

14. A reading of the Ex.P5 Receipt dated 27.09.2009 further indicates that the date “27th September 21” has been written in black ball point pen and the date thereafter has been scored off with blue ball point pen and substituted with the year “2009”. Thus, there is apparent contradiction between the dates given in Ex.P2 Legal Notice dated



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23.04.2016 and Ex.P5 Receipt dated 27.09.2009 on the strength of which,
the present suit has been filed by the plaintiff.

15. However, the fact remains that Ex.P2 Legal Notice dated 23.04.2016 preceded Ex.P3 Notice dated 30.01.2013 in respect of Cheque No.040684, dated 28.12.2012 and Cheque No.040685, dated 05.01.2013. In response to Ex.P2 Legal Notice dated 23.04.2016, the defendant *vide* Ex.P4 Reply dated 09.05.2016 has admitted having receive a sum of Rs.55,00,000/-. Relevant of Ex.P4 Reply dated 09.05.2016 reads as under:-

However, our client is willing to refund Rs.55,00,000/- to your client after deducting the re-registration charges along with legal expenses for the properties executed deeds in your client's favour and her husband's name to and in favour of our client's name forthwith, and also by giving an undertaking letter to that effect that she shall not indulge in any nefarious action in this regard in future. Kindly advice your client properly, if she will not do so, our client reserve his right to institute civil and criminal proceedings against your client with your client's risk and cost which please inform her.

16. Thus, there is no dispute that a sum of Rs.55,00,000/- was paid



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by the plaintiff to the defendant. There is also acknowledgement of debt due in Ex.P5 Receipt dated 27.09.2009. In Ex.P4 Reply dated 09.05.2016, the defendant has accepted having received a sum of Rs.55,00,000/-. On the strength of the above Ex.P4 Reply dated 09.05.2016, the plaintiff has made out a case for grant of a Judgment and Decree.

17. As far as the claim of the plaintiff for interest at 24% per annum is concerned, Ex.P5 Receipt dated 27.09.2009 indicates that the amount of Rs.55,00,000/- given by the plaintiff to the defendant was the investment and therefore, there shall be no interest on the amount given by the plaintiff. Therefore, the claim of the plaintiff for interest at 24% per annum cannot be allowed.

18. It is also noticed that Ex.P4 Reply dated 09.05.2016 indicates that there has been certain documents which have been executed in favour of the plaintiff and her husband in connection with the amount of Rs.55,00,000/- given to the defendant.



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19. Considering the above, the suit deserves to be partly decreed in favour of the plaintiff and against the defendant by directing the defendant to pay a sum of Rs.55,00,000/- to the plaintiff as admitted in Ex.P4 Reply dated 09.05.2016.

20. As far as interest on the aforesaid amount of Rs.55,00,000/- is concerned, though the plaintiff has not filed the present suit as summary suit, the proceeding in the present suit has more or less proceeded in a summary manner. Ex.P5 Receipt dated 27.09.2009 specifically states that no interest is payable on the amount advanced by the plaintiff to the defendant. Therefore, there shall be no interest for the period prior to the institution of suit. There shall also be no interest *pendente lite* as the contract between the plaintiff and the defendant is also silent on the same.

21. Applying Section 34 of Civil Procedure Code, there shall be no interest on the amount payable either prior to the institution of the suit and/or during the pendency of the suit. However, there shall be interest at 6% per annum from the date of decree till the date of realization subject to the plaintiff paying the deficit stamp duty and penalty under the Indian



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Stamp Act, 1899 on Ex.P5 Receipt dated 27.09.2009.

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22. As far as the re-conveyance of the land as stated in Ex.P4 Reply dated 09.05.2016 is concerned, it is open for the defendant to work out his remedy in accordance with law.

23. The Suit is partly decreed as above. Parties to bear their own cost.

06.02.2023

Internet: Yes/No
Index: Yes/ No
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Copy To

The District Collector,
O/o. The District Collector,
No.32, Rajaji Salai, , Chennai – 600001.



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C.SARAVANAN, J.

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