IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.03.2024

PRONOUNCED ON : 11.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.S No.140 of 2015

K.B.Radhakrishnan ... Plaintiff

..Vs..

1.Agate International Pvt. Ltd.,
rep. by its Director Suriyaprakasam
Prakadeesh Kumar and
Ramasamy Suriyaprakasam
No.916, Secto-4, Poctut C
Vasant Kunj
New Delhi-110 070

2.Agate Finance Ltd.,
formerly known as Agate Madras
International Finance Ltd.,
Represented by its Directors
Naina Mohamed, Suriyaprakasam
Prakadeesh Kumar and
Ramasamy Suriyaprakasam
(Defendants 1 & 2 amended as per
order dated 22.06.2023 in A.No.
2278 of 2023 in C.S No.140 of 2015)

3.K.N.Natarajan

4.Sultan Abdul Kadir
5.Francis Sekar Raja
6.Naina Mohamed
7.N.Raveendran
8.Thrivikraman Thambi
9.V.Ravi Karthikeyan
10.T.Sathya Rajeswari .. Defendants

Prayer: Civil Suit has been filed under Order IV Rule 1 of O.S Rules and Order VII Rule 1 CPC, praying to pass the following judgment and decree against the defendants:

a) directing the defendants 1 to 6 to pay the plaintiff a sum of Rs.1,17,00,000/- (Rupees One Crore Seventeen Lakhs only) along with interest of Rs.1,01,20,356/- (Rupees One Crore One Lakh Twenty Thousand Three Hundred and Fifty Six only) calculated at the rate of 15% per annum simple interest till 14.02.2013 on daily product basis on the monies invested by the plaintiff in 1st and 2nd defendant companies and future interest from the date of plaint till the date of payment.

b) to declare the sale of the schedule mentioned property belonging to the 2nd defendant to defendants 9 and 10 under the deed of sale dated 10.08.2012 registered as Doc No.1647 of 2012, on the file of SRO Thiyagaraya Nagar as sham, illegal, null and void.

c) for costs of the suit.

For Plaintiff : M/s.Adithya Reddy

For Defendants : Mr.Sai Bharath & Ilan for D7
D3 to D6 & D8 to D10 - Set Exparte
D1 & D2 - Name printed

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JUDGMENT

This Civil Suit has been filed seeking for the relief as stated therein.

2. The case of the Plaintiff, as set out, in the plaint is as follows:-

(i) The plaintiff is a resident of Pollachi and he is carrying on primary business as a trader in pulses, nuts, jaggery and yarn for the last three decades. He has been awarded contract by Sabarimala Iyyappan Devasthanam for supply of Jaggery and other material continuously since 1993 till date. He had acquainted with the 3rd defendant at or about the year 2003-2004. The 3rd defendant during one of the visits to the plaintiff at the city of Chennai had introduced to the 5th defendant who represented to be the Director of the 2nd defendant company. The said meeting took place at 2nd defendant company's office in Chennai. The 5th defendant represented the plaintiff that they are carrying on business as Coal Exporters and Importers and the 2nd defendant company was generating huge profits and made tall claims and representations.

(ii)The 5th defendant had specifically held out that the 2nd defendant company was promoted by the 4th and 6th defendants who are citizens of Malaysia and that the said persons are behind the running and profitable functioning of the 2nd defendant company. Subsequently, the 5th defendant had introduced the plaintiff to the 4th defendant as the Managing Director of the 1st and 2nd defendant Companies. The 4th defendant also confirmed the same and made tall claims and representations. Based on the specific representations and guarantees made by the 4th defendant and induced by the same, the plaintiff had invested and agreed to invest amounts in the business activity of the companies. The 4th defendant had also specifically held out and represented that he was carrying on various business activities inclusive and not restricted to trading in scrap. The plaintiff was doing yarn business along with the 3rd defendant in the years 2003-2004. The 3rd defendant introduced the plaintiff to the 5th defendant who claimed to be a Director in the 2nd defendant company in the year 2005. The 3rd and 5th defendants attempted to convince the plaintiff to invest monies in the 1st and 2nd defendant companies by making claims regarding the company's performance and projections for future. The 5th defendant informed the plaintiff that the 1st and 2nd defendant companies were promoted by 4th and 6th defendants who are Malaysian citizens. The defendants 4 to 6 were the major shareholders in both the 1st and 2nd defendant Companies.

(iii)The plaintiff was promised by the 4th defendant that a new joint venture company will be incorporated in which the plaintiff would be given equal shareholding. The plaintiff was made to fly to Malaysia more than 8 times, during the course of which he was even shown a few scrap yards and two coal fields said to be belonging to the 4th defendant and his Companies in order to impress the plaintiff. Believing the statements of the defendants to be true the plaintiff invested huge sums of money into the 1st and 2nd defendant companies. The details of the investments made by the plaintiff in the 2nd defendant company are as follows:

Date	**Amount**	**Mode of Payment**	**2nd Defendant's Bank**
04.04.2007	50,00,000/- (Fifty Lakhs)	Cheque No.003905 of SBI, Ernakulam	ICICI Bank, Chennai.
09.06.2007	12,00,000/- (Twelve Lakhs)	Cheque No.003912 and 003913 of SBI,	IOB, Chennai

Date	Amount	Mode of Payment	2nd Defendant's Bank
		Ernakulam	
15.06.2007	15,00,000/-		ICICI Bank, Chennai

(iv)Apart from the above payments made to the 2nd defendant, the plaintiff invested another Rs.50,00,000/- in the 1st defendant company by way of RTGS transfer from the plaintiff's Indian Bank a/c, Vyttila Branch, Ernakulam to the 1st defendant company's account with Punjab National Bank on 24.10.2007. Therefore, the plaintiff had invested a sum of Rs.1,27,00,000/- in total in the 1st and 2nd defendant companies. The plaintiff had invested these sums with the understanding that the plaintiff would be allotted shares equivalent to the amounts invested as well as on the assurance that the plaintiff would be made a Director in both the Companies. However the plaintiff was not given any share certificates in lieu of the investment and it is not known as to how the sums invested by the plaintiff have been accounted for in the books of the companies. The plaintiff kept requesting the defendants to convene a meeting of the Board of Directors and shareholders of the company. However, ever since the plaintiff made the investments not a single Board meeting or AGM has been called for the Companies to the plaintiff's knowledge. Despite repeated requests, the plaintiff was not provided with the Company's balance sheets and accounts. In fact, after this turn of events the plaintiff independently made enquiries in the affairs of the 1st and 2n defendant companies and found out that neither the 4th defendant nor any of the other defendants were involved in coal mining activity.

(v)After the monies were involved, the defendants 4 to 7 completely avoided the plaintiff and refused to give him any particulars regarding the investments made by him. They also kept the plaintiff in the dark regarding the functioning of the companies. The plaintiff was given no returns either in the form of dividend or interest for the investments made by him. Therefore, from 2009, left with no option the plaintiff demanded that his investments be returned by the 4th to 7th defendants immediately. The defendants completely avoided the plaintiff. On 14.03.2009 after repeated demands by the plaintiff for returning the money the plaintiff was invited to Malaysia for settling the amount during which the defendants 3, 4, 5 and 7 met the plaintiff. As would be evident from the so-called minutes of the said meeting which was provided to the plaintiff , the amount of Rs.1,27,00,000/- is specifically acknowledged. However, none of the other statements recorded in the minutes of meeting reflect the actual position of what transpired at the meeting. The plaintiff was forced to sign the minutes under duress. The plaintiff was promised that on signing the minutes he would be given the money immediately. The plaintiff did not pursue education beyond 4th standard, which he pursued in a rural school and therefore is not at all conversant with English. The statement in the alleged minutes that the plaintiff had taken back Rs.15,00,000/- and agreed to resign and transfer his shares in the 1st defendant company and the Indonesian Company P.T. Agate Resources Indonesia is false and baseless. In fact, the plaintiff had not received even a single rupee in return of the investments made by him. It was only a few months later that the plaintiff was given two cheques from the company being Cheque No.672514 and 672515 dated 04.05.2009 for Rs.5 lakhs each, were paid to the plaintiff. Therefore, out of Rs.1,27,00,000/- only Rs.10,00,000/- was refunded to the plaintiff. Also, there was no understanding that the plaintiff would be refunded his money only after completion of some alleged coal mine sale transactions in Indonesia in the future. In fact the plaintiff believes that the defendants 1 to 7 did not own any coal mines anywhere. Therefore, the plaintiff kept insisting that his investments be refunded through emails.

(vi)While that be so, the plaintiff was shocked to receive a legal notice dated 16.07.2010 from the defendants 4, 5 and 7 as Directors of the 1st defendant company wherein it was claimed that the plaintiff was made a Director of the 1st defendant company and on P.T Agate Resources, Indonesia. It was alleged in the said notice that the plaintiff has withdrawn some amounts invested by him either through himself or through the 3rd defendant. It was also alleged that the 2nd defendant company had advanced loans to the 3rd and 8th defendants and that the plaintiff was personally responsible for the said amounts. While admitting that a sum of Rs.1,27,00,000/- was invested by the plaintiff, it was claimed in the said notice that after deducting the alleged withdrawals and alleged loans lent to 3rd and 8th defendants only a sum of Rs.58,70,000/- was due to the plaintiff. The plaintiff denied the allegations in the said notice and refused to accept the sum so offered.

(vii) Left with no choice and after repeated attempts at negotiation and communication, the plaintiff caused the issuance of a legal notice dated 21.09.2011 to the defendants 4 to 7 wherein the plaintiff made it clear that he was in no way connected to the 3rd and 8th defendants in these transactions and cannot in any way be responsible for the alleged loans advanced to them. It was pointed out that none of the alleged withdrawals or payments made from the company was towards the plaintiff's refund of investment. The plaintiff therefore demanded that the sum of Rs.1,27,00,000/- be paid along with interest and out of which, Rs.10,00,000/- was repaid through cheques, dated 04.05.2009. The defendants 1, 2, 4, 5, 6 and 7 replied to the said notice vide reply dated 26.10.2011, claiming that the sum of Rs.1,27,00,000/- invested by the plaintiff was given only as loan to the 1st and 2nd defendant companies. This allegation is being made for the first time which itself shows that it is an afterthought and false. It was claimed that the plaintiff had withdrawn various amounts from the companies through the 3rd and 8th defendants and therefore, only a sum of Rs.48,70,000/- was due to the plaintiff. The said statement is entirely false and baseless. The reference that the alleged minutes of 14.03.2009 record that a sum of Rs.14,00,000/- was allegedly paid to the 3rd defendant is totally irrelevant to the plaintiff. In the said reply notice, the defendants 1, 2, 4 to 7 have categorically admitted receipt of a sum of Rs.1,27,00,000/- and alleged the same was towards loan given to the second defendant.

(viii).The plaintiff has nothing to do with the 3rd and 8th defendants with respect to their dealing with the 1st and 2nd defendant companies. The 3rd defendant merely introduced the plaintiff to the 5th defendant and the 3rd defendant knew the defendants 4 to 7 from much before, the time the plaintiff was introduced to them. Therefore, there can be no presumption that the monies withdrawn by the 3rd to 8th defendants, with whom the plaintiff might have independent business dealings, were withdrawn on behalf of the plaintiff. The defendants 1, 2, 4, 5, 6 & 7 in their reply notice dated 26.10.2011 also claimed that the plaintiff has to repay the 5th defendant a sum of Rs.2,16,65,000/-. There are absolutely no particulars regarding how and why this amount is payable to the 5th defendant. To the said reply, the plaintiff sent a rejoinder notice dated 10.11.2011. Regarding the averment that the plaintiff owned the 5th defendant Rs.2,16,65,000/-, it was pointed out that the 5th defendant had made some part payment towards assignment of a sale agreement in his favour but failed to perform his obligations under the assignment fully thereby causing serious loss to the plaintiff. It was also stated that the plaintiff will initiate separate legal proceedings against the 5th defendant for damages in relation to his failure to perform his obligations under the assignment. It was pointed out that the said transactions are entirely different and unconnected to the plaintiff's payments to the 1st and 2nd defendant companies. Therefore, it is clear that the defendants 4 to 7 have conspired to play a fraud on the plaintiff and have been attempting to defeat his genuine claim for refund of the sum of Rs.1,17,00,000/- along with interest.

(ix)While that be so, it has come to light that a property held by the 2nd defendant company, being 2965 sq.ft. of plot and building at Door No.46, Ramakrishna Street, T.Nagar, Chennai-17 has been alienated to the 9th and 10th defendants vide sale deed dated 10.08.2012. Revenue records show that the said property was originally purchased in the name of Agate Madras International Finance Ltd., the erstwhile name of the 2nd defendant company. Though the said name was changed to Agate Finance Ltd., i.e 2nd defendant, the revenue records of the property reveal that even at the time of sale to the 9th and 10th defendants on 10.08.2012 the property stood in the name of Agate Madras International Finance Ltd. It is reliably learnt that the resolution of the 2nd respondent company's members authorizing the sale of the property was forged by the defendants 4, 5 and 7 as there was no such meeting held in which the proposal to sell the property was approved. Therefore, the entire sale to defendants 9 and

10 is invalid and void. The plaintiff suspects the sale consideration from the said sale has been misappropriated by the defendants 4, 5, 6 and 7 thereby leaving the other shareholders and creditors of the 2nd defendant company in lurch. Having huge sums of money to acquire shares in the 2nd defendant company, the plaintiff is vitally interested in the assets of the company. The assets are being alienated only to defeat the plaintiff's claims. Hence the suit.

3.On the side of the Plaintiff, the plaintiff examined himself as PW1 and Ex.P1 to Ex.P20 were marked. Though summons were served on the defendants 3, 4, 5, 6, 7, 8, 9 and 10, they did not enter appearance before this Court and no written statement has been filed by them. Hence, they were set ex-parte on 16.03.2023.

4.The learned counsel for the plaintiff submits that the plaintiff has invested the amount of Rs.1,27,00,000/- in the business activity of the 1st and 2nd defendant company with the understanding that he would be allotted shares equivalent to the amounts invested as well as on the assurance that he would be made a Director in both the companies. ie. 1st and 2nd defendants herein. However, neither share certificates were given nor he was made as a Director in both companies by convening the Board of Directors meeting.

5. It has been further submitted that after investment of the amount of Rs.1,27,000,00/-, the defendants 4 to 7 completely avoided the plaintiff and refused to give him any particulars regarding the investments made by him. Further, the plaintiff was given no returns either in the form of dividend or interest for the investments made by him. Hence, the plaintiff demanded the defendants 4 to 7 to refund the amount along with interest. after repeated demands, two cheques from the company being Cheque No.672514 and 672515 dated 04.05.2009 for Rs.5 lakhs each, were paid to the plaintiff. Therefore, out of Rs.1,27,00,000/- only Rs.10,00,000/- was refunded to the plaintiff and the balance of Rs.1,17,00,000/- is to be refunded by the defendants 4 to 7 who are the directors of the said companies.

6.The learned counsel for the plaintiff further submits that even the payment of Rs.1,27,00,000/- was admitted by the defendants 4, 5 & 7 in their the Legal Notice dated 16.07.2010 vide as Exhibit P-10, they have stated that as the plaintiff had withdrawn various amounts from the companies through the 3rd and 8th defendants, the balance amount of Rs.58,70,000/- is only to be refunded to the plaintiff after showing withdrawals of unrelated persons as loan. In reply notice dated 21.09.2011, vide Ex.P15, the plaintiff made it clear that he was in no way connected to the 3rd & 8th Defendant in these transactions and cannot in any way be responsible for the alleged loans advanced to them. It was pointed out that none of the alleged withdrawals or payments made from the Company was towards the plaintiff. Hence, he therefore demanded the sum of Rs. 1,17,00,000/- (Rupees One Crore Seventeen Lakhs only) to be paid immediately along with interest.

7. It has been further submitted by the learned counsel for the plaintiff that the Defendants 1, 2, 4, 5, 6 and 7 replied to the aforesaid notice vide Ex.P16 wherein they have accepted for the receipt of the amount of Rs.1,27,00,000/- as loan and it is shown as the various amount has been withdrawn by the plaintiff through the 3rd & 8th defendants and

therefore only a sum of Rs. 48,70,000/- (Rupees Forty-Eight Lakhs Seventy Thousand only) was due to the plaintiff without any documentary evidence. In the rejoinder notice issued by the Plaintiff to reply from 1st, 2nd, 4th, 5th, 6th and 7th Defendants dated 10.11.2011 vide Exhibit P-17, it is stated that the defendants are not having any right to deduct the amount paid to Natarajan and Thiruvikarmanambi and they are liable to refund of the amount along with interest. Hence, the defendants 1 to 6 are liable to pay a sum of Rs.1,17,00,000/- (Rupees One Crore Seventeen Lakhs only) to the plaintiff after deducting the refund of Rs.10 lakhs along with interest of Rs.1,01,20,356/- (Rupees One Crore One Lakh Twenty Thousand Three Hundred and Fifty Six only) calculated at the rate of 15% per annum simple interest till 14.02.2013 on daily product basis on the monies invested by the plaintiff in the 1st and 2nd defendant companies and future interest from the date of plaint till the date of payment and other relief stated in the suit.

8. Heard the learned counsel for the plaintiff and as there is no

appearance on the side of the defendants and no written statement was filed even after notice was served on them, they were set exparte.

9. On perusal of the Notice dated 16.07.2010 vide Ex.P10, issued by the defendants 4, 5 and 7 as Directors of the 1st defendant company, it is seen that the amount of Rs.1,27,00,000/- has been reflected in their notice and even they are also accepting for the receipt of the said amount, it is stated therein that the plaintiff has withdrawn the said loan amount through the 3rd and 8th defendants, the balance sum of Rs.58,70,000/- is only to be refunded to the plaintiff. Further, in the Reply Notice dated 26.10.2011, it is also confirmed for the receipt of amount of Rs.1,27,00,000/- from the plaintiff and stated only a sum of Rs.48,70,000/- was due to the plaintiff after showing the statement of return of payment and minutes of meeting of the company.

10.From the Ex.P.10 and Ex.P16, it is reflected the amount of Rs.1,27,00,000/- on their account and further, the defendants have not come forward to deny the plaint averments. At the same time, the plaintiff has proved his case by way of oral and documentary evidence. Hence, the

the Defendants 1, 2, 4 to 6 are liable to pay a sum of Rs.1,17,00,000/- along with interest @9% p.a. from the date of plaint till the date of Judgment.

11. In fine, this Civil Suit is partly decreed. No costs.

11.09.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking

lbm

__Witnesses examined on the side of the plaintiffs:__
1. P.W.1. - K.B. Radhakrishnan

2. ***Exhibits produced on the side of the plaintiffs:***

S.No.	Exhibits	Description
1.	P-1	The certified copy of the Memorandum of Association of 2 defendant.
2.	P-2	The certified copy of the Articles of Association of 2nd defendant.
3.	P-3	The certified copy of the certificate of incorporation of 2nd defendant pursuant to name change.
4.	P-4	The printout copy of the statement of plaintiff's bank account with State Bank of India, Commercial Branch, Kochi. (Affidavit under Section 65 B of the Indian Evidence Act filed and recorded)
5.	P-5	The printout copy of the statement of plaintiff's bank account with Indian Bank, Vyitila.(Affidavit under Section 65 B of the Indian)
6.	P-6	The photocopy of the visa entries in plaintiff passport No. 2854203. (proof and relevance)
7.	P-7	The photocopy of the visa entries in plaintiff passport No. Z1744747 (proof and relevance)
8.	P-8	The purported minutes of meeting attended by plaintiff 3rd, 4th, 5th 6th and 7th defendants.
9.	P-9	The statement plaintiff's bank account with Tamil Nadu Mercantile Bank, Pollachi.
10.	P-10	The original legal notice issued on behalf of 4th 5th and 7th defendant.
11.	P-11	The certified copy of the profit & Loss account of 2nd defendant company.
12.	P-12	The certified copy of the annual returns of 2nd defendant company.

S.No.	Exhibits	Description
13.	P-13	The certified copy of the compliance certificate of 2nd defendant company under companies Act, 1959.
14.	P-14	the certified copy of the balance sheet of the 2nd defendant.
15.	P-15	the original legal notice issued on behalf of plaintiff counsel to defendant 1,2 and 4-7.
15.	P-16	is the original reply on behalf of defendants 1,2 and 47 to plaintiff's legal notice dated 21.09.2011
15.	P-17	the original rejoinder notice issued by plaintiff counsel to reply form defendant 1,2 and 4-7 dated 26.10.2011.
	P-18	the photocopy of the purported resolution of extraordinary General meeting of 2nd defendant company. (Proof and relevance)
	P-19	the certified copy of the sale deed executed on behalf o 2nd defendant company in favour of 9nd and 10 defendants.
	P-20	the original encumbrance certificate with respect to schedule mentioned property.

3.On the side of the defendants, no witness was examined nor documents were marked.

11.09.2024

A.A.NAKKIRAN, J.

lbm

Pre-Delivery Judgement in
C.S.No.140 of 2015

11.09.2024