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C.S. No.1039 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S. No.1039 of 2010

1.N.Balasubramanian (deceased)

2.A.Alamelu

3.B.Poornima

.. Plaintiffs

(plaintiffs 2 and 3 are impleaded and brought on record
as legal heirs of the deceased plaintiff as per order
dated 22.07.2022 in Appln. No.2629 of 2022)

Vs

1.Madhuri Mathur

2.Vivek Mathur

3.M/s.Power Control and
Appliances (Bombay) Pvt. Ltd.,
represented by its Director Vivek Mathur

4.M/s.Sumeet Research and Holdings Pvt. Ltd.,
represented by its Group Chairman and
Director Vivek Mathur

.. Defendants

Prayer: Civil Suit filed under Order VII Rule 1 of the Code of Civil
Procedure, 1908 read with Order IV Rule 1 of Original Side Rules to grant a
decree and judgment in favour of the plaintiff as against the defendants:



a) Directing the defendants jointly and severally to pay a sum of Rs.1,18,55,375/- (Rupees One Crore Eighteen Lakhs Fifty Five Thousand Three Hundred and Seventy Five only) together with interest at the rate of 18% from the date of the plaint till the date of realisation;

b) for a permanent injunction restraining the defendants, their men, agents, representatives, assigns or persons acting or anyone claiming under or through them from in any manner dealing with, alienating or encumbering the suit schedule mentioned properties, either by way of sale, mortgage, lease, joint development or otherwise;

c) For the costs of the suit.

For Plaintiffs : Mr.Arun Anbumani

For Defendants : Set Ex-parte

JUDGMENT

Originally, the suit was filed by N.Balasubramanian against the defendants jointly and severally for recovery of a sum of Rs.1,18,55,375/- together with interest at the rate of 18% per annum from the date of the plaint till the date of realisation.

2.N.Balasubramanian had also sought for a permanent injunction relief as prayed for in prayer (b) in the plaint.



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3. Insofar as the permanent injunction relief sought for by N. Balasubramanian is concerned, the learned counsel for the plaintiffs would submit, on instructions, that the same is not pressed since the suit schedule properties have already been alienated by the defendants.

4. The suit was filed seeking for recovery of money on the ground that the monies lent by N. Balasubramanian to the defendants towards restructuring their group concerns, namely, Sumeet Group were not repaid. N. Balasubramanian, the original plaintiff claims that the defendants were facing financial difficulties and they were badly in need of funds for restructuring their group concerns. According to N. Balasubramanian, to help the defendants to come out of their financial problems and to re-structure their debts, which they had availed funds from various financial institutions and third parties, he lent monies to the defendants to an extent of Rs.79,00,000/- as detailed hereunder:

<i>S.Nos.</i>	<i>Cheque No., Date and Bank</i>	<i>Cheque amount</i>	<i>In favour of</i>
1.	785459 07.05.2008 HDFC Bank	Rs.2,00,000/-	Mr. Mahindra Kumar Jain
2.	431571 19.05.2008 ICICI Bank	Rs.23,00,000/-	Mr. L. Gothamchand



S.Nos.	<i>Cheque No., Date and Bank</i>	<i>Cheque amount</i>	<i>In favour of</i>
3.	20.05.2008 RTGS ICICI Bank	Rs.30,00,000/-	M/s.Power Control and Appliances (Bombay) Pvt. Ltd.
4.	29.09.2008 Cash	Rs.10,00,000/-	Mr.Nizam Ali
5.	07.10.2008 RTGS Federal Bank	Rs.14,00,000/-	M/s.Power Control and Appliances (Bombay) Pvt. Ltd.
	Total	Rs.79,00,000/-	

5.The original plaintiff N.Balasubramanian claims that monies lent to the defendants were paid either by N.Balasubramanian or through sources arranged by him.

6.During the pendency of the suit, N.Balasubramanian died on 23.11.2020 leaving behind his wife A.Alamelu and his daughter B.Poornima as his only legal heirs. They were also brought on record as plaintiffs in this suit through order dated 22.07.2022 passed in A.No.2629 of 2022. The defendants were set ex-parte by this Court on 12.12.2022. Till date no application has been filed by any of the defendants to set aside the ex-parte order.



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7.The plaintiffs have also recorded their ex-parte evidence before the learned Additional Master II. The second plaintiff A.Alamelu was examined as a witness on behalf of the plaintiffs (PW1). She has also filed a proof affidavit reiterating the contents of the plaint. Through P.W.1, the following documents were marked as exhibits P1 to P21:

Ex.P1 is the print out copy of the letter dated 10.05.2008 sent by the defendants through fax and received by the second plaintiff's husband.

Ex.P2 is the print out copy of the letter dated 22.05.2008 sent by the defendants through fax and received by the second plaintiff's husband.

Ex.P3 is the file copy of the cheque dated 07.05.2008 favouring Mr.Mahendra Kumar Jain for Rs.2 lakhs.

Ex.P4 is the file copy of the banker's cheque dated 19.05.2008 favoring Mr.L.Gothamchand for Rs.23 lakhs.

Ex.P5 is the original stamp receipt dated 29.09.2008 issued by Mr.Nizam Ali, creditor of the defendant acknowledging receipt of Rs.10 lakhs.

Ex.P6 is the print out of the Email dated 07.10.2008 sent by the 1st defendant to the second plaintiff's husband enclosing a letter acknowledging



the receipt of Rs.14 lakhs by RTGS transfer.

Ex.P7 is the letter dated 09.05.2009 signed by the 2nd defendant and sent by the fax to the second plaintiff's husband.

Ex.P8 series is the original of the dishonoured cheque for Rs.32 lakhs issued by the defendants in favour of the second plaintiff's husband, along with the return memo and original of the cheque for Rs.79 lakhs issued by the defendants in favour of the second plaintiff's husband.

Ex.P9 is the print out of the Email dated 09.08.2010 sent by my husband's office to the 2nd defendant.

Ex.P10 is the original of the dishonoured cheque for Rs.1,14,00,000/- issued by the defendant in favour of the second plaintiff's husband, along with the return memo.

Ex.P11 is the print out of the Email dated 08.09.2010 sent by the defendant to the second plaintiff's husband.

Ex.P12 is the print out of the Email dated 16.09.2010 sent by the defendant to the second plaintiff's husband.

Ex.P13 is the print out of the Email dated 17.09.2010 sent by the defendant to the second plaintiff's husband.

Ex.P14 is the print out of the Email dated 23.09.2010 sent by the



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defendant to the second plaintiff's husband.

Ex.P15 is the print out of the Email dated 23.09.2010 sent by the second plaintiff's husband to the 2nd defendant.

Ex.P16 is the print out of the Email dated 23.09.2010 sent by the second plaintiff's husband to Mr.Hussain.

Ex.P17 is the print out of the Email dated 24.09.2010 sent by 2nd defendant to the second plaintiff's husband.

Ex.P18 is the print out of the Email dated 24.09.2010 sent by the second plaintiff's husband to 2nd defendant.

Ex.P19 series is the certified copy of the interim decree dated 12.12.2022 along with the being mentioned order dated 21.12.2022.

Ex.P20 is the photocopy of the letter dated 24.01.2009 from the defendants to the plaintiffs.

Ex.P21 is the photocopy of the letter dated 12.05.2010 from the 2nd defendant to the plaintiffs.

8.As seen from the aforementioned exhibits, earlier the plaintiffs had filed an application in A.No.7420 of 2010 before this Court under Order XII Rule 6 of C.P.C. seeking for interim decree based on the admission of



liability issued by the defendants on 24.01.2009, 09.05.2009, 12.05.2010 and 23.09.2010. Based on the admission of liability, i.e. e-mail dated 23.09.2010, issued by the second defendant on behalf of the defendants, which has been marked as Ex.P14, this Court passed an interim decree in favour of the plaintiffs against the defendants jointly and severally for a sum of Rs.110 lakhs.

9.Learned counsel for the plaintiffs would submit that the interim decree granted by this Court under Order XII Rule 6 of C.P.C. is yet to be executed by the plaintiffs. Now he seeks decree for the entire suit claim with regard to the money claim alone as the plaintiffs are not pressing for the permanent injunction relief as the defendants have already alienated the suit schedule property.

10.As seen from the exhibits, it is clear that the defendants have borrowed money from N.Balasubramanian for restructuring their group concerns under the name, Sumeet Group. They have also acknowledged their liability to N.Balasubramanian, the original plaintiff. Despite acknowledging their liability, they have not repaid the loan with interest.



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The details of acknowledgement of admission of liability and the exhibits are given hereunder:

'File copy of the cheque dated 07.05.2008 favouring Mr.Mahendra Kumar Jain for Rs.2 lakhs/Ex.P3.

File copy of the banker's cheque dated 19.05.2008 favouring Mr.L.Gothamchand for Rs.23 lakhs/Ex.P4.

Original stamp receipt dated 29.09.2008 issued by Mr.Nizam Ali, creditor of the defendant acknowledging receipt of Rs.10 lakhs/Ex.P5.

Print out of the Email dated 07.10.2008 sent by the 1st defendant to the second plaintiff's husband enclosing a letter acknowledging the receipt of Rs.14 lakhs by RTGS transfer/Ex.P6.

Letter dated 09.05.2009 signed by the 2nd defendant and sent by the fax to the second plaintiff's husband/Ex.P7.

Original of the dishonoured cheque for Rs.32 lakhs issued by the defendant in favour of the second plaintiff's husband, along with the return memo and original of the cheque for Rs.79 lakhs issued by the defendants in favour of the second plaintiff's husband/Ex.P8 series.

Original of the dishonoured cheque for Rs.1,14,00,000/- issued by the defendant in favour of the second plaintiff's husband, along with the return memo/Ex.P10.



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Print out of the Email dated 23.09.2010 sent by the defendants to the second plaintiff's husband/Ex.P14.

Print out of the Email dated 23.09.2010 sent by the second plaintiff's husband to the 2nd defendant/Ex.P15.'

11.The defendants have agreed to repay the loan availed from the original plaintiff N.Balasubramanian together with interest at the rate of 18% per annum as seen from the acknowledgement of liability and the cheques issued by the defendants, which include the interest amount calculated at 18% per annum. The cheques issued by the defendants towards repayment of the loan have also been returned dishonoured for insufficiency of funds and the dishonoured cheques have also been filed and marked as exhibits on the side of the plaintiffs. The details of the dishonoured cheques are given below:

'Original of the dishonoured cheque for Rs.32 lakhs issued by the defendant in favour of the second plaintiff's husband, along with the return memo and original of the cheque for Rs.79 lakhs issued by the defendants in favour of the second plaintiff's husband. - Ex.P8

Original of the dishonoured cheque for Rs.1,14,00,000/- issued by the defendant in favour of the second plaintiff's



husband along with the return memo.' - Ex.P10

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12.As seen from the exhibits marked on the side of the plaintiffs, it is clear that despite several reminders sent by the plaintiffs, the defendants have chosen not to repay the loan despite several assurances given by them. The plaintiffs are already having the benefit of interim decree passed by this Court under Order XII Rule 6 of C.P.C. based on the admission of liability issued by the defendants. The plaintiffs are yet to execute the interim decree. Therefore, the interim decree stands substituted by the judgment and decree passed in this suit.

13.Through the oral and documentary evidence placed on record, the plaintiffs have proved that they are entitled for a sum of Rs.1,18,55,375/- from the defendants jointly and severally. Even though the plaintiffs have claimed interest at the rate of 18% from the date of plaint till the date of payment, this Court restricts the same to 12% per annum considering the fact that there is a specific and direct clause enabling the plaintiffs to claim 18% interest though the cheques issued by the defendants which got dishonoured includes 18% interest on the principal sum.



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14.For the foregoing reasons, this suit is partly decreed in favour of the plaintiffs by directing the defendants jointly and severally to pay the plaintiffs a sum of Rs.1,18,55,375/- together with interest at the rate of 12% per annum from the date of plaint till the date of realisation.

15.Since the prayer (b) sought for in the plaint cannot be granted in view of the fact that the suit schedule property has already been alienated, this suit is dismissed as infructuous insofar as prayer (b) is concerned.

16.The defendants are directed to pay the plaintiffs the costs of the suit.

17.The interim decree granted by this Court in favour of the plaintiff on 12.12.2022 in A.No.7420 of 2010 stands substituted by this judgment.

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C.S. No.1039 of 2017



List of Witness examined on the side of the Plaintiffs:-

(PW1) A.Alamelu

List of Exhibits marked on the side of the Plaintiffs:-

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