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.IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.S.No.947 of 2017

TamilNad Mercantile Bank Limited,
Rep by its Chief Manager,
No.4, TTK Road,
Royapettah, Chennai.

...Plaintiff

Vs.

1.Mr.D.Harish Babu

2.M/s.Red Giant Movies,
Rep. by its Partners.

3.Mr.R.Arjun Durai

4.Mr.S.Udhayanidhi

...Defendants

PRAYER: Complaint filed under Order VII Rule 1 of CPC r/w Order IV Rule 1 of the O.S.Rules, praying to pass judgment in favour of the plaintiff against the 1st defendant.

(a) To pay a sum of Rs.3,02,20,000/- (Rupees Three Crores Two Lakhs and Twenty Thousand) to the Plaintiff along with interest at the rate of 24% P.A. from the date of complaint till the date of repayment and to pass such other suitable orders.

(b) Cost of the suit.



For Plaintiff : Mr.S.Sethuraman
For Defendants : Exparte -D1
Mrs.Sri Padmaja -D2 to D4

J U D G M E N T

The plaintiff has filed the above suit for recovery of money to pay a sum of Rs.3,02,20,000/- (Rupees Three Crores Two Lakhs and Twenty Thousand) along with interest at the rate of 24% P.A. from the date of plaint till the date of repayment

2. Despite service of summons, the first defendant has not chosen to appear before the Court and he has been set exparte on 14.06.2023. However, the defendants 2 to 4 have chosen to file their written statement. The following issues were framed by this Court on 07.08.2023:

“ (1) Whether the 1st defendant is liable to pay a sum of Rs.3,02,20,000/- (Rupees Three Crores Two Lakhs and Twenty Thousand only) to the plaintiff?

(2) Whether the 1st defendant is liable to pay interest @ 24% per annum on the principal amount of Rs.3,02,20,000/- to the plaintiff?

(3) To what relief?”



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3. This matter was referred to the learned III Additional Master for recording evidence and one Mr.K.Rajkumar, the Chief Manager of the Plaintiff's Bank, has been examined as P.W.1 and Exhibits P1 to P10 were marked on the side of the plaintiff. P.W.1 has been cross examined by the learned counsel for the defendants 2 to 4, except for clarifying that there is no relief against defendants 2 to 4 in the suit, the cross examination is not touching upon the merits of the suit claim made by the plaintiff.

4. It is the case of the plaintiff that the second defendant was having a current account with their Bank and several Fixed Deposits were also held with the plaintiff Bank and the fourth defendant also had Fixed Deposits. The first defendant who was an employee with the 2nd defendant and he was taking care of the banking operation of the 2nd and 4th defendant with the plaintiff bank right from 2007 onwards.

5. It is alleged that the first defendant forged the signature of the 4th defendant and limited the proceedings of the current account of the 2nd defendant and thereafter, forging signatures of the 4th defendant



fraudulently withdrawn the money from the current account of the second defendant and he had misappropriated Rs.3,02,20,000/-, from the accounts of the 2nd and 4th defendants maintained with the plaintiff Bank. The fourth defendant on realising the fraud played by the first defendant has given a police complaint and the first defendant was arrested. The first defendant admitted to the police that he has misappropriated the said amount and therefore, 2nd and 4th defendants demanded refund of a sum of Rs.3,02,00,000/-, the first defendant refusing such refund and the plaintiff Bank left with no other alternate had to refund the said amount of Rs.3,02,00,000/- to the 2nd and 4th defendants and filed the present suit for recovery of money which was swindled by the first defendant.

6. The Bank has reversed the entries and an amount of Rs.3,02,20,000/- has been paid into the Bank Account of the 2nd and 4th defendant on 15.05.2017 which is marked as Ex.P-3. Exhibits P-4 and P-5 are complaints made to the Commissioner of Police dated 28.12.2016, Exhibits P-6 to P-8, FIRs registered against the first defendant. Ex.P-10, (confessions statement), the first defendant admitting to the fraud and misappropriation. In order to recover the money paid to the defendants 2 and 4, the plaintiff issued lawyers notice on 27.07.2017 demanding



repayment of a sum of Rs.3,02,20,000/- with interest. The said copy of the legal notice is marked as Ex.P-2. The statement of accounts showing reversal of money to the accounts of the defendants 2 and 4. Therefore, the plaintiff has made out a case for recovery of money from the first defendant. The first defendant has acted fraudulently and thereby caused huge monetary loss to the plaintiff Bank. Hence, the first defendant who has forged the sum of Rs.3,02,20,000/- is liable to compensate the Bank.

7. The defendants 2 to 4 are not proper and necessary parties, moreover, there is no relief claimed by the plaintiff Bank as against the defendants 2 to 4. Therefore, in respect of defendants 2 to 4, the suit is dismissed. However, the plaintiff is entitled to a decree as prayed for with costs, as against first defendant alone.

03.06.2024

Index : Yes/No
Speaking/Non-speaking order
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Witnesses examined on the side of the plaintiff:

P.W.1. - Mr.K.Rajkumar



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Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Description
1.	P-1	Copy of the FIR No.49 dated 01.03.2017 under Sections 420, 408, 465, 467, 468 & 471 of IPC given to the complainant by the police authorities.
2.	P-2	Office copy of the legal notice issued by the plaintiff's counsel along with original postal acknowledgment card.
3.	P-3	Statement of accounts in the name of M/s.Red Giant Movies for the period 01.01.2016 to 07.06.2017.
4	P-4	Photocopy of the Complaint dated 28.12.2016 given by 2 nd defendant to the plaintiff.
5	P-5	Photocopy of the complaint dated 28.12.2016 given by the 2 nd defendant to the plaintiff.
6	P-6	Photocopy of the complaint dated 28.12.2016 given by the plaintiff to the commissioner of Police.
7	P-7	Photocopy of the complaint dated 05.01.2017 given by the plaintiff to the Commissioner of Police.
8	P-8	Photocopy of the complaint dated 11.01.2017 given by the 2 nd defendant to the Commissioner of Police.
9	P-9	Photocopy of the FIR dated 03.03.2017
10	P10	Photocopy of the Confession statement given by 1 st defendant before Inspector of Police, Central Crime Branch.

Witnesses examined on the side of the defendants:

Nil.

Documents marked on the side of the defendants:

Nil.



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P.B.BALAJI,J.

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