IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

C.S. No.123 of 2022

Bharat Munoth ... Plaintiff

Vs.

Prince Property Management Services,
Represented by its Partner
Aswin Kumar Kamdar,
No.61, Ormes Road, 3rd Floor,
Kilpauk, Chennai – 600 010. ... Defendant

Civil Suit is filed under Order IV Rule 1 of Original Side Rules r/w. VII Rule 1 of CPC to pass a judgment and decree to direct the defendant to pay a sum of Rs.1,49,50,000/- together with interest at 18% p.a. thereon with monthly rests from the date of plaint till date of payment in full and to award costs of this suit.

For Plaintiff : Mr.T.Natarajan

For Defendant : Ex-parte

JUDGMENT

The Civil Suit has been filed to direct the defendant to pay a sum of Rs.1,49,50,000/- together with interest at 18% p.a. thereon from the date of plaint till date of payment in full.

2. The defendant is a partnership concern in which one Aswin Kumar Kamdar is a partner. The plaintiff knew the said Aswin Kumar for several years and during one meeting Aswin Kumar requested the plaintiff to lend him money to meet out his business commitments. Since Aswin Kumar had a good relationship with the plaintiff and the plaintiff assured that he would pay the interest @ 18% per annum, by posing trust upon Aswin Kumar, the plaintiff lent a sum of Rs.1,00,00,000/- on 27.05.2015 by issuing a cheque for Rs.50,000/- and transferring Rs.99,50,000/- by way of RTGS to the account of the defendant. Thereafter the defendant was paying interest on the sum borrowed by him by way of cheques on various dates. The defendant tendered a sum of Rs.4,05,000/- less TDS of Rs.45,000/- on 28.06.2019 being the interest @18% on the principal amount borrowed. Thereafter the defendant failed to make any further payments. As on 31.01.2022, a sum of Rs.1,46,50,000/- was due to be paid by the defendant. Since the defendant availed loan for business purposes, he is liable to pay the dues together with

interest at 18% per annum. The plaintiff had made repeated request to the defendant to pay the dues and intimated the defendant to settle the dues. Since the defendant failed to respond, without finding any other alternate, the plaintiff had filed this suit for recovery of money as claimed by him towards principal and interest along with cost.

3. After receiving summons, the defendant appeared through his counsel and later remained *ex parte* without filing any written statement and contesting the suit.

4. The plaintiff examined himself as P.W.1 and Exs.P1 to P3 were marked.

5. The learned counsel for the plaintiff submitted that the plaintiff had lent a sum of Rs.1,00,00,000/- to the defendant for his business purposes. The plaintiff produced Ex.P1- Passbook pertaining to account maintained at Federal Bank, Chennai and Bank of Baroda, Purasalwalkam to show that on 27.01.2015 he transferred a sum of Rs.50,000/- from his Federal Bank account and Rs.99,50,000/- from his Bank of Baroda account to the

defendant's Prince Property Management Services. Ex.P3 which is the books of account of the plaintiff shows that the payment of Rs.4,05,000/- was made on several occasions on which Rs.45,000/- was deducted towards TDS each time. The last of such payment was made on 28.06.2019. It was alleged by the plaintiff that it was the last payment made by the defendant. The learned counsel for the plaintiff further submitted that the defendant was regular in paying the interest all along but all of a sudden he stopped paying the dues after 28.06.2019. Ex.P3 is computerized statement of the accounts of defendant's Prince Property Management Services along with 65B Certificate.

6. The last payment of the defendant can only be construed as acknowledgment of the loan availed by the defendant from the plaintiff. Since the defendant did not repay the loan availed by him from the plaintiff, he had filed the suit for recovery of money.

7. Despite the defendant had appeared through his counsel, he did not file any written statement and contest the suit by stating that the above payments did not relate to any loan transactions as alleged by the plaintiff.

So the oral and documentary evidence produced by the plaintiff in support of the case remains unchanged and I find no reason to reject the same. Since the plaintiff has proved his claim, he is entitled to get a decree as prayed except at the rate in which the plaintiff claim interest.

8. The plaintiff had stated that the rate of interest agreed for the loan amount was @ 18% per annum and claimed that the contractual rate of interest should be allowed to be recovered. Even it is claimed by the plaintiff that the loan is granted for business purposes, the interest @ 18% per annum is higher than the prevailing interest for such loans given by banking institutions. Hence I feel that the plaintiff is entitled to get only a reasonable interest, which in my view should be at 12% per annum from the date of disbursing the loan (i.e.27.01.2015) till the date of filing the suit and thereafter at the rate of 9% per annum from the date of filing of suit till the date of decree and at the same rate of 9% per annum from the date of decree till the date of realization.

9. In the result, the Civil Suit is decreed for recovery of a principal

sum of Rs.1,00,00,000/- along with interest @12% per annum from the date of loan till the date of filing of the suit and @ 9% per annum from the date of plaint to the date of decree and @9% per annum from the date of decree till the date of realization along with costs, from the defendant.

12.09.2023

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APPENDIX

Witness examined:

P.W.1 – Bharat Munoth

Documents marked:

Exhibits	*Documents*
P1	Original Federal Bank Passbook bearing Account no.11000100079059
P2	Bank statement from Bank of Baroda dated 09.04.2015
P3	Printout from the books of Bharat Munoth along with certificate under Section 65 B of Indian Evidence Act.

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R.N.MANJULA, J.,

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