IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.03.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.469 of 2019

E.Velu ... Plaintiff

Versus

1.P.Abusa
2.M.A.Salim ... Defendant

Prayer : Plaint filed under Order IV Rule 1 of the Original Side Rules read with Section 15 of Specific Relief Act read with Order VII Rule 1 of the Code of Civil Procedure, to pass a judgment and decree to :

a) directing the defendant to pay to the plaintiff the said sum of Rs.8,16,00,000/- (Rupees Eight Crores and Sixteen Lakhs Only) with such further interest as may accrue between the filing of the plaint and the date of payment, and also the costs of this suit, on some day to be named by the Court and in default that the said property may be sold and the proceeds (after defraying thereout the expenses of the sale) applied in and towards the payment of the amount of the said principal, interest and costs;

b) That if such proceeds shall not be sufficient for the payment in full of such amount, the defendant may be ordered to pay to the plaintiff the amount of the deficiency with interest thereon at the rate of six per cent per annum until realisation;

c) That for the purpose all proper directions may be given and accounts taken by the Court.

For Plaintiff	:	Mr.V.Saravana Rangan
For Defendants	:	Ms.R.V.Rukmani for M/s.P.B.Ramanujam Associates

<u>JUDGMENT</u>

This Civil Suit has been laid for

a. directing the defendant to pay to the plaintiff the said sum of Rs.8,16,00,000/- (Rupees Eight Crores and Sixteen Lakhs Only) with such further interest as may accrue between the filing of the plaint and the date of payment, and also the costs of this suit, on some day to be named by the Court and in default that the said property may be sold and the proceeds (after defraying thereout the expenses of the sale) applied in and towards the payment of the amount of the said principal, interest and costs;

b. That if such proceeds shall not be sufficient for the payment in full of such amount, the defendant may be ordered to pay to the plaintiff the amount of the deficiency with interest thereon at the rate of six per cent per annum until realisation;

c. That for the purpose all proper directions may be given and accounts taken by the Court.

2.The brief facts of the case are as under :

2.1.It is the case of the plaintiff that the defendants are engaged in the business of promoting CMDA Approved Plots, Flats, Villas in the name of M/s.Salim Builders, Civil Engineering Enterprises in and around Chennai. The defendants have approached the plaintiff in the month of September 2017 for a financial assistance to the tune of Rs.6 crores in order to discharge their loan with Kotak Mahindra Bank Ltd and also for their business developments. Accordingly, on various dates, i.e., 03.10.2017, 22.09.2017, 17.10.2017, 15.12.2017, 16.12.2017, the plaintiff had transferred amounts to the defendants and from 22.09.2017 to 08.01.2018, a sum of Rs.1,13,77,459/- were paid by cash. Besides, a sum of Rs. 1,82,61,541/- is also paid by way of DD No.023166 on 14.12.2017 to and in favour of Kotak Mahindra Bank Limited, Chennai in order to clear the loan of the first defendant. After receipt of the said amount, the defendant executed a simple mortgage dated 08.01.2018 for the said amount agreeing to at the rate of interest @ 24 p.a., on or before the 5th day of every consecutive English calendar month from the date of mortgage. As the defendants failed to pay the interest and principal after receipt of amount, the plaintiff caused a demand notice dated 17.04.2019. Even after the demand notice, as the amount has not been settled, the suit came to be filed.

3. The learned counsel for the plaintiff would submit that receipt of amount, execution of the mortgage is not in dispute. Therefore, now the defendant cannot take a different stand that actual amount has not been realized. It is the contention that further payment has been made through bank except Rs.1,17,77,459/- is paid by way of cash in different dates which is also clearly spoken. He would further submit that the defendant has admitted in the evidence that they are liable to pay the mortgage amount. Such view of the matter, when there is no dispute with regard to the execution of the mortgage, the plaintiff is certainly entitled to judgment and decree.

4. Admitting that the second defendant is doing business in the

name of M/s.Salim Builders, Civil Engineering Enterprises, it is the contention of the defendants that the plaintiff offered to render a sum of Rs.8 crore, subject to second defendant offering his property as a security. After payment of Rs.1,82,61,541/- to the Kotak Mahindra Bank Limited, Chennai, the remaining amount has not been released to the defendant.

5. It is their further contention that though initially, the plaintiff agreed to lend Rs. 8 crore, however, later, he has agreed to lend only a sum of Rs. 6 crore. Admitting that they have executed a mortgage dated 08.01.2018, it is the contention that after payment to Kotak Mahindra Bank Limited, Chennai as against the balance of Rs.4,17,38,459, the plaintiff has released only a sum of Rs.1,62,50,000/- that too in four instalment. As far as the payment details contained in the plaint, it is submitted that those were the transaction unconnected to the mortgage. Hence, it is the contention that as the entire amount has not been paid, the suit has to be dismissed.

6. It is the further contention of the learned counsel for the defendants the plaintiff is money lender. Therefore, he is not entitled to interest at the rate of 24% and the further contention that only part amount of

the mortgage money has been paid the defendant and a part of amount is also paid back to the plaintiff. To substantiate such submission, the defendants have filed Ex.D2. Hence, suit cannot be decreed in entirety.

7. On the above pleadings, following issues have been framed for trial:

1.Whether the plaintiff is entitled for the suit claim of Rs.8,16,00,000/- with interest @ 24% p.a. from the date of suit till realisation?

2.Whether the plaintiff is entitled for costs?

3.Whether the plaintiff is entitled to sell the property through Court in case of failure of the defendants to pay the said amount from the date fixed by the Court and the proceeds (after defraying thereout the expenses of the sale) applied in an towards the payment of the amount of the said principal, interest and costs?

4.Whether the plaintiff is entitled if such proceeds shall not be sufficient for the payment in full of such amount, the defendants may be ordered to pay to the plaintiff the amount of the deficiency with interest thereon at the rate of 6% per annum until realisation?

5.Whether not the plaintiff released only a sum of Rs.3,45,11,541/- as against Rs.6,00,00,000/- agreed to be financed?

6.Whether the plaintiff was entitled to unilaterally adjust amount towards other loan transactions when the mortgage of Rs.6,00,00,000/- pertained only to release of charge of Kotak Mahindra Bank?

7.Whether the defendant is liable to pay interest as claimed by the Plaintiff? if so, on what amount?

8.To what other reliefs is the plaintiff entitled to?

8. On the side of the plaintiff, Mr.Vasanthamoorthy, Power Agent of the plaintiff was examined as P.W.1 and marked Exs.P1 to P32. On the side of the defendants, Mr.M.A.Salim/second defendant was examined as D.W.1 and marked Exs.D1 & D2.

9. I have perused the materials placed on record.

<u>Issues Nos. 1 to 8</u>

10. The suit has been laid for recovery of mortgage amount of Rs.6 crores said to have been paid by the plaintiff and also mortgage deed executed by the defendant. The execution of the mortgage is not in dispute. Ex.P24 is the original mortgage deed dated 08.01.2018. Since the execution is not disputed, the question of examination of any attesting witness does not arise at all. On perusal of the contents of the documents makes it very clear that it is admitted by the defendant that a sum of Rs.6 crores have been paid to them by way of bank transfer and also some payments are made in cash on different dates. These facts are not disputed. Therefore, once the execution of document is admitted and receipt of the money is also admitted by the defendant, now, the defendant cannot take a different stand contrary

to the terms of the written instruments. Even in the entire written statement, it is not the case of the defendants that they never borrowed any amount through bank. Apart from the bank transfer, a sum of Rs.1,13,77,459/- said to have been paid as per the plaintiff by way of cash, this aspect is not seriously disputed in the written statement, whereas, only contentions raised in the written statement is to the effect that though the plaintiff initally agreed to pay a sum of Rs.8 crores, he later agreed to pay only a sum of Rs. 6 crores and after making a payment of Rs.1,82,61,541/- in favour of Kotak Mahindra Bank Limited, Chennai for clearing the loan of the defendant, the plaintiff has not released the amount. On the other hand, according to the defendants, the plaintiff released only a sum of Rs.1,62,50,000/- that too in four instalments. This stand in the written statement is totally contrary to the registered mortgage deed, wherein, in the mortgage deed, they have clearly admitted that they had received a sum of Rs.6 crores in total.

11. Such view of the matter, the vague defence set up in the written statement will not help the defendants in proving the case. Now, arguments has been advanced on the basis of Ex.D2 to the effect that towards mortgage money, some amount has been re-paid. It is relevant to

note that in the entire written statement, the plea of discharge has not been raised. The first time during the submission, an attempt has been made by the learned counsel for the defendants to establish the so-called discharge. This Court is of the view that in the absence of plea of discharge mere some payment said to have been made under Ex.D2, the Court cannot presume that there is a valid discharge towards the mortgage amount. It is relevant to note that D.W.2 in his evidence categorically admitted that the payment made under Ex.D2 is related to different transactions not in respect of the mortgage money. That apart, specific admission of the D.W.1 in Question No.26 shows that they are liable to pay the entire mortgage amount. In the evidence itself, the defendant admitted that the payment made under Ex.D2 relates to different transactions and not relate to the mortgage money. Therefore, the plea of discharge and non payment of entire mortgage amount have no legs to stand in the eye of law.

12. Considering the above aspects, this Court is of the view that the plaintiff is certainly entitled to recovery of mortgage money of Rs.6 crores with interest. The mortgage deed stipulates 24% interest and though the plaint is silent about money lending, but, Ex.P20 filed by the plaintiff

indicate that the primary business of the plaintiff is money lending. Such being the manner, charging exorbitant interest is nothing but usurious. It is relevant to note that as per Section 3 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, no person shall charge exorbitant interest. Notes under Section 3 makes it clear that as far as secured loan is concerned, interest shall not exceed 9% simple interest per annum. Such view of the matter, when the loan is secured and the mortgage deed is executed, the plaintiff is certainly entitled to 9% interest for the mortgage money of Rs.6 crores from the date of mortgage, i.e., 08.01.2018 till the date of realisation.

13. Accordingly, all the issues are answered in favour of the plaintiff. The suit is allowed with costs to the extent indicated above and preliminary decree is passed directing the defendants to pay a sum of Rs. 6 crores with interest @ 9% p.a. from the date of mortgage, i.e. 08.01.2018 till date of realisation. Time for payment of such amount is four months. In the event of failure to pay that amount within the time, the plaintiff is entitled to apply for final decree proceedings for bringing the mortgage property for sale for realisation of the amount. In the event where the net proceeds from sale are not found sufficient to satisfy decree amount, the plaintiff is at

liberty to file appropriate application for recovery of the balance amount.

11.03.2024

dhk

List of Witnesses examined on the side of the Plaintiffs:

P.W.1 Mr.Vasanthamoorthy

List of Exhibits marked on the side of the Plaintiffs :

Sl. No.	***Exhibits***	***Description of documents***	***Date***
1	Ex.P1	Online Certified copy of Sale Deed	11.07.1960
2	Ex.P2	Online print out certified copy of rectification deed bearing No.2499 of 1969	02.09.1969
3	Ex.P3	Online print out certified copy of sale deed bearing No.2097 of 1994	16.06.1994
4	Ex.P4	Online print out certified copy of sale deed bearing No.2098 of 1994	16.06.1994
5	Ex.P5	Online print out certified copy of sale deed bearing No.2109 of 1994	20.06.1994
6	Ex.P6	Online print out certified copy of sale deed	20.06.1994

Sl. No.	*Exhibits*	*Description of documents*	*Date*
		bearing No.2110 of 1994	
7	Ex.P7	Online print out certified copy of sale deed bearing No.2112 of 1994	18.06.1994
8	Ex.P8	Online print out certified copy of Patta	03.03.2022
9	Ex.P9	Online print out copy of Memorandum of Deposit of Title Deed Doc.No.4160 of 2013	02.07.2013
10	Ex.P10	Online print out copy of Memorandum of Deposit of Title Deed Doc.No.4161 of 2013	02.07.2013
11	Ex.P11	Online print out copy of Encumbrance Certificate	12.03.2022
12	Ex.P12	Online print out copy of certified Memorandum of Deposit of Title Deed Doc.No.2644 of 2014	28.04.2014
13	Ex.P13	Online print out certified copy of Receipt bearing Doc.No.2640 of 2014 issued by City Bank	28.04.2014
14	Ex.P14	Online print out certified copy of Receipt bearing Doc.No.2641 of 2014	28.04.2014
15	Ex.P15	Online print out copy of Encumbrance Certificate Survey No.136/1A1, 67	12.03.2022
16	Ex.P16	Online print out copy of Encumbrance Certificate Survey No.136/1A1, 67	12.03.2022
17	Ex.P17	Online print out certified copy of Receipt bearing Doc.No.1427 of 2015 issued by City	03.03.2015

Sl. No.	Exhibits	Description of documents	Date
		Bank	
18	Ex.P18	Online print out copy of certified Memorandum of Deposit of Title Deed Doc.No.1428 of 2015	03.03.2015
19	Ex.P19	Online print out copy of Encumbrance Certificate	12.03.2022
20	Ex.P20	Original Money Lender License	03.10.2016
21	Ex.P21	Online print out copy of Encumbrance Certificate Survey No.67, 136/1	12.03.2022
22	Ex.P22	Served copy of the letter of the 2nd defendant	23.11.2017
23.	Ex.P23	Online print out certified copy of Receipt bearing Doc.No.97 of 2018 issued by Kotak Mahindra Bank Limited	-
24.	Ex.P24	Original Mortgage Deed bearing D.No.134 of 2018	08.01.2018
25.	Ex.P25	Office copy of the legal notice to the first defendant	17.04.2019
26.	Ex.P26	Office copy of the legal notice to the second defendant	17.04.2019
27.	Ex.P27	Acknowledgement Card from the first defendant	27.04.2019
28.	Ex.P28	Acknowledgement Card from the second defendant	-
29.	Ex.P29	Online print out copy of Encumbrance	26.03.2022

Sl. No.	*Exhibits*	*Description of documents*	*Date*
		Certificate Survey No.67/PART, 136/1	
30.	Ex.P30	Original Specific Power of Attorney	29.06.2019
31.	Ex.P31	Copy of the Reply Notice dated 26.12.2019	26.12.2019
32.	Ex.32	Online print out copy of statement of accounts	03.10.2017 to 16.12.2017

List of Witnesses examined on the side of the Defendant :

D.W.1 Mr.M.A.Salim

List of Exhibits marked on the side of the Defendant:

Sl. No.	*Exhibits*	*Description of documents*	*Date*
1	Ex.D1	Original authorisation letter by the first defendant to second defendant	01.11.2023
2	Ex.D2	Original bank statements of the 2^{nd} defendant's concern	-

11.03.2024

dhk

Internet : Yes
Index : Yes / No

Speaking order / Non Speaking order

To

The Sub-Assistant Registrar,
Original Side,
High Court, Madras.

N. SATHISH KUMAR, J.

dhk

C.S.No.469 of 2019

11.03.2024