



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05..12..2023

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Civil Suit No.202 of 2022

1.P.A.Abdul Jaleel

2.Jamal Mohiadeen

... Plaintiffs

-Versus-

1.A.Sharafudeen (deceased)

2.M/s.Hotel Oriental Towers,
Rep. By its Managing Director,
Mr.A.Sharafudeen,
No.2889, Srinivasan Pillai Road,
Pudupattinam Vattam, Thanjavur 613 001.

3.Fareetha Begum

4.Jawaharbabu

5.Ahmed Azad

[Defendants 3 to 5 were brought on record as the legal heirs of the deceased 1st defendant as per order dated 19.04.2023 made in A.No.1776 of 2023 and as per order dated 30.06.2023 extending time to amend the plaint and file Amended Copy of Plaint]



... Defendants

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Suit filed under Order IV, Rule 1 of Madras High Court Original Side Rules r/w Order VII Rule 1 of CPC praying for a judgment and decree against the defendants for a sum of Rs.16,00,00,000/- (Rupees Sixteen Crore only) together with interest @ 6% p.a. From the date of institution of the suit till date of repayment, in default thereof,, to create a charge over the schedule mentioned property; permanent injunction restraining the defendants from selling, transferring and creating encumbrance over the suit property more fully described in the plaint schedule till such time, the amounts due to the plaintiffs are discharged; and for cost of the suit.

For Plaintiff (s) : Mr.Avinash Wadhwani
For Defendant (s) : No Appearance for D2 to D5
D1 died

JUDGEMENT

This suit is filed for recovery of a sum of Rs.16,00,00,000/- (Rupees Sixteen Crore only) from the defendants together with interest @ 6% p.a. from the date of institution of the suit till date of repayment, in default thereof to create a charge over the schedule mentioned property; permanent injunction restraining the defendants from selling, transferring and creating encumbrance over the suit



property more fully described in the plaint schedule till such time, the amounts due to the plaintiffs are discharged; and for cost of the suit.

2. It is the case of the plaintiffs that the defendants are residing in Singapore. The 2nd defendant hotel was owned by the 1st defendant. The 1st defendant and the plaintiffs started a business in 1982 in the name and style “Overseas Cosmetics (P) Limited in Singapore in which the plaintiffs and the 1st defendant were the directors. The 1st defendant was the Managing Director of the 2nd defendant hotel. When the business was being carried on by the plaintiffs and the 1st defendant, the 1st defendant surreptitiously sold the building to the 3rd defendant and failed to share the sale proceeds. The payable by the 1st defendant was reckoned and the amount actually due to the 1st plaintiff was Rs.10,00,00,000/- (Rupees Ten Crore only) and that of the 2nd plaintiff was Rs.6,00,00,000/- (Rupees Six Crore only) and in all a sum of Rs.16,00,00,000/- (Rupees Sixteen Crore only) was due and payable to the plaintiffs by the 1st defendant as on 18.04.2015. The plaintiffs requested the 1st defendant to settle the dues. When the plaintiffs and the 1st defendant returned to Chennai, on 19.04.2015, the 1st defendant executed a document offering the suit schedule property as security and acknowledging the payment due by him to the plaintiff and agreeing to repay the same with interest @ 6% p.a. within 24 months from



the date of mortgage deed. That document was duly notarized. The plaintiffs have also initiated proceedings against the 1st defendant in Singapore wherein he was declared as insolvent. Despite repeated demands, the 1st defendant had neither paid interest nor principal. Hence, the plaintiffs issued legal notice on 20.04.2017 to the 1st defendant calling upon him to settle the dues. Though it was acknowledged, strangely, notice sent to the 1st defendant was returned with an endorsement “Left India”. On coming to know that the 1st defendant was taking steps to sell the property and defraud the plaintiffs and that the 1st defendant and his son submitted a statement before the Bankruptcy proceedings pending in Singapore court, and the 1st defendant was going to sell the mortgaged property of the 2nd defendant to someone, plaintiffs issued another legal notice on 22.06.2017 calling upon them not to do any activity endangering to their rights in the security. The said notice was also returned with an endorsement “Left India” and the postal cover addressed the 1st defendant was returned with an endorsement “Intimation Delivered on 29.06.2017.” Hence, this suit for recovery of money from the defendants based on the document dated 19.04.2015 acknowledging the amount due and payable by the 1st defendant with interest Pending suit, 1st defendant died on 20.03.2021 and hence, his wife, daughter and son, who are legal heirs, were brought on record as defendants 3 to 5.



3. The defendants 3 to 5 were set ex parte by this court on 20.11.2023.

4. The 2nd plaintiff examined himself as P.W.1 and marked Ex.P.1 to Ex.P.6.

5. P.W.1 in his evidence has spoken about the nature of the business carried on by himself and the 1st plaintiff jointly along with the 1st defendant. When the business was being carried on smoothly, the 1st defendant surreptitiously sold the property to a third party and the 1st defendant had not even paid single pie from the sale proceeds and the 1st defendant was liable to be a sum of Rs.16,00,00,000/- to him and the 1st plaintiff. In this regard the 1st defendant himself had executed Ex.P.1 which has been styled as “Deed of Mortgage” offering the suit schedule property as security for the amount due and agreeing to pay a sum of Rs.10,00,00,000/- to the 1st plaintiff and a sum of Rs.6,00,00,000/- to the 2nd plaintiff with interest @ 6% p.a. thereon within a period of 24 months from 19.04.2015.

6. On a careful perusal of Ex.P.1, this court has found that the 1st defendant had executed Ex.P.1 acknowledging that he was due a sum of Rs.16,00,00,000/- as on 18.04.2015 and promising to pay the said amount with interest @ 6% p.a. This court has further found that the 1st defendant had also offered the suit schedule property as security for the payment due. However, Ex.P.1 was



admittedly not a registered document which was supposed to have registered compulsorily under the Registration Act, 1908. Therefore, this court is of the view that the said document cannot be admissible as evidence and as such the plaintiffs cannot rely upon the same to say that the 1st defendant had executed a deed of mortgage. However, taking into consideration the unconditional promise made by the 1st defendant to pay a sum of Rs.16,00,00,000/- with interest, to such extent, Ex.P.1 can be viewed as acknowledgment of liability by the 1st defendant. Ex.P.2 is the office copy of the legal notice caused by the plaintiffs through their counsel to the 1st defendant on 20.04.2017. Ex.P.3 is the photocopy of the postal acknowledgment card dated 22.04.2017 acknowledged by the 2nd defendant. Ex.P.4 is the returned postal cover addressed to the 1st defendant. Ex.P.5 is the office copy of the further legal notice issued by the plaintiffs on 22.06.2017. Ex.P.6 is the returned postal cover addressed to the defendants 1 and 2 dated 06.07.2017.

7. Considering the fact that evidence of the 2nd plaintiff has become unchallenged and the execution of Ex.P.1 by the 1st defendant was also not denied by the other side, being legal heirs of the deceased 1st defendant, the defendants 3 to 5 are liable to pay the suit amount from the estate of the 1st defendant at their hands. Accordingly, this court is of the view that the plaintiffs are entitled to a



decree for recovery of the suit amount with interest as prayed for.

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In the result, the suit is decreed as prayed for with costs as against the defendants 3 to 5. The plaintiffs are entitled to recover a sum of Rs.16,00,00,000/- (Rupees Sixteen Crore only) from the estate of the 1st defendant which is in the hands of the defendants 3 to 5 together with interest @ 6% p.a. from the date of institution of the suit till date of repayment. Time for payment six months. Charge is created in respect of the suit schedule property. The defendants are hereby restrained from selling, transferring and creating encumbrance over the suit property more fully described in the plaint schedule till such time the amounts due to the plaintiffs are discharged. The suit against 2nd defendant is dismissed.

Index : yes / no
Neutral Citation: yes / no
Speaking/Non Speaking order
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05..12..2023



List of witnesses examined on the side of the plaintiff:

P.W.1 – Jamal Mohiadeen (2nd plaintiff)

List of Witnesses examined on the side of the defendants:

Nil

List of documents marked on the side of the plaintiff:

Ex.P.1	19.04.2015	Photocopy of the Deed of Mortgage dated 19.04.2015
Ex.P.2	20.04.2017	Office copy of the legal notice issued by the plaintiffs through their counsel
Ex.P.3	22.04.2017	Photocopy of the acknowledgment card of the 2 nd defendant
Ex.P.4	24.04.2017	Original returned postal cover addressed to the 1 st defendant
Ex.P.5	22.06.2017	Office copy of the legal notice issued by the plaintiffs
Ex.P.6	06.07.2017	Original returned postal covers addressed to defendants 1 and 2

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

Nil

05..12..2023



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9

N.SATHISH KUMAR.J.,

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