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C.S.No.312 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2024

CORAM : JUSTICE N.SESHASAYEE

C.S.No.312 of 2011
and O.A.No.126 of 2023

Purasawalkam Santhatha Sanga Nidhi Ltd.,
Rep. by its Director / Trustee
No.47, Vellala Street
Purasawalkam
Chennai - 600 084.

.... Plaintiff

Vs

1.P.Kasthuri
2.P.L.N.Vijayan
3.Vaishnavi Priya

.... Defendants

Prayer : Civil Suit filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC., praying to pass a decree and judgment against the defendants jointly and severally :

- a) directing the defendants to pay jointly and severally to the plaintiff on or before the date to be fixed by this Hon'ble Court a sum of Rs.72,43,928.15 together with interest at 21.6% p.a. from the date of the plaint till the date of realization and costs within the time stipulated by way of passing preliminary decree;
- b) in default of payment of the said amount within the time granted, this



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Court may be pleased to order for sale of the schedule mentioned property after defraying thereabout the expenses of the sale applied towards the payment of the said principal, interest, penal interest, interest tax and costs of the suit by way of passing final decree;

- c) a direction that in the above case if the proceeds of the sale of the schedule mentioned property are found to be insufficient for payment of the decree amount in full, the defendants may be ordered jointly and severally to pay the plaintiff the amount of such deficiency with interest and cost till realization by way of passing a personal decree against them.
- d) directing the defendants to pay the cost of the suit; and to pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

For Plaintiff : Mr.J.Nandagopal

For Defendants : Mr.Sarathy
for Mr.S.Venkatesan

JUDGMENT

The suit is laid for recovery of mortgage money along with accrued interest.

2. The plaintiff has come forward with a very straight case. The plaintiff had advanced a sum of Rs.4,00,000/- to a certain Padmanabhan, and to secure the



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debts, he had executed two mortgage deeds, one on 12.06.1995 for a sum of Rs.1,75,000/-, and the other on 10.07.1995 for a sum of Rs.2,25,000/-. The suit claim with accrued interest is Rs.72,43,928.15 and the future interest now runs on the principal amount.

3. The mortgagor has since passed away, the suit was laid against his widow, the first defendant and his children who are arrayed as defendants 2 and 3.

4. The defendants have come forward with a strange line of defence that they had sought for another loan from the mortgagee and had that loan being given, they would redeem the suit mortgage.

5. In essence, the defendants had admitted the mortgage and the amount borrowed. While things are what they are, the plaintiff is stated to have issued an auction sale notice dated 11.02.2023 on the defendants to repay the debt by 28.02.2023, in default of which, the plaintiff would invoke Section 69 of the Transfer of Property Act, as provided in the mortgage deed.

6. The defendants would now come forward with an application in O.A.No.126



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of 2023, seeking an injunction to stall the intended private auction.

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7. When the matter came up before this Court on couple of occasions earlier, this Court required the defendants to make a candid statement as to how they intend to settle the admitted claim involved in the suit. The learned counsel for the defendants had now filed an affidavit wherein he has merely agreed to pay the principal sum of Rs.4,00,000/- and no more.

8. The counsel for the plaintiff informs the Court that the value of the mortgaged property can substantially secure the debt due to the plaintiff. And that the plaintiff rejects the offer made by the defendants. The same is recorded.

9. The counsel for the plaintiff circulated a calculation memo dated 09.03.2023, and the details are as below :

1.	First Term Special Loan No.2281 sanctioned on 19.06.1995	Rs. 1,75,000.00
	Interest @ 21.60% for 78 months, from June 1995 to Nov.2001 till loan tenure	Rs. 5,52,016.10
	Interest @ 18% for 255 months from Dec.2001 to Feb.2023	Rs. 2,40,40,674.00



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2.	Second Term Special Loan No.2316 sanctioned on 12.07.1995	Rs. 2,25,000.00
	Interest @ 21.60% for 78 months, from June 1995 to Dec.2001 till loan tenure	Rs. 7,22,565.65
	Interest @ 18% for 254 months from Jan.2002 to Feb.2023	Rs 3,09,92,267.50
	Total	Rs 3,17,14,833.15
	In all together Total	Rs 5,63,07,523.25

10. In the result, the suit is decreed and the defendant is directed to pay Rs.5,63,07,523.25p with future interest on the principal amount at 18% within a period of three months, failing which the plaintiff is at liberty to invoke Section 69 of the Transfer of Property Act. The preliminary decree for repayment of mortgage is accordingly be passed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order
ds



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APPENDIX

I. Witnesses :

<i>Plaintiff :</i>	
P.W.1	T.Chandrasekaran

II. Exhibits :

Ext.P1	27.04.2015	Letter authorising Mr.T.Chandrasekaran working as Manager in plaintiff-Nidhi, to appear and give evidence in C.S.No.312/2011
Ext.P2	25.04.1995	Original Loan Application Form
Ext.P3	12.06.1995	Long Term Special Loan Mortgage deed executed between the plaintiff, Mr.S.Padmanabhan and his wife Mrs.P.Kasthuri (1 st defendant) for Rs.1,75,000/-
Ext.P4	10.07.1995	Long Term Special Loan Mortgage deed executed between the plaintiff, Mr.S.Padmanabhan and his wife Mrs.P.Kasthuri (1 st defendant) for Rs.2,25,000/-
Ext.P5	30.04.2005	Letter by the plaintiff to Mr.S.Padmanabhan requiring him to pay Rs.9,05,393.55 as on 31.03.2005 against Loan A/c.No.TSL 2281
Ext.P6	30.04.2005	Letter by the plaintiff to Mr.S.Padmanabhan requiring him to pay Rs.11,72348.15 as on 31.03.2005 against Loan A/c.No.TSL 2316
Ext.P7	22.06.2009	Letter addressed to the plaintiff-Nidhi by the first defendants requiring to provide the loan interest details
Ext.P8	29.06.2009	Letter addressed to the first defendant by the plaintiff-Nidhi intimating the aggregate sum due to the Nidhi against Loan A/c.Nos.2281 & 2316 as on 22.06.2009
Ext.P9	30.06.2009	Postal Acknowledgement card



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Ext.P10	27.07.2009	Legal notice issued by the plaintiff on Mr.S.Padmanabhan and first defendant
Ex.P11	04.08.2019	Postal Acknowledgement cards
Ex.P12	13.03.2008	Encumbrance Certificate from 01.01.1987 to 05.03.2008
Ex.P13	27.01.2011	Encumbrance Certificate from 01.01.2008 to 23.01.2011
Ex.P14		Statement of Accounts for TSL.No.2281 as on 09.01.2011
Ex.P15		Statement of Accounts for TSL.No.2316 as on 09.01.2011

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N.SESHASAYEE.J.,

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