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C.S. No.957 of 2001

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.S. No.957 of 2001

M/s.Koladi Investment Services Ltd.

Rep. by Authorised Personnel

K.Sasikumar

New No.154 (Old No.313) TTK Road,

Royapettah, Chennai – 600 014

... Plaintiff

Vs.

1. Ravishankar Films Private Ltd.

rep. by its Director Mr.A.Manohar Prasad

2. A.Ravishankar Prasad

3. A.Manohar Prasad

(all having office at 3, Sarangapani Street,

T.Nagar, Chennai – 600 017)

... Defendants

Prayer: The suit filed under Order IV Rule 1 of O.S.Rules read with Order VII Rule 1 C.P.C., praying to pass judgment and decree against the defendants as follows:



C.S. No.957 of 2001

i) directing the defendants to pay to the plaintiff, jointly and severally a sum of Rs.120,70,000/- together with interest @ 36% p.a. on the principal sum of Rs.50,00,000/- from the date of the plaint till date of realisation and

ii) directing the defendants to pay the cost of this suit.

For Plaintiff : Mr.A.Chidambaram

For Defendants : set Ex-parte on 30.06.2022

JUDGMENT

This suit is filed for recovery of money a sum of Rs.120,70,000/- with interest @ 36% p.a. on the principal sum of Rs.50,00,000/- from the date of the plaint till date of realisation.

2. The averments made in the plaint is that they had advanced a sum of Rs 50,00,000/- to the defendant company under a Promissory Note dated 30-05-1996, vide cheque No.556994 dated 30-05-1996 drawn on Indian Bank, Peters Road Branch, Chennai- 600086, favouring M/s.Salem



C.S. No.957 of 2001

WEB COPY

Stainless Steel Suppliers, as instructed by the defendant Company vide their letter dated 30.05.1996 and the said Pronote had been executed by the 3rd defendant/A.Manohar Prasad, Director of the Company and countersigned by one N.Gopalakrishnan, Officer of the Company, thereby agreeing to repay the said sum of Rs.50,00,000/- together with interest @ 36% p.a. on demand for which, the Director of the defendant company viz, A.Ravishankar Prasad and A.Manohar Prasad, the defendants 2&3 stood as personal guarantors. The defendant company had been paying interest regularly up to 31-03-1997 but subsequently, failed and neglected to pay the interest regularly from 01-04-1997 onwards and excepting the sum of Rs.5,80,000/- (i.e. Rs.50,000/- on 20-02-1998 and Rs.2,30,000/- on 05-05-1998 vide cheque No.880566, drawn on State Bank of India, Chintadripet Branch) and a sum of Rs.3,00,000/- on 01-08-1998 (vide cheque No.180933 drawn on Canara Bank, T. Nagar Branch), issued by the sister concern of the 1st defendant, i.e. M/s.Gemini Industries and Imaging



C.S. No.957 of 2001

Limited. The cheques were made in favour of M/s Rkay Marketing, the sister concern of the plaintiff and no other payment had been made towards discharge of the dues under the said Pronote by the defendants. In spite of repeated demands, the defendants had failed and neglected to settle the said loan amount to the plaintiff. The plaintiff had issued a letter dated 11-12-2000, through Courier thereby, calling upon the 1st defendant company to settle the dues of the plaintiff and though the said letter and demand had been received, the defendants have not evinced any interest in settling the dues of the plaintiff. Therefore, a sum of Rs.50,00,000/- towards Principal and Rs.70,70,000/- towards interest calculated at the rate of 36% p.a. from 01-04-1997 after giving credit to the sum of Rs.5,80,000/- paid by the defendants as above stated, totaling in all to Rs.120,70,000/-, the defendants have failed and neglected to pay despite repeated demands. Hence, the present suit is filed for recovery of money.



C.S. No.957 of 2001

3. Though the defendants had filed written statement, subsequently, there was no representation for the defendants on 16.06.2022 and 23.06.2022 and therefore, the defendants were set ex-parte by this Court on 30.06.2022.

4. The plaintiff filed proof affidavit for chief examination and also marked 7 document as. Ex.P.1 to Ex.P.7 in which, Ex.P.1 is the original demand promissory note dated 30.05.1996 executed by the defendant company, Ex.P.2 is the letter dated 30.05.1996 sent by the defendant company to the plaintiff requesting to issue proceeds of bills discounted amounting to Rs.50,00,000/- directly to M/s.Salem Stainless Steel Suppliers, Ex.P.3 is the certified true copy of the board resolution dated 30.05.1996 passed in the defendant company, Ex.P.4 is the letter of demand dated 11.12.2000 sent by the plaintiff to the defendants calling upon them to pay the dues, Ex.P.5 is the courier receipt No.3111939,



C.S. No.957 of 2001

Ex.P.6 is the letter dated 29.05.1996 issued by the plaintiff to the defendant company regarding sanctioning of credit facility as bill discounting facility for a sum of Rs.50,00,000/- and Ex.P.7 is the statement of account for a period from 01.04.2001 to 30.06.2001.

5. Heard the learned counsel for the plaintiff and perused the materials available on record.

6. According to the plaintiff, the defendants had borrowed a sum of Rs.50,00,000/- and executed a promissory note and had also promised to repay the amount with interest at 36% p.a. since it is a commercial transaction. Though they had been paying the interest regularly for sometime, subsequently, they failed and neglected to pay the amount.

7. The main defence taken by the defendants is that the suit claim is



C.S. No.957 of 2001

barred by limitation and therefore, this Court while framing issues, had framed one of the issues as to whether the suit claim is barred by limitation.

8. A suit has to be filed within three years from the date of last payment. In this case, this suit has been filed on 25.07.2001 and the date of promissory note is 30.05.1996. A perusal of Ex.P4 shows that the plaintiff has sent a letter of demand dated 11.12.2000, to the defendant company, in which, it has been stated that the last payment received by the plaintiff from the defendants was on 01.08.1998, whereas, a perusal of the Ex.P.7/Statement of Accounts produced by the plaintiff itself shows that the last payment received by the plaintiff was on 31.03.1998. The plaintiff has not filed any other document either for the renewal of the claim extending the period of limitation or for fresh promissory note.



C.S. No.957 of 2001

WEB COPY

9. Even though the defendants had taken the defence that the suit is barred by limitation, the plaintiff has not produced any document to establish that the last payment made by the defendant company to the plaintiff was on 01.08.1998 which shows that, in order to bring the suit in time, they have mentioned the date of receipt of last payment as 01.08.1998 without any supporting documents.

10. Though the defendants filed the written statement, subsequently, they remained ex-parte and they did not cross examine the plaintiff and proved that they are not liable to pay to the plaintiff. However, it is made clear that, since because the defendants remained ex-parte, the suit cannot be decreed automatically in favour of the plaintiff. It is for the plaintiff to prove their case. Especially when one of the issues framed by this Court is as to whether the suit claim is barred by limitation, it is for the plaintiff to establish that the suit claim is not barred by limitation.



C.S. No.957 of 2001

WEB COPY

11. As stated above, Ex.P.7/statement of accounts produced by the plaintiff clearly shows that the last payment received by the plaintiff was on 31.03.1998. Ex.P.1 shows that the date of promissory note is on 30.05.1996. The present suit has been filed on 25.07.2001. Therefore, the plaintiff has not been filed within 3 years either from the date of borrowal or from the date of last payment.

12. Therefore, from the averments made in the plaint and the proof affidavit filed by P.W.1 and also from the documents viz., Ex.P.1 to Ex.P.7, this Court finds that the suit claim is barred by limitation. Therefore, the suit is liable to be dismissed.

13. Accordingly, this Suit is dismissed. However, since the defendants have been set ex-parte, there shall be no order as to costs.

15.04.2024

(1/2)

Ksa-2



C.S. No.957 of 2001

Plaintiff's witness:

P.W.1 - K.Sasikumar

Documents exhibited by the plaintiffs:

S.No.	Exhibits	Documents
1	Ex.P.1	The original demand promissory note dated 30.05.1996
2	Ex.P.2	The letter dated 30.05.1996
3	Ex.P.3	The certified true copy of the Board Resolution dated 30.05.1996
4	Ex.P.4	The letter dated 11.12.2000
5	Ex.P.5	The Courier Receipt No.3111939
6	Ex.P.6	The letter dated 29.05.1996
7	Ex.P.7	The statement of accounts for the period from 01.04.2001 to 30.06.2001 (Sec. 65B certificate is filed)

Defendants' witness: NIL

Documents exhibited by the defendants: NIL

15.04.2024

(2/2)

Index : Yes / No

Speaking Order : Yes / No

Neutral Case Citation : Yes/No

ksa-2



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C.S. No.957 of 2001

P.VELMURUGAN. J.

Ksa-2

C.S. No.957 of 2001

15.04.2024