



AS No.230 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

A.S.No.230 of 2019
and CMP No.20603 of 2019

C.V.Ganapathy

... Appellant/Plaintiff

Vs

1. M/s. Kanmani Investments,
Rep. by its Managing Partner,
Mr.V.V.S.Manian,
No.2, Jaishankar Street,
West Mambalam, Chennai 600 033.

Mr.V.V.S. Manian, (Since Deceased)
Managing Partner,
M/s. Kanmani Investments,
3-13, H.I.G. Flats (New)
K.K.Nagar, Chennai 600 078.

Dr.Vikram, (Since Deceased), Partner,
M/s. Kanmani Investments,
B-13, H.I.G. Flats (New)
K.K.Nagar, Chennai 600 078.

2. Mrs.Rajalakshmi, Partner,
M/s. Kanmani Investments,
B-13, H.I.G. Flats (New)
K.K.Nagar, Chennai 600 078.



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3. Mrs.Lalitha Manian, Partner,
M/s. Kanmani Investments,
B-13, H.I.G. Flats (New)
K.K.Nagar, Chennai 600 078.

4. Mr. Kannan Vikraman, Partner,
M/s. Kanmani Investments,
B-13, H.I.G. Flats (New)
K.K.Nagar, Chennai 600 078.

5. Ms.V.Bharathy
D/o. Mr.V.V.S.Manian,
3-13, H.I.G. Flats (New)
K.K.Nagar, Chennai 600 078.

... Defendants/Respondents

This appeal is filed under Section 96 of the Code of Civil Procedure, to set aside the decree and judgment to the extent of interest and consequently modify the decree and judgment in Original Suit No.13619 of 2010 [C.S.No.599 of 1999] passed by the learned XV Additional City Civil Judge at Chennai dated 31.07.2017.

For Appellants : Mr.Sri Krishna Bhagavat T.
for M/s.P. Subba Reddy

For Respondents : No appearance



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The plaintiff in OS No.13619 of 2010 is the appellant. The said suit was filed for recovery of a sum of Rs.12,95,096/- consisting of a principal sum of Rs.8,50,000/- and interest at 24% per annum amounting to Rs.4,03,096/- apart from a sum of Rs.42,000/- towards alleged expenses, suit was instituted on 09.04.1999 in this Court and it was numbered as CS No.599 of 1999. Upon enhancement of the pecuniary jurisdiction of the City Civil Court, Chennai it was transferred to City Civil Court and renumbered as above.

2. According to the plaintiff, he was working Abroad as a Non Resident Indian and he settled in Coimbatore 01.07.1994 and he was looking for institutions for investment. The second defendant approached him claiming to be running an investment institution in the name M/s.Kanmani Investments and assured him that he intends to do business of development and management of farm land, believing the assurance, the plaintiff advanced monies to the defendants on various occasions. The total amount that was paid by the plaintiff to the second defendant amounted to Rs.13,50,000/-.



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3. When accounts were furnished, the plaintiff found that only a sum of Rs.3,50,000/- was spent on purchase to lands and therefore, when he demanded repayment, the second defendant executed a Memorandum of understanding acknowledging the receipt of Rs.13,50,000/- and agreed to repay the same in installments. Since the second defendant did not honour the commitment made under the Memorandum of understanding dated 12.07.1996, the plaintiff had come forward with the present suit for recovery of money.

4. The suit was resisted by the defendants 1 and 2 contending that the suit is not maintainable since the first defendant is wrongly described as a Partnership Firm. According to defendants 1 and 2, the first defendant is a Proprietorship Firm, which did not have any legal existence independent of the proprietor. It was also contended that from the monies that were received from the plaintiff, various purchases were made in the name of the second defendant as well as in the name of the plaintiff's son. It was also contended that all those documents were with the plaintiff. However, accepting the moral obligation to pay it was claimed that the first defendant has paid a total sum of Rs.6,27,625/- on various dates. It was therefore claimed by the defendants that the suit



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itself is ill-conceived and the same is liable to be dismissed.

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5. Defendants 3, 4 and 6 filed a separate written statement stating that they are not partners of the first defendant and therefore, they cannot be made liable. On the above pleadings, the learned Trial Judge framed the following issues:

1. Whether the plaintiff has paid a sum of Rs.13,50,000/- to the 2nd defendant by way of cheque and Demand Draft;

2. Whether the 2nd defendant purchased the land in the name of the plaintiff as per the commitments made by the 2nd defendant or not;

3. Whether the defendants 3 to 6 are the partners in the in the first defendant's company;

4. Whether the 2nd defendant has entered into Memorandum of Understanding on 12.07.1996 or not;

5. Whether the plaintiff is entitled for decree and judgment as prayed for in the plaint;



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6. *Whether the plaintiff is entitled to interest at the rate of 24 per cent per annum;*

7. *Whether the suit is bad for misjoinder of parties;*

8. *Whether the defendants have no say in the business transaction of the 1st defendant;*

9. *To what further relief the parties are entitled?*

6. At trial, the plaintiff examined himself as P.W.1 and Exhibits A1 to A14 were marked. Mrs.Lalitha Manian, wife of the second defendant/the fifth defendant was examined as D.W.1 and Ex.B1 was marked.

7. On the consideration of the evidence on record, the learned Trial Judge concluded that the second defendant is liable to pay a sum of Rs.8,25,000/- which admittedly remained unpaid out of the sum of Rs.13,50,000/- that was agreed to be paid under Ex.A5, the Memorandum of Understanding dated 12.07.1996. The learned Trial Judge, however,



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till the date of suit and thereafter at 6% per annum.

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8. While the defendants had accepted the decree, the plaintiff is on Appeal contending that the interest awarded by the Trial Court is very low. According to the plaintiff, since the transaction was a commercial transaction, the Court must have awarded interest at the contractual rate which as per Ex.A5 is normally at 12% and in the event of default it shall be at 24%. Pointing out to the fact that the second defendant had committed default in payment of installments as provided under Ex.A5, Mr.T.Sri Krishna Bhagavat, learned counsel appearing for the appellant would contend that the Trial Court erred in granting 12% interest from 01.05.1997 to the date of suit and thereafter at 6%. The learned counsel would further submit that the grant of interest at 6% even during the pendency of the suit is against the provisions of Section 34 of the Code of Civil Procedure.

9. When the Appeal was listed on 15.04.2024, there was no representation for the respondent. Therefore, it was directed to be listed under the caption 'for orders' today. Even today none appears for the respondents. Therefore, we have no other option but to proceed with the



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Appeal on merits.

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9. We have considered the submissions of Mr.T.Sri Krishna Bhagavat, learned counsel appearing for M/s.P. Subba Reddy, for the appellant.

10. From the Memorandum of Understanding dated 12.07.1996 marked as Ex.A5, we are able to gather that it was a commercial transaction between the parties. The Memorandum of Understanding provides for interest at 12% ordinarily and in the event of default it provides for payment of interest at 24%. Admittedly, the defendant had committed default in payment of installments at least from May 1997. Therefore, in the normal circumstances, the transaction being a commercial transaction, the plaintiff would be entitled to interest at the contractual rate. But in the case on hand we find that the contractual rate is also usurious, since it is 24% per annum. At the same time, we are unable to approve the action of the Trial Court in granting meager interest at 6% even for the period during which the suit was pending.



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that the plaintiff would be entitled to interest at 12% from 05.01.1997 till the date of decree on Rs.8,25,000/- and from the date of decree, the plaintiff would be entitled to 9% per annum, since we find that it is a commercial transaction and the mandate of Section 34 of the Code of Civil Procedure that post decree interest shall be at 6% will not apply. No other point was urged before us.

12. Hence the Appeal is **partly allowed**, the decree of the Trial Court is modified granting interest on Rs.8,25,000/- from 01.05.1997 till date of decree at 12% per annum and the post decree interest will be at 9% per annum from the date of decree till date of payment. The dismissal of the suit against D1, D3, D4 & D6 will stand confirmed. We find that the suit was dismissed for default on 28.04.2011 and restored to file on 22.10.2013, the Trial Court has refused the interest for the said period. We are not in agreement with the said conclusion of the learned Trial Judge, inasmuch as the defendants have had the advantage of that money during that period also. But refusal of interest would be justified only in claims for compensation where the delay in determination of the compensation is contributed by the person claiming compensation and not in recovery of a money suit while the defendants had the benefit of



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the money belonging to the plaintiff for that period also. Hence that portion of the decree will stand set aside.

13. It is seen from Ex.B1, pursuant to the orders of this Court dated 01.07.2008 made in Application No.1279 of 2008 in CS No.599 of 1999, the defendants had deposited a sum of Rs.14,00,000/- to the credit of the suit by way of fixed deposit in Indian Bank, High Court Branch, on 14.07.2008 for a period of two years and the deposit receipt has been handed over to the Registrar General. There will be a direction to the Registrar General to en-cash the fixed deposit receipt and pay the proceeds to the appellant, since the decree is not under challenge. The suit will stand decreed as indicated above. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J.) (R.SAKTHIVEL, J.)
18.04.2024

jv

Index : No
Internet : Yes
Speaking order
Neutral Citation: No



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To

1. The Additional City Civil Judge
Chennai.
2. The Section Officer,
V.R. Section,
Madras High Court, Chennai 104.



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R.SUBRAMANIAN, J.
and

R.SAKTHIVEL, J.

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