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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.01.2024

PRONOUNCED ON :22.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.S.No.61 of 2012

M/s.Sri Mahalakshmi Metal and Scrap
Procession Pvt. Ltd.,
403/B, T.H.Road, Chennai – 19,
represented by its Director,
Mr.Arun Sharma

... Plaintiff

vs

1.K.Anand Chakravarthy,
Proprietor,
M/s.Imagine Creations.
2.Dr.Kandasamy
3.Vadivu alias Sankaravadivu,
4.Mrs.Aquilla Maria Anand
5.Arun Chakravarthy

... Defendants

Prayer: Civil Suit is filed under Order IV Rule 1 of the Original Side Rules, 1956 , praying to (i) Directing the defendants jointly and severally to pay a sum of Rs.3,06,38,446/- together with interest at the rate of 18% per annum from the date of the plaint till the date of realization;

(ii) To pay the cost of the suit;

(iii) Passing such other order or orders as this Court may deem fit in the circumstances of the case.



For Plaintiff : Mrs.S.Chitra Sampath
Senior Advocate
for M/s.T.S.Baskaran
For 1st Defendant: Mr.T.Mohan
Senior Advocate
for M/s.S.Xavier Felix
D2-D5-Ex-parte

ORDER

This suit has been filed by the plaintiff company for recovery of Rs.3,06,38,466/- together with interest at the rate of 18% per annum from the date of plaint to the date of realisation.

2. Gist of the averment found in the plaint:

The plaintiff company is involved in the business of Steel and Finance. The first defendant being a proprietor of M/s.Imagine Creations approached the plaintiff for financial assistance for production of Movie called “Nil Gavani Selladhey”. A finance agreement was entered between the plaintiff and first defendant dated 11.05.2009, whereunder it was agreed that plaintiff would invest a sum of Rs.2 Crores and it was the responsibility of the first defendant to complete the feature film. It was also agreed that on completion of the film, the negative rights of the film would be handed over to the plaintiff and it was entitled to sell the distribution



rights of the feature film. Subsequently, a deed of agreement was entered into on 24.05.2010, whereunder, a receipt of Rs.1,97,50,000/- by the first respondent from plaintiff based on earlier finance agreement was admitted on the very same day a further sum of Rs.10,88,000/- was paid by the plaintiff to various parties at the request of the 1st defendant. It was further agreed a sum of Rs.3,00,000/- would be paid by the plaintiff towards publicity expenses under the said agreement. It was also agreed that a charge was created over the negatives of the film titled “Nil Gavani Selladhey” with Geminie Colour Laboratory and the plaintiff shall have first charge over the feature film and sound negatives etc. It was further agreed that the first defendant was liable to pay the plaintiff interest at the rate of 18% per annum on the money received by the first defendant. It was further agreed that on sale of negatives plaintiff would be entitled to the amount due to it including interest and the remaining amount would be shared in the ratio of 80:20 (i.e., 80% for plaintiff and 20% for first defendant). It was further agreed that in case of any loss after adjustment of the amount due to the plaintiff namely the principal and interest, the first defendant would make good the loss.



2(b). The defendants approached the plaintiff for release of the charge in its favour to enable him to release the film. The plaintiff agreed to release the charge subject to the condition that the defendants guarantee the due payment of the outstanding amount due to the plaintiff after release of the film. Thus a deed of guarantee was executed by the defendants on 16.12.2010 in favour of plaintiff under which the defendants guaranteed the due payment of outstanding amount and further agreed to clear the plaintiff outstanding amount despite insufficient collection by selling various rights to the parties. In the said agreement, it was agreed that total outstanding amount to the plaintiff as on that date was approximately Rs.2,75,00,000/-. On execution of the said guarantee deed, the plaintiff had released charge over the negatives of the said film on the fond hope that the defendants would make the payments. It is the case of the plaintiff that after giving credit to a sum of Rs.6,59,721/- received by the plaintiff due to the exploitation of the said film there was an outstanding balance of Rs.3,06,38,466/- as on 30.09.2011 due from the defendants and they were liable to pay the said amount together with interest at the rate of 18% per annum. It was also claimed by the plaintiff, the cheques issued by the first defendant were returned unpaid and subsequently the plaintiff had issued a



lawyer notice on 12.10.2011 calling upon the defendants to pay the above said amount within 15 days from the date of receipt of notice. Despite receipt of said notice, the defendants failed to pay the amount as demanded. In these circumstances, the plaintiff was constrained to file the above suit for recovery of the amount as mentioned above.

3. Gist of written statement filed by the first defendant:

The first defendant in his written statement claimed that the plaintiff was guilty of suppression of material facts and approached the Court with unclean hands. The first defendant claimed that the witness signatures in finance agreement dated 11.05.2009, deed of agreement dated 24.05.2010 and deed of guarantee dated 16.12.2010 were forged and the same were not executed in the presence of witnesses as claimed by the plaintiff and accordingly, the said documents were invalid, not binding and non-est in eye of law. It was claimed that the first defendant never approached the plaintiff represented by Arun Sharma and the said Arun Sharma was a total stranger to the first plaintiff. It was claimed by the first defendant that the suit filed by the plaintiff represented by Arun Sharma



without proper authorisation was liable to be dismissed. It was also claimed by the first defendant that the negative rights of the movie were handed over to the plaintiff company and the same was sold by the plaintiff to various persons and an amount of Rs.3,10,00,000/- was realized by the plaintiff. Therefore, the defendants claimed that he was not liable to pay any amount towards the suit claim.

4. Gist of the averment found in the written statement of the 3rd defendant:

It was claimed by the 3rd defendant in the written statement that the plaintiff was a total stranger and he had no acquaintance with the plaintiff's company at any point of time. The 3rd defendant also had stated that she was not aware of finance agreement or deed of agreement relied on by the plaintiff. The 3rd defendant also denied the very execution of deed of guarantee dated 16.12.2010 and claimed that it was a forged document. It was further stated that the signatures of defendants 2, 3 and 5 in the deed of guarantee was originally obtained by the first defendant in an empty non judicial stamp papers and empty blank papers for the purpose of creating the partition deed in his favour with respect to the building complex owned by



3rd defendant at Kancheepuram. Hence the 3rd defendant claimed that alleged deed of guarantee dated 16.12.2010 relied on by the plaintiff was not valid in eye of law.

4(b). It is pertinent to mention that the written statement was filed by the 3rd defendant along with an application to condone delay of 2748 days in filing written statement and to set aside the ex-parte order dated 12.01.2017 in A.Nos.78 and 468 of 2020. The said applications were dismissed.

5. Gist of the averment found in the additional written statement filed by the first defendant:

In the additional written statement it was claimed by the first defendant that the pleadings of the plaintiff verified by its Director viz., Arun Sharma could not be relied upon as he was not authorised by Board of Directors of the company through any Board Resolution to present the suit. It was claimed that Arun Sharma had resigned from Directorship of the company on 16.04.2016 and thereafter filed A.No.1731 of 2018 for production of additional documents by swearing false affidavit as if he was a



Director. It was claimed by the first defendant that his signature in finance agreement dated 11.05.2009 marked as Ex.P1 and deed of guarantee dated 16.12.2010 marked as Ex.P17 were forged one. It was also claimed that he had not entered into any deed of agreement dated 24.05.2010 marked as Ex.P4. It was further claimed by the first defendant that he entered into an agreement with one Anil Kumar Ojha for investing in his movie “Nil Gavani Selladhey” and a charge was created in his favour over the exploitation rights of the film. Therefore, theatrical rights were exploited by Anil Kumar Ojha. The first defendant admitted the bank statement filed by the plaintiff which contained the details of the amount paid to the first defendant on various dates. However, it was claimed that said payments were not made towards loan transaction as alleged by the plaintiff but it was an investment transaction between said Anil Kumar Ojha and the first defendant. Hence, it was claimed by the first defendant, he was not liable to pay suit claim to the plaintiff.

5(b). It was also claimed by the first defendant that Board Resolution dated 01.11.2007 authorising Anil Kumar Ojha to file pleadings and documents and to give evidence in the suit was false and fabricated one.



It was also claimed that Anil Kumar Ojha had become Director of the company only on 31.03.2012 and not from 07.11.2005. The first defendant also denied his signature contained in the cheque dated 01.10.2011 allegedly issued by him in favour of plaintiff company for discharge of the loan amount. It was further claimed that the entire suit claim was false one and there was only an investment transaction between the first defendant and Anil Kumar Ojha for production of feature film and the defendants 2 to 5 had never guaranteed for proper repayment of loan amount by first defendant to plaintiff. It was also claimed by the first defendant that despite holding of entire rights of the movie and earning of sufficient theatrical collection by Anil Kumar Ojha, one of the Directors of plaintiff company namely Pratap Kumar Rakesh sold immovable property belonged to Mrs.Omana by executing a registered sale deed in favour of Arun Kumar Sharma. Further the dubbing rights of the movie was also sold by Anil Kumar Ojha. It was claimed by the first defendant that the plaintiff suppressed all these facts in his pleadings and the suit had been laid by plaintiff represented by Arun Sharma at the instigation of above said Anil Kumar Ojha and hence the same is liable to be dismissed.



6. Gist of the reply statement filed by the plaintiff:

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It was claimed by the plaintiff that Arun Sharma was inducted as a Director of the plaintiff company on 29.05.1995 and he resigned from his position on 01.04.2016 and again he was reinducted as a Director on 20.01.2017 and therefore the suit was maintainable. It was claimed by the plaintiff that the agreements dated 11.05.2009, 16.12.2010 and 24.05.2010 were denied by the first defendant in his additional written statement after completion of plaintiff side evidence and therefore, the said plea was liable to be rejected. It was further claimed by the plaintiff that a deed of simple mortgage dated 03.03.2011 was executed in favour of plaintiff as security for proper repayment of the loan amount. In the said document, payment of Rs.2,85,00,000/- was admitted and a further sum of Rs.35,00,000/- was also referred to. It was also agreed that the first defendant and Mrs.Omana should pay the outstanding amount within six months and on failure to repay the said amount the mortgagee was empowered to sell the mortgaged property privately. In order to enforce these terms the Power of Attorney was executed by Mrs Omana authorising Pratap Kumar Rakesh to sell mortgaged property. Since the first defendant and the mortgagor Mrs.Omana failed to pay the amount dues in time, the said



property was sold and the sale consideration was adjusted towards the dues of the first defendant in respect of the said additional loan amount of Rs.35,00,000/-.

7. Issues framed:

Based on these pleadings of the parties, the following issues were framed by the Court:

(i) Whether the finance agreement dated 11.05.2009 and the deed of guarantee dated 16.12.2010 are true and valid?;

(ii) Whether the plaintiff had lent a sum of Rs.2,20,23,000/- pursuant to the agreements to the defendants?;

(iii) Whether the defendant is liable to pay a suit claim?;

(iv) To what other reliefs the parties are entitled to?.



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8. Thereafter in the application filed by the defendants, the following additional issues were framed by the defendants:

(i) Whether the suit filed by the plaintiff's company through its Director of Arun Sharma is maintainable?;

(ii) Whether the pleadings and the documents filed by Mr.Arun Sharma can be relied upon?;

(iii) Whether the Board of Resolution dated 28.10.2011, 01.11.2011 and 19.01.2019 are true and valid?.

9. Evidence let in by the parties:

On behalf of the plaintiff, the above said Arun Kumar Sharma and Anil Kumar Ojha were examined as PW.1 and PW.2 respectively. Thirty three documents were marked on behalf of the plaintiff as Exs.P1 to P33. On behalf of the defendants, the first defendant was examined as DW1 and eight documents were marked as Exs.D1 to D8. The defendants 2 to 5 remained ex-parte.

**10. Discussion on Additional issues 1 to 3:**

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The learned senior counsel appearing for the plaintiff submitted that Arun Kumar Sharma was inducted as Director of the plaintiff company on 29.05.1995 and he resigned from the Board of Directors of the company with effect from 01.04.2016. Thereafter, he was reinducted as a Director on 20.01.2017. The Board Resolution dated 28.10.2011 marked as Ex.P26 authorises Arun Sharma to institute the suit as a plaintiff company. In order to prove, he was Director of plaintiff company during the relevant period, balance sheets of the company for the period 2010 to 2012 were produced under Exs.P28 to P30, wherein the signature of Arun Sharma was affixed in his capacity as Director. Therefore, the learned senior counsel submitted that on the date of filing of the suit during November 2011, he was Director of the company duly authorised by Board Resolution. Hence, the suit filed by him representing the plaintiff company as a Director is very well maintainable. The learned Counsel further submitted that Board Resolution dated 28.10.2011 was marked without any objection by the defendants as Ex.P26. The first defendant transacted with Arun Sharma as Director of Plaintiff company by executing various documents under Exs.P1, P3 to P17, P20, P21, P24, P25, P31 to P33. Therefore, the first defendant cannot



dispute the status of Arun Kumar Sharma as Director of the company. The learned senior counsel further submitted that Board Resolution dated 19.01.2019 marked as Ex.P22 authorises Anil Kumar Ojha to give evidence in the suit on behalf of the plaintiff company and the same was marked without any objection by defendants and hence the first defendant cannot be permitted to challenge the same at the time of arguments.

11. In support of his contention, the learned senior counsel for the plaintiff relied on the following judgments:

(i) *United Bank of India Vs. Naresh Kumar and others* reported in (1996) 6 SCC 660;

(ii) *Sociedade De Fomento Industrial Ltd., and others Vs Ravindranath Subraya Kamat and others* reported in 1998 SCC online Bom 328;

(iii) *Sri Parameshwari Prasad Gupta Vs Union of India* reported in (1973) 2 SCC 543;

(iv) *Recon Agrotech Ltd., Vs. Vijaya Sales Corporation and others* reported in 2000 SCC Online AP 807;



12. The learned senior counsel for the first defendant submitted that the plaintiff failed to produce any Board Resolution authorising plaintiff company to grant loan to any persons and therefore in view of Section 292 (1) (e) of Companies Act, the suit filed by the plaintiff as if the suit transaction was a loan transaction between plaintiff company and first defendant was not maintainable and the absence of resolution probabalises the case of the first defendant that it was only investment by the plaintiff.

13. The learned senior counsel further submitted that under Section 48 of The Companies Act, documents executed on behalf of the company must have company seal and however in the plaintiff's documents company seal was not found and therefore, it probabalises the case of the defendant that he had no transaction with the plaintiff company. The learned senior counsel further submitted that there was no whisper in the plaint averment about any Board Resolution authorising Arun Kumar Sharma to present the present suit filed by the plaintiff and therefore, the suit is not maintainable. It is further submitted by the learned senior counsel that Board Resolution dated 19.01.2019 was brought on record only after filing



of proof affidavit by PW.2 that too without obtaining the leave of the Court.

It is the specific case of the learned senior counsel that in A.No.1536 of 2019, this Court permitted PW.2 to file Board Resolution dated 01.11.2011 but not resolution dated 19.01.2019. The learned senior counsel further submitted that the plaintiff side witnesses suppressed the resignation of Arun Sharma from the Directorship of the company. The learned senior counsel also submitted that Ex.D9 certified copy of Form No.12 produced by defendants would disprove re-induction of PW.1 as a Director of the plaintiff company from 20.01.2017. The learned Senior Counsel emphatically submitted that the suit transaction is only an investment by PW.2, Anil Kumar Ojha, in his individual capacity and there was no financial transaction involving the plaintiff.

14. In support of his contention, the learned senior counsel appearing for the 1st defendant relied on the following judgments:

(i) *Schmenger GMBH and Company Leder Vs. Saddler Shoes Private Limited* reported in *Manu/TN/3885/2010*;

(ii) *State Bank of Travancore Vs. Kingston Computers (I) Private Ltd., reported in (2011) 11 SCC 524:Manu/SC/0280/2011 (SC)*;



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(iii) *Nibro Ltd., Vs. National Insurance Company Limited* reported in AIR 1991 Delhi 25: Manu/DE/0138/1991;

(iv) *Shubh Shanti Services Ltd., Vs. Manjula S.Agarwalla and others* reported in Manu/SC/0387/2005 : AIR 2005 SC 2506 (SC);

(v) *Miraj Marketing Corporation Vs. Vishaka Engineering and others* reported in Manu/DE/1193/2004:(2004) 115 DLT 471;

(vi) *Apple Valley Resort Vs. H.P.State Electricity Board and Others* reported in Manu/HP/0014/2003: 2004 118 CompCas 328;

(vii) *Ferruccio Sias and others Vs. Jai Manga Ram Mukhi and others* reported in Manu/DE/0843/1999 : 77 (1999) DLT 522.

15. A reading of plaint would indicate the same was verified by Arun Kumar Sharma during November 2011. Ex.D5 is a document filed by the defendants. The same would indicate Arun Kumar Sharma was appointed as Director of plaintiff company on 29.05.1995 and he resigned from the post on 01.04.2016. Therefore, on the date of filing of the suit (i.e., November 2011) Arun Sharma acted as a Director of the plaintiff company even as per the document marked by the defendants as Ex.D5. Exs.P29 and P30 are balance sheets of the plaintiff company as on



31.03.2011 and 31.03.2012 respectively which were signed on 08.08.2011 and 04.07.2012 respectively. These two documents appeared to have been signed by Arun Kumar Sharma as Director of the plaintiff company. Therefore, Exs.P29, P30 corroborate Ex.D5 with regard to the fact that Arun Kumar Sharma functioned as Director of the plaintiff company at the time of presentation of the suit. Therefore, the contention of the first defendant as if he was not Director of the company at the relevant point of time could not be accepted.

16. Ex.P26 is the Board Resolution passed by the Board of Directors of plaintiff company authorising Arun Kumar Sharma, Director of the company to verify the pleadings and file the present suit. The marking of said documents was opposed by the first defendant. Further it was submitted that unless the minute book of the board is produced the contention of the Resolution cannot be proved.

17. In *United Bank of India Vs Naresh Kumar and others* reported in (1996) 6 SCC 660, while dealing with the ratification of any act done on behalf of the company without a due authorisation, the



Apex Court observed as follows:

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It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the Code of Civil Procedure a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by against a corporation the Secretary or any Director or other Principal officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence



thereof and in cases where pleadings have been signed by one of its officers a Corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The Court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer.

18. In ***Sociedade De Fomento Industrial Ltd., and others Vs. Ravindranath Subraya Kamat and others*** reported in **1998 SCC Online Bombay 328** while dealing with the applicability of Section 48 of Old Companies Act, Bombay High Court, observed as follows:

6. While assailing the impugned order, Shri M.S. Usgaonkar, the learned Senior Counsel appearing for the plaintiffs, submitted that the reference to section 48 of the Companies Act as well as the judgment relied upon by the trial Court in G. Subha Rao v. M/s. Rasmi Die-Castings Ltd, A.I.R. 1998 A.P. 95 is totally out of context and irrelevant for the decision in the matter. Section 48 provides that "a Company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney to execute deeds on its behalf in any place either in or outside India and a deed signed by such an attorney on behalf of the Company



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and under his seal where sealing is required, shall bind the Company and have the same effect as if it were under its common seal. Indeed, as rightly submitted by the learned Counsel for the appellants, I fail to understand as to how section 48 of the Companies Act can be imported in the matter in issue. Section 48 will come into play when somebody wants to enforce the obligations arising under the contract against Company and when Company denies or disputes the execution of agreement or contract under which the obligation arises in favour of the third person by the Company. That is not the case in the instant matter and here it is the Company itself, as rightly contended by the appellants, that is seeking to enforce the Clause 4 of the letter of appointment. Being so, reference to section 48, is totally out of question. So also, the reliance on the judgment in the matter of G. Subha Rao v. M/s. Rasmi Die-Castings Ltd, A.I.R. 1998 A.P. 95 (supra) is also out of context and is not at all applicable to the facts of this case. Being so, the finding of the trial Court that the Memo of Understanding is not executed by the plaintiffs Companies nor by the defendants companies and therefore cannot be acted upon, cannot be sustained and is liable to be set aside.

19. In view of the law laid down in the above mentioned case laws, it is clear, the company is entitled to ratify the acts done on behalf



of the company without valid authorisation. In the case on hand, the plaintiff produced Ex.P26, extract of the minutes of the Board Resolution dated 28.10.2011 to prove that Arun Kumar Sharma was authorised to verify the pleadings. Even in the absence of such authorisation, the act of filing of the suit as well as verifying the pleading can very well be ratified by the company expressly or impliedly. In the case on hand, another Director of company namely Anil Kumar Ojha was examined on behalf of the plaintiff and he deposed in favour of the plaint pleadings. In such circumstances, technical objections raised by the defendants as if Arun Kumar Sharma was not authorised to verify the pleadings on behalf of the company is without any substance. Hence, the said objection of the senior counsel appearing for the first defendant is rejected.

20. PW.2 Anil Kumar Ojha was initially inducted as Director of the Company on 07.11.2005 under Ex.P23 and he resigned from the Directorship and again re-inducted as Director of the company on 04.04.2016 as per Ex.D5. Therefore, when he was examined as PW.2 he was Director of the company. It was stated by the plaintiff that application for reception for additional evidence was filed in A.No.1536 of 2019. It was



claimed that the plaintiff wanted to file Resolution dated 19.01.2019 as additional document as per the averment in the affidavit but along with application resolution dated 01.11.2011 was wrongly filed instead of resolution dated 19.01.2019.

21. A reading of affidavit filed in support of Application No.1536 of 2019 seeking leave of the Court to produce the documents would suggest that the plaintiff wanted to produce only the Board Resolution dated 01.11.2011 not Board Resolution dated 19.01.2019 authorising Anil Kumar Ojha to depose on behalf of the plaintiff. In the affidavit as well as the petition, the plaintiff mentioned only Resolution dated 01.11.2011 but not 19.01.2019. Even in the order passed by this Court in A.No.1536 of 2019, this Court only permitted plaintiff to mark four documents namely Form-32 filed by the plaintiff dated 05.12.2005, the cheque issued by the first defendant dated 01.10.2011, return memo by bank dated 03.10.2011 and Board Resolution dated 01.11.2011 to be marked. However, after obtaining leave of the Court to mark Resolution dated 01.11.2011, at the time of marking, the plaintiff marked Board Resolution dated 19.01.2019 also as Ex.P22 along with Board Resolution dated 01.11.2011.



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22. A perusal of Ex.P22 would suggest in the first page of the same, resolution dated 01.11.2011 is stitched. In the second page Resolution dated 19.01.2019 is stitched along with Resolution dated 01.11.2011. However, there was no application or order to mark Resolution dated 19.01.2019. In such circumstances, there was no leave by the Court to produce additional documents dated 19.01.2019. Mere marking of the same without objection would not enable the plaintiff to rely on said documents in the absence of any order permitting the plaintiff to mark the same. Therefore, I hold that the plaintiff is not entitled to rely on Resolution dated 19.01.2019. However, resolution dated 01.11.2011 marked as Ex.P22 also authorises Anil Kumar Ojha to file pleadings, produce document and give evidence in the suit. Therefore, resolution dated 01.11.2011 is sufficient to enable PW.2 Anil Kumar Ojha to give evidence on behalf of plaintiff. In view of discussions made earlier additional issues 1 and 2 are answered in favour of plaintiff. The additional issue No.3 is partly answered in favour of defendants in respect of Board Resolution dated 19.01.2019 and partly in favour of plaintiff in other respects.

23. Discussion on Issues Nos.1 to 4:



In support of the suit claim plaintiff relied on financial agreement dated 11.05.2009 marked as Ex.P1, deed of agreement dated 24.05.2010 marked as Ex.P4 and deed of guarantee dated 16.12.2010 marked as Ex.P17. The finance agreement was entered into by first defendant along with plaintiff represented by Arun Kumar Sharma as Director. It is written in Rs.20 stamp paper in the witness column only one witness signed, however, he has not been examined. Ex.P4 is deed of agreement entered between the first defendant and Arun Kumar Sharma in his capacity as Director of the plaintiff company. The same was attested by one Aquilla Maria and one J.S.Rajkumar, both the attestor were not examined and Ex.P17 deed of guarantee is also a document entered in Rs.20 stamp paper signed by all the defendants and Arun Kumar Sharma in his capacity as Director of the company. It acknowledges outstanding amount of Rs.2,75,00,000/- payable by the first defendant to the plaintiff. However, the said documents were not attested by any witness.

24. In the original written statement filed by the first defendant, the first defendant raised a plea that there was no transaction between the first defendant and plaintiff and he denied his signatures as forged one in Para No.13 of the statement. Likewise in para No.11 of the



written statement he claimed that the signatures of the witnesses found in document dated 24.05.2010 as forged.

25. A reading of the written statement in general as a whole would indicate there was denial of execution of finance agreement dated 11.05.2009 and deed of agreement dated 24.05.2010. However, the denial was not specific though the signatures of the witnesses was specifically denied and the denial of first defendant's signature in the document was not specific. When there is no categorical admission of the documents by the defendants, the stand taken by the first defendant in his additional written statement admitting the bank statement filed by the plaintiff which contains details of amount paid by the plaintiff to first defendant would assume significance. In para No.16 of additional written statement, the first defendant averred as follows.

“The first defendant admits the bank statement filed by the plaintiff which contains the details of amount paid to the 1st defendant on various dates and the same were not issued as a loan for production of movie but an investment transaction made by Mr.Anil Kumar Ojha and hence the 1st defendant is not liable to pay the suit claim as claimed by the plaintiff since the very suit is not maintainable and liable to be



dismissed.”

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26. Therefore, the amounts paid by the plaintiff under bank statement marked as Exs.P21 was specifically admitted by the first defendant in his pleadings. However, he had set up a defence as if the said amount was paid as an investment by Anil Kumar Ojha, but not as a loan transaction by plaintiff. Therefore, the first defendant categorically admitted receipt of the suit amount from plaintiff company under Ex.P21. When the amount to the tune of Rs.2,75,00,000/- had been transferred to the account of the first defendant from the account of the plaintiff under Ex.P21, the payment of amount as claimed by the plaintiff in favour of first defendant is duly proved in the light of the admission made by the first defendant in the additional written statement. However, the first defendant raised a plea, the said amount was received as an investment from Anil Kumar Ojha, one of the Director of the plaintiff company and first defendant had no transaction with the plaintiff. The first defendant has not examined any other independent witness in support of his plea regarding alleged financial investment agreement. When amount is transferred from the plaintiff company's account to first defendant, the defence set up by the defendants as



if one of the Director of the plaintiff company Anil Kumar Ojha in his personal capacity invested money in the film business cannot be accepted.

Likewise, the plea of the first defendant as if he had no transaction with plaintiff pales into insignificance in the light of the statement of account filed by the plaintiff under Ex.P21. This Court wants to point out Ex.P21 bank statement was marked on 04.04.2018 through PW.1 and thereafter additional written statement was filed by 1st defendant on August 2021, admitting payments under Ex.P21. When plaintiff issued a pre-suit notice spelling out the loan transaction between the plaintiff and the first defendant, having received the same, the first defendant failed to come up with any reply. If the suit transaction is an investment transaction as distinguished from loan transaction, as claimed by the first defendant immediately after receipt of pre-suit notice, the first defendant would have come up with a reply spelling out the said facts. However, for the reason best known to the first defendant, he failed to give any reply to the pre-suit notice denying loan transaction pleaded by the plaintiff. In such circumstances, the plea raised by the defendant as if the suit transaction is financial investment by one of the Director of the plaintiff company namely PW.2 Anil Kumar Ojha and hence the suit for recovery of money filed by the plaintiff is liable to be



dismissed is not acceptable to this Court.

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27. Ex.D1 is the mortgage deed marked by the first defendant, it is a deed of mortgage executed by one Mrs.Omana in favour of plaintiff. Ex.D1 is a document filed by first defendant marked through cross examination of PW.2. Hence, recitals found thereon are binding on first defendant. Suggestive question number 27 put to PW.2 [cross examination dated 04.08.2021] would indicate Ex.D1 was executed by one Omana for and on behalf of 1st defendant in favour of plaintiff. The recital in the document reveals that the said mortgage deed was executed as a security for the loan already availed by imagine creation represented by its proprietor the first defendant herein. The said recitals in Ex.D1 would prove there was loan transaction between the first defendant and plaintiff and as a security for the same said Mrs.Omana executed mortgage deed in favour of plaintiff. In the said document receipt of Rs.3,20,00,000/- = [Rs.2,85,00,000/- +Rs.35,00,000/-] by first defendant from plaintiff was admitted. It was also agreed already loan was availed by first defendant from plaintiff and outstanding amount was Rs.2,85,00,000/- and a sum of Rs.35,00,000/- was paid by RTGS on the date of registration of said



documents. In such circumstances, the plaintiff proved the loan transaction pleaded by them by preponderance of probabilities and first defendant miserably failed to lead any evidence in support of defence set up by him as if, the amount paid by the plaintiff was only an investment in the business venture and not the loan transaction. Hence, the issues Nos.1 to 4 are answered in favour of the plaintiff and against the defendants.

28. In view of the answer to the issues Nos.1 to 4 and additional issues Nos.1 to 3, the plaintiff is entitled to decree for recovery of money as prayed for. Though the plaintiff prayed for interest at the rate of 18% per annum, in view of the present low interest regime, this Court is not inclined to grant interest at the rate of 18% per annum. However taking into consideration, the nature of the transactions between the parties and the low interest regime, this Court feels an interest at the rate of 9% per annum would be appropriate in this case.

29. Accordingly, the suit is decreed as prayed by directing the defendants to pay a sum of Rs.3,06,38,446/- together with interest at the rate of 9% per annum from the date of plaint to till date of realization.

22.03.2024



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Index

: Yes / No

Speaking order

: Yes / No

Neutral Citation

: Yes / No

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S.SOUNTHAR, J.

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Pre-delivery order made in
C.S.No.61 of 2012

22.03.2024