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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
14.07.2025	23.07.2025

CORAM :

THE HON`BLE MR.JUSTICE K.KUMARESH BABU

C.S.No.141 of 2024

Arvind Bagrecha ... Plaintiff

vs.

1.G.Selvaraj
2.G.S.Saravana Kumar ... Defendants

Prayer : Civil Suit filed under Order VII Rule 1 of CPC r/w Order XXXVII Rule 2 of Original Side Rules for the following reliefs:-

(a) to pay the plaintiff a sum of Rs.1,71,38,984/- (Rupees One crore seventy one lakhs thirty eight thousand nine hundred and eighty four only) with such further interest as may accrue, on the Principal amount of Rs.25,00,000/- from the date of filing of the plaint till the date of payment and also the costs of the suit on some date to be named by the Court, and in default that the suit schedule property may be sold and the sale proceeds (after defraying there out the

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expenses of the sale) to be adjusted towards the payment of the amount of principal, interest and cost.

(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 9% per annum until realization and

(c) to award cost of the suit.

(d) granting such further or other order as may be deemed fit and proper in the circumstances of the case.

For Plaintiffs : Mr.Ralph V.Manohar

For defendants : D1 & D2 set exparte on 06.03.2025

J U D G M E N T

The present suit has been filed for recovery of a sum of Rs.1,71,38,984/- from the defendants, along with interest on the principal amount of Rs.25,00,000/-. The plaintiff also seeks, in the alternative, a relief to direct the sale of the suit property mortgaged in favour of the plaintiff.

2) The case of the plaintiff is that the defendants, who are engaged in the real estate business, approached the plaintiff for financial assistance to

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purchase and develop the suit property. Based on mutual understanding, the plaintiff lent a sum of Rs.25,00,000/- to the defendants, and as security for the said amount, the defendants executed a registered mortgage deed over the suit property. The mortgage was registered as Document No. 528 of 2012, dated 05.01.2012. Subsequently, the defendants borrowed additional sums of Rs.2,50,000/- and Rs.10,00,000/- and the same was settled by the second defendant and the plaintiff issued receipt for the same. Though partial payments were made, the outstanding dues remained unpaid. The defendants issued promissory notes acknowledging their liability and the same was marked as Ex.P3 and Ex.P4. However, despite repeated demands, the defendants failed to clear the loan. When the plaintiff demanded repayment, the second defendant issued 17 cheques towards discharge of the liability. All the cheques were dishonoured on presentation with the endorsement **"Account Closed".** In view of the defendants' continued default and fraudulent conduct, the plaintiff has filed this suit seeking recovery of the total amount due, along with interest, and in the alternative, to enforce the mortgage by directing the sale of the suit property.

3) On the side of the plaintiff, the plaintiff examined himself as PW1 and marked Ex.P1 to Ex.P9. The defendants were set ex-parte on 06.03.2025.

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4) Heard Mr.Ralph V. Manohar, learned counsel appearing for the plaintiff.

5) Mr. Ralph V. Manohar, learned counsel for the plaintiff, submits that the defendants are real estate developers who purchased the suit property with the intention of constructing and selling developed units. He submits that the first defendant is the absolute owner of the suit property, having purchased it through a registered sale deed marked as Ex.P1 bearing Document No. 371 of 2012, dated 05.01.2012. Subsequently, the defendants approached the plaintiff for a loan of Rs.25,00,000/-, and as security, mortgaged the suit property in favour of the plaintiff by executing a registered mortgage deed marked as Ex.P2 dated 05.01.2012, vide Document No. 528 of 2012, registered at the Sub-Registrar Office, Guduvancheri. He submits that the defendants agreed to repay the said loan in 30 equal monthly installments of Rs.1,45,835/- each, commencing from 04.02.2012, with interest at the rate of 30% per annum. It is contended that the defendants paid only 11 out of the 30 installments, that too with inordinate delay. He submits that the plaintiff has received a total sum of Rs.14,73,000/- towards part repayment of the loan installments.

6) He further submits that the first defendant additionally borrowed

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Rs.2,50,000/- on 27.04.2012 and Rs.10,00,000/- on 08.12.2012, which amounts were settled by the second defendant, for which the plaintiff issued appropriate receipts. However, no further payments were made by the defendants towards the original mortgage loan that forms the subject matter of the present suit. He contends that when the plaintiff demanded repayment of the outstanding dues, the second defendant issued 17 post-dated cheques(Ex.P6) during May 2019, all of which were dishonoured upon presentation with the endorsement **"Account Closed".** Thereafter, the plaintiff issued a legal notice dated 25.06.2019, which was duly received by both defendants. However, the defendants failed to respond to or comply with the said notice.

7) He further submits that the defendants have failed to discharge the loan liability as per the agreed terms. Further, the photocopy of the plaintiff's ledger statement of account as on 01.03.2024 as Ex.P8, evidencing the relevant transactions. Finally, he submits that the defendants were set ex-parte on 06.03.2025 after due service of summons. Therefore, he prays that the suit may be decreed as prayed for.

8) I have considered the submissions of the learned counsel for the

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plaintiff and perused the material available on record.

9) Based on the uncontroverted pleadings and the oral and documentary evidence adduced by the plaintiff, it is evident that the first defendant is the absolute owner of the suit property, having purchased the same through a registered sale deed dated 05.01.2012 (Ex.P1). To secure a loan of Rs.25,00,000/- borrowed from the plaintiff, the defendants executed a registered mortgage deed dated 05.01.2012 in favour of the plaintiff (Ex.P2). The loan was to be repaid in 30 equal monthly installments of Rs.1,45,835/- with interest at 30% per annum commencing from 04.02.2012. However, the defendants repaid only 11 installments, and that too with delay, amounting to a total of Rs.14,73,000/-.

10) Further, the first defendant borrowed additional sums of Rs.2,50,000/- and Rs.10,00,000/- on 27.04.2012 and 08.12.2012 respectively, which were settled by the second defendant and duly acknowledged by the plaintiff. Despite repeated demands for repayment of the mortgage loan, the second defendant issued 17 post-dated cheques during May 2019, all of which were dishonoured with the endorsement "Account Closed" (Ex.P6). A statutory legal notice was issued by the plaintiff on 25.06.2019, duly served on both

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defendants, but no reply or payment was made.

11) The documentary evidence, including the promissory notes (Ex.P3 & Ex.P4) and the ledger account statement as on 01.03.2024 (Ex.P8), clearly substantiate the plaintiff's claim. The defendants were set ex-parte on 06.03.2025 after due service of summons. In view of the above, it is clear that the defendants have defaulted in repaying the mortgage loan and have also failed to respond to the legal notice. The plaintiff has established his claim both legally and factually. Therefore, the plaintiff is entitled to a decree for recovery of the outstanding loan amount along with interest as claimed.

12) In fine, the suit is decreed as prayed for, directing defendants 1 and 2 to pay a sum of Rs.1,71,38,984/- to the plaintiff, along with interest on the principal amount of Rs.25,00,000/- from the date of the plaint, within a period of eight weeks from the date of this decree. Failing such compliance, the plaintiff is at liberty to proceed with the sale of the mortgaged suit property, in accordance with law, for realisation of the loan amount. However, there shall be no order as to costs.

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List of witnesses examined on the side of the Plaintiff:

PW1- Mr.Arvind Bagrecha

List of documents marked on the side of the Plaintiff:

Ex.P1	The certified copy of the Sale Deed executed in favour of the defendant, registered as Doc.No.317/2012 dated 05.01.2012.
Ex.P2	The original deed of Simple Mortgage executed by the defendant in favour of the plaintiff dated 05.01.2012.
Ex.P3	The original promissory note dated 27.04.2012.
Ex.P4	The original promissory note dated 08.12.2012.
Ex.P5	The original letter of undertaking dated 08.12.2012.
Ex.P6	(Series)(17 Nos) The original cheques dated 10.05.2019 to 26.05.2019 issued by the 2nd defendant to the plaintiff and return memo.
Ex.P7	The office copy of the legal notice dated 25.06.2019 issued by the plaintiff to the defendant along with acknowledgement card and return cover.
Ex.P8	The photocopy of the ledger statement of accounts as on 01.03.2024.
Ex.P9	The printout of the encumbrance certificate dated 08.01.2024 for the period from 01.01.2010 to 05.01.2024. Certificate under Section 63 of BSA, 2023 is filed for Ex.P9.

List of witnesses examined on the side of the Defendant:

NIL

List of documents marked on the side of the Defendant:

NIL

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K.KUMARESH BABU.J.,

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Pre-Delivery Judgment in
C.S.No.141 of 2024

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