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C.S.(Comm.Div.) No.90 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

C.S.(Comm.Div.) No.90 of 2021

J.Pankaj Mehta
Proprietor
M/s.Power Media
69/41, Dr.Radhakrishnan Road,
Mylapore, Chennai 600 004.

... Plaintiff

-VS-

1.M/s.Eshan Productions,
Represented by its Partners
Mr.R.G.Dushyanth & Mrs.Abirami Dushyanth
Royapettah, Chennai 600 014.

2.Mr.R.G.Dushyanth
Partner, M/s.Eshan Productions
No.25, Besant Road
Royapettah, Chennai 600 014.

3.Mrs.Abirami Dushyanth
Partner, M/s.Eshan Productions
No.25, Besant Road
Royapettah, Chennai 600 014.

... Defendants



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PRAYER: Civil Suit filed under Order VII Rule 1 of O.S.Rules Read With Order XXXVII Rule 1 & 2 of CPC And Section 7 of the Commercial Court, Commercial Division and Commercial Appellate Division of the High Court Act, 2016, praying to grant a judgment and decree on the following terms:-

(a) Directing the Defendants to pay to the plaintiff the sum of Rs.77,75,000/- (Rupees Seventy Seven Lakhs Seventy Five Thousand only) (Rs.50,00,000/- towards Principal and Rs.27,75,000/- towards interest at the rate of 18% per annum on Rs.50,00,000/- (Rupees Fifty Lakhs only) till the date of plaint till realization;

(b) Directing the Defendants to pay a sum of Rs.27,75,000/- (Rupees Twenty Seven Lakhs Seventy Five Thousand only) as compensation together with future interest at 18% per annum from the date of plaint till realization;

(c) Directing the Defendants to pay to the plaintiff the costs of this suit.

For Plaintiff : Mr.K.Ravi, Sr. Advocate

For Defendants : Mr.Gautham S.Raman
for M/s.C.Seethapathy



JUDGMENT

WEB COPY Pursuant to a request for financial assistance by the first defendant herein, represented by its partners, namely, the second and third defendants herein, the plaintiff gave a loan of Rs.50,00,000/- to the first defendant in two installments. The first and installments were paid on 11.05.2018 and 18.05.2018, respectively. Thereafter, the second and third defendants submitted a lab letter dated 11.05.2018 to the plaintiff from Gemini Effects. The defendants also executed two demand promissory notes in favour of the plaintiff for sums of Rs.25,00,000/- each dated 11.05.2018 and 18.05.2018. Two cheques for Rs.25,00,000/- each, both dated 13.06.2019, drawn on Indian Bank, Royapettah, Chennai 600 014, were also handed over to the plaintiff. Upon presentation, the said cheques were dishonored on account of insufficient funds. After issuing lawyer's notice dated 26.06.2019, the present suit was filed for recovery of a sum of Rs.75,77,000/- along with interest at 18% per annum on the principal sum of Rs.50,00,000/- from the date of plaint



until realization. In addition, the plaintiff claimed a sum of Rs.27,75,000/- as compensation with further interest thereon at 18% per annum from the date of plaint till realization.

2. The first and second defendants filed a written statement. In such written statement, the defendants assert that the claim has been inflated by including a claim for Rs.27,75,000/- without any basis so as to bring the case within the pecuniary jurisdiction of this Court. The defendants further assert in the written statement that blank promissory notes and two blank undated cheques were issued upon demand by the plaintiff. The defendants further state that the movie of the defendants ran into financial difficulties.

3. Upon completion of pleadings, the following issues were framed:

- 1. Whether the Defendants have executed the subject promissory notes in favour of the plaintiff?*



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2. *Whether the transaction between the plaintiff and the defendants is a loan transaction?*

3. *Whether the plaintiff and the defendants entered into a distribution agreement dated 11.05.2018 as alleged by the defendants?*

4. *Whether the subject cheques issued by the 1st defendant towards the part repayment of the loan?*

5. *Whether the defendants had agreed to pay compensation equal to the interest?*

6. *Whether this Court has pecuniary jurisdiction to try the suit?*

7. *Whether the plaintiff is entitled to decree for a sum of Rs.77,75,777/- with interest @ 18% per annum?*

8. *Whether the plaintiff to entitled a sum of Rs.27,75,000/- as compensation together with future interest as 18% per annum from the date of plaint?*

9. *What are the other reliefs to which the parties are entitled?*

4. The plaintiff adduced evidence by examining Mr. J.Pankaj Mehta, Proprietor of the plaintiff. In course of the examination in



chief of P.W.1, ten documents were exhibited as Exs.P1 to P10. The second defendant, R.G.Dusshyanth, was examined as D.W.1 and four documents were exhibited through him as Exs.D1 to D4.

Issue No.6

5. Since Issue No.6 relates to the pecuniary jurisdiction of this Court, it is appropriate to decide this issue first before dealing with other issues. The suit was laid as a summary suit for an aggregate sum of Rs.1,05,50,000/-. This includes a claim for compensation of a sum of Rs.27,75,000/-. Court fee was also paid on this aggregate sum. In view of the aggregate suit claim exceeding the threshold of Rs.1 crore, I conclude that this Court has pecuniary jurisdiction.

Issue Nos.1, 2, 3, 4, 5, 7 and 8:

6. The plaintiff assert that two demand promissory notes were executed by the second and third defendants in favour of the plaintiff. These two demand promissory notes were exhibited as



Exs.P1 and P2. The plaintiff also asserts that two cheques for sums of Rs.25,00,000/- each were issued by the defendants towards repayment of the loan of Rs.50,00,000/-. In the written statement of the first and second defendants, it is stated in paragraph 7, in relevant part, as under:

“.... The Plaintiff who is also financier demanded that the Defendants give two blank promissory notes and two blank undated cheques at the time of receipt of this amount as security towards performance of the Agreement dated 11.05.2018. It is submitted that at that time the Defendants did not give these demands much thought since the Plaintiff is well known to the 2nd Defendant and his family and hence, he had signed two blank cheques and two blank promissory notes as security.”

Thus, the execution of the promissory notes and cheques by the second and third defendants as partners of the first defendant is not denied. Consequently, the presumptions under Section 118 of the Negotiable Instruments Act, 1881, including those pertaining to



consideration and date, become applicable. Consequently, it becomes necessary to examine whether the presumption was rebutted by establishing that the consideration specified in the promissory notes is improbable.

7. The primary defence raised by the defendants is that blank promissory notes and cheques were signed and handed over to the plaintiff. Learned senior counsel for the plaintiff referred to the above paragraph of the written statement, in this regard, and submitted that the receipt of a sum of Rs.50,00,000/- and the execution of the promissory notes and cheques were admitted by the defendants therein. The Defendants also admitted that the sum of Rs.50,00,000/- was received, but contended that it was received as an advance payment towards the distribution agreement. Reference may be made, in this regard, to the answer to Q.54 in the cross examination of DW1 and the answer to Q.1 in the re-examination of DW1. This leads to the question as to whether such distribution



agreement was signed and, more importantly, acted upon by the parties.

8. The defendants exhibited an email dated 11.05.2018 from the plaintiff and the attachments thereto as Ex.D1. The email refers to an attached distribution agreement. The attached distribution agreement is unsigned and stipulates a total consideration of Rs.1,25,00,000/- with Rs.50,00,000/- having been paid as advance. Apart from the fact that there is no evidence of the execution of such agreement, significantly, there is no evidence of either party acting thereon by fulfilling obligations under such agreement. In effect, a sum of Rs.50,00,000/- was paid by the plaintiff to the defendants, who neither provided distribution rights nor repaid the amount received. Consequently, the defendants are liable to repay this amount with interest. The promissory notes specify 18% per annum as the rate of interest. Both on this account and because the transaction is commercial, the defendants are liable to repay the sum



received with interest at 18% per annum until realisation. All the above issues are decided or disposed of in favour of the plaintiff and against the defendants.

Issue No.5:

9. The plaintiff asserted in the plaint that the defendants agreed to pay compensation of Rs.27,75,000/-, which is equivalent to the interest claim up to the date of suit. In spite of such assertion, the plaintiff has failed to place credible documentary or oral evidence in support of such assertion. In view thereof, Issue No.5 is decided in favour of the defendants and against the plaintiff.

10. Upon consideration of the pleadings and evidence, the suit is liable to be decreed in terms of prayer (a) of paragraph 19 of the plaint by directing the defendants to pay the plaintiff the sum of Rs.77,75,000/- (Rupees Seventy Seven Lakhs Seventy Five Thousand only) comprising the principal sum of Rs.50,00,000/- and interest



thereon at 18% per annum from 31.07.2017 to 31.07.2021. The plaintiff is also entitled to interest at 18% per annum on the principal sum of Rs.50,00,000/- from the date of plaint until realisation. Since costs follow the event, the defendants are also liable to pay costs to the plaintiff. The plaintiff has paid a sum of Rs.1,12,550/- (Rupees One Lakh Twelve Thousand Five Hundred and Fifty only) as Court fees. After adding reasonable lawyer's fees and expenses of Rs.3,00,000/- (Rupees Three Lakhs only) thereto, the defendants are liable to pay a sum of Rs.4,12,550/- as costs.

11. Therefore, the suit is decreed by directing the defendants to pay the plaintiff the following:

(i) the sum of Rs.77,75,000/- (Rupees Seventy Seven Lakhs Seventy Five Thousand only) comprising the principal sum of Rs.50,00,000/- and interest thereon at 18% per annum from 31.07.2017 to 31.07.2021;



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(ii) interest at 18% per annum on Rs.50,00,000/- from the date of plaint until realisation.

(iii) an aggregate sum of Rs.4,12,550/- as costs towards court fees, lawyer's fees and expenses.

20.09.2024

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

Plaintiff's witness:

P.W.1 – J.Pankaj Mehta

Documents exhibited by the Plaintiff:

<i>Exhibits</i>	<i>Documents</i>
Ex.P1	Promissory note dated 11.05.2018 for Rs.25,00,000/- executed by the defendants in favour of the plaintiff.
Ex.P2	Promissory note dated 18.05.2018 for Rs.25,00,000/- executed by the defendants in favour of the plaintiff.
Ex.P3	Cheque dated 13.06.2019 bearing No.971529 for Rs.25,00,000/- drawn on Indian Bank, Royapettah Branch, Chennai duly signed issued by the 2 nd defendant on behalf of the 1 st defendant in favour of the plaintiff.



<i>Exhibits</i>	<i>Documents</i>
Ex.P3	Cheque dated 13.06.2019 bearing No.971532 for Rs.25,00,000/- drawn on Indian Bank, Royapettah Branch, Chennai duly signed issued by the 2 nd defendant on behalf of the 1 st defendant in favour of the plaintiff.
Ex.P5	The Returned memo dated 14.06.2019 of ICICI Bank Ltd., for cheque no.971529.
Ex.P6	The Returned memo dated 14.06.2019 of ICICI Bank Ltd., for cheque no.971532.
Ex.P7	Statutory notice dated 28.08.2019 issued by the plaintiff's advocate to the defendants.
Ex.P8	3 Postal Acknowledgment cards, duly signed by the defendant, all dated 28.06.2019.
Ex.P9	Reply notice dated 12.07.2019 from the Advocate of the defendants to the counsel for the plaintiff.
Ex.P10	Whatsapp messages from 2 nd defendant to plaintiff.

Defendants' witness:

D.W.1 – R.G.Dusshyanth

Documents exhibited by the defendants:

<i>Exhibits</i>	<i>Documents</i>
Ex.D1	Online print out copy of the E-mail dated 11.05.2018 (Under Section 65B certificate is submitted) marked with objection subject to proof and relevancy.
Ex.D2	Online print out copy of the E-mail dated 18.05.2018 (Under Section 65B certificate is submitted) marked with objection subject to proof and relevancy.



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<i>Exhibits</i>	<i>Documents</i>
Ex.D3	Office copy of the letter dated 11.05.2018 marked with objection subject to proof and relevancy.
Ex.D4	Office copy of the letter dated 18.05.2018 marked with objection subject to proof and relevancy.

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SENTHILKUMAR RAMAMOORTHY,J

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