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C.S. (Comm. Div.) No.10 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.S. (Comm. Div.) No.10 of 2024

Sreyans S.Bardia

... Plaintiff

Vs.

C.T.M.Veerappan

... Defendant

Prayer: The plaint is filed under Order VII Rule 1 of CPC read with Order IV Rule 1 of Madras High Court O.S. Rules and Section 7 of the Commercial Courts Act, 2015, praying to pass a judgment and decree against the defendant on the following terms:-

a) Directing the defendant to pay the plaintiff a sum of Rs.11,60,82,173/- together with Interest @ 18% per annum on Rs.7,77,77,000/- from the date of the plaint, till the date of the payment on or before a date as may be fixed by this Court and in default, that the Schedule



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Property may be sold and the proceeds (after defraying there-out the expenses of the sale) applied in and towards payment of the amount of the said principal, interest and costs;

b) If such sale proceeds shall not be sufficient for the payment in full of such amount, the defendant may be ordered to pay to the plaintiff the amount of deficiency with interest thereon at 18% per annum until realisation; and

c) For that purpose all proper directions may be given and accounts taken by the Court;

d) to pay the costs of the suit.

For Plaintiff : Mr.G.Kalyan Jhabakh
for M/s.Surana & Surana
Sole Defendant : Set Ex-parte on 08.04.2024

JUDGMENT

This suit is filed for (a) to direct the defendant to pay the plaintiff a sum of Rs.11,60,82,173/- together with Interest @ 18% per annum on



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Rs.7,77,77,000/- from the date of the plaint, till the date of the payment on or before a date as may be fixed by this Court and in default, the Schedule Property may be sold and the proceeds (after defraying there-out the expenses of the sale) applied in and towards payment of the amount of the said principal, interest and costs, (b) if such sale proceeds shall not be sufficient for the payment in full of such amount, the defendant may be ordered to pay to the plaintiff the amount of deficiency with interest thereon at 18% per annum until realisation, (c) for that purpose, all proper directions may be given and accounts be taken by the Court, and (d) to pay the costs of the suit.

2. The brief averments of the plaint;

2.1. The defendant was well known to the family of the plaintiff. The defendant was into the business of distribution of "KUMAR SHIRTS" and other businesses. His family had been running a Boutique Textile Shop, dealing in high-end Sarees and other materials. The defendant is



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from a community well known in the field of business. The defendant had borrowed monies for business purpose from the family of the plaintiff and in respect of such borrowals, had mortgaged the Suit Schedule Property (which had been acquired and built out of his own earnings).

2.2. The defendant had been promising to repay the monies borrowed from the plaintiff's family but, failed to clear his dues. The defendant, verified the amounts payable as on 24.02.2021 to the family members of the plaintiff in respect of the borrowals made. Thus, the total sum of Rs.7,32,77,000/- (Rupees Seven Crores Thirty Two Lakhs Seventy Seven Thousand only) was due and payable by the defendant to the plaintiff's family. The defendant wanted a further loan of Rs.45,00,000/- (Rupees Forty Five Lakhs only) for his business purpose. The plaintiff agreed to clear the entire dues payable by the mortgagor under the various mortgages and have a single Mortgage Deed executed in respect of the monies outstanding as on 24.02.2021 and the further sum of



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Rs.45,00,000/- to be advanced by the plaintiff to the defendant. Thus, in the above circumstances, the plaintiff paid a sum of Rs.45,00,000/- to the defendant vide Demand Draft dated 24.02.2021 drawn on YES Bank Limited, bearing No.237688.

2.3. The defendant thus mortgaged the land situated at No.7B, (New No.20), Gandhi Mandapam Main Road, Kotturpuram, Chennai-600 085, measuring about 3,200 sq.ft. with a super-structure, more fully described in the Schedule hereunder (hereinafter referred to as Schedule Property) as security by executing a Deed of Simple Mortgage dated 24.02.2021 with power of sale under Section 69 of the Transfer of Property Act, in favour of the plaintiff and registered as Document No.493 of 2021 and secured an amount of Rs.7,77,77,000/- (Rate of interest 18% p.a.).

2.4. In view of the close family association of the plaintiff's family and the defendant, it had been agreed between the plaintiff and the defendant that at the time when the defendant makes payment of all the



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monies due under the Mortgage Deed dated 24.02.2021, all the old/earlier Mortgages would also be simultaneously cancelled.

2.5. As the defendant committed default in repayment of loan, the plaintiff issued a Notice dated 01.02.2023, calling upon the defendant to make payment of the monies due under the above referred Mortgage Deed dated 24.02.2021. The defendant received the said Notice. The defendant also acknowledged his dues. He met the plaintiff and gave a hand-written letter to the plaintiff, confirming that he would come after 5th April, 2023, and settle all the dues on 10.04.2023. The plaintiff believed the representation made by the defendant. In spite of the promise to pay the said sum, the defendant has failed and neglected to clear the same.

2.6. As the defendant failed to honour his commitment despite his written promise to do so, the plaintiff was left with no other alternative, but to initiate proceedings under Section 12A of the Commercial Courts Act before the State Legal Services Authority in the High Court Campus,



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to the plaintiff. The plaintiff, left with no other alternative, has filed the present suit. As on 17.11.2023, the defendant is liable to pay a Rs.11,60,82,173/- in which, principal is Rs.7,77,77,000/- and interest is Rs.3,83,05,173/-.

3. Despite service of suit summons and printing of name in the cause list, the defendant had not entered appearance either in person or through counsel and also not filed the written statement. Therefore, the sole defendant was set-exparte by this Court on 08.04.2024.

4. In order to substantiate his claim, the plaintiff filed his proof affidavit for chief examination and reiterated the averments made in the plaint in his proof affidavit. The plaintiff examined himself as P.W.1 and also marked 10 documents as Ex.P.1 to Ex.P.10 in which, Ex.P.1 is the defendant's original product invoice and original sales bag from the defendant's boutique textile shop, Ex.P.2 is the photocopy of the sale deed dated 11.12.1986, Ex.P.3 is the photocopy of the mortgage deed dated



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24.02.2021 bearing Doc.No.493 of 2021, Ex.P4 is the photo copy of the notice dated 01.02.2023 along with the original acknowledgement card, Ex.P.5 is the letter dated 15.02.2023 received on 16.02.2023 from the defendant, Ex.P.6 is the application for pre-suit mediation, Ex.P.7 is the photocopy of the defendant's letter dated 19.06.2023, Ex.P.8 is the Non-Starter Report dated 28.07.2023 issued by Tamil Nadu State Legal Services Authority, Ex.P.9 is the online copy of the Encumbrance Certificate (Certificate U/s. 65-B of I.E. Act produced) and Ex.P.10 is the Calculation of interest arising out of the said mortgage deed dated 24.02.2021.

5. The sole defendant remained ex-parte. The chief examination of the plaintiff and the documents marked on the side of the plaintiff are unchallenged.

6. On a perusal of the averments made in the plaint and the proof affidavit filed by P.W.1 and also the documentary evidence marked on the side of the plaintiff, this Court finds that the plaintiff has proved his claim.



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7. Therefore, the suit is decreed as prayed for with costs.

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Witness examined on the side of the plaintiff;

Mr.Sreyans S.Bardia - P.W.1

List of exhibits marked on the side of the plaintiff:

S.No.	Exhibits	Description of documents
1	Ex.P.1	The defendant's product invoice and bag
2	Ex.P.2	The photocopy of the sale deed dated 11.12.1986 (The original seen and returned, the learned counsel for the plaintiff undertakes to produce the same before the Court)
3	Ex.P.3	The photocopy of the Mortgage deed dated 24.02.2021 (The original seen and returned, the learned counsel for the plaintiff undertakes to produce the same before the Court)
4	Ex.P.4	The photocopy of the Notice dated 01.02.2023 along with the original acknowledgment card
5	Ex.P.5	The letter dated 15.02.2023 received on 16.02.2023 from the defendant
6	Ex.P.6	The application for pre-suit mediation



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S.No.	Exhibits	Description of documents
7	Ex.P.7	The photocopy of the defendant's letter dated 19.06.2023
8	Ex.P.8	The Non-Starter Report dated 28.07.2023 issued by Tamil Nadu State Legal Services Authority
9	Ex.P.9	The online copy of the Encumbrance Certificate (Certificate U/s. 65-B of I.E. Act produced)
10	Ex.P.10	The Calculation of interest.

List of witnesses examined on the side of the defendant - **Nil**

List of exhibits marked on the side of the defendant - **Nil**

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Index : Yes / No

Speaking Order : Yes / No

Neutral Case Citation : Yes/No

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