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A.S.No.198 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR**

**A.S.No.198 of 2024
and
C.M.P.No.7058 of 2024**

1.Smt.Bija
W/o.Late.Anilkumar

2.Sri.A.Abishanth
S/o.Late.Anilkumar

3.Sri.A.Srishanth
S/o.Late.Anilkumar

..Appellants

Vs.

Sri.J.Udayakumar
S/o.Jaganathan

..Respondent

Prayer:

Appeal filed under Section 96 r/w. Order 41 of C.P.C. to set aside the judgment and decree dated 20.10.2023 made in O.S.No.1556 of 2019 on the file of the XX Additional District and Session Judge, City Civil Court, Allikulam, Chennai.



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For Appellant : Mr.N.Selvarajan
For Respondent : Mr.S.B.Viswanathan

J U D G M E N T

(The order of the Court was made by Mrs.J.Nisha Banu,J.)

The Appeal has been filed challenging the Judgment and Decree dated 20.10.2023 passed in O.S.N.1556 of 2019 on the file of the XX Additional District and Sessions Judge, City Civil Court, Alikulam, Chennai.

2. The plaintiff/respondent herein had filed a suit for recovery of money of Rs.22,80,000/- with future interest from the date of filing of the suit till the date of realisation. The said sum is alleged to have borrowed by the deceased husband/father of the appellants/defendants from the respondent/plaintiff. Now, the parties have settled the dispute among themselves and have also filed a memorandum of compromise.

3. Learned counsel appearing on either side would state that recording the memorandum of compromise, the appeal may be disposed of.

4. Both the parties are present. A memorandum of compromise duly signed by both the parties and the counsel, is filed. The Appeal is disposed of in terms of joint memo of compromise entered into between



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the parties.

5. The Memorandum of Compromise filed by the parties dated 01.08.2024 is extracted hereunder:

MEMORANDUM OF COMPROMISE

This Memorandum of Compromise is executed at Chennai on this 1st day of August 2024

Between

J.Udayakumar, son of late Jaganathan, Hindu, aged about 51 years, residing at Door No.4, Amutham Nagar Extension, Kodungaiyur, Chennai - 600018 [Hereinafter called the Party of the First Part, which term shall mean and include his legal heirs, agents, representatives and assigns]

And

1) Bija, wife of late Anil Kumar, Hindu, aged about 52 years, residing at Door No.24/16, Barracks Street, Seven Wells, Chennai - 1.

2) A.Abishanth, son of late Anil Kumar, Hindu, aged about 31 years, residing at Door No.24/16, Barracks Street, Seven Wells, Chennai-1.

3) A.Srishanth, son of late Anil Kumar, Hindu, aged about 29 years, residing at Door No.24/16, Barracks Street, Seven Wells, Chennai - 1 [Hereinafter called the Parties of the Second Part, which term shall mean and



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include his legal heirs, agents, representatives and assigns)

Whereas the Party of the First Part and the husband and father of the Parties of the Second Part late Anil Kumar were good friends. Out of their friendship the Party of the First Part advanced a loan of Rs. 18,00,000/- in peace meals on various dates to late Anil Kumar for construction of his house at his native place in State of Kerala. Late Anil Kumar, after completion of construction of house, conducted house warming ceremony on 18.01.2017.

Whereas after completion of construction of house and after the house warming ceremony Anil Kumar died on 16.02.2017. Thereafter, on the request of the Party of the First Part, the 2nd person in the Parties of the Second Part has executed a Letter of Undertaking dated 28.02.2017 to pay Rs. 19,38,000/- before the end of June 2017. Thereafter, on 14.06.2017 the Party of the Second Part issued a cheque for Rs. 19,38,000/- towards discharge of the loan amount.

Whereas since the cheque for Rs.19,38,000/- issued by the 2nd person in the Parties of the Second Part was dishonoured and as the Party of the Second Part failed to pay the cheque amount even after 15 days from the date of receipt of the statutory legal notice, the



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Party of the First Part filed a complaint in C.C.No.2455 of 2017 in the XVIII Magistrate Court, George Town, Chennai and the Fast Track Court No. IV (Magisterial Level), George Town, Chennai passed a judgment dated 19.08.2019 convicting the 2nd person in the Parties of the Second Part for offence under section 138 of the N.I. Act, imposed a sentence of 2 years simple imprisonment and directed the Party of the Second Part to pay the cheque amount of Rs. 19,38,000/- as compensation to the Party of the First Part.

Whereas the appeal filed by the 2nd person in the Parties of the Second Part in Crl.A.No.322 of 2019 was allowed by the XX Additional Sessions Court, Chennai vide its judgment dated 10.11.2021 and the appeal filed by the Party of the First Part in Crl A. No.495 of 2022 as against the judgment passed in Crl.A.No.322 of 2019, is pending on the file of the Honorable High Court of Madras.

Whereas the Party of the First Part filed a suit in O.S.No.1556 of 2019 for recovery of a sum of Rs. 22,80,000/- in the XX Additional District Court, Chennai as against the Parties of the Second Part and after trial the XX Additional District Court, Chennai allowed the suit vide its Judgment and Decree dated



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20.10.2023. *As against the judgment and decree dated 20.10.2023 the Parties of the Second Part filed an appeal in A.S.No. 198 of 2024 in the High Court of Madras and the same is pending.*

Whereas after during pendency of the Appeal Suit in the High Court of Madras, the Parties of the Second Part approached the Party of the First Part and expressed their desire to resolve the dispute through compromise. During the compromise talks, the Parties of the Second Part have agreed pay Rs.21,00,000/- [Rupees Twenty One Lakh Only] as full and final settlement and the Party of the First Part also has agreed for the same.

Whereas the parties to this Memorandum of Understanding are desirous of reducing the terms and conditions of compromise into writing and the same necessitated the party of the First Part and the Parties of the Second Part to enter into this Memorandum of Understanding.

Now this Memorandum of Understanding witnesseth_ as follows:

1] The Parties of the Second Part have agreed to pay Rs.21,00,000/- [Rupees Twenty One Lakh Only] towards full and final settlement and the Party of the First Part also has agreed to receive the said amount



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from the Parties of the Second Part and resolve the dispute between them amicably.

2] The Parties of the Second Part have this day transferred Rs. 10,00,000/- [Rupees Ten Lakh Only] through RTGS vide Reference No. FRTA00006167281 dated 01.08.2024 from the account of the 3rd person in the parties of second part with ICICI bank Ltd to the account of the party of the first part to the Standard Chartered Bank towards part settlement amount agreed between the parties and the Party of the First Part doth hereby acknowledge the receipt of the said payment from the Parties of the Second Part.

3] The Party of the First Part and the Parties of the Second Part have jointly agreed to file a joint memo in the Honorable High Court of Madras praying to refer the Appeal Suit in A.S. No. 198 of 2024 to Lok Adalat in order to resolve the dispute by getting a compromise award.

4] The Party of the First Part and the Parties of the Second Part have jointly agreed to file this Memorandum of Compromise in Lok Adalat and pray the presiding officer of the Lok Adalat to pass an award based on the terms and conditions stipulated in the Memorandum of Compromise.

5] The Party of the First Part has agreed to give



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his consent to Lok Adalat to raise the attachment of the house property made in pursuant to the order and decree dated 19.02.2021 passed in IA.No.2 of 2019 in O.S.No.1556 of 2019 by the XX Additional District Court, Chennai so as to enable the Parties of the Second Part to mortgage the property with bank, avail loan and pay the remaining amount of Rs.11,00,000/- [Rupees Eleven lakh Only] to the Party of the First Part.

6] The Parties of the Second Part have agreed to effect the order of raising of attachment passed by Lok Adalat in the office of the Sub Registrar, Chokli, State of Kerala within a period of 15 days from the date of receipt of certified copy of the award proposed to be passed by Lok Adalat.

7] The Parties of the Second Part has agreed to mortgage or sell the property under attachment within a period of 30 days from the date of effecting of order of raising of attachment in the office of the Sub Registrar, Chokli, State of Kerala and pay the remaining amount of Rs.11,00,000/- (Rupees Eleven Lakh Only]

8] The Party of the First Part and the Parties of the Second Part have agreed to pray Lok Adalat to pass a conditional decree for recovery of money of



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Rs.11,00,000/- [Rupees Eleven Lakh Only] together with interest at the rate of 12% per annum upto the date of realization, in case of failure on the part of the Parties of the Second Part in paying the remaining amount of Rs.11,00,000/- (Rupees Eleven Lakh Only) within period stipulated under this Memorandum of Compromise.

9] The Party of the First Part has agreed to withdraw the Criminal Appeal in Crl.A. No.495 of 2022 filed by him against the 2nd person in the Parties of the Second Part pending on the file of the Honorable High Court of Madras upon payment of Rs. 11,00,000/- [Rupees Eleven Lakh Only) by the Parties of the Second Part to the Party of the First Part within the time stipulated in this Memorandum of Compromise.

10] Both the parties to this Memorandum of Compromise have agreed to strictly adhere and abide by the terms and conditions in letter and spirit and in case of failure on the part of either of the parties in doing to, both the parties are entitled to proceed with their respective appeals pending in the Honorable High Court of Madras

11] It is mutually agreed between the parties that this Memorandum of Compromise constitutes entire agreement between the Parties and supersedes all prior



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understandings and writings and the terms and conditions may be changed only by a written document signed by the parties hereto.

12] It is mutually agreed between the parties that the terms or provisions of this Memorandum of Compromise may be modified, amended, supplemented, waived, or discharged only in writing and which may be in the nature of an addendum, then only to the extend expressly specified therein.

13] It is mutually agreed between the parties that no waiver shall be valid against any Party hereto unless made in writing and signed by the other Party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

14] It is mutually agreed between the parties that neither party shall assign any of its rights or obligations under this Memorandum of Compromise to any third Party without the prior written consent of the other Party.

15] The Parties to this Memorandum of Compromise prepare, execute and sign three originals and out of three one shall be retained by the Party of the First Part, one shall be retained by the Parties of the Second Part and one shall be furnished to Lok Adalat so as to pass an award in terms of the



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Memorandum of Compromise.

*In witnesses whereof the Party of the First Part
and the Parties of the Second Part execute and sign
this Memorandum of Compromise at Chennai on this
1st day of August 2024.*

The terms of the memo of compromise shall form part of the decree.

6. In the result, the Appeal is disposed of in terms of the memorandum of compromise. No costs. Consequently, connected miscellaneous petition is closed. Registry to refund court fee, if any, as per relevant Rules.

(J.N.B,J.) (N.S., J.)
02.09.2024

Index : Yes / No
Internet : Yes
vsi

To

The XX Additional District and Session Judge,
City Civil Court,
Allikulam,
Chennai



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J. NISHA BANU, J.
and
N.SENTHILKUMAR, J.

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