IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 22.07.2024	Judgment Pronounced on 30.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

C.S.No.507 of 2012

Sundaram Fasteners Limited
Represented by its Executive Director
& Secretary,
Mr.V.G.Jaganathan
No.98-A, Dr.Radhakrishnan Salai,
Mylapore,
Chennai – 600 004. .. Plaintiff

/versus/

S.Venkatesan .. Defendant

Prayer: This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules r/w Order VII Rule 1 of the Code of Civil Procedure, prayed for a judgment and decree against the Defendant:-

a) Directing the defendant to pay the plaintiff a sum of Rs.2,01,62,274/- along with interest calculated at the rate of 18% p.a., from the date of filing this plaint till the date of receipt of payment;

b) For the costs of the suit.

For Plaintiff : Mr.P.R.Raman
Senior Counsel
for Mr.C.Seethapathy

For Defendant : Mr.D.Prabhu Mukunth Arunkumar

JUDGMENT

The suit has been filed seeking recovery of a sum of Rs.2,01,62,274/- together with interest at 18% per annum from the date of plaint, till the date of receipt of payment and in default, direct sale of the mortgaged properties described in the schedule to the plaint and apply the proceedings towards payment of decree amount.

2.**The plaint in brief:**

(a) The plaintiff is a Company incorporated under the Companies Act, 1956, engaged in production and manufacture of a wide range of products consisting of high-tensile fasteners, powder metal components, etc. The plaintiff has a diversified product line and provides world class facilities in many countries and is backed by a motivated team of talented persons and they are leaders in the automotive and industrial segments worldwide.

(b) According to the plaintiff, the defendant joined the service of the plaintiff in 1978 as a Temporary Typist and in 1979, he was confirmed as a Clerk and assigned with Employee No.0933. With passage of time, the defendant worked in various departments and was transferred to the Finance Department in 1994 and also came to hold the post of Senior Executive-Finance with effect from 01.04.2006.

(c) According to the plaintiff, the responsibilities of the defendant was to verify the accounts for supplier Bills and process and authorize cheque payments to the suppliers for the accounted bills; verify and pass travel bills of field employees in the marketing department and process and authorize reimbursement of travel expenses/advances and accounting for travel expenses of marketing field staffs.

(d) The plaintiff's statutory auditors, in October 2011, raised certain queries with regard to transactions accounted by the defendant. It was at that point of time that the plaintiff discovered series of malpractices indulged in by the defendant, especially in accounting and payment of the suppliers' bills. The plaintiff's auditors submitted a special report dated 15.10.2011 raising several queries and it came to light that the defendant had created nine fictitious vendor codes in the computer system and processed several fictitious transactions under the said nine accounts.

(e) According to the plaintiff, the payments to these 9 vendors were fraudulently authorized by the defendant and cheques were also issued to them and further, the Bank accounts opened in the names of these vendors had the benefit of these cheque deposits and ultimately such funds were being diverted by the defendant from these bank accounts to unlawfully enrich himself. The plaintiff further alleges that the defendant has misused SAP code – 90001 for creating fictitious transactions for multiple vendors to enable payment to be made to these vendors. Further, the defendant also processed the payment vouchers and cheques to these fake vendors for fictitious transactions and authorized payments and also got the cheques signed from the cheque signing authority. These cheques were later on deposited by the defendant himself in the fraudulent bank accounts opened in the names of the fictitious vendors and the defendant thus siphoned off the funds from these bank accounts.

(f) According to the plaintiff, the defendant indulged in such fictitious transactions from January 2000 to October 2011 and caused wrongful loss to the plaintiff to the tune of Rs.1,59,36,005/-. The breakup of the said amount in respect of nine vendors has been provided by the plaintiff at paragraph No. 14 of the plaint. In respect of travel expenses to the marketing field staffs also, the defendant has generated false requests and got the same approved and in this regard, a sum of Rs.42,26,269/- has been siphoned off by the defendant without any back up papers or supporting documents.

(g) The plaintiff further alleges that in respect of six field staffs who were given unauthorized payments under the head of travel advances/expenses', the amounts were subsequently transferred either to the defendant or to his wife's personal bank accounts and in some instances, the cash was withdrawn and handed over to the defendant. The allegation on this ground is that the defendant has looted this amount of the plaintiff fraudulently and such fraudulent acts have been confirmed by all the filed staffs.

(h) The plaintiff has further stated that though the fraudulent acts have been indulged in by the defendant for more than 12 years, it came to the plaintiff's knowledge only on 21st October 2011 and on the same day, the defendant was questioned and he admitted his guilt and gave it in writing vide his letter dated 21.10.2011 that he had caused wrongful loss to the plaintiff Company. The plaintiff has further stated that since they have not preserved the records prior to January 2000 they were not in a position to even verify and confirm the actual loss caused by the defendant prior to January 2000. The plaintiff has further stated that the defendant also gave his property documents as security for repayment of the amounts wrongfully siphoned off from the plaintiff and in fact, the suit prayer has been amended after filing of the suit to include the prayer regarding equitable mortgage created by the defendant and seeking the relief to bring the mortgaged properties to sale and to set off the against the decreetal amount passed by this Court.

(i) The plaintiff has further stated that the defendant has created equitable mortgages over three properties belonging to himself, his wife and also their joint property, only to secure repayment of the wrongful loss caused to the plaintiff. The plaintiff has also stated that Disciplinary

Proceedings were initiated against the defendant and domestic enquiry was held and the Enquiry Officer also concluded that apart from the defendant's admission, the plaintiff's management had proved misconduct by the defendant and the defendant was therefore dismissed from service on 21.05.2012.

(j) The plaintiff further stated that the defendant filed a suit in O.S.No.2967 of 2012 before the VII Assistant City Civil Court, Chennai, and that the plaintiff is defending the said suit filed by the defendant. The plaintiff further stated that the six field staffs who were also hand in glove with the defendant also faced disciplinary action and were suspended. According to the plaintiff, all the six field staffs have been approached by the defendant individually and they have been used for the defendant's personal illegal gain. The plaintiff has accepted the unconditional apology of five of them excepting, one K.T.Govindan Menon, who was terminated from service and rest of them were let off and all of them resigned from the plaintiff Company. In such circumstances, the plaintiff has filed the suit for the reliefs above mentioned.

3.(a) The defendant has filed a written statement wherein he has stated that he has filed the suit in O.S.No.2697 of 2012 seeking a declaration that the dismissal of the defendant by the plaintiff is without jurisdiction, illegal and against the principles of natural justice and therefore, null and void and for a permanent injunction to restrain the plaintiff from taking any legal action against the defendant and also for a mandatory injunction to reinstate the defendant into service with effect from 21.10.2011 and for another mandatory injunction to return the original Sale Deeds which have been deposited by the defendant with the plaintiff, under coercion of the plaintiff.

(b) According to the defendant, the said suit was filed before the present suit and therefore, the present suit, seeking recovery of alleged wrongful loss, is only a counter blast to the suit filed by the defendant. The defendant has further stated that there is no cause of action for filing the present suit and the order dismissing the defendant from service dated 21.05.2012 is silent about any repayment of money and therefore, the present suit for monetary claims is not maintainable. The defendant has further stated that he has been working in the Finance Department from 1997 onwards, taking care of Divisional Departments, Marketing, Design and Development, Research and Development and Presidents Office. In 2006-2007, the defendant was promoted as Senior Executive, Finance and in addition to the same, he was taking care of the divisional job and certification payments of Padi Unit. According to the defendant, he has saved more than Rs.4 crores in transportation for the year 2006 to 2007 which was even reflected in the Appraisal Report of the defendant.

(c) The defendant further states that his responsibility as set out in plaint was not factually correct since one Mr.V.Kamatchinathan, Senior General Manager (Finance) and Mr.Meenakshi Sundaram, President (Finance) were in charge of verification and accounting in respect of bills of suppliers and fund releasing and the defendant had no role to play in finance handling as alleged in the plaint. The defendant has further stated that he had only followed the instructions of his Superiors, Mr.V.Kamatchinathan, Mr.P.V.Nanda Gopal, Functional Supervisor and Ms.Arockiamary Anandhi D.M. (Finance).

(d) According to the defendant, all consequences arising out of the decisions taken by the Finance Department are to be faced by V.Kamatchinathan who had indulged in malpractices along with Mr.Meenakshi Sundaram, President (Finance) and according to the defendant, for the wrongful loss committed by them, the defendant has been made a scape goat. The defendant has also denied having created fictitious vendor codes and further stated that he cannot not do the same without the authorization from higher officials in the plaintiff's Company. According to the defendant, non-joinder of Mr.V.Kamatchinathan and Mr.Meenakshi Sundaram, rendered the suit liable to be dismissed for non-joinder of proper and necessary parties.

(e) The defendant denied that he was responsible for scrutiny and passing off travel expenses submitted by marketing field staff and blamed the signing authority of the cheques viz., Mr.V.Kamatchinathan and the second signing authority, Ms.Arockiamary Anandhi D.M, for all the malpractices. In short, the defendant denied having caused any wrongful loss or for having played fraud in causing loss to the tune of Rs.2,01,62,274/- as claimed by the plaintiff.

(f) The defendant further states that the admission of guilt given in writing by the defendant on 21.10.2011, was only under threat, coercion and undue influence and having no other option, the defendant confessed and wrote the contents as dictated by his seniors, Mr.V.Kamatchinathan and Mr.Meenakshi Sundaram. The defendant further states that again on 17.11.2011, he was forced to write a letter handing over the documents of immovable property as security for the amounts siphoned off by the defendant and also to be repaid to the plaintiff. According to the defendant, he was also forced to write an assurance letter on 11.12.2011, assuring to settle the amount of loss. It is only in this regard that the defendant had filed the suit before the VII Assistant City Civil Court, Chennai.

(g) The defendant further states that in respect of the domestic enquiry, a retired District Judge was named as Enquiry Officer and the said Enquiry Officer, Mr.S.Govindarajan, did not follow the principles of natural justice and under coercion, the defendant was made to admit his guilt and without proper opportunity, the defendant was suspended from service and thereafter, the Enquiry Officer also gave a finding in a biased manner. All these have been challenged by the defendant in the suit filed before the VII Assistant City Civil Court, Chennai. The defendant has therefore prayed for dismissal of the suit in entirety.

4.This Court, on 12.03.2018, has framed the following issues:

"*1.Whether the defendant created nine fictitious vendor codes in the computer system and processed numerous fictitious transactions under these vendor accounts?*

2.Whether the payments to these vendors were then wrongfully and fraudulently authorized by the defendant?

3.Whether subsequently, cheques were issued in the name of these vendors for such wrongly authorized payments?

4.Whether Bank accounts were opened in the name of these vendors and the cheques were deposited into these bank accounts and such funds were then diverted by the defendant from these bank accounts?

5.Whether the defendant siphoned off the payments?

6.Whether the defendant fraudulently generated requests for the payment of travel advances without any back papers/supporting documents?

7.Whether the money paid to these employees, which payments were made under the head of travel advances/expenses, were later transferred/paid by the respective Field Staffs, to the defendant/his wife?

8.What is the amount of loss caused to the plaintiff by the defendant?

9.Whether the plaintiff is entitled to a preliminary decree on the mortgage by deposit of title deeds said to have been created by the defendant on 17.11.2011?

10.To what relief is the plaintiff entitled to?"

5.On the side of the plaintiff, one S.Rajagopalan was examined as P.W.1 and V.V.S.Ramakrishna was examined as P.W.2 and through P.W.1 and P.W.2, Exs.P1 to Ex.P39 and Ex.P40 to Ex.P54 were marked. On the side of the defendant, the defendant examined himself as D.W.1 and Ex.D1 to Ex.D9 were marked.

6.I have heard Mr.P.R.Raman, learned Senior Counsel for Mr.C.Seethapathy, learned counsel for the plaintiff and Mr.D.Prabhu Mukunth Arunkumar, learned counsel for the defendant. I have also gone through the pleadings, oral and documentary evidence adduced by the parties on record and also perused the materials available on record.

7.(a) Mr.P.R.Raman, learned Senior Counsel appearing for the plaintiff would submit that the plaintiff Company is a global leader in the automobile industry and is known for keeping up high standards in the industry. According to the learned Senior Counsel, the defendant was quietly going about his under hand activities by siphoning off funds from the plaintiff Company and the same went unnoticed by the plaintiff, until the internal audit flagged off the issue. Immediately, the plaintiff had inspected and found out the fraud played by the defendant. According to the learned Senior Counsel, the plaintiff cannot be called upon to prove the negative.As soon as the internal auditors suspected foul play, the plaintiff called upon the defendant to offer explanation and without being able to justify his illegal actions, the defendant admitted to all his illegalities in writing and also subsequently offered three of his properties, including his wife's and joint properties, as equitable mortgage to secure the amount to be repaid to the plaintiff.

(b) Learned Senior Counsel would also submit that the burden was only on the defendant to establish that the payments made to the nine fictitious vendors were in fact, supported by supplies and in this regard the defendant has not been able to supply any evidence whatsoever. Therefore, it has to be necessarily held that the plaintiff's allegations have been proved and when the defendant has not been able to discharge the burden upon him to escape from liability on the score that his actions were all legitimate and supported by valid documents, the plaintiff is entitled to a decree. Learned Senior Counsel would submit that it has been brought out in evidence that all the nine fictitious vendors were closely related to the defendant and therefore, it only probablises the acts of the defendant in siphoning off the funds of the plaintiff by creating fictitious accounts in the name of his near and dear. Even with regard to the travel expenses, the learned Senior Counsel would submit that the defendant has not been able to produce bills and all the field staffs have admitted to their guilt and also to the factum of having been hand in glove with the defendant. Therefore, he would submit that the suit has to be decreed as prayed for.

8.(a) Per contra, Mr.D.Prabhu Mukunth Arun Kumar, learned counsel for the defendant would first and foremost submit that the suit is only a counter blast to the suit filed by the defendant before the City Civil Court, questioning the termination of his services. The learned counsel for the defendant would further submit that the defendant was not responsible for the financial decisions and he brought to my notice the hierarchy in the finance department and the evidence in this regard, especially in cross-examination of P.W.1. He would also submit that the plaintiff has not been able to prove as to what was the actual responsibility of the defendant and in this regard he would place reliance on Ex.P1, Ex.P2 and Ex.P9 which did not disclose the role or responsibility of the defendant in any way.

(b) The learned counsel for the defendant would further submit that from being appointed as a temporary Typist the defendant has moved up to the senior position only because of his integrity and hard work and because of the malpractices committed by his senior officials and in order to cover them up, the defendant was made a scape goat and he was threatened and coerced to give his confession of guilt in writing. He would further submit that the plaintiff has also not established the actual loss caused to the plaintiff and the account statements which have been relied on by the plaintiff are not duly certified under Section 65(B) of the Indian Evidence Act and therefore, they cannot be taken as valid and legal evidences. He would further submit that even under Ex.P2 no allegation of any mishandling of finance and siphoning off the funds was proved and only a suspicion had been raised and therefore, it was incumbent on the plaintiff to establish the actual loss suffered, that too on account of the acts, much less fraudulent acts of the defendant by adducing satisfactory and sufficient evidence. He would further submit that internal audits are carried out every year and while so, how this has not been brought to the notice of the plaintiff during the earlier years is also not explained. He would further submit that the SAP code cannot be created by the defendant alone and unless the superiors of the defendant were also co-operating with the defendant, such alleged misdeeds could not have been carried out by the defendant.

(c) The learned counsel for the defendant would further invite my attention to Ex.P34 dated 20.02.2012 where the defendant has given his explanation and state that the plaintiff cannot take different stands against similarly placed persons, especially, when both the persons confessed to have committed the crime. The learned counsel for the defendant would further submit that the plaintiff has to make out a case as to what extent the defendant can be held liable and responsible and in this regard, there is absolutely no evidence whatsoever. He would also bring to my attention

Ex.D6, where the defendant's service has been appreciated by the Company and he was also promoted and given increased salary and other facilities. He would further submit that the termination order in Ex.P38 issued by the plaintiff does not speak about any recovery proposed to be initiated and the suit itself is not maintainable. He would therefore pray for dismissal of the suit.

9.<u>Issues 1 to 8:</u>

I have carefully considered the submissions advanced by the Learned senior counsel appearing for the learned counsel for the plaintiff and the learned counsel for the defendant. Since the issues 1 to 8 are all interconnected, I proceed to decide the same together.

10.It is not in dispute that the defendant was an employee under the plaintiff company. It is also not in dispute that for the first time in October 2011, the plaintiff came to be aware of nine fictitious vendor codes in their system and the same were attributable to the defendant. However, it is the case of the defendant that he has not misused his position or done any act which has caused wrongful loss to the plaintiff. He has further pointed fingers at his immediate seniors. According to the defendant without the involvement of his immediate seniors in his department, such amounts could not have been siphoned off from the plaintiff's Company.

11.In light of the above allegations and counter allegations, I have gone through the pleadings, the evidence adduced by the parties and also considered the arguments advanced by the learned counsel on either side.

12.It is to be noted that the plaintiff immediately on coming to know about the wrongful loss caused to them, at the instance of the defendant took up the matter with the defendant on the very same day. The defendant admitted to have committed the mistakes in writing and undertook to make good the losses suffered by the plaintiff. In this regard it is also an admitted fact that the defendant deposited his title documents as a security for repayment of the amounts due and payable by him to the plaintiff company. It is also not in dispute that disciplinary proceedings were initiated by the plaintiff company against the defendant and ultimately the defendant was also dismissed from service on 21.05.2012.

13.It is seen that the defendant chose to file a suit in OS. No.2967 of 2012, before the City Civil Court challenging his dismissal of service as being illegal and against the principles of natural justice and without jurisdiction. If really the defendant was not involved in the several alleged acts causing wrongful loss to the plaintiff company, the defendant would not have admitted his guilt even as early as on 21.10.2011, that too in writing.

14.Even if according to the defendant such a letter was by exercise of coercion and force, nothing prevented the defendant from challenging the said letter immediately. In fact even thereafter he has only acted in furtherance of the said letter dated 21.10.2011, on 17.11.2011 and 11.12.2011,also by depositing the original documents of title with a view to secure the amounts due and payable by him. Therefore even at that point of time the defendant has not retraced from his original admission of guilt and only as a second thought, that too, after he was dismissed from service on 21.05.2012, he has chosen to challenge the same by way of a suit before the City Civil Court.

15.It is also brought to my notice that the said suit was also dismissed for default and only after full fledged trial in the present suit, it is represented that an application has been taken out to restore the said order dismissing the suit for non prosecution. In any event the same will not have a bearing on the present proceedings. When the defendant has admitted to have caused loss to the plaintiff, he cannot try to shift the blame on his co-employees and seniors for having played fraud and causing wrongful loss to the plaintiff. The burden is very heavy on the defendant to establish that the letter of admission dated 21.10.2011 was written by him under threat, coercion and undue influence. Scanning the entire evidence, oral and documentary available on record, I do not find a shred of evidence supporting or establishing the said plea of threat, coercion and undue influence except for the bald allegations in the pleadings. Further, in any event the mere fact that subsequent to the letter dated 21.10.2011 until long after being dismissed from service on 21.05.2012 the defendant has not taken a single step towards questioning or challenging his letter dated 21.10.2011. In fact again on 17.11.2011 and 11.12.2011 also the defendant has written letters admitting his guilt and liability. Therefore, it can be safely concluded that the subsequent suit filed by the defendant and the allegations of threat, coercion and undue influence are merely an afterthought and the letter dated 21.10.2011 would bind the defendant in all force and he cannot escape from the admissions made thereunder.

16.It has also come out in evidence that the beneficiaries of the fictitious accounts are all either friends or close relatives of the defendant. The defendant has not been able to explain the same and none of those fictitious vendors were also examined by the defendant. Certainly the burden was on the defendant to establish that the contents of his letter dated

21.10.2011 were not true and that the transactions with the alleged fictitious vendors, nine in number, were actually genuine transactions. Though the defendant contended that the burden was on the plaintiff to establish the same, I am unable to countenance the said submission for the simple reason that when the defendant himself had admitted to his acts of malfeasance and misappropriation, the burden was not on the plaintiff, but on the defendant to establish the contra. Therefore there is no difficulty with regard to the amounts paid out to the nine fictitious vendors who are all closely associated or related with the defendant. The said sum totals to Rs.1,59,36,005/-

17.In so far as the verification and passing of the travel bills for field employees, it is the specific case of the plaintiff that the defendant has struck a deal with the field staff in and by which the amounts deposited into their bank accounts were later transferred either to the plaintiff or to the plaintiff's wife's personal bank accounts and in some cases cash was withdrawn and handed over to the plaintiff by the field staff themselves. These amounts pertain to travel advances to field employees who are in the marketing department. Ex.P12 to P18, P20 to P22, P47 and P48 have been filed on the side of the plaintiff to establish the wrongful losses caused to them by the defendant. On perusal of the exhibits, it is seen that amounts have been deposited into the banks of the marketing staff and exhibits P20 to

P22 are letters from the defendant and the respective marketing staff with regard to the amounts paid towards alleged travel advances. The amounts total up to Rs.42,26,269/-.

18.The allegation of the plaintiff is that the defendant has accounted bills raised payment advices and had payments approved from his seniors and ensured that cheques were prepared and paid out to the fictitious vendors and the field employees through whom the defendant got the amounts reimbursed and thereby, made an illegal gain and unlawful enrichment at the expense of the plaintiff company. The defendant has strongly objected to the documents, mainly the said computer statements being exhibited on the side of the plaintiff to establish the actual amounts lost by the plaintiff as a result of the fraud played by the defendant.

19.According to the learned counsel for the defendant, in the absence of the Section 65B certificate under the Indian Evidence Act the documents relied on by the plaintiff, mainly computer printouts and statements cannot be relied on. The further contention of the defendant is that the plaintiff has to prove and establish the actual loss suffered by them and that the losses were only on account of the acts and omissions of the defendant.

20.With regard to the establishment of the losses suffered by the plaintiff, as already discussed herein above the plaintiff's burden has been eased by the admission of the defendant himself. The defendant has not chosen to dispute the claim or the losses suffered by the plaintiff and on the contrary voluntarily he has admitted to his guilt at the first instance on 21.10.2011 itself. His further act of handing over the original documents of title to secure repayment of the alleged losses suffered by the plaintiff on 11.12.2011 would also go to show that the defendant, even at that point of time, did not dispute his liability. Therefore, merely relying on the subsequent suit filed in the year 2012, the defendant cannot contend that the burden is only on the plaintiff to establish the losses suffered and it is not on the defendant. It is a clear case where the burden stood transfered to the defendant, the moment he admitted the various acts alleged to have been undertaken by him with an intention and to have actually caused losses to the plaintiff.

21.With regard to the admissibility of the statement of accounts and computer printout, Section 65B is extracted hereunder for easy reference.

"***65. Cases in which secondary evidence relating to documents may be given.-***

Secondary evidence may be given of the existence, condition, or contents of a document in the *following cases:-*

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:-

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer."

22.Admittedly, in the present case it is not as if no certificate under Section 65B has been filed. It is the contention of the defendants that competent person has not filed the certificate and therefore none of the accounts or computer print outs would be admissible in evidence .

23.Admittedly, the plaintiff is a limited company and their systems are handled by several employees at various levels. The computer system belongs to the plaintiffs company and the same cannot be disputed and therefore the certificate issued under Section 65 cannot be disregarded in its entirety. The relevancy of electronic evidence produced by a person must be tested in the light of the facts and circumstances of each case. The certificate is signed by a responsible employee of the plaintiff company and they cannot be disregarded merely on the ground that the person in actual custody of the device has not issued the certificate.

24.Even according to Section 65B with regard to the person signing the certificate, he need not be in actual operation or control of the relevant device. It is sufficient if he holds a responsible position and is concerned with the management of the relevant activities.

25.As far as the present case is concerned, when the defendant had categorically admitted not just once, but on several occasions, that he has misappropriated funds, the plaintiff was certainly entitled to rely on the computer printouts and statements of accounts to establish the quantum of loss suffered on account of the acts of misfeasance by the defendant. Therefore merely because the 65B certificates were signed by a person not in actual custody of the device, it cannot be stated, especially in the facts and circumstances of the present case, that the certificates were not valid and cannot be relied on by the court.

26.In fact even subsequent to 21.10.2011 in Ex.P19 the defendant vide Exs.P20, P21 has reaffirmed his liability confirming that he has been the cause for the plaintiff’s loss and in fact in respect of the travel allowances of marketing field staff in and by letter dated 11.12.2011, the defendant vide

Ex.P21 has categorically admitted even the quantum of amount to the tune of Rs.43 lakhs. Therefore in the light of the above admissions of the defendant himself, it does not lie in the mouth of the defendant to question the computer printouts and statements of accounts relied on by the plaintiff to substantiate the amounts lost by the plaintiff on account of the wrongful acts committed by the defendant.

27.I have already held the suit filed after the defendant was dismissed from service is only a mere afterthought and it is also come out in evidence that the defendant did not even prosecute the said suit and allowed it to be dismissed for default and only when the present suit has come out for arguments he has made a feeble attempt to have the said suit restored. This does not further the cause of the defendant in any manner.

28.The plaintiff through evidence of P.W.1 and P.W.2 has clinchingly established the actual amounts lost by them because of the acts of the defendant. Even the defendant in his cross examination has stated that some of the payments were made to his wife and mother-in-law and for the services obtained,there are no written requisitions made by the plaintiff company, engaging these persons for various services like data key, data keying in and accounts. It is also admitted that there are nine bogus vendors for which there have been no invoices or approvals from the department concerned. It is also been established that no supplies were made in respect of the said nine fictitious vendors are concerned. If really according to the defendant the vendors were not bogus and the payments made to the field staff were genuine payments or transactions, the defendant could have produced material documentary evidence by way of invoices and supply orders to establish the same. From the evidence of the defendant it is clear that the defendant has not been able to discharge the burden of proving that the transactions with the alleged fictitious vendors were actually true and genuine transactions and similarly payments made to the field staff in the marketing department were also genuine payments.

29.On the contrary, the plaintiff has filed Ex.P22 in and whereby the employees of the plaintiff company have given in writing on 11.12.2011 that the defendant prevailed upon them to make unlawful enrichment at the expense of the plaintiff company. The defendant has also not taken steps to examine any of the other co-employees or his seniors, according to the defendant, who were responsible for the actual losses suffered by the plaintiff and not the defendant. Therefore, in the light of the Exs.P19 to P22 and the oral evidence of D.W.1, it is clear that the defendant has siphoned off huge sums of money from the plaintiff company, under the guise of alleged supplies having been made through his close associates, friends and relatives.

30.Exs.P3 to P7 and Exs.P41 to P45 being his statement of accounts and transactions, clearly establish that the defendant has routed huge sums of money through the fictitious vendors accounts and ultimately had such amounts transferred to his account or his wife's account and thereby made unlawful enrichment. I have already held that the statement of accounts and computer statements filed by the plaintiff can be admitted in evidence in the light of the facts and circumstances of the present case, especially in the light of the candid admission made by the defendant himself that he has done these acts and thereby caused loss to the plaintiff company. Therefore the plaintiff is certainly entitled to the suit claim and the defendant has not been able to establish that he has been made a scapegoat for the wrongful losses committed by his immediate seniors in the finance department. In fact I am unable to even countenance the said defense raised by the learned counsel for the defendant that in order to protect certain other individuals in the finance department, the plaintiff has chosen to make the defendant a scapegoat.

31.The plaintiff is a company engaged in successful production and manufacture and sale of a wide range of products and having a substantial market share not only in the country, but also abroad. Therefore, there is no reason why the plaintiff should protect any erring official in any of its departments, be it the finance department or otherwise. If the plaintiff had reason to believe that it was not the defendant but his immediate seniors who were cause for the wrongful loss then the plaintiff certainly would not have spared those persons as well, as the plaintiff had nothing to loose by seeking to recover its losses,from whomsoever was responsible . Therefore, there is absolutely no merit in the contention of the defendant that for covering up the laches of his seniors in the finance department the defendant was made a scapegoat in the entire process.

32.In so far as the arguments advanced by the learned counsel for the defendant that the plaintiff has not even established the responsibilities of the defendant in the company and therefore the plaintiff was not entitled to succeed in the suit, again cannot be countenanced. When the defendant himself has admitted that he has indulged in acts resulting in causing loss to the plaintiff company, it is not necessary for the plaintiff to establish the actual role or responsibility of the defendant. Such contentions raised by the defendant are actually insignificant to decide the suit claim. For all the above reasons, the issues 1 to 8 are answered in favour of the plaintiff and it is held that the defendant has been the cause for the wrongful loss caused to the plaintiff as claimed by the plaintiff and is therefore liable to make good the same to the plaintiff.

33.<u>Issue No.9:</u>

The plaintiff claims to be entitled to a preliminary decree of mortgage by deposit of title deeds. It is seen that in and by Exs.P23, P24 and P25, the plaintiff has deposited the original documents of title, enclosing sale deeds along with covering letter. The defendant has handed over the original documents of title relating to 3 properties.

34.Admittedly the properties covered by Exs.P23 and P24 belong to the defendant. However, the property covered under Ex.P25 belongs to the defendants wife. In the covering letter to Exs.P23 dated 17.11.2011, the defendant has stated that he is handing over his property documents as surety towards repayment to the plaintiff. He has referred to 2 properties, one in which he was residing at that relevant point of time and another property belonging to him and situated at Kumbakonam. In the letter dated 17.11.2011, the defendant had undertaken to produce the original of the sale deed pertaining to the property were he was residing. In furtherance of the said undertaking on 22.12.2011, the defendant has also handed over the original sale deed of his apartment at Virugambakkam, Chennai-92. However, in respect of Ex.P25 admittedly the property referred to in the original document stands in the name of the defendant's wife Kousalya. There is no authorization by the defendant's wife to enable the defendant to offer her property as security for repayment of amounts due to the plaintiff. Therefore Ex.P25 cannot be said to have created a valid mortgage by deposit of title deeds. Further in Ex.P23 also there is no reference to Ex.P25 property belonging to the defendant's wife. Therefore by no stretch of imagination there can be a valid charge over Exs.P25 property created by the defendant in favour of the plaintiff. Also, I find that in the plaint that the plaintiff has not chosen to include the property of the wife in so far as the decree in respect of mortgage is concerned. However, in so far as the other two properties covered by Exs.P23 and P24, certainly, the defendant has created a valid mortgage by deposit of title deeds and consequently when the amounts are due and payable by the defendant to the plaintiff, the plaintiff is certainly entitled to a preliminary decree in respect of the said properties. Issue No. 9 has been answered accordingly.

35.In fine, the suit is decreed in the manner following:

(i) The plaintiff is entitled to a decree against the defendant for recovery of a sum of Rs. 2,01,62,274/- together with interest at 18% p.a. from the date of plaint, till the date of decree and thereafter at 6% p.a. from the date of decree, till the date of realization.

(ii) The defendant shall pay the amount afore stated due and payable to the plaintiff, within a period of three months from today.

(iii) In default of the payment of the amount decreed in clause (i) herein above, as decreed in clause (ii) herein above, the plaintiff shall be entitled to bring the schedule mentioned properties to sale in the execution by way of final decree application and apply the sale proceeds towards the amount due and payable, and proceed against the defendant personally for recovery of shortfall, if any.

(iv) The defendant shall pay the costs of the suit.

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Index : Yes / No
Speaking / Non speaking
Neutral Citation : Yes / No

List of Witnesses on the side of the plaintiff:

P.W.1 – S.Rajagopalan

P.W.2 – V.V.S.Ramakrishna

List of Exhibits on the side of the plaintiff:

Sl.Nos.	*Exhibits*	*Descriptions of documents*
1.	P1	The certified extract of the Resolution of the Board of Directors dated 28.05.2012. (Objected. Marked subject to admissibility on the point that no permission was obtained from the Court as it does not for part of the plaint document)
2.	P2	The Auditor's Special Report dated 15.10.2011.
3.	P3	The Sri Sudarshal Enterprises Expenses List.
4.	P4	The Sharp Instruments Expenses List. (Objected on the point that copy produced along with the plaint and document sought to be marked and differing)
5.	P5	The Yoga Enterprises Expenses List. (Objected on the point that copy produced along with the plaint and document sought to be marked are differing.)
6.	P6	The S.Shanmugam Expenses List. (Objected on the point that copy produced along with the plaint and document sought to be marked are differing)
7.	P7	The M/s.KVR Exports Expenses List.
8.	P8	The M/s.Maruthi Enterprises Expenses List.
9.	P9	The Mr.P.Rajendra Kumar Expenses List. (Objected on the point that copy produced along with the plaint and document sought to be marked are differing)
10.	P10	The M.T.J.Jyothee Expenses List. (Objected on the point that copy produced along with the plaint and document sought to be marked are differing)
11.	P11	The Mr.K.Kousalya Expenses List.
12.	P12	The Xerox copy of Bank statement of

Sl.Nos.	***Exhibits***	***Descriptions of documents***
		Mr.T.Badrinarayanan. (Objected. Marked subject to proof and relevancy)
13.	P13	The Xerox copy of Bank Statement of Mr.G.Sankara Narayanan. (Objected. Marked subject to proof and relevancy)
14.	P14	The Xerox copy of Bank statement of G.Sankaranarayanan/Bhuvaneswari. (Objected. Marked subject to proof and relevancy)
15.	P15	The Xerox copy of Bank statement of R.Giridharan. (Objected. Marked subject to proof and relevancy)
16.	P16	The Xerox copy of Bank Statement of Mr.K.T.Govindan Menon. (Objected. Marked subject to proof and relevancy)
17.	P17	The Xerox copy of Bank statement of Mr.V.Venkataraman. (Objected. Marked subject to proof and relevancy)
18.	P18	The Xerox copy of Bank statement of Mr.S.Nedumal. (Objected. Marked subject to proof and relevancy)
19.	P19	The original confession letter of defendant dated 21.10.2011.
20.	P20	The original letter dated 09.12.2011 from defendant.
21.	P21	The original letter dated 11.12.2011 fro field defendant.
22.	P22	The original Appeal letter dated 11.12.2011 from field staffs.
23.	P23	The original Letter of defendant dated 17.11.2011 enclosing Sale Deeds-Doc.Nos.5631/03 and 2362/08.
24.	P24	The original letter of defendant dated 22.12.2011 enclosing Sale Deed Doc.No.5631/03.
25.	P25	The original Letter of defendant dated 09.01.2012 enclosing Sale Deed Doc.No.3864/04.
26.	P26	The original resignation letter of Mr.Badri dated 15.12.2011 Narayanan.
27.	P27	The original resignation letter of Mr.Nedumal dated 15.12.2011.
28.	P28	The original resignation letter of Mr.R.Giridharan dated 15.12.2011.
29.	P29	The original resignation letter of Mr.G.Sankara Narayanan

Sl.Nos.	***Exhibits***	***Descriptions of documents***
		dated 15.12.2011.
30.	P30	The original resignation letter of Mr.V.Venkataraman dated 15.12.2011.
31.	P31	The original termination letter of Mr.K.T.Govinda Menon dated 20.12.2011. (Objected on the point that copy produced along with the plaint and document sought to be marked are differing.)
32.	P32	The original Charge Sheet cum Notice of Enquiry dated 10.02.2012.
33.	P33	The original Enquiry Proceedings dated 16.02.2012.
34.	P34	The original letter from the defendant dated 20.02.2012.
35	P35	The original letter from defendant dated 20.02.2012.
36.	P36	The Enquiry proceedings dated 22.02.2012.
37.	P37	The certified copy of Enquiry findings dated 27.02.2012 issued by Civil Civil Court, Chennai. (Objected. Marked subject to admissibility)
38.	P38	The original dismissal order dated 21.05.2012 issued by the plaintiff.
39.	P39	The Certificate under 65-B of Indian Evidence Act, 1982 for the documents in Exs.P3 to P11. (Objected. Marked subject to admissibility)
40.	P40	The original certified extract of the resolution of the Board of Directors of the plaintiff, passed on 30.03.2022 dated 23.08.2022. (The learned counsel for the defendants has objected that this document was not part of the list of documents to be marked as additional documents before the Hon'ble Court in A.No.428 of 2020 subject to objection the document is marked)
41.	P41	The statement of payments made to sharp enterprises (The learned counsel for the defendant has objected that the document does not show as it is be described the statements of payments to sharp enterprises.
42.	P42	The Statement of payments made to Mr.S.Shanmugam (The learned counsel for the defendant has objected that the subject to proof and relevancy and the document does not

Sl.Nos.	*Exhibits*	*Descriptions of documents*
		show as it is be described the statements of payments to sharp enterprises)
43.	P23	The statement of payment made to Yoga enterprises (The learned counsel for the defendant has objected that the subject to proof and relevancy and the document does not show as it is be described the statements of payments to sharp enterprises)
44.	P44	The statement of payments made to Mr.P.Rajendra Kumar (The learned counsel for the defendant has objected that the subject to proof and relevancy and the document does not show as it is be described the statement of payments to sharp enterprises)
45.	P45	The statement of payments made to T.J.Jyothee (The learned counsel for the defendant has objected that the subject to proof and relevancy and the document does not show as it is be described the statements of payments to sharp instruments).
46.	P46	The certificate under Section 65-B of the Evidence Act dated 24.08.2022 filed in Ex.P41 to Ex.P45 (The learned counsel for the defendant has objected that is the document is not in the list of document for which leave is granted)
47.	P47	The certified copy of the Award of the Hon'ble I Additional Labour Court, Chennai dated 24.11.2017. (The learned counsel for the defendant has objected that may be marked subject to proof and relevancy)
48.	P48	The Certified copy of the charge sheet filed by the Central Crime Branch, EDF-I, Team I, Chennai, before the learned Judicial Magistrate, Poonamallee dated 09.01.2019. (The learned counsel for the defendant has objected that may be marked subject to proof and relevancy).
49.	P49	The certified copy of the statement of Bank accounts of the marketing staff filed by the Central Crime Branch, EDF-I, Team I, Chennai, before the learned Judicial Magistrate, Poonamallee for the year 2006 (The learned counsel for the defendant has objected that may be marked subject to proof and relevancy).
50.	P50	The certified copy of the statement of Bank accounts of the marketing staff filed by the Central Crime Branch, EDF-I, Team I, Chennai, before the learned Judicial Magistrate,

Sl.Nos.	*Exhibits*	*Descriptions of documents*
		Poonamallee for the year 2007 (The learned counsel for the defendant has objected that may be marked subject to proof and relevancy and it does not show the statement of bank accounts with the marketing staff and other documents, cheque, pay in slip can not be marked).
51.	P51	The certified copy of the statement of Bank accounts of the marketing staff filed by the Central Crime Branch, EDF-I, Team I, Chennai, before the learned Judicial Magistrate, Poonamallee for the year 2008 (The learned counsel for the defendant has objected that may be marked subject to proof and relevancy and it does not show the statement of bank accounts with the marketing staff and other documents, cheque, pay in slip can not be marked).
52.	P52	The certified copy of the statement of Bank accounts of the marketing staff filed by the Central Crime Branch, EDF-I, Team I, Chennai, before the learned Judicial Magistrate, Poonamallee for the year 2009 (The learned counsel for the defendant has objected that may be marked subject to proof and relevancy and it does not show the statement of bank accounts with the marketing staff and other documents, cheque, pay in slip can not be marked).
53.	P53	The certified copy of the statement of Bank accounts of the marketing staff filed by the Central Crime Branch, EDF-I, Team I, Chennai, before the learned Judicial Magistrate, Poonamallee for the year 2010 (The learned counsel for the defendant has objected that may be marked subject to proof and relevancy and it does not show the statement of bank accounts with the marketing staff and other documents, cheque, pay in slip can not be marked).
54.	P54	The certified copy of the statement of Bank accounts of the marketing staff filed by the Central Crime Branch, EDF-I, Team I, Chennai, before the learned Judicial Magistrate, Poonamallee for the year 2011 (The learned counsel for the defendant has objected that may be marked subject to proof and relevancy and it does not show the statement of bank accounts with the marketing staff and other documents, cheque, pay in slip can not be marked).

List of Witness examined on the side of the Defendant:

D.W.1 – S.Venkatesan

List of exhibits marked on the side of the Defendant:

Sl.Nos.	***Exhibits***	***Description***
1.	Ex.D1	The original Revision of Basis Salary dated 18.01.2003.
2.	Ex.D2	The original promotion letter as executive DFM in Grade E1 dated 18.11.2003.
3.	Ex.D3	The original letter granting annual increment for the year 2006 dated 06.05.2006.
4.	Ex.D4	The original letter promotion as Senior Executive – Finance in Grade E2 dated 06.11.2006.
5.	Ex.D5	The original Revision of Salary dated 01.01.2007.
6.	Ex.D6	The original Appreciation letter for good work done in 2006 to 2007 dated 01.10.2008.
7.	Ex.D7	The original promotion to Grade E3 with effect from 01.04.2010 dated 18.08.2010.
8.	Ex.D8	The original Revision of Compensation dated 17.09.2010.
9.	Ex.D9	The original Revision of Compensation with effect from 01.07.2010 dated 25.10.2010.

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P.B.BALAJI.J.

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