IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15.02.2023
Pronounced on	02.06.2023

CORAM

THE HON'BLE MR.JUSTICE **C.SARAVANAN**

C.S(COMM.DIV.)No.95 of 2019

1.W.S.Sethu Narayana Babu (Deceased)
2.W.S.Nalini
3.W.S.Vijayanand
4.P.V.Anitha Srinath
5.W.S.Vinitha
(Plaintiffs 2 to 5 are brought on record
as legal heirs of the deceased sole
plaintiff as per order dated 06.10.2020
in A.No.3624 of 2021) ... Plaintiffs

vs.

1.S.Sathindar
2.K.R.Seethapathy
3.K.Nirmala Educational Trust,
Represented by its Managing Trustee,
K.r.Seethapathy

4.M/s.Vijayalakshmi & Co.,
Rep.by its Proprietrix S.Vijayalakshmi

5.M/s.Sethmal & Co.,
Rep.by its Proprietrix W.S.Malini Sethu,

6.M/s.Sree Corporation,
Rep.by its Proprietrix N.S.Swetha

7.N.Jayasree Rao .. Defendants

PRAYER : Civil Suit filed under Order IV Rule 1 O.S.Rules read with Order VII Rule 1 of CPC and Section 7 of the Commercial Courts Act, 2015 along with Sections 27, 28, 29, 134 & 135 of the Trade Marks Act, 1999 praying to pass :

a. For a direction directing the Defendants 1 to 3 jointly and severally to pay the Plaintiffs the sum of Rs.7,76,85,167/- (Rupees Seven Crores Seventy Six Lakhs 8thy Five Thousand One Hundred and Sixty Seven only), which is the sum total of the aggregate Principal amount of Rs.2,75,00,000/- due under the Promissory Notes, the aggregate Interest amount due of Rs.3,39,68,500/- accrued till 09.12.2018 on the said Principal amount and the overdue interest of Rs.1,62,16,667/- calculated till 09.12.2018 @18% per annum on the above aggregate interest amount together with interest @24% per annum on the said Principal amount of Rs.2,75,00,000/- from the date of Plaint till date of repayment,

b. Costs of the suit; and

c. Pass such or further orders.

For Plaintiffs	:	Mr.C.P.Sivamohan
For D1 to D3	:	Mr.T.A.Srinivasan
For D4 to D7	:	No Appearance

JUDGMENT

The present civil suit has been filed by the plaintiff for the following relief:

a.For a direction directing the Defendants 1 to 3 jointly and severally to pay the Plaintiffs the sum of Rs.7,76,85,167/- (Rupees Seven Crores Seventy Six Lakhs 8thy Five Thousand One Hundred and Sixty Seven only), which is the sum total of the aggregate Principal amount of Rs.2,75,00,000/- due under the Promissory Notes, the aggregate Interest amount due of Rs.3,39,68,500/- accrued till 09.12.2018 on the said Principal amount and the overdue interest of Rs.1,62,16,667/- calculated till 09.12.2018 @18% per annum on the above aggregate interest amount together with interest @24% per annum on the said Principal amount of Rs.2,75,00,000/- from the date of Plaint till date of repayment,

b. Costs of the suit; and

c. Pass such or further orders, as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus justice.

2. The deceased plaintiff Mr. Sethunarayana Babu had filed the present suit on 21.12.2018 to recover a sum of Rs.7,76,85,167/- from the 1st to the 3rd defendant in respect of the 14 different Promissory Notes.

3. These 14 promissory notes were allegedly executed by the 1st defendant in favour of the deceased plaintiff, proprietary concern of the deceased plaintiff and in favour of the respective proprietary concerns of the 4th defendant to 7th defendant separately.

4. Few Promissory Notes are also alleged to have been executed by the 1st Defendant and the 2nd defendant jointly in favour a proprietary concern of the deceased plaintiff. Details of 14 promissory notes based on which the said claim is made are as under:-

TABLE 1:

Name of Proprietary concern	Exhibit	Date	Amount	Interest	Date of Renewal	Renewal Interest
M/s Vijayalakshmi & Co – 4th Defendant	EX.P.25	01.01.2013 (NW)	RS.20,00,000/-	18%	29.12.2015 (NW)	24%
M/s Vijayalakshmi & Co – 4th Defendant	EX.P.32	01.04.2013 (NW)	RS.6,00,000/-	12%	29.12.2015 (NW)	24%
M/s Sethmal& Co. – 5th defendant	EX.P.26	01.01.2013 (NW)	RS.10,00,000/-	18%	29.12.2015 (NW)	24%
M/s Sethmal& Co. – 5th defendant	Ex.P.33	01.04.2013 (NW)	Rs.3,00,000/-	12%	29.12.2015 (NW)	24%
M/s Sree Corporation–6th Defendant	EX.P.27	01.01.2013 (NW)	RS.10,00,000/-	12%	29.12.2015 (NW)	24%
M/s Sree Corporation –6th Defendant	EX.P.28	01.01.2013 (NW)	RS.10,00,000/-	18%	29.12.2015 (NW)	24%
M/s Sree Corporation –6th Defendant	EX.P.34	01.04.2013 (NW)	RS.6,00,000/-	12%	29.12.2015 (NW)	24%

Name of Proprietary concern	Exhibit	Date	Amount	Interest	Date of Renewal	Renewal Interest
M/s Sree Corporation –6th Defendant	EX.P.35	01.04.2015 (NW)	RS.31,50,000/-	24%	29.12.2015 (NW)	24%
M/S PARTHA & CO of Original Plaintiff	EX.P.23	01.01.2013 (NW)	RS.25,00,000/-	18%	29.12.2015 (NW)	24%
M/S PARTHA & CO of Original Plaintiff	EX.P.24	01.01.2013 (NW)	RS.25,00,000/-	12%	29.12.2015 (NW)	24%
M/S PARTHA & CO of Original Plaintiff	EX.P.30	01.04.2013 (NW)	RS.11,00,000/-	12%	29.12.2015 (NW)	24%
M/S PARTHA &CO(*)	EX.P.22	01.01.2013 (NW)	RS.50,00,000/-	15%	29.12.2015 (NW)	24%
M/S PARTHA &CO(*)	EX.P.31	01.04.2013 (NW)	RS.7,50,000/-	12%	29.12.2015 (NW)	24%
In favour of Original Plaintiff (Since deceased)	EX.P.29	01.01.2013 (NW)	RS.60,00,000/-	24%	29.12.2015 (NW)	24%
			Rs.2,75,00,000/-		29.12.2015 (NW)	24%

NOTE:

- (*) – Promissory Notes allegedly executed by 1st and 2nd defendants through bear the signature of the same person twice.
- **NW – Not Witnessed;**
- **W – Witnessed.**

5. The suit claim is made on the principal amount of Rs.2,75,00,000/- together with interest of Rs.3,39,68,500/- @ 24% till 09.12.2018 and towards over-due interest of Rs.1.62,67,667/- calculated at 18% till 09.12.2018as detailed below:-

TABLE 2:

Aggregate Principal Amount(Rs.)	Aggregate Interest Amount. (Rs.)	Overdue Interest Amount(Rs.)	Grand Total (Rs.)
2,75,00,000/-	3,39.68,500/-	1,62,16,667/-	7,76,85,167/-

6. After the plaint was filed, the 1st defendant filed written statement. The written statement of the 1st defendant has been adopted by the 2nd and 3rd defendants. The 2nd defendant is the father of the 1st defendant. The 1st and the 2nd defendants are the trustees of the 3rd defendant.

7. Following issues were framed for Trial in this suit: -

i. Whether the defendants 1 to 3 are jointly and severally liable to pay the suit amount to the plaintiff based on the Promissory Notes and cheques duly assigned and made-over in favour of the plaintiff by the defendants 4 to 7, besides part of the suit claim amount directly payable to the plaintiff under a Negotiable Instruments Act?

ii. Whether the suit claim is barred by the Law of Limitation?

iii. Whether the 3rd defendant is a proper and necessary party for effective adjudication?

iv. Whether the plaintiff is entitled to the suit claim with interest as prayed for?

v. Whether the suit is maintainable in the absence of leave to sue to club the cause of action against the defendants 4 to 7?

vi. Whether the made-over of the Promissory Notes by the defendants 4, 5, 6 and 7 in favour of the plaintiff is valid?

vii. To what other relief the plaintiff is entitled ?

8. The 1^{st} and 2^{nd} defendants appear to be the trustee of the 3^{rd} defendant. The 1^{st} and 2^{nd} defendants had allegedly borrowed amounts from the deceased plaintiff namely, Mr.W.S.Sethunarayana Babu and 4^{th} defendant to 7^{th} defendants for the 3^{rd} defendant Trust.

9. The liability in the respective 14 promissory notes are traceable from the year 2006 which were allegedly renewed by the 1^{st}/ 2^{nd} defendants from time to time and later by issuing a fresh Promissory Note in favour of the deceased plaintiff and rest of the 4^{th} to 7^{th} defendant as detailed above in Table-1.

10. The original plaintiff Mr.W.S.Sethunarayana Babu died on

13.03.2021 after the trial commenced. In fact, the original plaintiff late Mr.W.S.Sethunarayana Babu had also tendered evidence and was partly cross-examined on 27.06.2019. Following 43 Exhibits were marked on behalf of the plaintiff detailed as under:-

TABLE 3:

EXHIBIT	DATE	DESCRIPTION OF THE DOCUMENTS	PARTIES TO THE DOCUMENT
Ex.P.1	07.07.2006	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of 4th Defendant renewed on 05.07.2009 & 01.07.2012
Ex.P.2	14.08.2006	Promissory Note for Rs.5,00,000/-	Executed by the 1st Defendant in favour of Partha & Co. Renewed 10.08.2009 & 05.08.2012
Ex.P.3	13.11.2006	Promissory Note for Rs.5,00,000/-	Executed by the 1st Defendant in favour of 4th Defendant renewed on 10.11.2009 & 05.11.2012
Ex.P.4	13.11.2006	Promissory Note for Rs.5,00,000/-	Executed by the 1st Defendant in favour of 5th Defendant renewed on 10.11.2009 & 05.11.2012
Ex.P.5	21.12.2006	Promissory Note for Rs.5,00,000/-	Executed by the 1st Defendant in favour of 4th Defendant renewed on renewed on 15.12.2009 & 10.12.2012
Ex.P.6	17.07.2007	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of 6th Defendant renewed on 10.07.2010
Ex.P.7	27.08.2007	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of Plaintiff renewed on 01.07.2010
Ex.P.8	11.10.2007	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of 6th Defendant renewed on 05.10.2010

EXHIBIT	DATE	DESCRIPTION OF THE DOCUMENTS	PARTIES TO THE DOCUMENT
Ex.P.9	01.04.2008	Promissory Note for Rs.5,00,000/-	Executed by the 1st Defendant in favour of 5th Defendant renewed on 25.03.2011
Ex.P.10	01.04.2008	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of Partha & Co. Renewed on 25.03.2011
Ex.P.11	21.09.2008	Promissory Note for Rs.15,00,000/-	Executed by the 1st Defendant in favour of Partha & Co. Renewed on 15.09.2011
Ex.P.12	05.10.2008	Promissory Note for Rs.5,00,000/-	Executed by the 1st Defendant in favour of 7th Defendant renewed 01.07.2010
Ex.P.13	31.01.2009	Promissory Note for Rs.5,00,000/-	Executed by the 1st Defendant in favour of Plaintiff renewed on 01.07.2010
Ex.P.14	12.05.2009	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of Plaintiff renewed on 01.07.2010
Ex.P.15	07.08.2009	Promissory Note for Rs.5,00,000/-	Executed by the 1st Defendant in favour of Plaintiff renewed on 01.07.2010
Ex.P.16	05.10.2009	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of Partha& Co. Renewed on 01.10.2012
Ex.P.17	24.12.2009	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of Plaintiff renewed on 01.07.2010
Ex.P.18	25.01.2010	Promissory Note for Rs.5,00,000/-	Executed by the 1st Defendant in favour of Plaintiff renewed on 01.07.2010
Ex.P.19	15.09.2011	Promissory Note for Rs.50,00,000/-	Executed by the 1st & 2nd Defendants in favour of Partha& Co.
Ex.P.20	01.07.2012	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of the plaintiff
x.P.21	31.08.2012	Promissory Note for	Executed by the 1st Defendant

EXHIBIT	DATE	DESCRIPTION OF THE DOCUMENTS	PARTIES TO THE DOCUMENT
		Rs.10,00,000/-	in favour of Partha& Co
Ex.P.22	01.01.2013	Promissory Note for Rs.50,00,000/-	Executed by the 1st Defendant in favour of Partha& Co. Renewed on 29.12.2015
Ex.P.23	01.01.2013	Promissory Note for Rs.25,00,000/-	Executed by the 1st Defendant in favour of Partha& Co. Renewed on 29.12.2015
Ex.P.24	01.01.2013	Promissory Note for Rs.25,00,000/-	Executed by the 1st Defendant in favour of Partha& Co. Renewed on 29.12.2015
Ex.P.25	01.01.2013 01.01.2013	Promissory Note for Rs.20,00,000/-	Executed by the 1st Defendant in favour of 4th Defendant renewed on 29.12.2015
Ex.P.26	01.01.2013	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of 5th Defendant renewed on 29.12.2015
Ex.P.27	01.01.2013	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of 6th Defendant renewed on 29.12.2015
Ex.P.28	01.01.2013	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of 6th Defendant renewed on 29.12.2015
Ex.P.29	01.01.2013	Promissory Note for Rs.60,00,000/-	Executed by the 1st Defendant in favour of Plaintiff renewed on 29.12.2015
Ex.P.30	01.04.2013	Promissory Note for Rs.11,00,000/-	Executed by the 1st Defendant in favour of Partha& Co. Renewed on 29.12.2015
Ex.P.31	01.04.2013	Promissory Note for Rs.7,50,000/-	Executed by the 1st Defendant in favour of Partha& Co. Renewed on 29.12.2015
Ex.P.32	01.04.2013	Promissory Note for Rs.6,00,000/-	Executed by the 1st Defendant in favour of 4th Defendant renewed on 29.12.2015

EXHIBIT	DATE	DESCRIPTION OF THE DOCUMENTS	PARTIES TO THE DOCUMENT
Ex.P.33	01.04.2013	Promissory Note for Rs.3,00,000/-	Executed by the 1st Defendant in favour of 5th Defendant renewed on 29.12.2015
Ex.P.34	01.04.2013	Promissory Note for Rs.6,00,000/-	Executed by the Executed by the 1st Defendant in favour of 6th Defendant renewed on 29.12.2015
Ex.P.35	01.04.2015	Promissory Note for Rs.31,50,000/-	Executed by the 1st Defendant in favour of 6th Defendant renewed on 29.12.2015
Ex.P.36	22.11.2017	Debt Recovery certificate No.564/2014 issued by Debts Recovery Tribunal-11, Chennai	
Ex.P.37	22.11.2018	Letter of Intimation of Assignment	Issued by W.S. Sethu Narayana Babu to Partha& Co. With Acknowledgment card
Ex.P.38	22.11.2018	Letter of Intimation of Assignment	Issued by the 4th Defendant to the 1st Defendant with Acknowledgment Card
Ex.P.39	22.11.2018	Letter of Intimation of Assignment	Issued by the 5th Defendant to the 1st Defendant with Acknowledgment Card
Ex.P.40	22.11.2018	Letter of Intimation of Assignment	Issued by the 6th Defendant to the 1st Defendant with Acknowledgment Card
Ex.P.41	10.12.2018	Legal Notice	Issued by W.S. Sethu Narayana Babu to Partha& Co. With Acknowledgment card
Ex.P.42		Calculation Sheet/Statement of Account of the 14 consolidated Pro- notes	
Ex.P.43		Concise Statement of Accounts as on 09.12.2018	

11. Thereafter, the legal representatives of late Mr.W.S.Sethunarayana Babu were impleaded and were arrayed as 1st to 4th plaintiffs.

12. Incidentally, the 1st plaintiff is the wife of the original plaintiff late Mr.W.S.Sethunarayana Babu. The 1st plaintiff is stated to be the proprietor of M/s.Sethmal & Co., 5th defendant.

13. The 2nd defendant is the son of late Mr.W.S.Sethunarayana Babu and the 1st plaintiff. After the death of the original plaintiff Mr.W.S.Sethunarayana Babu on 13.03.202, his son Mr.W.S.Vijayanand (2nd plaintiff) deposed evidence on behalf of the plaintiff as P.W.2.

14. The 3rd and 4th plaintiffs are the daughters of the late Mr.W.S.Sethu Narayana Babu and the 1st plaintiff. The daughter of 3rd plaintiff is stated to be the proprietrix of the 6th defendant proprietary concern.

15. It appears that the original plaintiff late Mr.W.S.Sethu Narayana Babu and the 1st and the 2nd defendants have known other are related to each other.

16. The 1st defendant is the brother-in-law of one P.Sudhakar. The said Sudhakar is said to be the nephew of the original plaintiff late Mr.W.S.Sethu Narayana Babu.

17. On behalf of the defendant Nos.1 to 3, the 1st defendant tendered evidence as DW1. No exhibits were marked on behalf of these defendants.

18.Court record also indicates that the suit summons were served on defendant Nos.4-7 and therefore their names were directed to be printed in the cause list vide Order 18.6.20019. However, they failed to appear.

19. Defendant Nos.5 and 6 were set *exparte* on 20.62019. Defendant Nos.4-7 also did not file written statement. Since defendant Nos.4-7 did not file any written statement within 30 days of service of

suit summons, they forfeited their right to file written statement under the provision of the Order VIII of CPC as amended for the purpose of Commercial Courts Act,2015.No relief was also sought against defendant Nos.4-7.

20. 14 Promissory Notes in Table 1 based on which the suit claim has been made draw support from21 other promissory notes which were marked as exhibits detailed as in Table-3. Thus, in all 35 promissory notes were marked as exhibits.

21. Since there are 35 Promissory Notes which are inter connected, I propose to deal with 14 Promissory Notes in Table-1/3 with the other 21 promissory notes in Table 3which according to the deceased plaintiff late Mr.W.S.Sethu Narayana Babu remained unpaid and have given right to the present suit.

22. The case of the deceased plaintiff late Mr.W.S.Sethu Narayana Babu is that 14 Promissory Notes in Table-1 were executed by the 1stdefendant in favour of the deceased plaintiff late Mr.W.S.Sethu

Narayana Babu, his proprietary concerns and in favour of 4th to 7th defendants' proprietory concerns and by the 1st & 2nd defendant jointly in favour of the proprietary concern of deceased plaintiff late Mr.W.S.Sethu Narayana Babu, were substituted with 14 promissory notes as in Table -1 . The further case of the deceased plaintiff late Mr.W.S.Sethu Narayana Babu, was the 4th to 7th defendant assigned the rights in 14 promissory notes as in Table-1 in favour of the deceased plaintiff late Mr.W.S.Sethu Narayana Babu vide Exs.P.37 to P.40.

23. Barring Ex.P.29 - Promissory Notes dated 01.01.2013, all the Promissory Notes in Table-1 are in the name of proprietary concerns of which the deceased plaintiff and rest of the defendant Nos.4, 5, 6 and 7 defendants are the proprietors.

24. No documents have been filed to substantiate that defendant Nos.4, 5, 6 and 7 are the proprietors of the proprietary concerns named in the exhibits in Table-1.

Promissory Notes Allegedly Executed By 1st Defendant in favour of M/s.Vijayalakshmi & Co, 4th Defendant for Rs. 26,00,000/-:

25. The 4th defendant is M/s Vijayalakshmi & Co. It appears to be a Proprietary concern of one S. VijayalakshmiW/o R.G. Sivakumar.

26. The details of the subject Promissory Notes based on which the plaintiff has sought to establish the case are covered by the following five exhibits as detailed below: -

TABLE 4:

EXHIBIT	DATED	INTEREST	AMOUNT	DATE OF 1st RENEWAL	DATE OF 2ND RENEWAL
EX. P.1	07.07.2006 (W)	18%	RS.10,00,000	05.07.2009(NW)	01.07 2012(NW)
EX. P.3	13.11.2006 (W)	24%	RS.5,00,000	10.11.2009(NW)	05.11.2012(NW)
EX. P.5	21.12.2006(W)	24%	RS.5,00,000	15.12.2009(NW)	10.12.2012(NW)
			RS.20,00,000/		

NOTE:

· **NW – Not Witnessed;**

· **W – Witnessed.**

TABLE 5:

EXHIBIT	DATED	AMOUNT `	INTEREST	DATE OF RENEWAL	RENEWAL INTEREST	ASSIGNMENT MADE OVER BY EX P 38
EX. P.25	01.01.2013(NW)	RS.20,00,000	18%	29.12.2015(NW)	24%	22.11.2018
EX. P.32	01.04.2013(W)	RS.6,00,000	12%	29.12.2015(NW)	24%	22.11.2018

NOTE:

· **NW – Not Witnessed;**

· **W – Witnessed.**

27. The alleged liability in Promissory Notes marked as Exhibits in Table-4 were substituted allegedly by Promissory Notes marked as Exhibits in Table 5 as below:-

TABLE 6:

TABLE 4		TABLE 5	
EXHIBIT	AMOUNT	EXHIBIT	AMOUNT
EX P1	10,00,000	EX P25	20,00,000
EX P3	5,00,000		
EX P5	**5,00,000**		

28. The case of the plaintiff, in the plaint is that in lieu of the liability in Ex.P1, Ex.P3 and Ex.P5 Promissory notes, the 1st defendant renewed the liability by executing Ex.P25 dated 01.01.2013 for a consolidated principal amount of Rs.20,00,000/- in favour of the 4th defendant.

29. It is the case of the Plaintiff in Ex.P25 Promissory Note, the. 1st defendant promised to repay the said sum together with interest @ 18% per annum. It is further case of the plaintiff that Ex.P25 Promissory Note dated 01.01.2013 was renewed on 29.12.2015 whereby the 1st defendant agreed to pay the said sum of Rs.20,00,000/- together with interest @ 24% per annum with effect from 01.10.2013.

30. The further case of Plaintiffs is that the 1st defendant had also executed Ex.P32 Promissory Note dated 01.04.2013 in favour of the 4th defendant for a sum of Rs.6,00,000/- and promised to repay the same together with interest @ 12% per annum.

31. The aforesaid sum of Rs.6,00,000/-was allegedly towards balance interest remaining unpaid on account of the capitalization of interest accrued on the aforesaid Principal sum of Rs.20,00,000/- till 31.03.2013.

32. According to the Plaintiffs, Ex.P32 - Promissory Note dated 01.04.2013 was also duly renewed on 29.12.2015, whereby the 1st defendant agreed to pay the said sum together with interest @ 24% per annum with effect from 01.10.2013.

33. It is further case of Plaintiffs that the 1st defendant had paid interest in respect of the aforesaid Ex.P.25 dated 01.01.2013 and Ex.P.32 Promissory Note dated 01.04.2013 for Rs.20,00,000/- and Rs.6,00,000/- only upto 30.09.2013.

34. The plaintiffs, further case is that in the above circumstances, by Ex.P.38 Letter of Intimation of Assignment was delivered on 22.11.2018 and thus the 4th defendant assigned/made over the right in favour of the Plaintiff in Ex.P.25 and Ex.P.32 - Promissory Notes executed by the 1st defendant in favour of the 4th defendant.

35. Ex.P.38 - Assignment/Made Over letter dated 22.11.2018 was also duly intimated to the 1st defendant and the receipt of which was

duly acknowledged by the 1st defendant. Yet the 1st defendant failed to pay the amount.

36. The 1st defendant in the written statement has denied the allegations/averments in para 4, 5, 6 & 7 of plaint. It is the case of the 1st Defendant, that the 1st defendant approached the original plaintiff late Mr.W.S.Sethunarayana Babu in the year 2006 and requested for a hand loan to meet some financial exigencies and pursuant to his request, the original plaintiff late Mr.W.S.Sethunarayana Babu asked the 1st defendant to come to his office at Anna Nagar East.

37. Since the amount was high, the original plaintiff late Mr.W.S.Sethunarayana Babu agreed to pay the amount in part. It is further case of the 1st defendant that he went to the office of the original plaintiff late Mr.W.S.Sethunarayana Babu handed over the three post-dated Cheques dated 7.7.2006, 13.11.2006 and 21.12.006 and advised the 1st defendant to deposit the cheques on the specified dates.

38. It is further case of the 1st defendant that the plaintiff obtained signatures in blank promissory Notes and filled up the amounts and claimed that he would fill the necessary particulars later when he was free.

39. Thus, according to the 1st defendant, the 1st defendant signed the Promissory Notes wherever the original plaintiff late Mr.W.S.Sethunarayana Babu sought for signature. It is the further case of the 1st defendant that the original plaintiff also secured blank cheques for the loan amount towards security for repayment and filled-up the particulars of the blank cheques on the rear side of every promissory note leaving some space between two signatures.

40. It is further case of the 1st defendant that, when the 1st defendant questioned about the signatures obtained on the rear side of the promissory notes, the original plaintiff convinced that it was only a formality.

41. It is submitted that the 1st defendant paid the interest regularly as agreed by him for the above promissory notes. The 1st defendant has specifically denied that he renewed Ex.P.25 Promissory Note dated 1.1.2013 and/or renewed Ex.P.32 Promissory Note dated 29.12.2015.

42. The 1st defendant has categorically stated that he has neither signed renewal of the Promissory Note nor agreed for the change of interest at 24% as claimed by the Plaintiff. It is further case of the 1st defendant that the Plaintiff inserted few words by exploiting the 1st defendant's signature in promissory notes signed by him while availing loans to his whims and convenience.

43. The 1st defendant has denied having executed Ex.P.32 Promissory Note dated 01.04.2013 and renewal of the same on 29.12.2015 as alleged in the plaint. The allegation that the 1st defendant agreed to pay interest at 24% per annum is denied as absolutely false.

44. The 1st defendant has further stated that he never executed Ex.P32 Promissory Note dated 01.04.2013 for Rs.6,00,000/- as alleged by the Plaintiff or renewed the aforesaid promissory notes periodically or agreed to pay interest 24% per annum. The 1st defendant has stated that the plaintiff has filed this vexatious suit against the defendant Nos.1 to 3 on false and frivolous grounds with an intention to fill his coffers.

45. With regard to the allegations made in para 17 of the plaint, it is submitted that the 1st defendant had no transaction with the 4th defendant. The purported Assignment of the alleged debt by the 4th defendant in favour of the plaintiff was not true and was an attempt to show as if the Assignment was for consideration.

46. The 1st defendant had put the original plaintiff late Mr.W.S.Sethunarayana Babu to put to strict proof of the same. It is stated that the original plaintiff late Mr.W.S.Sethunarayana Babu had not produced any evidence to show that consideration was passed under the promissory notes.

47. It is the further the case of the 1st defendant that plaintiff and the 4th , 5th and 6th and 7th defendants were money lenders who did not possess valid money lending licence under Tamil Nadu Money Lenders Act, 1957 read with Tamil Nadu Money Lender Rules, 1959.

48. The 4th defendant who have assigned the rights in the Promissory Note vide EX P25 dated 01.01.2013 and EX P32 dated 01.04.2013 in favour of the Original Plaintiff. It is submitted that the alleged Assignment vide EX P38 dated 22.11.2018 is not valid, and the Assignment is purposely made to circumvent the provisions of law.

49. It is submitted that the deceased plaintiff was not a holder in due course, because the promissory notes relied on by the plaintiffs are not supported by a consideration and the Assignment vide Ex.P38 dated 22.11.2018 is both false and not attested.

50. It is submitted that the Plaintiff ought to have established that the assignment was not made after passing proper consideration for the Promissory Note.

51. A look at the promissory notes indicates that the subject promissory notes are not in the name of an individual i.e. Mrs.S.Vijayalakshmi.

52. The promissory notes are in the name of M/s Vijayalakshmi & Co. of which Mrs.S.Vijayalakshmi is stated to be the proprietrix. No records have been filed to substantiate that Mrs.S. Vijayalakshmi was carrying on any business as a proprietrix of M/s Vijayalakshmi & Co or was registered as a money lender under the provisions of the Tamil Nadu Money-Lenders Act, 1958 read with the rules made thereunder.

Promissory Note allegedly executed By 1st defendant in favour of 5th defendant for Rs. 13,00,000/-.

53. The 5th defendant is M/s Sethmal & Co. It appears to be a Proprietary concern of Mrs.W.S. Malini Sethu W/o Late Mr.W.S.Sethunarayana Babu, the original plaintiff.

54. Here also the promissory notes are not in the name of Mrs.W.S.Malini Sethu. They are in the name of M/s Sethmal & Co. alone.

55. The details of the subject Promissory Notes based on which the plaintiff has sought to establish the case are covered by the following four exhibits as detailed below: -

TABLE 7:

EXHIBIT	DATED	INTEREST	AMOUNT `	DATE OF 1st RENEWAL	DATE OF 2ND RENEWAL
EX. P.4	13.11.2006**(W)**	24%	RS.5,00,000	10.11.2009(NW)	05.11.2012(NW)
EX. P.9	01.04.2008(W)	18%	RS.5,00,000	25.03.2011(NW)	
			RS.10,00,000/-		

NOTE:

- **NW – Not Witnessed;**
- **W – Witnessed.**

TABLE 8:

EXHIBIT	DATED	AMOUNT `	INTEREST	DATE OF RENEWAL	RENEWAL INTEREST	ASSIGNMENT MADE OVER BY EX P 39
EX. P.26	01.01.2013(NW)	RS.20,00,000	18%	29.12.2015(NW)	24%	22.11.2018
EX. P.33	01.04.2013(NW)	RS.6,00,000	12%	29.12.2015(NW)	24%	22.11.2018

NOTE:

· **NW – Not Witnessed;**
· **W – Witnessed.**

56. The alleged liability in Promissory Notes marked as Exhibits in Table 7 were substituted allegedly by Promissory Notes marked as Exhibits in Table 8 as below:

TABLE 9:

TABLE 7		TABLE 8	
EXHIBIT	AMOUNT	EXHIBIT	AMOUNT
EX. P.4	5,00,000	EX. P.26	10,00,000
EX. P.9	5,00,000	EX. P.33	3,00,000
EX P5	**5,00,000**		

57. It is the case of the plaintiff, in the plaint, that in lieu of the two Promissory Notes in Table-7 Ex.P.4 dated 13.11.2006 and Ex.P.9 dated 01.04.2008 were executed by the 1st defendant, which were periodically renewed to pay interest. A consolidated Promissory Note vide Ex.P.26 dated 01.01.2013 for the Principal sum of Rs.10,00,000/-

58. The Ex.P.26 Promissory Note dated 01.01.2013 is stated to have been duly renewed by the 1st defendant on 29.12.2015 agreeing to pay the said sum of Rs.10,00,000/- together with interest @ 24% per annum with effect from 01.10.2013.

59. The Plaintiffs stated that the 1st defendant had also executed Ex.P.33 Promissory Note dated 01.04.2013 in favour of the 5th defendant for a sum of Rs.3,00,000/- being the interest capitalized on the aforesaid principal sum of Rs.10,00,000/- till 31.03.2013. Ex.P.33 Promissory Note dated 01.04.2013 is said to have been duly renewed on 29.12.2015 by the 1st defendant agreeing to pay the said sum together with interest @ 24% per annum with effect from 01.10.2013.

60. The Plaintiffs stated that the 1st Defendant had paid interest in respect of the aforesaid two Promissory Notes for Rs. 10,00,000/- and Rs.3,00,000/- only upto 30.09.2013 and thereafter failed to repay the same.

61. The Plaintiffs stated that on 22.11.2018, the 5th defendant assigned/made over Ex.P.26 – Promissory Note dated Ex.P.33 Promissory Note dated 01.04.2013 in favour of the Plaintiff, executed by the1st defendant in favour of the 5th defendants.

62. The said Assignment/made over were also duly intimated to the 1st defendant vide Ex.P.39 letter dated 22.11.2018 and the receipt of which were duly acknowledged.

63. The defence of the 1st defendant in the written statement is that the allegations in para 8, 9, 10 & 11 of the plaint are untrue and that the 1st defendant was unacquainted with the 5th defendant and at no point of time had availed any loan from the 5th defendant as was alleged in the Plaint.

64. It is further stated that the plaintiff obtained signatures in the blank promissory notes in the year 2006 and when the 1st defendant questioned as to why he was obtaining signatures in numerous promissory notes when a single promissory note was sufficient for a transaction, the Plaintiff convinced that he would split the amounts into small denominations in the Promissory Notes to evade the Income Tax.

65. It is the further case of the defendants that the Plaintiff stated that they have to be careful after the Introduction of attaching the PAN number with AADHAR and if caught by the Income Tax Authorities they would be in deep trouble and have to face wrath of the Income Tax Officials.

66. The 1st defendant has categorically denied that he renewed Ex.P.4 Promissory Note dated 13.11.2006 and Ex.P.9 Promissory Note dated 01.04.2008 or execution of Ex.P.26 – Promissory Note dated 01.01.2013 and Ex.P.33 – Promissory Note dated 01.04.2013 in favour of the 5th Defendant or agreed to repay the same with interest at 12% per annum and later agreed to repay the amount with interest at 24% p.m. from 1.10.2013. The 1st defendant has put the plaintiff to strict proof of the allegation.

67. It is submitted that the plaintiff deceived the 1st defendant and filled lumpsums amount in every Promissory Note and kept the remaining blank Promissory Notes to claim that it was only towards payment of interest vide Ex.P.33 Promissory Note dated 01.04.2013. The

renewal endorsement made on the backside of the Promissory Note has not sufficient to take for renewal of liabilities.

68. With regard to the allegations made in para 17 of the plaint, it is submitted that the 1st defendant had no transaction with the 5th defendant and the Assignment of the alleged debt by the 5th defendant in favour of the plaintiff was not true that it was an attempt to show that the Assignment was for consideration and the plaintiff was put to strict proof of the same.

Promissory Note allegedly executed by M/s.Sree Corporation, 1st defendant in favour of the 6th defendant for Rs. 57,50,000/-.

69. Here also the promissory notes were allegedly executed in favour of M/s Sree Corporation. M/s Sree Corporation is stated to be a Proprietary concern of Ms.N.S.Swetha D/o N.Srinath and the 3rd defendant herein. The Promissory Notes are not in the name of Ms.N.S.Swetha, 6th defendant.

70. The details of the subject Promissory Notes based on which the plaintiff has sought to establish the case are covered by the following six exhibits as detailed below: -

TABLE 10:

EXHIBIT	DATED	INTEREST	AMOUNT `	DATE OF 1st RENEWAL
EX. P.6	17.07.2007**(W)**	24%	RS.10,00,000	10.07.2010**(NW)**
EX. P.8	11.10.2007(NW)	24%	RS.10,00,000	05.10.2010(NW)
			RS.20,00,000/	

NOTE:

- **NW – Not Witnessed;**
- **W – Witnessed.**

TABLE 11:

EXHIBIT	DATED	AMOUNT `	INTEREST	DATE OF RENEWAL	RENEWAL INTEREST	ASSIGNMENT MADE OVER BY EX P 40
EX. P.27	01.01.2013(NW)	RS.10,00,000	12%	29.12.2015(NW)	24%	22.11.2018
EX. P.28	01.01.2013(NW)	RS.10,00,000	18%	29.12.2015(NW)	24%	22.11.2018
EX. P.34	01.04.2013	Rs.6,00,000	12%	29.12.2015(NW)	24%	22.11.2018
EX. P.35	01.04.2015	RS.31,50,000/-	24%	29.12.2015(NW)	24%	22.11.2018

NOTE:

- **NW – Not Witnessed;**
- **W – Witnessed.**

71. The alleged liability in Promissory Notes marked as exhibits in Table 10 were substituted allegedly by Promissory Notes marked as Exhibits in Table 11 as below:

TABLE 12:

TABLE 9		TABLE 10	
EXHIBIT	AMOUNT	EXHIBIT	AMOUNT
EX. P.6	10,00,000	EX. P.27	10,00,000
EX. P.8	10,00,000	EX. P.28	10,00,000

72. It is the case of the plaintiff that the 1st defendant borrowed a sum of Rs.20,00,000/- from the 6th defendant, and executed Ex.P.6 Promissory Notes dated 17.07.2007 and Ex.P.8 dated 11.10.2007 in favour of the 6th defendant and promised to repay the same together with interest specified therein.

73. Subsequently, Ex.P.6 Promissory Note dated 17.07.2007 which was renewed on 10.07.2010 and later a fresh Promissory Note in Ex.P.27 dated 01.01.2013 was executed by the 1st defendant in favour of the 6th defendant for the said sum of Rs.10,00,000/- promising to repay the said sum with interest @ 12% per annum. The said Promissory Note

in Ex.P.27 dated 01.01.2013 was duly renewed on 29.12.2015 by the 1st defendant and agreed to pay the aforesaid sum of Rs.10,00,000/- together with interest @ 24% per annum with effect from 01.10.2013.

74. It is the further case of the plaintiff that in lieu of Ex.P.8 Promissory Note dated 11.10.2007 which stood renewed on 05.10.2010, Ex.P.28 Promissory Note dated 01.01.2013 was executed by the 1st defendant in favour of the 6th defendant for the said sum of Rs.10,00,000/- promised to repay the said sum with interest @ 18% per annum. Subsequently, Ex.P.28 Promissory Note dated 01.01.2013 was renewed on 29.12.2015 with interest @ 24% per annum with from 01.10.2013.

75. The plaintiffs stated that the 1st defendant had also executed Ex.P.34 Promissory Note dated 01.04.2013 in favour of the 6th Defendant for a sum of Rs.6,00,000/- towards interest capitalized on the aforesaid consolidated principal sum of Rs.20,00,000/-. It is the further case of the Plaintiff that Ex.P.34 Promissory Note dated 01.04.2013 was

duly renewed on 29.12.2015 where the 1st defendant agreed to pay the said sum together with undertaking to pay interest @ 24% per annum with effect from 01.10.2013.

76. It is the further case of the Plaintiff that the 1st defendant had paid interest in respect of the aforesaid three Promissory Notes vide Ex.P.27, Ex.P.28 and Ex.P.34 only upto 30.09.2013.

77. The Plaintiffs state that in addition to the above borrowals, by the 1st defendant borrowed further sum of Rs.31,50,000/- from the 6th defendant vide Ex.P.35 Promissory Note dated 01.04.2015, Rs.31,50,000/- promising to repay the said sum together with interest @ 24% per annum. Ex.P.35 Promissory Note dated 01.04.2015 is said to have been duly renewed by the 1st defendant on 29.12.2015.

78. The plaintiffs further stated that in the above circumstances, vide Ex.P.40 dated 22.11.2018, the 6th defendant assigned/made over the rights over the Promissory Notes in favour of the plaintiff, of all the

Promissory Notes executed by the 1st defendant in favour of the 6th defendant.

79 The said assignment was also duly intimated to the 1st Defendant vide Ex.P.40 - letter dated 22.11.2018, receipt of which was duly acknowledged.

80. The 1st defendant in the written statement has denied the execution Ex.P6 Promissory Note dated 17.7.2007 or its renewal on 10.7.2010 or execution of Ex.P.27 Promissory Note dated 1.1.2013 or its renewal in favour of the 6th defendant for Rs.10 lakhs.

81. The 1st defendant has also denied the execution of Ex.P.8 Promissory Note dated 11.10.2007 for Rs.10 lakhs or its renewal on 5.10.2010 or substitution of liability Ex.P.28 Promissory Note dated 1.1.2013. According to the 1st defendant, the 6th defendant is an unknown person and was unacquainted with the 1st defendant. The allegations have been made with an ulterior motive to show that the claim is genuine one.

82. With regard to the allegations made in paras 12, 13, 14, 15 and 16 in the plaint, the 1st defendant submits that he never executed any promissory note in favour of the plaintiff or to anyone else and hence denied. It is stated that, the Plaintiff took signatures in blank Promissory Notes in the year 2006 and exploited the same for unlawful gains.

83. The 1st defendant specifically denied the execution of Promissory Note on 17.7.2007, 11.10.2007, 1.4.2013 or the renewal on 10.7.2010, 5.10.2010, 29.12.2015 respectively. The payment of interest at 24% per annum for the alleged borrowals are denied as false and the 1st defendant had not promised to pay interest on the alleged borrowals and had not renewed the alleged promissory notes in any mode and put the plaintiff to strict proof of the same.

84. It is submitted that the plaintiff is not a holder in due course, because the promissory notes relied on by the plaintiffs are not supported by any consideration and the assignment vide Ex.P.40 false one and not attested. The plaintiff ought to have establish that the assignment was not made after passing proper consideration for the Promissory Note.

85. The Plaintiff taking advantage of the promissory notes colluded with the 4th to 7th defendants. It is submitted that filed has a vexatious, time-barred suit for unlawful enrichment. It is submitted that the claims was time barred and the alleged endorsement on the back of the said Promissory Notes to show that the claim is alive.

Promissory Note allegedly executed by 1st defendant in favour of M/s.Partha & Co., of the deceased plaintiff Mr.W.S.Sethunarayana Babu for Rs. 61,00,000/-.

86. The details of the subject Promissory Notes based on which the plaintiff has sought to establish the case are covered by the following 8th exhibit. It is as detailed below: -

TABLE 13:

EXHIBIT	DATED	INTEREST	AMOUNT `	DATE OF 1st RENEWAL	DATE OF 2ND RENEWAL
EX. P.2	14.08.2006(W)	18%	RS.5,00,000	10.08.2009(NW)	05.08.2012(NW)
EX. P.10	01.04.2008(W)	18%	RS.10,00,000	25.03.2011(NW)	
EX. P.11	21.09.2008(NW)	12%	**RS.15,00,00/-**	15.09.2011(NW)	
EX. P.16	05.10.2009(NW)	12%	RS.10,00,000	01.10.2012(NW)	
EX. P.21	31.08.2012(NW)	18%	RS.10,00,000		
			RS.50,00,000		

NOTE:

·NW – Not Witnessed;

· W – Witnessed.

TABLE 14:

EXHIBIT	DATED	AMOUNT	INTEREST`	DATE OF 1st RENEWAL	DATE OF 2ND RENEWAL
EX. P.23	01.01.2013(NW)	RS.25,00,000	18%	29.12.2015(NW)	24%
EX. P.24	01.01.2013(NW)	RS.25,00,000	12%	29.12.2015(NW)	24%
EX. P.30	01.04.2013(NW)	RS.11,00,000	12%	29.12.2015(NW)	24%

NOTE:

· NW – Not Witnessed;

·W – Witnessed.

87. The alleged liability in Promissory Notes marked as Exhibits in Table 13 were substituted allegedly by Promissory Notes marked as Exhibits in Table 14 as below:

TABLE 15:

TABLE 13		TABLE 14	
EXHIBIT	AMOUNT	EXHIBIT	AMOUNT
EX. P.2	5,00,000	EX.P.23	Rs.25,00,000
EX. P.10	10,00,000		
EX.P.21	10,00,000	EX.P.24	Rs.25,00,000
Ex.P.11	15,00,000		
Ex.P.16	10,00,000		

88. The case of the Plaintiffs is that the 1st defendant had borrowed from the original plaintiff, namely W.S.Sethu Narayana Babua sum of Rs.50,00,000/- and executed the Promissory Notes in the name of his proprietary concern namely M/s Partha& Co.

(i)Ex. P-2 Promissory Note dated 14.08.2006 Ex. P2 for a sum of Rs.5,00,000/- which was renewed on 10.08.2009 and it was further renewed on 05.08.2012 by paying interest up to 30.06.2011.

(ii)Ex. P-10 Promissory Note dated 01.04.2008 Ex. P-10 for a sum of Rs.10,00,000/- which was renewed on 25.03.2011.

(iii)Ex.P-11 Promissory Note dated 21.09.2008for a sum of dated Rs.15,00,000/ which was renewed on 15.09.2011.

(iv)Ex.P-16 Promissory Note dated 05.10.2009for a sum of Rs.10,00,000/ which was renewed on 01.10.2012 by paying interest up to 31.07.2011.

(v) Ex.P.21 Promissory Note dated 31.08.2012for a sum of Rs.10,00,000/-

89. It is the further case of the deceased original plaintiff W.S.Sethu Narayana Babu that, Ex P2, Ex.P.10 and Ex.P.21 Promissory Note which were periodically renewed by paying interest, Ex.P.23 Promissory Note dated 01.01.2013 was executed by the 1st defendant in favour of M/s Partha & Co., for the consolidated sum of Rs.25,00,000 due promising to repay the said sum with interest @ 18% per annum.

90. The aforesaid Ex.P.23 Promissory Note dated 01.01.2013 was duly renewed by the 1st defendant on 29.12.2015 promised to repay the aforesaid sum of Rs.25,00,000/- together with interest @ 24% per annum with effect from 01.11.2013.

91. It is the further case of the deceased original Plaintiff

W.S.Sethu Narayana Babu that, Ex.P.11 and Ex.P.16 Promissory Note was periodically renewed, Ex.P.24 Promissory Note dated 01.01.2013 was executed by the 1st defendant in favour of M/s. Partha & Co., for the consolidated sum of Rs.25,00,000/- promised to repay the same together with interest @ 12% per annum.

92. It is the further case of the deceased original plaintiff W.S.Sethu Narayana Babu that, Ex.P.24 Promissory Note dated 01.01.2013 was duly renewed by the 1st defendant on 29.12.2015 agreeing to pay the said sum of Rs.25,00,000/- together with interest @ 24% per annum with effect from 01.11.2013.

93. The plaintiffs stated that the 1st defendant had also executed a Promissory Note vide Ex.P30 dated 01.04.2013 in favour of M/s Partha & Co., for a sum of Rs.11,00,000/- promised to repay the same together with interest @ 12% per annum, towards interest capitalized on the aforesaid consolidated principal sum of Rs.50,00,000.

94. The said Promissory Note vide Ex.P.30 dated 01.04.2013 was duly renewed on 29.12.2015 agreeing to pay the said sum together with interest @ 24% per annum with effect from 01.11.2013.

95. The Plaintiffs stated that the 1st Defendant had paid interest in respect of the aforesaid Ex.P.23, Ex.P.24 and Ex.P.30 Promissory Notes for Rs.25,00,000/-, another sum of Rs.25,00,000/- and Rs.11,00,000/- only upto 31.10.2013.

96. The defence of the 1st defendant in the written statement is that the allegations in paras 18, 19 and 20 of the plaint, it is submitted that the 1st defendant denied that he had borrowed Rs.50 lakhs from the plaintiff and no renewal endorsement has been made by the 1st defendant. The 1st defendant had not renewed the alleged Promissory Notes as claimed by the Plaintiff.

t 97. With regard to the allegations in paras 21 and 22 in the plaint are denied as false and puts the plaintiff to strict proof of the same. The 1st defendant had not signed any Ex.P.23, Ex.P.24 and Ex.P.30 Promissory Note for Rs.25,00,000/-, another sum of Rs.25,00,000/- and Rs.11,00,000/- allegedly on 1.1.2013 in favour of the plaintiff and the 1st defendant had not renewed on 29.12.2015 it separately.

Promissory Note executed allegedly by 1st and 2nd defendasnts in favour of M/s.Partha & Co.for Rs. 57,50,000/-.

98. The details of the subject Promissory Notes based on which the plaintiff has sought to establish the case are covered by the following three exhibits as detailed below: -

TABLE 16:

EXHIBIT	DATED	INTEREST	AMOUNT `	DATE OF 1st RENEWAL
EX. P.19	15.09.2011(NW)	15%	RS 50,00,000/-	**01.01.2013(NW)**
			RS 50,00,000/-	

NOTE:

· **NW – Not Witnessed;**
· **W – Witnessed.**

TABLE 17:

EXHIBIT	DATED	AMOUNT	INTEREST`	DATE OF 1st RENEWAL	DATE OF 2ND RENEWAL
EX. P.22	01.01.2013(NW)	RS.50,00,000/	15%	29.12.2015(NW)	24%
EX. P.31	01.04.2013(NW)	RS.75,00,000	12%	29.12.2015(NW)	24%

NOTE:

- **NW – Not Witnessed;**
- **W – Witnessed.**

99. The alleged liability in Promissory Notes marked as Exhibits in Table 16 were substituted allegedly by Promissory Notes marked as Exhibits in Table 17 as below:-

TABLE - 18

TABLE 16		TABLE 17	
EXHIBIT	AMOUNT	EXHIBIT	AMOUNT
EX. P.19	50,00,000	EX. P.22	50,00,000

100. It is the case of the plaintiff is that the 1st and 2nd defendants had jointly borrowed a sum of Rs.50,00,000/- from M/s Partha & Co., and executed Ex P.19 - Promissory Note on 15.09.2011.

101. It is the further case of the plaintiff that, the aforesaid Ex.P.22 Promissory Note dated 01.01.2013 was executed by the 1st

defendant in favour of M/s Partha & Co., for the aforesaid sum of Rs.50,00,000/- due and payable by the 1st defendant, promised to repay the said sum with interest @ 15% per annum.

102. The aforesaid Ex.P.22 - Promissory Note dated 01.01.2013 was duly renewed on 29.12.2015 by the 1st defendant agreeing to pay the said sum of Rs.50,00,000/- together with interest @ 24% per annum from 01.11.2013.

103. The Plaintiffs stated that the 1st defendant had also executed Ex.P.31 - Promissory Note dated 01.04.2013 in favour of M/s.Partha & Co., for a sum of Rs.7,50,000/- promised to repay with interest @ 12% per annum towards interest capitalized till 31.03.2013 on the aforesaid principal sum of Rs.50,00,000/-.

104. The aforesaid Ex.P.3 - Promissory Note dated 01.04.2013 was duly renewed on 29.12.2015 by the 1st Defendant agreeed to pay

with interest @ 24% per annum with effect from 01.11.2013.

105. The 1st defendant in the written statement is that the allegations in paras 23 and 24 in the plaint is that the 1st and 2nd defendants had not borrowed Rs.50,00,000/- on 15.9.2011 on the alleged Ex. P.19 Promissory Note dated 15.9.2011.

106. The issuance of cheques allegedly for security for repayment is given in the year 2006. The execution of Ex.P.22 Promissory Note dated 1.1.2013 for Rs.50,00,000/- in favour of the Plaintiff is denied as false and the 1st defendant had not signed or executed Ex.P.22 Promissory Note in favour of the plaintiff on 1.1.2013 and renewed it on 29.12.2015.

107. With regard to the allegations in para 25 in the plaint are denied as false. The 1st defendant had not executed Ex.P.31 Promissory Note on 1.4.2013 for Rs.7,50,000/- as alleged by the plaintiff to

capitalized interest accrued till 31.3.2013 on the principal sum of Rs.50,00,000/-. It is also denied that the aforesaid Ex.P.31 Promissory Note was renewed on 29.12.2015.

108. With regard to the allegations in para 26 in the plaint are denied as false and it is false to state that the 1st defendant executed Ex.P.21 and Ex.P.22 - Promissory Notes for Rs.50 lakhs and Rs.7,50,000/- and the renewal of the same on 29.12.2015.

Promissory Note allegedly executed by 1st defendant in favour of Ms.N.Jayasree Rao, 7th defendant for Rs. 5,00,000/-.

109. The details of the subject Promissory Notes based on which the plaintiff has sought to establish the case are covered by the following exhibit as detailed below: -

TABLE 19:

EXHIBIT	DATED	INTEREST	AMOUNT `	DATE OF 1st RENEWAL
EX. P.12	105.10.2008(NW)	12%	RS 5,00,000/-	01.07.2010(NW)
			RS 5,00,000/-	

NOTE:

- **NW – Not Witnessed;**
- **W – Witnessed.**

110. It is the case of the plaintiff that the 1st defendant had borrowed a sum of Rs.5,00,000/- from the 7th defendant on 05.10.2008 and in consideration thereof the 1st defendant had executed Ex.P12 Promissory Note dated 05.10.2008 in favour of the 7th defendant and he issued a cheque as security for due repayment of the aforesaid amount, and the aforesaid Ex.P.12 Promissory Note was renewed on 01.07.2010.

Promissory Note executed by 1st defendant in favour of original

plaintiff late Mr.W.S.Sethunarayana Babu for Rs.55,00,000/-

111. The details of the subject Promissory Notes based on which the plaintiff has sought to establish the case are covered by the following seven exhibits as detailed below: -

TABLE 20:

EXHIBIT	DATED	INTEREST	AMOUNT `	DATE OF 1st RENEWAL
EX. P.7	27.08.2007(NW)	24%	RS.10,00,000/-	**01.07.2010(NW)**
EX. P.13	31.01.2009(NW)	12%	**RS.5,00,000/-**	01.07.2010(NW)
EX. P.14	12 05.2009(NW)	12%	**RS.10,00,000/-**	01.07.2010(NW)
EX. P.15	07.08.2009(NW)	12%	**RS.5,00,000/-**	01.07.2010(NW)
EX. P.17	24.12.2009(NW)	12%	**RS.10,00,000/-**	01.07.2010(NW)
EX. P.18	25.01.2010(NW)	12%	**RS.5,00,000/-**	01.07.2010(NW)
EX. P.20	01.07.2010(NW)	12%	**RS.10,00,000/-**	
			RS.55,00,000/-	

NOTE:

·**NW – Not Witnessed;**
·**W – Witnessed.**

112. It is the case of the plaintiff in the plaint that the 1st defendant had borrowed a further sum of Rs.55,00,000/- directly from

the sole original plaintiff since deceased on various dates.

(i) Ex.P.7 Promissory Note dated 27.08.2007 for a sum of Rs. 10,00,000/- which was renewed on 01.07.2010.

(ii) Ex.P.13 Promissory Note dated 31.01.2009 for a sum of Rs.5,00,000/- which was renewed on 01.07.2010.

(iii)Ex.P.14 Promissory Note dated 12.05.2009 for a sum of Rs. 10,00,000/- which was renewed on 01.07.2010.

(iv) Ex.P.15 Promissory Note dated 07.08.2009 for a sum a sum of Rs.5,00,000/- which was renewed on 01.07.2010.

(v) Ex.P.17 Promissory Note dated 24.12.2009 for a sum of Rs.10,00,000/- which was renewed on 01.07.2010.

(vi) Ex.P.18 Promissory Note dated 25.01.2010 for a sum of Rs.5,00,000/- which was renewed on 01.07.2010.

(vii)Ex.P.20 Promissory Note dated 01.07.2012 for a sum of Rs.10,00,000/-.

113. The 1st defendant has denied that the 1st defendant had borrowed Rs.55 lakhs directly from the Plaintiff. The 1st defendant has also denied that had renewed the promissory notes allegedly on 1.7.2010.

114. The alleged liability in promissory notes marked as exhibits in Tables - 20 & 19 were substituted allegedly by promissory notes marked as Exhibits in Table 22 as below:

TABLE 21:

TABLEs 20 & 19		TABLE 22	
EXHIBIT	AMOUNT	EXHIBIT	AMOUNT
EX. P.7	10,00,000	EX.P.29	Rs.60,00,000
EX. P.14	10,00,000		
EX.P.15	5,00,000		
Ex.P.17	10,00,000		
Ex.P.18	5,00,000		
Ex.P.20	10,00,000		
Ex.P.13*	5,00,000		
Ex.P.12	5,00,000		

* Assigned by the 7th defendant in favour of the plaintiff.

115. It is the case of the plaintiff in the plaint that Ex.P7, Ex.P13, Ex.P14, Ex.P15, Ex.P17, Ex.P18 & Ex.P20 Promissory Noteswere executed by the 1st defendant in favour of the sole/original plaintiff W.S. Sethu Narayana Babu (since deceased) for a sum of Rs.55,00,000/-.

116. It is further case of the plaintiff is that, the aforesaid Ex.P.12 - Promissory Note dated 05.10.2008 for a sum of Rs.5,00,000/-

executed by the 1st defendant in favour of the 7th defendant sum of which was later assigned/made over in favour of the plaintiff on 31.12.2012.

TABLE 22:

EXHIBIT	DATED	AMOUNT `	INTEREST	DATE OF RENEWAL	RENEWAL INTEREST	ASSIGNMENT MADE OVER BY EX P 37
EX. P.29	01.01.2013(NW)	RS.60,00,000	24%	29.12.2015(NW)	24%	22.11.2018

117. It is the further case of the plaintiff that Ex.P.29 Promissory Note dated 01.01.2013 was executed by the 1st defendant in favour of the sole original plaintiff W.S.Sethu Narayana Babu since deceased for the consolidated Principal sum of Rs.60,00,000/- with interest @ 24% per annum. The aforesaid Ex.P.29 Promissory Note dated 01.01.2013 was duly renewed by the 1st defendant on 29.12.2015.

118. Hence, the sole original plaintiff (since deceased) caused vide Ex.P.41 Legal Notice dated 10.12.2018 to defendant Nos.1 to 3 and

called upon the defendants 1, 2 & 3 to jointly and severally pay him, the aggregate principal sum of Rs.2,75,00,000/- (Rupees Two Crores and Seventy Five Lakhs only) together with the aggregate interest of Rs.3,39,68,500/- (accrued till 09.12.2018) and to also pay interest @ 24% per annum on the said principal amount of Rs.2,75,00,000/- from 10.12.2018 till date of repayment along with overdue interest amount @ 18% per annum, within seven days from the date of receipt of the said notice.

119. However, defendant Nos.1, 2 & 3 having received the Legal Notice vide Ex. P41 dated 10.12.2018 have however deliberately neglected and failed to make payment of even a single rupee much less the above amounts. Hence, the Plaintiff is constrained to file the present suit for recovery of the amounts due to him, as above.

120. The 1st defendant in the written statement has denied the allegations in paras 28 and 29 in the plaint that the 1st defendant had borrowed a sum of Rs.5,00,000/- on 5.10.2008 from the 7th defendant

who is unknown and unacquainted person to the 1st defendant and the 1st defendant had not issued any cheque allegedly in favour of the 7th defendant. The execution of Ex.P.12 Promissory Note on 5.10.2008 for Rs.5 lakhs and its renewal are absolutely false.

121. The 1st defendant in the written statement has denied execution of the Ex.P.29 – Promissory Note. The 1st defendant is not aware of any made over/assignment of the alleged Promissory Note in favour of the plaintiff and never received any communication in this regard.

122. With regard to the allegations in para 30 and 31 in the plaint, it is stated that Ex.P7, Ex.P13, Ex.P.14, Ex.P.15, Ex.P17, Ex.P.18 & Ex.P.20 - Promissory Notes allegedly executed by the 1st defendant in favour of the plaintiff for Rs.55 lakhs and Ex.P.12 - Promissory Note dated 5.10.2008 for Rs.5 lakhs in favour of 7th defendant which was assigned/made over in favour of the plaintiff on 31.12.2012 is absolutely false and frivolous.

123. The 1st defendant is not liable to pay any interest on the above said sum of Rs.60 lakhs and he never executed Ex.P.29 -

Promissory Note allegedly on 1.1.2013 and renewed the same on 29.12.2015 towards interest dues.

124. I have considered the arguments advanced by the learned counsel for the plaintiffs and the learned counsel for the defendants. I have also perused the plaint and the written statement and the documents that were originally marked through the deceased plaintiff.

125. I have also examined the deposition of P.W.1, the original plaintiff late Mr.W.S.Sethunarayana Babu (since deceased after filing of the suit and after his chief examination) and the deposition of the 2nd plaintiff who tendered evidence of P.W.2 after the death of the original plaintiff Mr.W.S.Sethunarayana Babu. I have also perused the deposition of 1st defendant who tendered evidence of D.W.1.

126. Although, the deceased plaintiff late Mr. W.S.Sethunarayana Babu, had the option to file a summary suit under

Order 37 of C.P.C., the deceased plaintiff, W.S.Sethunarayana Babu filed the above suit as a regular money suit under Order 7 of C.P.C as a ''holder in due course" of 14 promissory notes as grouped in Table-1.

127. Though a total of 35 instruments were marked as Exhibits in Table-3 as "promissory notes", essentially, the suit is based on 14 of 35 of such instruments grouped in Table-1. They were marked as "promissory notes" on behalf of the plaintiff.

128. Out of these 14 instruments, barring Ex.P.29 instrument dated 01.01.2013 for a sum of Rs.60,00,000/-, rest of the instruments have been purportedly executed by the 1st defendant in favour of various proprietary concerns, of which, Defendant Nos.4-6 and the deceased plaintiff Mr.W.S.Sethunarayana Babu are said to be the proprietors/proprietrix respectively.

129. Although, Ex.P.29 instrument dated 01.01.2013 for a sum of Rs.60,00,000/- was executed in the name of the original plaintiff late Mr.W.S.Sethunarayana Babu himself, it has been strangely

assigned/endorsed by him in favour of his own proprietary concern named Partha & Company. There is no explanation forthcoming from the plaintiff as to why the deceased plaintiff Mr.W.S.Sethunarayana Babu would endorse Ex.P.29 instrument dated 01.01.2013 in favour of his own proprietary concern.

130. Section 4 of the Negotiable Instruments Act, 1881 defines the expression "promissory notes" as follows :-

"A "Promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, ***to pay a certain sum of money only to****, or to the order of,* ***a certain person****, or to the bearer of the instrument.*

Illustrations

A signs instruments in the following terms:

(a) "I promise to pay B or order Rs. 500."

(b) "I acknowledge myself to be indebted to B in Rs.1,000, to be paid on demand, for value received."

(c) "Mr. B, I O U Rs. 1,000.

(d) "I promise to Pay B Rs. 500 and all other sums which shall be due to him."

(e)"I promise to Pay B Rs. 500, 1st deducting thereout any money which he may owe me."

(f) "I promise to Pay B Rs. 500 seven days after my marriage

with C."

(g) "I, promise to Pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."

(h) "I promise to Pay B Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

131. For an instrument to partake the character of a "promissory note", it has to satisfy the requirements of Section 4 of the Negotiable Instruments Act, 1881. Such an instrument should be executed in favour of a "certain person" for a certain sum "binding himself" to pay the same either to the drawee or to the "holder in due course". It is a settled position of law that a "proprietary concern" is not a legal entity. A "proprietary concern" is not a "person" and therefore not a certain person.

132. A "proprietary concern" merely represents its

proprietor/proprietrix as the case may be. Although a proprietary concern is not a "person", a suit can nevertheless be instituted against a "proprietary concern" under Order XXX Rule 10 of CPC.

133. As per Order XXX Rule 10 of CPC, a person carrying on business in a name or style other than his own name can be sued in such name as if it were a firm name, and, insofar as the nature of such case permits, all rules under Order XXX shall apply. Thus, the suit was maintainable against the 4^{th} to 6^{th} defendants.

134. In **Rasiklal Manikchand Dhariwal vs. M.S.S.Food Products,** (2012) 2 SCC 196, there is an observation that although Order XXX Rule 10 makes an enabling provision for a proprietary concern or assumed name to be sued against but the analogy of enabling provision in Rule 10 cannot be extended to the plaintiff filing suit in the name other than his own name.

135. The Courts have repeatedly held that a proprietary concern is not a person. In **Ashok Transport Agency vs. Awadesh Kumar**

(1998) 5 SCC 567, it was held that a "proprietary concern" is only a business name in which the proprietor of the business carries on his or her business.

136. In **Vaidyanathan, etc. v. Dodla Dairy Limited, etc.,** 1999 ILW (Crl.) 395 : 1999 (2) All India Criminal LR (Mad.) 54, it was held as under:-

> *"It is a settled position of law that the proprietorship concern by itself if not a legal entity apart from its proprietor; the proprietary concern and the proprietrix are one and the same person."*

137. In **A.C.Narayanan vs. State of Maharashtra** (2014) 11 SCC 790, the Hon'ble Supreme Court held as follows:-

> ***"31.****In view of the discussion, we are of the opinion that the attorney holder cannot file a complaint in his own name as if he was the complainant, but he can initiate criminal proceedings on behalf of his principal. We also reiterate that where the payee is a* ***"proprietary concern"****, the complaint can be filed:*
>
> > *(i) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the "payee";*
> >
> > *(ii) the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and*
> >
> > *(iii)the proprietor or the proprietary concern represented by the attorney holder under a*

power of attorney executed by the sole proprietor."

138. In **Sri Sivasakthi Industries v. Arikant Metal Corporation**, 1991 SCC OnLine Mad 383, this Court held that a 'proprietary concern' is not a firm. It held that there is a basic and fundamental difference between a “firm” and a “proprietary concern”. The Court held that only the drawer of the cheque can be prosecuted. As such, the proceedings against the 1st accused, viz., M/s. Sri Sivasakthi Industries, represented by its Proprietor, Raman was however quashed.

139. In **P. Muthuramanv.Shree Padmavathi Finance (Regd.)** 1996 (1) Company Law Journal 247, the Court held that as the "sole proprietary concern" is not a company within the meaning of company as defined under the Explanation to Section 141 of the Negotiable Instruments Act, 1881. It held that the sole proprietary concern need not be made a party in the complaint apart from the sole proprietor.

140. This Court in **S.K. Real Estate v. S. Ahmed Meeran,** II

(2002) CCR 421 : 2002 (3) All India Criminal LR (Mad.) 907, once again held that a "sole proprietary concern" is not a person. It was held that "Accused No.1", a "sole proprietary concern" was neither a "legal entity" or a "juridical person". It therefore held the prosecution cannot be maintained against a "sole proprietary concern." All these decisions were rendered in the context of dishonour of cheque.

141. The expression "person" is not defined in Negotiable Instruments Act, 1881. The expression "person" has however been defined in Section 3(42) of the General Clauses Act, 1897. It reads as follows:-

> "(42) “person” shall include any company or association or body of individuals, whether incorporated or not;"

142. Apart from a natural person/an individual, the expression "person" can include a "company" or "an association" or "a body of individuals", whether incorporated or not. "Promissory note" should be an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

143. For the plaintiff's to succeed, the 14 instruments (grouped in Table -1) which were marked as exhibits on behalf of the plaintiff's should satisfy the requirement of the definition of "promissory notes" in Section 4 of the Negotiable Instruments Act, 1881 as promissory note is required to be executed in favour a "**certain person**" for a "**certain sum**".

144. This is the mandatory requirement of Section 4 of the Negotiable Instruments Act, 1881, exception being in the case of inchoate stamped instruments as in Section 20 of the Negotiable Instruments Act, 1881. Even in case of an inchoate stamped instruments, the name should be in favour of certain person who can be identified.

145. Primordial issue therefore to be decided in this case is whether 13 & 14 instruments in Table-1 are "promissory notes" or not as they are not in the name of an individual but in the name of "sole proprietary concern" allegedly of the deceased plaintiff and 4th to 6th defendant? If the answer is in the affirmative, the plaintiff should succeed

in this suit.

146. Therefore, the 14 instruments in Table-1 based on which the present suit has been filed have to satisfy the definition of "promissory notes", in Section 4 of the Negotiable Instruments Act, 1881.

147. For an instrument to be called as a "promissory note", such an instrument should be executed in favour of "certain person" as per Section 4 of the Negotiable Instruments Act, 1881. As mentioned above, "proprietary concern" is not the "certain person" as contemplated in Section 4 of the Negotiable Instruments Act, 1881.

148. It is the case of the plaintiffs that the deceased plaintiff Mr.W.S.Sethunarayana Babu and defendant Nos.4 to 7 are the proprietors/proprietrix of the following proprietary concerns:-

TABLE 23

Exhibit Nos. / Table1 & 3	Person named in Promissory Notes in Table -1(also in Table-3)	Proprietors/ Proprietrix	Rank in the Suit.

Table 1	Table 3			
22, 23, 24, 30 & 31	2, 10, 11, 16, 19, 21, 22, 23, 24, 30 & 31	M/s.Partha & Company	Mr.W.S. Sethu Narayana Babu	Plaintiff
29	7, 13, 14, 15, 17, 18, 20 &29	Mr.W.S. Sethu Narayana Babu		Plaintiff
25 & 32	1, 3, 5, 25 & 32	M/s.Vijaya Lakshmi & Company	Mrs.S.Vijaya lakshmi	4th Defendant
26 & 33	4, 9, 26 & 33	M/s.Sethamal & Company	Mrs.W.S.Malini Sethu	5th Defendant
27, 28, 34 & 35	6, 8, 27, 28, 34 & 35	M/s.Sree Corporation	Ms.N.S.Swetha	6th Defendant
-	12	Mr.N.Jayasree Rao		7th Defendant

149. However, there are no records to show that these 4th to 7th defendants were running any proprietary concerns with above names. No

statutory records or registration of proprietary concern are available. There are also no averments in the plaint as to what was the nature of business carried on by these proprietary concerns in the name of the defendants 4 to 7 and the deceased plaintiff Mr.W.S.Sethunarayana Babu.

150. In fact, there are also no records to show that the deceased plaintiff Mr.W.S.Sethunarayana Babu was running a proprietary under the name and style of M/s. Partha & Company during his lifetime.

151. "Promissory notes" are generally printed and drawn on the stationery provided by the drawee, although printed instruments are also available in the market for being used as a "promissory note".

152. Although, in the banking parlance, it is not unheard of bank accounts being opened in the name of "business name" of a "proprietary concerns" for trading purpose as the proprietors/proprietrix of such "proprietary concerns" are known in the trade by their "business name" or "trade name" and are therefore entitled to open and operate "current accounts" different from a "savings accounts". This is recognised

by Reserve Bank of India as business are carried out in "trading names"/"business names" of such business concerns.

153. Before allowing such a facility, the banks get all the particulars of the proposed customer in prescribed KYI/KYC form. Issuance of a cheque book by a bank with specified current account number printed and Sl.No. etc. for such cheque leaves is different from "promissory notes". "Promissory notes" are drawn and signed by the drawer and is required to be stamped in the favour of a certain named person.

154. Thus, presumption regarding authenticity of a cheque drawn on a cheque leaf issued by a bank book as compared to a "promissory note" is few notch higher, although there is a rebuttable presumption under Section 118 of the Negotiable Instruments Act, 1881, in case of all the categories of negotiable instrument.

155. If the instrument satisfy the requirement of Section 4 of

the Negotiable Instruments Act, 1881 as a "promissory note", presumption under Section 118 of the Negotiable Instruments Act, 1881 will operate against Defendant Nos.1 to 3. Although there is a "presumption", it is nevertheless a "rebuttable presumption". Section 118 of the Negotiable Instruments Act, 1881 reads under**:-**

> "**118. Presumptions as to negotiable instruments**. —Until the contrary is proved, the following presumptions shall be made: —
>
> (a) of consideration —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;
>
> (b) as to date —that every negotiable instrument bearing a date was made or drawn on such date;
>
> (c) as to time of acceptance —that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;
>
> (d) as to time of transfer —that every transfer of a negotiable instrument was made before its maturity;
>
> (e) as to order of indorsements —that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;
>
> (f) as to stamps —that a lost promissory note, bill of exchange or cheque was duly stamped;
>
> (g) that holder is a holder in due course —that the holder

of a negotiable instrument is a holder in due course:

> Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

156. If the 4^{th} to 6^{th} defendants who have assigned the 13 instruments in Table -1 in favour of the deceased plaintiff Mr.W.S.Sethunarayana Babu are "promissory notes", it should be clear in what capacity these instruments were executed by them as "promissory notes" i.e as "money lenders" or as a person other than a "money lender". There is no averment in the plaint regarding this aspect.

157. If the amount was given as a loan, the 4^{th} to 6^{th} defendants as also the deceased plaintiff Mr.W.S.Sethunarayana Babu, they should have registered themselves as "Money lenders" within the meaning of the Tamil Nadu Money-Lenders Act, 1957.

158. The onus was on the plaintiff's to prove that exception

provided under the definition of "loan" in Section 2(6) of the Tamil Nadu Money-Lenders Act, 1957 applied to the deceased plaintiff Mr.W.S.Sethunarayana Babu as also to the 4th to 6th defendants that they have advanced money to the defendants 1 and 2 as an advance made *bona fide* not having primary object of money lending. Fact that money was allegedly lent since 2006/2007, there is a presumption that they would have lent money in the capacity of money lenders.

159. There is a specific bar under Section 3 of the Tamil Nadu Money-Lenders Act,1957 on a person from carrying on the business as a "money lender" except in accordance of the provisions of the said Act. They are required to obtain licence and maintain proper accounts.

160. Under Section 9 of the Tamil Nadu Money-Lenders Act,1957, the Courts cannot come to the rescue of the deceased original plaintiff Mr.W.S.Sethunarayana Babu for money allegedly lent by him in the name of his proprietary concern Partha and Company as also for money allegedly lent by the 4th to 6th defendants and their proprietary concern.

161. That apart as per Latin phrase "*Id certum estquod certum reddi potest*" that is certain which can he made certain. Therefore, in case of an inchoate instrument, it can be concluded that the person who has drawn the instrument closed eyes and executed it was bound by it and gave the holder in due course an authority to fill in the details.

162. In **Yeo Eng Pwa v. Chetty Firm**, 4IC 293, it was held that the words 'certain person' mean a person who is capable of being ascertained at the time when a promissory note is made. In the present case, barring Ex.P-29 instrument, all the instruments have been drawn in the name of proprietary concern.

163. In **Khivraj Chordia and others vs. Esso Standard Eastern**, AIR 1975 Mad 374, the Court held as follows:-

> *"13. ... in determining objections founded on the alleged uncertainty of a term in a contract, the test is not whether the term is in itself certain but whether it is capable of being made certain.* ***Id certum est quod reddi cerium potest*** *(That is sufficiently certain which can be made certain.)"*

164. In **N.K.Giriraja Shetty v. N.K. Parthasarathy Shetty,**

2006 SCC Online Kar 180, the Court held in the case, it can be seen from the evidence that the uncertainty in the terms of the contract are not capable of being made certain.

165. As far as promissory notes are concerned, a drawer of a "promissory note" has to draw the "promissory note" in favour of "a certain person" i.e. the payee who can be identified so as to bind the drawer of such "promissory note" to the payee named therein or to bearer or "holder in due course" of such "promissory note" wherever there is an endorsement.

166. There are also no documents filed along with the plaint to substantiate that Defendant Nos.4 to 7 existed as proprietary concerns or had lent money to the 1st defendant either as "money lenders" or as an "ordinary commercial concern", in the course of their regular business.

167. Although, the 1st defendant has not denied the execution

of these instruments. The 1st defendant however has taken a specific stand that defendants 4 to 7 are strangers and had money transactions only with Mr.W.S.Sethunarayana Babu in 2006/2007.

168. The specific defence of the 1stdefendant in the written statement is also that he had transaction only with the deceased plaintiff Mr.W.S.Sethunarayana Babu in 2006/2007 and that while lending money, the deceased plaintiff Mr.W.S.Sethunarayana Babu obtained signatures in blank "promissory notes" and were later filled up and to make it seem as if the rest of the defendants i.e defendants 4 to 7 had lent money to the 1st defendant during the said period, who executed rest of the demand "promissory notes" as in Table-3, which were later replaced with fresh promissory notes by the 1st defendant in favour of rest of the defendants 4 to 7 as also in favour of the deceased plaintiff as in Table - 3.

169. It is stated that there was no consideration for signing promissory notes especially in respect of the instruments where the payee named are 4th to 7th defendants. In the present case, the deceased plaintiff has filed the present suit as a "holder in due course" of all the 14 instruments in Table-1.

170. In this connection, Sections 20 and 43 of the Negotiable Instruments Act, 1881 are relevant. They are read as under:-

Section 20 of the Negotiable Instruments Act, 1881	**Section 43 of the Negotiable Instruments Act, 1881**
Section 20. Inchoate stamped instruments.— Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: provided that no	**43.Negotiable instrument made, etc., without consideration.—** A negotiable instrument made, drawn, accepted, indorsed, or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto. Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed

person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.	can, if he has paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation. Exception II.—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover therein an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

171. Under Section 20 of the Negotiable Instruments Act, 1881, wherever inchoate instrument are executed, the person drawing such instrument is liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount, provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

172. The person drawing such an instrument gives *prima facie* authority to the holder thereof to make or complete negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp.

173. There are two parts to Section 43 of the Negotiable Instruments Act, 1881. First part provides for a common consequence where a negotiable instrument is made, drawn and accepted without consideration. In such a case, it creates no liability on the person who has drawn the instrument.

174. However, where drawer transfers such instrument with or without indorsement to a holder for consideration to a holder,such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

175. It is a settled position of law that an objections as to the absence of consideration can be inquired into only between the parties who stand in immediate relation to each other i.e. between the drawer and the acceptor, the payee and the drawer of a promissory note, and an endorser and his endorsee.

176. Between parties who do not stand in such immediate

relation, it has been held that it is no defence that the defendant drew, accepted or endorsed for no consideration and he must prove that neither he, nor any of the intermediate parties through whom the plaintiff derives right paid any consideration. However, for the plaintiff to succeed, the plaintiff has to satisfy that 14 instruments meet the requirements of Section 4 of the Negotiable Instruments Act, 1881.

177. Thus, it is open for the first defendant to prove the contrary. The first defendant can prove the non-existence of a consideration by raising a probable defence.

178. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant discharges initial burden showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a

matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument.

179. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist. Thereafter, the onus can shift on the plaintiff. If the plaintiffs fail to discharge the burden of proof, they will fail in their endeavour.

180. In **Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal,** (1999) 3 SCC 35, it was observed as under**:-**

> *"**12.** Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable.* ***The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the***

same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. *The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist. We find ourselves in the close proximity of the view expressed by the Full Benches of the Rajasthan High Court and the Andhra Pradesh High Court in* *this regard."*

181. In **M.S. Narayana Menon v. State of Kerala and another** *(*2006) 6 SCC 39, it was held as follows:-

> *"**30.** Applying the said definitions of "proved" or "disproved" to the principle behind Section 118(a) of the Act, the court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon."*

182. In **Punjab & Sind Bank vs. VinkarSahakari Bank Ltd., and Others**, (2001) 7 SCC 721, the Hon'ble Supreme Court in the context of dishonour of a cheque held as follows:-

> *"**21.** Section 142 of the Act envisages a complaint to be made in writing either by the payee or the holder in due course of the cheque, as the case may be. <u>Section 8 of the Act defines "holder" as any person entitled in his own name to the possession of the cheque and to receive or recover the amount due thereon from the parties thereto.</u> We have no*

doubt that the complainant Bank was well within its right to possess the cheque and to receive or recover the amount covered by the instrument. "Holder in due course" means a person who for consideration became the possessor of a cheque if payable to the bearer before the amount became payable(vide Section 9).

22. *In this context reference has to be made to Section 118(g) of the Act which contains a mandate that until the contrary is proved the holder of a negotiable instrument shall be presumed to be a holder in due course. Thus there is no escape for the court from drawing such presumption.*

23. *It is undisputed that the complainant Company is the holder of the instrument on its own right. As such it could be a holder in due course also until the party concerned adduces evidence to rebut the presumption. It is of course open to the respondents to rebut the presumption in the trial but till then the High Court could not say that the complainant is not a holder in due course at all."*

183. In the present case, although the deceased plaintiff Mr.W.S.Sethunarayana Babu has claimed that instruments were executed as "promissory notes" in the name of proprietary concerns of Defendant Nos.4 to 6 and that of the deceased plaintiff Mr.W.S.Sethunarayana Babu, there are no proof that proprietary concerns exist. The burden of

proof was on the plaintiffs 4^{th} to 6^{th} defendants as witnesses to prove Exs.P.22 to P.28 and P.30 to P.35 and other instruments in Table-3 were executed in their favour. Mere production of instruments as "holder in due course" of "promissory notes" is not sufficient.

184. This is the requirement of Section 4 of the Negotiable Instruments Act, 1881, exception being in the case of inchoate stamped instruments as in Section 20 of the Negotiable Instruments Act, 1881.

185. Deceased plaintiff Mr. W.S. Sethunarayana Babu as also 4^{th} to 6^{th} defendants have allegedly lent money to the contesting defendants from 2006/2007. Therefore, there is a presumption that this money lending business was contrary to the provisions of the Tamil Nadu Money-Lenders Act, 1957. The burden of proof cast on the plaintiffs have not been properly discharged by them.

186. Further, as mentioned, above for an instrument to be called as a "promissory note", the identity of the payee should be certain. The identify can be certain either at the time when an instrument is made

or drawn or when the details are filled later in case of an inchoate instruments under Section 20 of the Negotiable Instruments Act, 1881.

187. Unless the name of the payee in the instrument is specific and certain, such an instrument cannot be considered as a "promissory note". A payee in a "promissory note" can be either in the name of "natural person" or a "juridical person" or a "legal entity" or a proprietor or proprietrix in their business name provided they are carrying on their business in their business name satisfying the definition of person as in Section 3(42) of the General Clauses Act, 1897. There should be adequate disclosure that the payee is business entity registered either under the provisions of the Tamil Nadu Money-Lenders Act, 1957 or with such other statutory authority.

188. The payee named in an instrument particularly in the case of a "promissory note" has to ensure that his/her or their identity is there in it so as to bind the person who has allegedly drawn it. The name of payee or the beneficiary cannot be hidden behind the shrouds of incorporeal name of the proprietary concern where there are no

documents to show that such proprietary concern are carrying on business.

189. A payee named with an incorporeal name of the proprietary concern in an instrument or the holder in due course of an instrument with such incorporeal name, therefore, cannot expect the Court to come to his or her or their rescue where there is a failure to pay the amount demanded as there is a cloud in the identity of the proprietary concerns with its proprietor or proprietrix.

190. A mere statement in the plaint that the 4^{th} to 6^{th} defendants are proprietary concern is not sufficient. Further, the individuals named as 4^{th} to 6^{th} defendants in the cause title of the plaint appear the close relative of the deceased plaintiff Mr.W.S.Sethunarayana Babu. Therefore, the plaintiff's ought to have produced them as their witness notwithstanding the fact that the 4^{th} to 6^{th} defendants failed to file their written statements and forfeited their rights to file written statement.

191. The deceased plaintiff Mr.W.S.Sethunarayana Babu was not entitled to sue the defendants No.1 for recovery of the amounts allegedly due from the respective 1st defendant as a holder in due course based on the assignments/endorsement of the rights in favour of the deceased plaintiff in respect of Exs.P.22 to P.28 and P.30 to P.35 instruments as "promissory notes" executed in the name of his proprietary concern.

192. There are also no endorsements in the Promissory Notes in Exs.P22, P23, P24, P30 & P31 in favour of the deceased plaintiff W.S.Sethu Narayana Babu. There are also no material to infer that instrument in Table-3 barring Ex.P.29 are promissory notes within the meaning of Section 4 of the Negotiable Instruments Act, 1881. Question of the deceased plaintiff being treated as "the holder in due course" of these instruments, as defined in Section 9 will not arise only if the above mentioned exhibits could be considered as "promissory notes".

193. Against seven other instruments i.e. Ex.P26, dated 01.01.2013 and Ex.P33 dated 01.04.2013, in favour of the proprietary concern M/s.Sethmal & Co., the 5th defendant herein, Ex.P27 dated 01.01.2013, Ex.P34 dated 01.04.2013, and Ex.P35 dated 01.04.2015 in favour of the proprietary concern M/s.Sree Corporation, the 6th defendant herein and Ex.P25 dated 01.01.2013 and Ex.P32 dated 01.04.2013 in favour of the proprietary concern M/s.Vijayalakshmi & Co., the 4th defendant herein, there are no endorsements in favour of the deceased plaintiff W.S.Sethunarayana Babu. Therefore, on this count also, the suit based on these instruments/exhibits have to fail.

194. Ex.P.19 instrument dated 15.09.2011 is said to have been executed by both the 1st and 2nd defendants in favour of Partha & Company, the Proprietary Concern of the deceased plaintiff,which was allegedly substituted, vide Ex.P.22 for a sum of Rs.50,00,000/-.

195. However, on perusal of Ex.P.19, executed in favour of M/s.Partha & Company indicate that there are two signatures. Both the signatures are of only the 1st defendant and not of the 2nd defendant. Therefore, suit against the 2nd and 3rd defendants is not maintainable.

196. Likewise, Ex.P.22 instrument dated 01.01.2013, only has signatures of 1st defendant. Both Exs.P.19 & P.20 have two signatures both of which are that of the 1st defendant and not that of the 2nd defendant. Therefore, suit against the 2nd and 3rd defendants is not maintainable.

197. The transaction as mentioned above appears to only between the deceased plaintiff and the 1st defendant. Defendant Nos.4 to 7 appear to be close relatives to the deceased plaintiff and the first defendant. If the amounts were due to each of the 4th to 7thdefendants from the 1st defendant and in favour of M/s.Partha and Company by the 1st and 2nd defendants, the amounts would have also reflected as the

amounts due from the 1st defendant in their respective books of accounts *viz.* Profit and Loss Account and Balance Sheet as "sundry debtor" and reflected in the income tax returns.

198. However, these instruments which were said to be executed in favour of the proprietary concern of the deceased plaintiff namely, M/s.Partha & Company and those promissory notes in favour of the 4th defendant, 5th defendant and 6th defendant as listed in Table -1 at best can be treated as "debt instrument". They are actionable claim within the meaning of Section 3 of the Transfer of Property Act, 1882, which reads as under:-

> *"3. "actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;]"*

The plaintiffs would have been entitled to succeed, provided the plaintiffs had discharged the burden cast on them.

199. As per Section 130 of Transfer of Property Act, 1882, an actionable claim can be transferred whether with or without consideration. It can be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent. The threshold for establishing a right to recover the amount under Section 130 of the Transfer of Property Act, 1882 is much higher than the presumption under Section 118 of the Negotiable Instruments Act, 1881. The plaintiffs have not discharged the burden of proof by bringing the defendants 2 to 7 as witnesses to establish the existence of loan and the subsequent assignment of such rights in favour of the deceased plaintiff Mr.W.S.Sethunarayana Babu.

200. Section 130 of Transfer of Property Act, 1882 read as under:-

> *"(1)The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent, shall be complete and effectual upon the execution of such instruments, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter*

provided be given or not: Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such Instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceeding and without making him a party thereto."

201. In ***Sunrise Associates vs. Govt. of NCT of Delhi and Others*** (2006) 5 SCC 603, the Hon'ble Supreme Court held as follows:-

"39. *The Transfer of Property Act, 1882, deals with transfer of actionable claims in Chapter VIII of that Act. Section 130 of the Transfer of Property Act provides that an actionable claim may be assigned for value. A right on the fulfillment of certain conditions to call for delivery of goods mentioned in a contract is an actionable claim and assignable under Section 130. (See Jaffer Meher Ali v. Budge-Budge Jute Mills Co. [ILR (1906) 33 Cal 702 : 10 CWN 755]) There may also be assignments of an actionable claim dehors Section 130. (See Bharat*

> *Nidhi Ltd. v. Takhatmal [(1969) 1 SCR 595 : AIR 1969 SC 313] .) Negotiable instruments, another species of actionable claim, are transferable under the Negotiable Instruments Act, 1881. Transferability is therefore not the point of distinction between actionable claims and other goods which can be sold. The distinction lies in the definition of actionable claim. Therefore if a claim to the beneficial interest in movable property not in the vendee's possession is transferred, it is not a sale of goods for the purposes of the sales tax laws."*

202. Such transfer shall be complete and effectual upon the execution of such instruments, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as provided is given or not.

203. Although the suit is maintainable, however, to recover the amounts allegedly due from the 1st defendant by impleading the 4th to 7th defendants in terms of Order XXX Rule 10 of C.P.C., the deceased plaintiff Mr.W.S.Sethunarayana Babu or the plaintiff should have established the case by letting in evidence that the amounts were due to

4th defendant to 7th defendant by the 1st defendant. The provisions merely entitles a plaintiff to sue such a person who has/have identified himself or /herself as the case may be in their business name so that such a person cannot take a plea to avoid their liability to the plaintiff.

204. Thus, it emerges that it is the deceased plaintiff Mr.W.S.Sethunarayana Babu had money transaction with the 1st defendant and had lent amounts in 2006-2007. Inchoate instruments were executed by the 1st defendant. The amount which the deceased plaintiff W.S.Sethunarayana Babu, seeks to recover are unaccounted money, which are not reflected in any of the books of account. Thus, the instruments were prepared in the name of the 4th to 6th defendants.

205. If 4th to 7th defendants had indeed lent the amount to the 1st defendant in connection with the activities of the 3rd defendant Trust run by the 1st and 2nd defendant, the amounts borrowed originally for the year 2006-07 would have been reflected in their books of accounts and Income Tax returns as also in the proprietary concern namely, Partha and

Company of the deceased plaintiff and that of the 4th to 7th defendants that they had lent the amounts in the year 2006-2007 to the first defendant and declared with the Income Tax Department. Ex.P.29-Promissory note dated 01.01.2013 alone is in the name of deceased plaintiff W.S.Sethunarayana Babu.

206. No such records have been filed to substantiate that amounts were shown as due in any records filed by any of the defendants to show that they had lent amounts to the 1st and 2nd defendants.

207. Thus, the instruments which were purportedly executed by the first defendant in favour of the "proprietary concern" of 4th defendant, 5th defendant, 6th defendant as also in favour of the "proprietary concern" of the deceased plaintiff as in **Table-1** cannot be construed as "promissory notes" to give a right to the deceased plaintiff to sue the first defendant as holder in due course of those "promissory notes" in **Table-1.**

208. As mentioned elsewhere, it is also strange the deceased

plaintiff W.S.Sethu Narayana Babu had endorsed Ex.P29 Promissory Note dated 01.01.2013 in favour of his own proprietary concern M/s.Partha and Company, which in line will not be different him.

209. Be that as it may, considering the fact that Ex.P29 instrument has been executed in the name of the deceased W.S.Sethu Narayana Babu, it is to be held to be a Promissory Note and therefore, presumption under Section 118 of the Negotiable Instrument Act, 1881 will stare at the 1st defendant.

210. In the light of the above discussions, the issues framed are answered as under:-

(a) Issue No.(i):- Whether the defendants 1 to 3 are jointly and severally liable to pay the suit amount to the plaintiff based on the Promissory Notes and cheques duly assigned and made-over in favour of the plaintiff by the defendants 4 to 7, besides part of the suit claim amount directly payable to the plaintiff under a Negotiable Instruments Act?

This issue is answered against the plaintiff.

(b) Issue No.(ii):- Whether the suit claim is barred by the Law of Limitation?

This issue is answered in favour of the plaintiff as the suit was instituted on 29.01.2019.

(c) Issue No.(iii):- Whether the 3rd defendant is a proper and necessary party for effective adjudication?

This issue is also answered in favour of the plaintiff.

(d) Issue No.(iv):- Whether the plaintiff is entitled to the suit claim with interest as prayed for?

This issue is partly answered in favour of the plaintiff. The plaintiff is partly entitled for the suit costs for Rs.60,00,000/- on Ex.P.29 – Promissory Notes, dated 01.01.2013, renewed on 29.03.2015.

(e) Issue No.(v):- Whether the suit is maintainable in the absence of leave to sue to club the cause of action against the defendants 4 to 7?

This issue is answered in favour of the plaintiffs, as the suit is based on the assignment of rights in respect of the instruments in Table-1 in favour of the plaintiffs as "promissory notes". However, the exhibits in Table-1 except Ex.P.29, dated 01.01.2013, are not promissory notes in the eye of law, as they have been executed in favour of the "proprietary concerns", whose identity remain unexplained.

(f) Issue No.(vi):- Whether the made-over of the Promissory Notes by the defendants 4, 5, 6 and 7 in favour of the plaintiff is valid?

Yes. However, the rights of the plaintiff is not under the Negotiable Instruments Act, 1881, but under Section 130 of the Transfer of Property Act, 1882. However, the plaintiffs have failed to discharge the burden of proof.

(g) Issue No.(vii):- To what other relief the plaintiff is entitled?

No other reliefs.

211. In the light of the above discussions, the plaintiffs are partly succeed insofar as the suit claim on the strength of Ex.P.29-promissory note, dated 01.01.2013. The plaintiff is entitled for interest at the rate of 12% p.a. being the commercial rate, from the date of Ex.P.29 promissory note till the date of realization.

212. In the result, the suit is partly decreed. Both parties shall bear their own costs.

02.06.2023

Speaking Order/Non-Speaking Order
Index : Yes/No
Neutral Citation : Yes/No
rgm/smn2

Plaintiffs' witness:-

1) Mr.W.S.Sethunarayana Babu : P.W.1
2) Mr.W.S.Vijay Anand : P.W.2

Defendants' witness:-

1) Mr.S.Sathindar : D.W.1

Documents exhibited by the plaintiffs:-

EXHIBIT	DATE	DESCRIPTION OF THE DOCUMENTS	PARTIES TO THE DOCUMENT
Ex.P.1	07.07.2006	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of 4th Defendant renewed on 05.07.2009 & 01.07.2012
Ex.P.2	14.08.2006	Promissory Note for Rs.5,00,000/-	Executed by the 1st Defendant in favour of Partha & Co. Renewed 10.08.2009 & 05.08.2012
Ex.P.3	13.11.2006	Promissory Note for Rs.5,00,000/-	Executed by the 1st Defendant in favour of 4th Defendant renewed on 10.11.2009 & 05.11.2012
Ex.P.4	13.11.2006	Promissory Note for Rs.5,00,000/-	Executed by the 1st Defendant in favour of 5th Defendant renewed on 10.11.2009 & 05.11.2012
Ex.P.5	21.12.2006	Promissory Note for Rs.5,00,000/-	Executed by the 1st Defendant in favour of 4th Defendant renewed on renewed on 15.12.2009 & 10.12.2012
Ex.P.6	17.07.2007	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of 6th Defendant renewed on 10.07.2010

EXHIBIT	DATE	DESCRIPTION OF THE DOCUMENTS	PARTIES TO THE DOCUMENT
Ex.P.7	27.08.2007	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of Plaintiff renewed on 01.07.2010
Ex.P.8	11.10.2007	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of 6th Defendant renewed on 05.10.2010
Ex.P.9	01.04.2008	Promissory Note for Rs.5,00,000/-	Executed by the 1st Defendant in favour of 5th Defendant renewed on 25.03.2011
Ex.P.10	01.04.2008	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of Partha & Co. Renewed on 25.03.2011
Ex.P.11	21.09.2008	Promissory Note for Rs.15,00,000/-	Executed by the 1st Defendant in favour of Partha & Co. Renewed on 15.09.2011
Ex.P.12	05.10.2008	Promissory Note for Rs.5,00,000/-	Executed by the 1st Defendant in favour of 7th Defendant renewed 01.07.2010
Ex.P.13	31.01.2009	Promissory Note for Rs.5,00,000/-	Executed by the 1st Defendant in favour of Plaintiff renewed on 01.07.2010
Ex.P.14	12.05.2009	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of Plaintiff renewed on 01.07.2010
Ex.P.15	07.08.2009	Promissory Note for Rs.5,00,000/-	Executed by the 1st Defendant in favour of Plaintiff renewed on 01.07.2010
Ex.P.16	05.10.2009	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of Partha& Co. Renewed on 01.10.2012
Ex.P.17	24.12.2009	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of Plaintiff renewed on 01.07.2010
Ex.P.18	25.01.2010	Promissory Note for Rs.5,00,000/-	Executed by the 1st Defendant in favour of Plaintiff renewed on 01.07.2010
Ex.P.19	15.09.2011	Promissory Note for Rs.50,00,000/-	Executed by the 1st & 2nd Defendants in favour of

EXHIBIT	DATE	DESCRIPTION OF THE DOCUMENTS	PARTIES TO THE DOCUMENT
			Partha& Co.
Ex.P.20	01.07.2012	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of the plaintiff
x.P.21	31.08.2012	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of Partha& Co
Ex.P.22	01.01.2013	Promissory Note for Rs.50,00,000/-	Executed by the 1st Defendant in favour of Partha& Co. Renewed on 29.12.2015
Ex.P.23	01.01.2013	Promissory Note for Rs.25,00,000/-	Executed by the 1st Defendant in favour of Partha& Co. Renewed on 29.12.2015
Ex.P.24	01.01.2013	Promissory Note for Rs.25,00,000/-	Executed by the 1st Defendant in favour of Partha& Co. Renewed on 29.12.2015
Ex.P.25	01.01.2013	Promissory Note for Rs.20,00,000/-	Executed by the 1st Defendant in favour of 4th Defendant renewed on 29.12.2015
Ex.P.26	01.01.2013	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of 5th Defendant renewed on 29.12.2015
Ex.P.27	01.01.2013	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of 6th Defendant renewed on 29.12.2015
Ex.P.28	01.01.2013	Promissory Note for Rs.10,00,000/-	Executed by the 1st Defendant in favour of 6th Defendant renewed on 29.12.2015
Ex.P.29	01.01.2013	Promissory Note for Rs.60,00,000/-	Executed by the 1st Defendant in favour of Plaintiff renewed on 29.12.2015
Ex.P.30	01.04.2013	Promissory Note for Rs.11,00,000/-	Executed by the 1st Defendant in favour of Partha& Co. Renewed on 29.12.2015
Ex.P.31	01.04.2013	Promissory Note for	Executed by the 1st Defendant

EXHIBIT	DATE	DESCRIPTION OF THE DOCUMENTS	PARTIES TO THE DOCUMENT
		Rs.7,50,000/-	in favour of Partha& Co. Renewed on 29.12.2015
Ex.P.32	01.04.2013	Promissory Note for Rs.6,00,000/-	Executed by the 1st Defendant in favour of 4th Defendant renewed on 29.12.2015
Ex.P.33	01.04.2013	Promissory Note for Rs.3,00,000/-	Executed by the 1st Defendant in favour of 5th Defendant renewed on 29.12.2015
Ex.P.34	01.04.2013	Promissory Note for Rs.6,00,000/-	Executed by the Executed by the 1st Defendant in favour of 6th Defendant renewed on 29.12.2015
Ex.P.35	01.04.2015	Promissory Note for Rs.31,50,000/-	Executed by the 1st Defendant in favour of 6th Defendant renewed on 29.12.2015
Ex.P.36	22.11.2017	Debt Recovery certificate No.564/2014 issued by Debts Recovery Tribunal-11, Chennai	
Ex.P.37	22.11.2018	Letter of Intimation of Assignment	Issued by W.S. Sethu Narayana Babu to Partha& Co. With Acknowledgment card
Ex.P.38	22.11.2018	Letter of Intimation of Assignment	Issued by the 4th Defendant to the 1st Defendant with Acknowledgment Card
Ex.P.39	22.11.2018	Letter of Intimation of Assignment	Issued by the 5th Defendant to the 1st Defendant with Acknowledgment Card
Ex.P.40	22.11.2018	Letter of Intimation of Assignment	Issued by the 6th Defendant to the 1st Defendant with Acknowledgment Card
Ex.P.41	10.12.2018	Legal Notice	Issued by W.S. Sethu Narayana Babu to Partha& Co. With Acknowledgment card
Ex.P.42		Calculation Sheet/Statement of Account of the 14 consolidated Pro- notes	
Ex.P.43		Concise Statement of	

EXHIBIT	DATE	DESCRIPTION OF THE DOCUMENTS	PARTIES TO THE DOCUMENT
		Accounts as on 09.12.2018	
Ex.P.44	18.07.2012 03.07.2016	Letter of Guraantee executed by the 1st Defendant in favour of M/s.Vijayalakshmi & Co., & E-mail by the 1st Defendant to Partha & Co., confirming the balance due by him with copy of the statement of the confirmation dated 25.06.2016 attached	
Ex.P45	18.07.2012	Letter of Guarantee executed by the 1st Defendant in favour of M/s.Sethmal & Co.,	
Ex.P46	18.07.2012	Letter of Guarantee executed by the 1st Defendant in favour of M/s.Partha & Co.,	
Ex.P47	18.07.2012	Letter of Guarantee executed by the 1st Defendant in favour of M/s.Sree Corporation	

Documents exhibited by the defendants:-

- Nil-

CSNJ

C.SARAVANAN, J.

rgm/smn2

Pre-delivery Judgment in
C.S(COMM.DIV.)No.444 of 2019

02.06.2023