IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2023

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.S.(Comm.Div.)No.33 of 2022

R.Rajamanickam ...Plaintiff

Vs

1. P.Ramanathan
2. V.Venkatesh ... Defendants

Prayer: Plaint under Order IV Rule 1 of O.S.Rules read with Order XXXVII Rules 1 and 2 of C.P.C, praying to pass a judgement and decree against the first defendant.

(i) Directing the first defendant to pay a sum of Rs.8,85,00,236/- together with interest at 12% per annum on the principal amount of Rs.7,50,00,200/- from the date of plaint till the date of realisation.

(ii) Directing the first defendant to pay the costs of the suit.

For Plaintiff : Mr.A.Ramesh Kumar

For Defendants : M/s.C.P.Sivamohan

JUDGEMENT

The suit in question has been filed for recovery of a sum of Rs.8,85,00,236/- together with interest at the rate of 12% per annum on the principal sum of Rs 7,50,00,200/- from the date of the plaint till the date of realization.

2. The plaintiff has submitted the following in his pleadings:

- That he is a businessman and investor, investing in start-up companies.
- That the defendants had approached him in the year 2017 asking him to invest in their company, namely, Sun Sine Solution Private Limited, which was incorporated in the year 2011–2012.

- That the defendants represented to the plaintiff that they are the first Indian company to develop proprietary technology for micro-inverters and D.C.Optimisers (module-level power electronic devices) offering rooftop solar energy solutions.
- That the defendants are the promoter directors of the said company and had given out that they have multiple orders in hand and are unable to fulfil the orders as they do not have the requisite funds.
- That they had requested that the plaintiff to join the Company as a shareholder and invest monies in their venture.
- That on 25.01.2018, the plaintiff, defendants, and the company had entered into a Shareholders Agreement for investing a sum of Rs. 7,50,00,200 by subscribing to a private placement of 3,40,910 shares at a face value

of Rs. 10 with a premium of Rs. 210.

- That the plaintiff had signed the agreement believing the representation and assurances made by the defendants.

- That the plaintiff later came to learn that the defendants had inflated their book entries and had deliberately misled the plaintiff.

- That the plaintiff, on coming to know about this, had wanted to opt out as an investor, but the defendants had convinced and assured the plaintiff that he could be a part of the company and had offered 1/3rd shareholding of the company.

- That the plaintiff agreed to reconsider this decision, provided he had the option, that in the event of the company not performing, the defendants would buy back the plaintiff's share at a rate of Rs.200 per share.

- That as the defendants were not in a position to carry on major works like marketing, sales, design, delivery and after sales service of the products on account of the shortage of staffs, the plaintiff had agreed to invest further by buying another 18 % shares from the first defendant.

- That the terms were negotiated under two separate meetings held on 12.01.2018 and 24.01.2018, the minutes of which was recorded.

- That the product of the defendants had a rejection rate of almost 100% but the defendants had insisted that the same was only 2%.

- That the defendants' assurances that they had a confirmed order, particularly from the Gujarat Energy Development Agency (GEDA), was not an order but only an offer of an empanelment in the concern, and that they had no confirmed orders from GEDA.

- That the plaintiff had made an investment of Rs.2.99 crores till the end of March 2018.
- That by the end of November 2018 a sum of Rs.7,50,00,000/- was invested by the plaintiff by making periodic payments.
- That the plaintiff and the defendants had held a meeting on 24.01.2018 for formulating a concrete business plan for achieving contracts and sales.
- That the defendants have not complied with their agreement to achieve a turnover of Rs.50-75 crores for the financial year 2018-2019 with the defendants' contribution being not less than Rs.25 Crores and which turn-over was to be achieved by 31.12.2018.
- That as per Clause 13.1 of the Shareholders Agreement dated 25.01.2018, the plaintiff could disinvest his

shareholding at the price bought by him.

- That since the defendants had deliberately failed to achieve the agreed returns for the investment, the plaintiff had decided to exercise his option under Section 13.1 of the Shareholders Agreement, vide his letter dated 04.01.2020.

- That the defendants vide letter 07.01.2020 had agreed to enter into a Share Purchase Agreement to purchase the shares of the plaintiff on or before 30.06.2022.

- That the first defendant had executed a promissory note dated 31.01.2020 and also a post-dated cheque dated 30.06.2020 with the promise that in case of failure to pay the said amount on or before 30.06.2020, then the plaintiff could deposit the said cheque to realise the amounts due.

- That on the said date, the plaintiff had delivered the shares to the defendants which was duly acknowledged by the defendants and he was also informed that the loan amounts would be settled after verification of the accounts by the CFO and auditor.

- That since the defendants had failed to honor the commitment, the plaintiff had deposited the cheque and when the same was presented on 13.07.2020 to his banker, M/s.Axis Bank, Chennai 600 004, it was returned with an endorsement "funds insufficient".

- That on 24.07.2020, the plaintiff has issued a notice under Section 138 of the Negotiable Instruments Act and demanded that the defendants pay a sum of Rs. 7,50,00,200 within 15 days from the date of receipt of the notice, which the defendants had failed to honor.

Therefore, the plaintiff has come forward with the suit in question.

3. Although the defendants had entered appearance in this suit filed before the Commercial Division, they had failed to file their written statement within the requisite period of 120 days, and by orders dated 06.04.2023, their right to file the written statement stood forfeited. However, they were permitted to participate in the trial and make their submissions.

4. The plaintiff to prove their case, had examined P.W.1 and marked Exhibits P1 to P14.

5. Mr.A.Ramesh Kumar, learned counsel for the plaintiff, would submit that the parties had entered into a Share Holders Agreement dated 25.01.2018, marked as Ex.P3, in and by which the plaintiff had agreed to invest in the company by subscribing to 3,40,910 equity shares of the company, namely, Sun Sine Solution Private Limited, through a private placement at the rate of Rs. 10/-

each with a premium of Rs. 210 in all for a sum of Rs. 220/- per share. As per Clause 13.1 of the Shareholders Agreement, an exit option was given to the plaintiff in the event of the company's failure to achieve the desired business plan before 31.03.2019.

6. It is the further argument of the learned counsel for the plaintiff that since the company had failed to achieve the desired returns, the plaintiff had decided to exit from the company and by letter dated 04.01.2020-Ex.P4, the plaintiff had offered his shares to the defendants at the rate of Rs. 220 per share and also further 1000 shares, he had purchased from the first defendant. In the said letter, the plaintiff had therefore called upon the defendants to buy back the shares by paying a total sum of Rs. 7,52,20,200 on or before 20.01.2020 and further repay the loan amount of Rs.1,41,62,676/-. The said letter was acknowledged by the defendants under ExsP4 and P5 and the second defendant had apart

from acknowledging the receipt of the letter, also stated that the shares would be purchased by the first defendant, for which he would be a witness, and that as regards the loan component, the same would be verified by their Financial Officer and Auditor and settled at the earliest. He would further draw the attention of this Court to various correspondence received by the plaintiff from the first defendant acknowledging their liability to the plaintiff. He would also draw the attention of the Court to Ex.P8-Share Purchase Agreement dated 31.01.2020, where under the 1st defendant apart from acknowledging the earlier agreement and letters dated 04.01.2020 of the plaintiff, letters dated 07.01.2020 and 17.01.2020 of the defendants and the acknowledgement by the second defendant dated 04.01.2020 had agreed to purchase back the shares at Rs. 7,50,00,200/- on or before 30.06.2020.

7. Learned counsel for the plaintiff would submit that, as per the terms of Ex.P8, the plaintiff had handed over 3,40,910 shares to the defendants, which is acknowledged by the first defendant under Ex.P9. Since the cheque -Ex.P12 issued by the first defendant was dishonoured on presentation as evidenced by Ex.P14. The plaintiff had issued a legal notice dated 24.07.2020-Ex.P10 and under Ex.P11, the first defendant had issued a reply notice dated 01.09.2020 requesting the plaintiff to wait till September 2021 to repay the amounts. In this reply, for the first time, the first defendant has contended that he could repay the plaintiff only after the shares are sold to third parties. The plaintiff has filed Ex.P13-Deposit Slip to show that the deposit of the cheque-Ex.P12 into Axis Bank and Ex.P14 is the return Memo issued by the Bank stating that the cheque has been returned with an endorsement "Funds insufficient". The learned counsel would submit that, despite the above agreements and their undertakings to purchase the shares and repay the amount of Rs. 7,50,00,200/-, the defendants have observed their

commitment in their breach, therefore the plaintiff is entitled to a decree.

8.As already submitted, the defendants have not filed their written statement. However, Mr. C.P. Sivamohan, learned counsel for defendants 1 and 2, has made his oral submissions. The sum and substance of which is that the plaintiff has not filed the promissory notes about which they had mentioned in the plaint, and further, the plaintiff has not proved that the shares were transferred in the name of the first defendant except for showing the Share Purchase Agreement (Ex.P8). The learned counsel would also question the dishonor of the cheque, and it is his contention that the suit itself is pre-mature since the parties had agreed that the amounts would be paid after the first defendant had found investors. He would also submit that, in response to a question in cross-examination as to whether the shares still remain with the plaintiff, P.W.1 has answered in the affirmative. That apart, in response to questions Nos. 28 to 33 and in the cross-examination and to question No. 51 as to whether the transfer of shares had been effected with the Registrar of Companies, P.W.1 has placed the onus on the first defendant. The learned counsel would submit that all of this would go to show that there is no transfer of shares effected by the plaintiff. Therefore, he would submit that the plaintiff is not entitled to the decree.

8. The only issue that requires a finding from this Court is whether the plaintiff is entitled to the relief claimed by him.

9. The plaintiff has clearly proved that he has invested a sum of Rs. 7,50,00,200/- by purchasing 3,40,910 shares in the company promoted by the defendants at the rate of Rs.220 per share. The factum of the purchase is acknowledged, vide Ex.P3 Share Holders Agreement. Exercising his option under this Share Holders

Agreement, the plaintiff informed the defendants about his intent to opt out of the contract and offered the shares back to the defendants, under his letter-Ex.P4. Ex.P4 has been received by the first defendant and second defendant and the second defendant under Ex.P5 not only acknowledges the receipt but also endorsed that the purchase will be made by the first defendant. The first defendant thereafter had entered into a Share Purchase Agreement (ExP8) dated 31.01.2020 with the plaintiff. In this agreement, the first defendant has acknowledged all the earlier correspondence and agreement and thereafter had undertaken to purchase the shares and pay the entire amount on or before 30.06.2020. A post-dated cheque has also been issued, which is evidenced by Ex.P12. This cheque when presented has been returned with the endorsement "Funds insufficient", which is evidenced by Exs.P13 and P14. Even under Ex.P11-reply notice dated 01.09.2020, which is the response to the legal notice-Ex.P10 dated 24.07.2020, the defendants have acknowledged their liability to repay the money, but for the first time, the defendants appear to have taken a stand that the amount could be paid only after the third party has purchased the shares, which is not the terms of the agreement between the parties.

10.The arguments of the learned counsel for the defendants regarding there being no proof of the shares having been transferred and the cheques having bounced, in the light of the above-referred exhibits, are baseless. Therefore, considering the fact that the plaintiff has proved the investment and the failure on the part of the defendants to repay the same, the issue has to be decided in favour of the plaintiff and the suit has to necessarily be decreed. **Accordingly, suit is decreed with costs.**

10.08.2023

Index : Yes/No
Speaking order/non-speaking order

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APPENDIX

Witnesses :

Plaintiff :	
P.W.1	Mr.R.Rajamanickam

II. Exhibits :

Ex.P1	Original Memorandum of Understanding dated 12.01.2018
Ex.P2	Original minutes of Meeting held on 24.01.2018 dated 30.01.2018.
Ex.P3	Original Share Holders Agreement dated 25.01.2018.
Ex.P4	Original letter by the plaintiff to the first defendant acknowledged dated 04.01.2020.
Ex.P5	Original letter by the plaintiff to the second defendant acknowledged dated 04.01.2020.
Ex.P6	Original letter from the first defendant to buy back the shares and acknowledging the dues and execution of promissory note and cheque dated 07.01.2020.
Ex.P7	Original letter from the first defendant acknowledging buy back of shares and confirming promissory note and cheque dated 17.01.2020.
Ex.P8	Certified copy of the Share Purchase Agreement dated 31.01.2020.
Ex.P9	Original acknowledging receipt of original shares by first defendant dated 31.01.2020.
Ex.P10	Office copy of the legal notice dated 24.07.2020.
Ex.P11	Copy of the reply notice dated 01.09.2020.

Ex.P12	Photocopy of the cheque dated 30.06.2020 (Separate affidavit is filed) (subject to objection)
Ex.P13	Photocopy of the Deposit Slip dated 10.7.2020 (Separate affidavit is filed) (subject to objection)
Ex.P14	Photocopy of the return Memo dated 14.07.2020 (Separate affidavit is filed) (subject to objection)

List of witness examined on the side of the Defendants:- -NIL
List of documents marked on the side of the Defendants:- -NIL

P.T.ASHA, J.,

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