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C.S.94 (Comm.Div) 1.01.2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Civil Suit (Comm.Div) No. 94 of 2021

1. B. Vinayak Nilesh
2. Baburaj

.. Plaintiffs

Versus

1. Rakesh Harlalka
2. Rahul Tibrewala
3. Rahul Kumar Singhi
4. Narendra Harlalka
5. Urmila Harlalka
6. Narendra Harlalka HUF
rep. by its Karta
Mr. Narendra Harlalka
No.6A, Triveni House
Govindan Street, Ayyavoo Colony
Aminjikarai, Chennai - 600 029
7. Ms. Rashmi Harlalka
8. Mrs. Sobhag Devi Singhi
9. Tritex Private Limited
represented by its Director
Mr. Rakesh Harlakha



C.S.94 (Comm.Div.)

Door No.6A, Triveni House
Govindan Street

Ayyavoo Colony, Aminjikarai, Chennai - 600 029

(9th defendant impleaded as per order dated 29.03.2022
in A.No.1015 of 2022)

.. Defendants

Plaint filed and numbered as C.S.(Comm.Div).No.94 of 2021 under Section 7 of Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act No.4 of 2016 read with Order VII Rule 1 of Code of Civil Procedure and Order 34 Rule 7 of Code of Civil Procedure read with Order IV Rule 1 of Original Side Rules of this Court.

For Plaintiffs : Mr. P.R. Raman, Senior Advocate
assisted by Mr. Anupam Raghuraman

For Defendants : Mr. M. Santhanaraman

JUDGMENT

The Plaintiffs have come forward with this Commercial Division Suit praying for the following reliefs:-

(a) To grant a decree for declaration that the defendants are "money lenders" as defined under Section 2(8) of Tamil Nadu Money Lenders Act, 1957 and are entitled to charge only upto 9% per annum simple interest on the money borrowed by the plaintiffs under Simple Mortgage Deed, dated 16.04.2012.



(b) To grant a decree for redemption of mortgage against the defendants 1 to 3, with consequential direction to return all the original title deeds of Schedule 'A' property, viz., Original Settlement Deed dated 15.12.2008 bearing document No.2446/2008 along with patta and revenue records as well as all the cheques mentioned in the Schedule 'B' issued by the first plaintiff. (c) To direct the defendants jointly and severally to pay the plaintiffs a sum of Rs.1,91,67,279/- along with interest at the rate of 9% per annum from this date to till realisation for the excess amount paid by the first plaintiff on the mortgage deed dated 16.04.2012.

(d) to grant a decree for declaration that Mortgage Deed dated 13.03.2020, registered as Document No. 722 of 2020 at Sub-Registrar Office, T. Nagar, Chennai - 600 017, executed between the plaintiffs and defendants to be null and void, being sham and nominal and not supported by consideration

(e) decree for permanent injunction, restraining the defendants or their men, agents from presenting for encashment of the cheques issued by the plaintiffs, and given as security to the defendants 1 to 3, in pursuance of the mortgage deed, dated 16.04.2012, as detailed and set out in the schedule hereunder, and

(f) to direct the defendants to pay the costs of the suit.

2. The case of the plaintiff, as could be unfolded from the plaint as well as the



amended plaint are as under:-

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The plaintiff states that they are in the business of construction for the last few decades and subsequently they have also entered into the field of automotive component business for the past few years prior to the filing of the plaint. According to plaintiff, for the purpose of meeting the urgent business expenditure, they were in need of funds and on 16.04.2012, one of the common friend introduced the plaintiffs to the first defendant, who is a money lender. The plaintiffs requested the first defendant to extend them financial assistance and after deliberations, the first defendant paid a sum of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs Only) by way of cheque from the bank account of the first defendant as well as third parties to the transaction namely the defendants 4, 5 and 8. On receipt of such amount, the plaintiffs executed a simple mortgage deed in favour of the defendants 1 and 3 which was registered as document No. 885 of 2012 in Book No.I on the file of Sub-Registrar, Theyagaraya Nagar. Further the plaintiffs also deposited the original title deeds of the property bearing Flat No.4A, Fourth Floor, New Door No.21, Raja Street, T. Nagar, which is described as one of the properties in the plaint schedule. It is the specific plea of the plaintiffs that in the mortgage deed dated 16.04.2012 there was no reference made to the quantum of amount paid by the defendants 1 to 3, 4, 5 and 8, but it was merely stated that the amount is being paid to the first plaintiff. However, as per the various cheques issued by the



defendants 1 to 3, 4, 5 and 8, out of the total sum of Rs.1,50,00,000/-, the defendants 1 to 3 have paid Rs.82,00,000/- and the balance amount to the tune of Rs.68,00,000/- was paid by the defendants 4, 5 and 8 with whom the plaintiffs have no contact or any other contact. Thus, the plaintiffs do not disown their liability to repay the amount of Rs.1,50,00,000/- they borrowed from the first defendant and they have also continued to repay the amount borrowed by them with interest to the defendants 1, 2, 3, 4, 5 and 8. According to the plaintiffs, out of the total loan amount of Rs.1,50,00,000/- received from the first defendant, the sum of Rs.68,00,000/- was paid by the defendant Nos. 4, 5 and 8 at the insistence of the defendants 1 to 3 and that was the reason why there was no reference made in the mortgage deed dated 16.04.2012 about the contribution of the amount paid by the defendants 4, 5 and 8.

3. The plaintiffs further alleged in the plaint that the defendants 1 to 3 had capitalised the situation in which they were placed and had levied interest at the rate of 27% per annum compounded quarterly. Such a percentage of interest, according to the plaintiffs, cannot be levied as it is against law. Notwithstanding the usurious rate at which the amount was paid, the plaintiffs diligently paid the principal amount with interest from 16.04.2012 till 29.10.2020. Thus, for the amount of Rs.1,50,00,000/- borrowed by the plaintiffs, they have repaid a total sum of Rs.3,87,21,482/- (Rupees



Three Crores Eighty Seven Lakhs Twenty One Thousand Four Hundred and Eighty Two Only) and the last payment was made to the tune of Rs.74,69,232/- on 29.10.2020. In order to fortify this submission, the plaintiffs also filed the audited statement of account, which would disclose that the entire payments were made by the plaintiffs only through bank transaction and none of the transaction was made through cash.

4. According to the plaintiffs, during June 2021, the first defendant submitted a self-serving statement of account and demanded repayment of a total sum of Rs.7,05,19,852/- notwithstanding the receipt of the amount of Rs.3,87,21,482/- paid by the plaintiffs. Upon verification it was noticed that the defendants made a claim of Rs.5,74,00,000/- towards principal and Rs.1,31,19,851/- as interest which is illegal and unreasonable. On the other hand, if the amount payable by the plaintiffs is even calculated at 27% per annum the amount payable by them as on 01.10.2020 would be Rs.1,55,97,268/- but they have so far paid Rs.3,87,21,482/- which is over and above the amount they are liable to pay to the defendants. In any event, the rate of interest to be levied by the defendants in accordance with law will be 9% simple interest as per Section 7 (1) of The Tamil Nadu Money Lenders Act. But the rate of interest charged by the defendants is contrary to the provisions of Section 7 (1) of the Tamil Nadu Money Lenders Act, 1957 (Tamil Nadu Act No.XXVI of 1957) which has to be read in



tandem with G.O. Ms. No.406, Cooperation dated 05.07.1979 published in the Tamil Nadu Government Gazette Extraordinary to Part II, Section 2 dated 06.07.1979. In any event, the plaintiffs have discharged their liability towards the mortgage of the year 2012 and therefore, they are entitled for redemption of the mortgage. Further, the defendants, who have received excess sum of Rs.1,91,67,279/- are jointly and severally liable to return the excess payments made to the plaintiffs with appropriate interest since the debt has already been discharged by the plaintiffs.

5. The plaintiffs further submit that when the dues covered under the mortgage deed dated 16.04.2012 was about to be discharged, the plaintiffs were in dire need for money to meet their business commitments. Therefore, the plaintiffs approached the defendants for further loan to the tune of Rs.4,15,50,000/-. Acceding the same, the defendants prepared a document titled "second mortgage deed" to create a second charge on the plaint schedule mentioned property taking advantage of the bad financial situation in which the plaintiffs are placed. Accordingly, on 13.03.2020, the first plaintiff went to the office of the Sub-Registrar, T Nagar to register the second mortgage deed dated 13.03.2020. According to the plaintiffs, they were informed by the first defendant that the amount covered under the Second mortgage deed will be paid to them upon execution of the mortgage deed. Believing such representation made by the first defendant, the plaintiff executed the second mortgage deed which was



registered as document No. 722 of 2020 in Book 1 on the file of Sub-Registrar, T. Nagar. However, the amount payable towards the second mortgage deed has not been paid by the first defendant as assured. Thus, the second mortgage deed dated 13.03.2020 has been executed by the first plaintiff without any consideration. When the first plaintiff approached the first defendant to discharge the mortgage deed dated 16.04.2012, as the defendants have already received a total sum of Rs.3,81,21,482/- to the utter shock of the plaintiffs, during June 2021, the first defendant furnished a statement of account and reiterated his demand for repayment of Rs.7,05,19,852/- for redemption of the mortgage deed dated 16.04.2012. On verification of the statement of account, it came to light that the defendants reiterated their claim for payment of Rs.5,74,00,000/- as principal and Rs.1,31,19,851/- as interest. Subsequently, the first defendant produced another statement of account during July, August and September 2021 in support of their arbitrary and illegal demand. Further, as the mortgage deed dated 13.03.2020 is without any consideration, the plaintiffs did not pay any principal or interest to the defendants till date. Resultantly, the second mortgage deed dated 13.03.2020 is a sham and nominal document, it will not bind the plaintiffs and it cannot be legally enforceable against them.

6. The Plaintiffs have also referred to the manner in which the first defendant



used to collect blank cheques from them whenever they approached him for repayment of the loan amount towards the first mortgage deed dated 16.04.2012.

According to the plaintiffs, the first defendant had collected about 36 cheques from them in such fashion, mostly in blank, and they were disclosed in para No. 18 of the plaint. The plaintiffs also states that whenever such cheques are paid, it was mutually understood between them that neither those cheques will be presented for encashment without the consent of the plaintiffs nor those cheques are meant for repayment of loan amount but they were tendered only as security. Furthermore, if and when the plaintiffs paid the interest amount belatedly, the cheque issued correspondingly will not be returned to them.

7. The plaintiffs state that the dispute between them and the defendants arose when the first defendant threatened the plaintiffs orally during the year 2021 stating that they will sell the plaint described property if they do not comply with their unreasonable demands to pay huge amount as interest. Even though the second mortgage deed dated 13.03.2020 was executed without any consideration, yet, the defendants demand payment of principal as well as interest as if they have paid the amount mentioned in the second mortgage deed dated 13.03.2020 to the plaintiffs. The first defendant, as a money lender/financier had collected exorbitant interest from the plaintiffs. The



immovable property given as security and which are covered under the two successive mortgage deeds dated 16.04.2012 and 13.03.2020 are one and the same, however, the mortgage amount was paid upon execution of the first mortgage deed alone and the second mortgage deed is without any consideration. Therefore, the plaintiffs are constrained to challenge the validity and enforceability of the second mortgage deed dated 13.03.2020 executed in favour of the defendants. Therefore, the plaintiffs have filed the instant suit for the reliefs mentioned supra.

8. On notice, the defendants have filed a written statement contending *inter alia* that the plaint averments are not borne out of truth and they are misleading. According to the defendants, the plaintiffs were not in dire need of any amount to meet their business commitments, as has been portrayed in the plaint. On the other hand, they have borrowed the loan amount of Rs.1,50,00,000/- on 16.04.2012 only to repay the loan already borrowed by them from one Suresh Kumar Ostwal in whose name they have executed a mortgage deed dated 16.06.2010. They have borrowed amount from the aforesaid Suresh Kumar with interest at the rate of 36% per annum and by utilising the amount paid by the defendants as loan, the plaintiffs have redeemed the earlier mortgage with Mr. Suresh Kumar Ostwal and executed the mortgage deed dated 16.04.2012 in favour of the defendants. The allegation that the mortgage was executed



only in favour of the defendants 1 to 3 and the mortgage amount was paid through the third parties to the transactions namely defendants 3 to 8 has no significance attached to this case when the plaintiffs have admitted the due execution of the mortgage deed dated 16.04.2012 and the receipt of the mortgage amount. At the same time, in the written statement, the defendants have admitted that the plaintiffs have been repaying the loan amount until 29.10.2010 together with interest, as has been agreed by them.

9. The defendants specifically denied the allegation that they have demanded exorbitant interest of 27% per annum and even if the interest is calculated at 27% per annum the outstanding amount would be only Rs.1,55,97,268/- on the basis of the audited statement of account. According to the defendants, the audited statement of account is a self-serving document over which no reliance can be placed and it was prepared to suit the convenience of the plaintiffs. Therefore, the allegation that the plaintiffs have paid more amount that they are entitled to pay to the defendants by calculating the interest payable by them at the rate of 9% per annum cannot be legally sustained. When the plaintiffs have agreed to pay the interest, as per the recitals and the terms and conditions contained in the mortgage deed dated 16.04.2012, they are bound to pay the same to the defendants.



10. With reference to the second mortgage deed dated 13.03.2020, it was a registered mortgage deed and the plaintiffs cannot take any exception over the same.

The defendants have denied the allegation that the amount covered under the second mortgage deed has been agreed to be paid in due course, but it was never paid. According to the defendants, the second mortgage deed is liable to be declared as void inasmuch as it was executed without receipt of any consideration of the mortgage amount is unreasonable and not sustainable. The principal amount of Rs.4,15,50,000/- covered under the second simple mortgage was executed by the first plaintiff and the break ups for the said sum of Rs.4,15,50,000/- and the banks through which such amounts were paid are clearly mentioned in the second simple mortgage. However, the plaintiffs have deliberately suppressed the same while filing the suit to make it as if the second mortgage deed is without any consideration. The defendants also denied the allegation that the plaintiffs have requested to release the property and to redeem the first mortgage but it was denied by the defendants by demanding a sum of Rs.7,05,19,852/- as a condition precedent for releasing the first mortgage deed. The defendants also denied having furnished a self-serving statement indicating the amount payable by the plaintiffs. The defendants also denied the allegation that the second mortgage deed dated 13.03.2020 is a sham and nominal document. Further, the defendants denied that they have not received any blank cheques from the plaintiffs as



alleged. When the plaintiffs have issued the cheques duly signed, the presumption is that those cheques have been issued for a legally enforceable debt and liability and the plaintiffs are bound to prove the contra in the appropriate proceedings. When the cheques were issued by the plaintiffs to the defendants, then, they are estopped from preventing the defendants from presenting the cheques to realise the amount in their capacity as holder of the cheques. It is a statutory right vested on the defendants and they cannot be unduly prevented from encashing the cheques. The defendants also denied that the cheques were not given as security but they are given towards the amount due and payable by the defendants. The defendants have also denied having threatened the plaintiffs during the year 2021 that they will sell the plaint described property if their demands are not met. Therefore, it was submitted that there was no cause of action for the suit and the cause of action stated to have arisen is imaginary.

11. The defendants have further stated in their written statement that the allegation that the first defendant is a money lender and he demanded the payments made to each of the family members and his company. The defendants also denied that the whatsapp chats between the second plaintiff and first defendant cannot be a valid piece of evidence to prove the contentions of the plaintiffs. Consequently, the relief prayed for by the plaintiffs to declare that the first defendant is a money lender is far



fetches and it is not legally sustainable. The entire amount received by the plaintiffs from the defendants towards loan has not been used for their business purpose but the plaintiffs lavishly spent the amount for their personal needs. The first plaintiff has purchased many luxury cars, including BMW 5 series, Mercedes ML 250, Mercedes AMG sports Car, Lamborghini Sports Car, BMW 3 series and Kona Electric Car etc., during the year 2012, 2014, 2016, 2019 and 2021 which so it cannot be said that due to the unreasonable made by the defendants to pay interest at exorbitant rate, the plaintiffs are in any manner prejudiced. Further, the plaintiffs have undertaken various international tours by using the money borrowed from the defendants during April 2018. The second plaintiff himself has personally informed the first defendant about the international trips he proposed to undertake such as London etc., by utilising the money paid by the defendants.

12. The defendants further stated that though interest rate is mentioned as 27% in the mortgage deed, on various instances, the plaintiffs have requested to reduce the rate of interest. The statement of account in respect of the amount borrowed by the plaintiffs from the individual defendants would disclose that the plaintiffs have repaid the loan amount only at 18%, 15% or 12% interest per annum and the defendants have never calculated interest at quarterly compounded rests as alleged. Even under the



subject mortgage deed, the interest mentioned was only simple mortgage, which the plaintiffs have distorted as compound interest. In other words, under the first mortgage deed as well as the second mortgage deed, the first plaintiff agreed to repay the mortgage money with interest within a period of 15 months and 12 months respectively and also to pay interest once in three months. On the contrary, without making the payment as agreed and redeeming the mortgage within the time stipulated, the plaintiffs have now come forward with the present vexatious suit and it is liable only to be dismissed. The plaintiffs, for the past one decade, repaying the principal amount with interest without redeeming the first mortgage. It is further stated that all the defendants are dealign with various business and the business carried on by them is not one and the same. The defendants are not professional money lenders. As the plaintiffs sought for financial assistance the defendants 4 to 8 have voluntarily paid the amount. Furthermore the defendants never insisted for payment of the loan amount with interest at the rate of 12% per annum which are borne out by records. The plaintiffs repaid the loan amount with interest ranging between 12% and 23% per annum and therefore, the prayer of the plaintiffs to declare the defendants as money lenders will not augur well and it is liable only to be dismissed with exemplary costs. The communication between the second plaintiff and first defendant in respect of repayment of loan amount were available in whatsapp chat. However, when the first defendant sent a statement of



outstanding as on 31.07.2021 which consist of both principal of Rs.5.70 crores and interest of Rs.1.44 crores, the second plaintiff sent a reply by assuring that they are working out it to clear as one time payment and get it closed at the earliest. However, contrary to the same, now the plaintiffs pray for releasing the mortgage by treating the payment already made by them as surplus or excessive and that the entire loan amount has been paid. Therefore, it is submitted that the plaintiffs have not approached this Court with clean hands. The allegation that the defendants are liable to pay Rs.1,91,67,279/- towards the excess amount paid by the defendants is legally not sustainable. Having agreed to the terms and conditions of the mortgage and paid the principal and interest upto 29.10.2020, it is not open to the plaintiffs to seek for refund of the amount paid to the defendants on the ground that they are liable to repay the amount only at interest at the rate of 9% per annum. It is also stated that the defendants, as mortgagees under the two registered mortgage deeds, have every right to bring the properties for auction sale to realise the amount due and payable to them as per law and such right is inherent on the strength of the deeds of mortgage executed by the plaintiffs. While so, the right of the defendants to bring the property for sale cannot be questioned by the plaintiffs especially when they have committed default in payment of the borrowed amount with interest rate as agreed. Accordingly, the defendants prayed for dismissal of the suit.



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13. In the above suit, the following issues were framed for consideration by this Court on 12.01.2023 and they are:-

(i) Whether the amounts borrowed by the plaintiffs were in fact returned to the defendants in excess and whether the plaintiff is entitled for a sum of Rs.1,91,67,297/- from the defendants along with interest ?

(ii) Whether the plaintiff is entitled to the declaration that the defendants are Money Lenders as defined under Section 2(8) of the Tamil Nadu Money Lenders Act, 1957 ?

(iii) Whether the defendants are liable to charge only up to 9% simple interest per annum on the money borrowed under the Simple Mortgage Deed dated 16.04.2012 ?

(iv) Whether consideration was received by the defendants in accordance with the Mortgage deed dated 13.03.2020 ?

(v) If the issue No.IV is answered in the affirmative, whether interest was charged by the Defendants, in accordance with the Mortgage Deed dated 13.03.2020 ?

(vi) Whether the plaintiff is entitled to the relief of cancellation of Mortgage Deed dated 13.03.2020 as null and void ?

(vii) Whether the plaintiffs are entitled to redeem Schedule A of the suit schedule properties ?

(viii) Are not the plaintiffs bound by the terms agreed under the mortgage deeds dated 16.04.2012 and 13.03.2020 ? and

(ix) Are the defendants money lenders under the Money Lenders Act, 1957 ?



14. The learned Senior counsel for the Plaintiffs submitted that the second mortgage deed dated 13.03.2020 was executed in favour of the defendants without receiving any consideration. In this context, it is submitted that the plaintiffs have taken out Application No. 1014 and 1015 of 2022 for impleading the 9th respondent and for appointment of an independent third party auditor to review the accounts of the parties. The aforesaid applications were allowed on 29.03.2022 whereby M/s.S.Venkatram & Co LLP, Chartered Accountants was appointed and directed to answer the terms of reference as stipulated in the order dated 29.03.2022. Upon scrutinising the accounts, the Auditor submitted his first report dated 23.06.2022, marked as Ex.C1, wherein at Page No.3, Para No.4, it was confirmed that “no documentation has been produced to us either party to evidence (a) the terms of repayment (b) tenor and terms of repayment of the hand loans and (c) whether the hand loans carry interest, and if so, what is the agreed rate of interest”. Further in page No.4, para No.7, the Auditors confirm that appropriation of the payments submitted by plaintiffs towards loan and interest is different from the appropriation submitted by the defendants and this resulted in each party treating the payments differently. It was further recorded that neither party produced any evidence to prove the correctness of the appropriation of repayments by them and hence, they are unable to confirm which appropriation is correct. In Annexure 11 of the said report, the manner in which the plaintiff had received the money has been



mentioned, but this Annexure is contradictory to the terms contained in the second mortgage deed. However, the Auditors failed to acknowledge that defendants have admitted, as per their own records, that a sum of Rs.1,56,50,000/- has been received by them as principal amount repaid with interest. As there was no documentary basis for the findings of the Auditors as per Annexure 11, this Court, by way of order dated 11.07.2022 directed the Court appointed Auditor to respond to issues raised as clauses (C) to (F) of terms of reference, as the Auditor failed to answer the same. The Auditor then provided his second report dated 29.07.2022 marked as Ex.C-2, wherein at page No.3, it was stated that their conclusion for arriving at Annexure-11 was founded on the balance of probabilities. In page No.4 of report 2, it was also stated that “neither party have produced any document to evidence (a) the terms of repayment for the monies borrowed under (i) simple mortgage deed (ii) the second simple mortgage deed (b) tenor and terms of repayment of other loans (hand loans) and (c) whether the hand loans carried any interest and if so what is the agreed rate of interest. According to the learned Senior Counsel appearing for the plaintiff, unless the plaintiff is provided with the above information with addendum evidence, they are not in a position to reply (with workings).

15. According to the learned Senior Counsel, in the above circumstances, this



Court on 03.08.2022, inquired as to why the terms of reference (C) to (G) could not be borrowed and the Auditor stated that as neither borrowers, nor the lenders could agree upon the purpose of repayment or the manner of appropriation of monies received, he could not answer the terms of reference. Thus, the Auditor was unable to arrive at any conclusion due to the manner in which the parties accounted the receipts and payments. The Auditor also submitted 3rd and 4th reports, wherein in the 4th receipt, it was noted that total amount received by the plaintiffs from the defendants was Rs.8,54,00,000/- and total amount repaid by the plaintiffs was Rs.8,72,21,343/-. The report is silent as to whether there are several payments made by the plaintiffs in cash to the defendants towards re-payment of hand loans not covered under either of the mortgage deeds.

16. The learned Senior Counsel appearing for the plaintiffs submitted that a combined reading of Question Nos.32 to 36, 43 and 44, the answers given by DW2 reveals that the defendants did not maintain their accounts properly and their own Auditor had asked to clarify as to whether the loans are related to the mortgages or hand loans. However, DW2 admitted that the defendants were unable to produce the information with respect to the hand loans and the mortgage loans. In the affidavit of admission and denial, the plaintiffs explained that there were no documents that were filed by the defendants and there was nothing to admit or deny. However, the



defendants have taken out Application No.2264 of 2023 to file additional documents and it was allowed on 25.04.2023, whereby Exs. D6 to D9 were marked which are reports and calculations arrived at by the Chartered Accountant appointed by the defendants. Thus, subsequent to the filing of the suit and at the time of trial, the defendants calculated the amounts due by plaintiffs to suit their needs. For the question as to what was the balance amount payable by the plaintiffs towards the second mortgage, under Question Nos.70 to 72, DW1 replied that he does not know and the Auditor will be able to answer. To the question as to whether Rs.4.15 crores were paid to the plaintiffs at the time of execution of second mortgage, it was replied by DW1 that amounts mentioned in the second mortgage were paid, but the defendants admitted that Rs.1,56,50,000/- was paid back.

17. The learned Senior Counsel further states that when the first mortgage was in force, at the instance of plaintiffs, numerous hand loans were made and those hand loans were paid back. This was also pointed out by the Auditors in the first report. Thus, it is clear that the amounts mentioned in Annexure 11 have, in fact been paid back to various parties as per the choice of the first defendant after a period of time and no amounts shown in Annexure 11 relates to the second mortgage deed. According to the learned Senior Counsel, there are instances where the first defendant requested the first



plaintiff to receive money from one of the defendants and within 24 to 48 hours, transfer the said amount to one of the other defendants. However, the Court appointed Auditor has also recorded such transactions as being principal for loans as per Annexure 11, which is completely unfounded, as some of the said sums were admitted by the defendants as returned in full to one of the defendants. In this context, reference was made to the table enclosed along with the written submissions as also "Whatsapp" conversation marked under Ex.P-12. The learned Senior Counsel also referred to Exs.P-16 to 36, e-mail communications exchanged between the parties to show that the defendants received substantial amount in cash towards the hand loan and even as per the e-mail, a total sum of Rs.86 lakhs had been received. However, the amount to the tune of Rs.2.5 crores has been paid in cash to the defendants from the date of first mortgage till the date of institution of the suit, but the plaintiffs have no proof towards the same. In any event, the stand of the defendants stood exposed that there were several hand loans between the parties and those hand loans do not form part of the second mortgage deed.

18. The learned Senior Counsel appearing for the plaintiffs submitted that all the transactions relating to the first mortgage loan, have been transacted only through Bank Transfer and the other transactions, including hand loans, which had large components, as cash and those transactions do not form part of either the first or second mortgage. In



fact, DW1 admitted that there were multiple transactions between the parties such as registered mortgage, hand loans and other loans against car, for which interest was levied at 27% per annum.

19. Turning to the relief of declaration to declare that the defendants are money lenders, the learned Senior Counsel for the plaintiff invited the attention of this Court to Exs.P-16 to P-36 whereunder, various hand loans were issued for which interest was charged on daily basis for hand loans and it is nothing short of usurious loan or *Kandhu-vatti* or *meter-vatti* as has been described under Section 2(5) and Section 2(7) of The Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. In this context, reference was made to the deposition of PW3 who had stated that he was introduced to the defendants only as money lenders and he had borrowed monies from them. DW1 admitted that he had extended loan to the plaintiffs and he had multiple transactions with them. He also admitted that the 4th defendant had extended financial assistance to Thenandal films and had failed to repay the said money. Referring to Sub-section (1) of Section 7 of the Tamil Nadu Money Lenders Act, 1957, the Government is empowered to fix maximum rate of interest that may be charged by a money lender and the rate of interest so fixed shall be correlated to the current bank rates of lending, as may be fixed by the Reserve Bank of India from time to time and have fixed the rate



of interest chargeable by money lenders be at the rate of 9% per annum for secured loan and 12% per annum for unsecured loan. In contravention of the above provisions of the Act, the defendants in this case have been charging interest in the range of 27% to 30% which is prohibited under the Act. To buttress this submission, the learned Senior Counsel appearing for the plaintiffs relied on the following decisions:-

1. *A. Ganesa Nadar vs. Jayalakshmi and others* reported in 2009 SCC Online Madras 1002 : (2009) 6 CTC 181
2. *Southern Petro Chemicals Industries Corporation Limited vs. Samyuktha Alagappan* (C.S.No.825 of 1999, Judgment dated 24.11.2010) (Madras High Court);
3. Judgment dated 31.03.2022 passed in A.S. (MD) No. 285 of 2021 (T.Rajeswari vs. Dharmar) (Madurai Bench of Madras High Court);
4. *Arvind Bagrecha vs. K. Mekala and others* MANU/TN/6628/2022 (Madras High Court);
5. *Y.K.Mohan Rao and others vs. J.N. Jahath Ramjee and others* MANU/TN/7392/2022 (Madras High Court).

20. The above decisions have been relied on to show that the defendants are



money lenders and they are duty bound to maintain proper accounts of their transactions. Further, the defendants are bound to charge interest only at 9% to 12% per annum, but they failed to do so. Instead, they have been arbitrarily and unreasonably received various amounts from the plaintiffs towards principal and interest for the hand loans as well as the mortgage loan. The learned Senior Counsel further stated that the amount lent by the defendants to the plaintiffs, was based on the suit schedule immovable property and not based on negotiable instruments. The defendants have been lending money as a Syndicate and charging exorbitant interest rate. The first defendant is the front-runner of such a Syndicate, in which the other defendants have played active role. Accordingly, the learned Senior Counsel prayed for decreeing the suit as prayed for with costs.

21. Per contra, the learned counsel for the defendants submitted that the suit is not maintainable and the various reliefs sought for by the plaintiffs are liable only to be rejected. Referring to Ex.D-2, being a 'Whatsapp' communication between the second plaintiff and the first defendant on 02.08.2021, just prior to institution of the suit, it is submitted that the second plaintiff admitted that a sum of Rs.5.70 crores is due towards principal and Rs.1.44 Crores is due towards interest. The second plaintiff also sent a reply stating that “we are working on it to clear as 'one time payment' and get it closed”.



In this context, during cross-examination, PW2 admitted that he had sent the 'Whatsapp' communication on 02.08.2021 admitting the liability as mentioned therein. The plaintiffs, have however suppressed the said admission and truncated the 'whatsapp' communications to suit their convenience to institute the suit. Thus, it is submitted that the plaintiffs did not approach this Court with clean hands. When there is a clear admission on the part of the second defendant with regard to the liability, as held by the Honourable Supreme Court in the decision rendered in *Uttam Duggal vs. United Bank of India reported in 2000 (7) SCC 120*, the plaintiffs are not entitled for a decree and judgment in respect of those admitted statements made by them as per Order XII Rule 6 of the Code of Civil Procedure. Thus, the pleadings of the plaintiffs are contrary to the documentary evidence and therefore, the suit itself is liable to be rejected as devoid of merits.

22. Referring to the order dated 07.03.2022 passed by this Court in O.A.No.737 of 2021 vacating the interim order, this Court observed that “as prima-facie evidence thereof, the respondents have placed the statement of accounts of 11 persons indicating that such persons paid a sum of Rs.415.50 lakhs to the first or second applicant. Given the fact that all payments were made through bank channels, prima-facie, it appears that the second mortgage was supported by consideration. There also, it does not appear to



the evidence of re-payment of those amounts. Consequently, it cannot be concluded prima- facie that the defendants are not entitled to payment.” In order to strengthen this observation, Exs.C-1 to C-4 reports of the Chartered Accountant are filed detailing the payments made to the plaintiffs. Ex.C-3 report specifically disclose the bank details with regard to the loan borrowed by the plaintiffs under the two mortgage deeds. While so, it is futile on the part of the plaintiffs to contend that the second mortgage is without any consideration.

23. With respect to the allegations made to declare the defendants as money lenders, it is submitted by the learned counsel for the defendants that such a relief prayed for by the plaintiffs is legally not sustainable. The plaintiffs, having admitted the execution of mortgage deeds and having agreed to pay 27% interest per annum, they are estopped from invoking the provisions of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 or The Money Lenders Act. The contract between the plaintiff and defendants is based on mortgage deeds. The plaintiffs have also issued 39 cheques mentioned in the 'B' Schedule of the plaint towards re-payment of the amount due under the suit mortgage deeds. Further, the transactions arising out of Negotiable Instruments are exempted under the Money Lenders Act, as held by this Court in the case of *Sri Kalpatharu Financiers Vs. V.Natarajan*, reported in *CDJ 2012 MHC 2307*.



Thus, when the transaction between the parties are based on the registered mortgage deeds and payments have been made towards the same, the parties are not governed by the provisions of the Money Lenders Act, as pleaded by the plaintiffs and the plaintiffs are bound to pay the agreed contractual rate of interest. The plaintiffs and defendants are therefore governed by the provisions of order XXXIV Rule 11 of CPC, as observed in the case of *N.M. Veerappa vs. Canara Bank*, reported in 1998 (2) SCC 317, wherein it was authoritatively held that the Court may order payment of interest after institution of the suit, but the parties are bound by the contractual rate of interest agreed upon by them prior to the institution of the suit. Under Order XXXIV Rule 11 CPC, a discretion has been conferred upon the Court to fix the quantum of interest from the date of suit. While so, the plaintiffs cannot seek to declare the defendants as money lenders. The plaintiffs, having agreed to pay the contractual rate of interest, upon execution of two mortgage deeds, have been re-paying the loan amount after 16.04.2012 being the date of first mortgage deed, the plaintiffs are estopped from seeking the relief of declaring the defendants as money lenders and to direct the defendants to return the so-called excess amount paid by them to the defendants. Therefore, the reliefs prayed for by the plaintiffs, are legally not sustainable.

24. The learned counsel for the defendants also submitted that as far as the



cheques issued by the plaintiffs, which are more-fully set out in the plaint, some of the cheques have been dishonoured and therefore, proceedings under Section 138 of the Negotiable Instruments Act, have already been initiated and only to get over the same, the present suit has been filed by the plaintiffs.

25. By pointing out the deposition of PW3, the learned counsel for the defendants submitted that he admitted that whatever amount he borrowed from the defendants 1 and 2, the same have been repaid and he is not aware that the defendants entered into various business, including garment exports, hotels etc. PW3 also admitted that he is not aware of the transactions between the plaintiffs and defendants. PW3 also admitted that the main avocation of the defendants is garment exports and chain of hotels. While so, portraying the defendants as money lenders, after enjoying the financial assistance provided by the defendants all these years, is unreasonable.

26. The learned counsel for the defendants also referred to the mortgage deeds and submitted that they relate to the property situated within the city of Chennai and consequently, they are entitled to invoke Section 69 of the Transfer of Property Act and bring the properties in auction. When the defendants have brought the property for auction by issuing auction notice dated 13.07.2022, the plaintiffs have taken out the



application in O.A. No. 472 of 2022 seeking interim injunction to restrain the defendants from bringing the property for auction. At the same time, this Court prima-facie found that the plaintiffs are liable to pay the amount covered under the two mortgage deeds and directed them to deposit Rs.2 crores to the credit of this suit. Thus, the order of interim injunction is preceded by a condition to deposit the amount. In any event, the cheques were admittedly issued by the plaintiffs. The plaintiffs have not denied having issued the cheques. Therefore, the statutory presumption under Sections 18, 118 and 139 of the Negotiable Instruments Act is clearly attracted. The cheques have been issued by the plaintiffs towards a legally enforceable debt and liability and they cannot now contend that the cheques have been given towards security. In fact, the defendants have presented all the cheques issued by the plaintiffs and they are the subject matter of proceedings under Section 138 of the Negotiable Instruments Act. Thus, the relief sought for by the plaintiffs is barred under Section 41(d) of the Specific Relief Act, as no injunction can be granted restraining the defendants from filing the complaint under the provisions of the Negotiable Instruments Act.

27. Turning to the allegations that the defendants have capitalised the situation of the plaintiffs who were in financial distress, it is contended that Exs.D-1 and D-3 were marked through PW1 and PW2 respectively. It was brought to the notice of this Court



through those documents that the plaintiffs are leading a luxurious life by purchasing several cars by importing the same to India and portrayed the same in their social media pages. The second plaintiff has taken up a road trip to London and shared it in the media. Further, the defendants have demonstrated that the first mortgage loan of Rs.1,50,00,000/- was taken by the plaintiffs to clear the dues which they owe to a financier who had charged higher rate of interest. Thus, considering the fact that the interest charged by the plaintiffs is lesser than the financier from whom the plaintiffs had earlier borrowed amount, they have approached the defendants for financial assistance. While so, it cannot be said that the defendants have taken advantage of the situation in which the plaintiffs were placed and consequently charged exorbitant rate of interest. The plaintiffs have filed the present suit to evade the payment to be made to the defendants. The suit is frivolous, vexatious and contrary to the facts. The transactions covered under the mortgage deeds were through Bank, as confirmed by the Court appointed Chartered Accountant and therefore, the plaintiffs are bound to pay the amount borrowed by them. Resultantly, the suit is vexatious and it is liable only to be dismissed as devoid of merits. The learned counsel for the defendants therefore prayed for dismissal of the suit.

28. Heard the learned Senior Counsel appearing for the plaintiffs and the learned



counsel appearing for the defendants and perused the materials available on record.

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29. The specific case of the plaintiffs is that they requested the first defendant to extend them financial assistance and after deliberation, the first defendant paid the same, i.e. Rs.1,50,00,000/- by way of cheque from the Bank Account of the first defendant as well as third parties to the transactions indicating Exs.D-4, 5 and 8. On receipt of such amount, the plaintiffs executed simple mortgage deed in favour of the defendants 1 to 3 and the same was also registered. The plaintiffs have also deposited the title deeds of the property including one of the properties in the plaint schedule. In the said mortgage deed, dated 16.04.2012, there was no reference made about the quantum of the amount paid by the defendants 1 to 5 and 8. It was merely stated that the amount is being paid to the first plaintiff and they have also issued various cheques and out the said amount, the defendants 1 to 3 have paid first Rs.82 lakhs and the balance amount of Rs.68 lakhs was paid by the defendants 4, 5 and 8. There is no privity of contract between defendants 4, 5 and 8. Out of the total amount of Rs.1,50,00,000/- with-held by the first defendant, a sum of Rs.68 lakhs was paid by the defendants 4, 5 and 8 at the instance of the defendants 1 to 3. That was the reason as to why the same was mentioned in the first mortgage deed, dated 16.04.2012. The defendants 1 to 3 charged 27% interest per annum, compounded quarterly for the said



sum of Rs.1,50,00,000/-. The plaintiffs also paid the principal amount with interest from 16.04.2012 till 29.10.2020 and the plaintiffs have paid totally Rs.3,87,021,418/- for the borrowal amount of Rs.1,50,00,000/- and the last payment made was to the tune of Rs.74,69,232/- on 29.10.2020 and also to prove the same, they have also filed Audited Statement of Account, which discloses that the entire payment made by the plaintiffs, was only through Bank transaction and none of the transaction was made through cash. Even as per the calculation of interest at 20% p.a., the amount payable by them as on 01.10.2020 is Rs.1,55,97,268/-, but they have so far paid Rs.3,87,21,482/- which is over and above the amount they are liable to pay to the defendants. Interest is liable to be levied only @ 9% and the rate of interest charged is contrary to the provisions of Section 7(1) of the Tamil Nadu Money Lenders Act. The plaintiffs discharged the first mortgage deed, dated 16.04.2012 and the defendants have received the excess sum of Rs.1,91,67,279/-, which is liable to be repaid by the defendants with reasonable interest.

30. Further, the case of the plaintiffs is that when the dues are covered under the first mortgage deed, dated 16.04.2012, which was about to be discharged, the plaintiffs were in dire need of money to meet their business commitments. Therefore, the plaintiffs approached the defendants for further loan to the tune of Rs.4,15,50,000/-, for which the defendants prepared the document, and named it as second mortgage deed, dated 13.03.2020, to create the second charge on the plaint schedule mentioned



properties, taking advantage of the bad financial situation in which the plaintiffs are placed. On 13.03.2020, the first plaintiff went to the office of the Sub-Registrar to register the second mortgage deed, dated 13.03.2020 and they were informed by the first defendant that the amount covered under the second mortgage deed, may be paid to them upon execution of the mortgage deed, leaving the same, the plaintiff executed the second mortgage deed, which was registered on 13.03.2020, the plaintiffs approached the first defendant to discharge the mortgage deed, dated 16.04.2012 and the defendants have also received total sum of Rs.3,81,21,482/- and at that time, the first defendant furnished the Statement of Accounts reiterating his demand for re-payment of Rs.7,05,19,852/- for re-payment of the mortgage deed, dated 16.04.2012. The first defendant also produced another account during July, August and September 2021 and as the mortgage deed, dated 13.03.2020 is without any consideration, the plaintiffs did not pay the principal and interest to the defendants till date. The second mortgage deed, dated 13.03.2020, is a sham and nominal document, which would not bind the plaintiffs.

31. It is the further case of the plaintiffs that the first defendant has calculated the cheques fastened mostly in the Bank. Whenever the cheques are paid to the plaintiffs, it is mutually understood between the plaintiffs and defendants that the cheques for encashment, were not under the consent of the plaintiffs for those documents for payment of the amount they have tendered only for one year period.



32. Even though the second mortgage deed, dated 13.03.2020 was executed without any consideration, yet the defendants demanded payment of the principal amount and interest, as if it is the claim of the amount mentioned in the second mortgage deed, dated 13.03.2020 to the plaintiffs. The first defendant is a money lender and financier and has collected exorbitant interest from the plaintiff. The immovable properties given as security, which are covered under the two mortgage deeds, dated 16.04.2012 and 13.03.2020, are one and the same. However, the mortgage amount for execution of the first mortgage deed alone is by consideration and the second mortgage deed is without any consideration. Further, the defendants demanded exorbitant interest and therefore, the defendants have to be declared as money lender and the second mortgage deed, dated 13.03.2000 has to be declared as null and void, since it is not supported by any consideration. The first mortgage deed has already been discharged. Further, the defendants are liable to pay the excess amount paid by the plaintiffs to the defendants and the defendants had to repay the excess amount paid by the plaintiffs to the tune of Rs.1,91,67,279/-.

33. The specific case of the defendants is that the plaintiffs admitted the execution of both the mortgage deeds and all the payments were made by the defendants only through Bank transaction and the plaintiffs paid interest as per the conditions stipulated in the mortgage deeds. Further, apart from this, the plaintiffs have already



borrowed some hand loans and the plaintiffs had also issued cheques for re-payment of the mortgage with interest. Since the plaintiffs have not repaid the money with interest and the cheques sent for collection of the amount, had dishonoured and the excess amount are to be paid under Section 138 of the Negotiable Instruments Act, as per the proceedings before appropriate Court.

34. Even the plaintiffs have admitted by e-mail communication that they have repaid Rs.82 lakhs and it is alleged that the plaintiffs repaid some amount also by way of cash. All the transactions relating to the mortgage loan, have been made only through the Bank Transfer and the other transactions including the loss component, are by way of cash and those transactions do not form part of either the first or the second mortgage deeds. The defendants are not the money lenders and the relief sought for by the plaintiffs, is legally unsustainable. The plaintiffs have admitted execution of the mortgage deeds and having agreed to pay 27% interest per annum, they are estopped from invoking the provisions of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act or the Tamil Nadu Money Lenders Act. The contract between the plaintiffs and defendants, is based on the mortgage deeds. The plaintiffs have also issued 39 cheques mentioned in B-schedule of the plaint, towards re- payment of the amount due under the mortgage deeds. Further, the transaction arising out of negotiable instruments, is exempted under the Tamil Nau Money Lenders Act and the transaction



between the parties, is based on the registered mortgage deeds and the payments have been made towards the same and the parties are not governed by the provisions of the Tamil Nadu Money Lenders Act. The plaintiffs and the defendants are governed by the provisions of Order 34 Rule 11 of the CPC. Further, under Order 34 Rule 11 of the CPC, discretion has been conferred on the Court to fix the quantum of interest from the date of the suit. The plaintiff cannot seek to declare the defendants as "money lenders" and the plaintiffs agreed to pay the contractual rate of interest upon execution of the two mortgage loans and the two mortgage deeds. Having repaid the loan amount after 16.04.2012 being the date of first mortgage deed, the plaintiffs are estopped from seeking the relief of declaration that the defendants are the money lenders and to direct the defendants to return the so-called excess amount paid by the defendants. The reliefs sought for by the plaintiffs are legally not sustainable.

35. Further, in order to get over the prosecution initiated under Section 138 of the Negotiable Instruments Act, the present suit has been filed by the plaintiffs. The main avocation of the defendants is that they are the garment exporter and running chain of hotels. The defendants are not the money lenders and since the plaintiffs had not made payment as per the mortgage deeds, the defendants are entitled to bring the mortgaged property for sale. The relief sought for by the plaintiffs is barred under Section 41(d) of the Specific Relief Act and no injunction can be granted restraining the defendants from



filing a complaint under the provisions of the Negotiable Instruments Act. Therefore, the suit filed by the plaintiffs, as such, is not maintainable and none of the reliefs sought for by the plaintiffs, are sustainable.

Issue No.1 : Whether the amounts borrowed by the plaintiffs were in fact returned to the defendants in excess and whether the plaintiffs are entitled for a sum of Rs.1,91,67,297/- from the defendants along with interest ?

36. As far as the first issue is concerned, according to the plaintiffs, they have borrowed a sum of Rs.1,50,00,000/- from the defendants 1 to 3 and out of which, the defendants 1 to 3 have paid Rs.87 lakhs and the balance due to the tune of Rs.68 lakhs was paid by the defendants 4, 5 and 8. However, the plaintiffs have no contact with the defendants 4, 5 and 8, but the said amount was repaid by the defendants.

37. The further case of the plaintiffs is that for the purpose of garment business expenditure, the plaintiffs were in need of funds and on 16.04.2012, one of the common friend, introduced the plaintiffs to the first defendant, who is a money lender. The plaintiffs requested the first defendant to explain them the financial assistance and after deliberation, the first defendant paid a sum of Rs.1,50,00,000/- by way of cheques from the Bank Account of the first defendant and the third party to the transactions, namely the defendants 4, 5 and 8 and on receipt of such amount, the plaintiffs executed a simple



mortgage deed in favour of the defendants 1 to 3 and the same was registered on 16.04.2012. The plaintiffs have also deposited the original deeds in respect of the properties, which are described as one of the properties in the plaint schedule. There was no reference made to the quantum of the amount paid by the defendants 1, 3, 4 and 8 in the said mortgage deeds. However, they have issued the cheques and through cheques, they have cleared the above said amount to the defendants. There is no recital regarding the contribution made by the said defendants and the loan amount of Rs.1,50,00,000/- is covered under the mortgage deeds and taking advantage of the critical situation of the plaintiffs, the defendants levied interest @ 27% per annum compounded quarterly, which is against law.

38. The plaintiffs diligently paid the principal amount with interest from 16.04.2012 till 29.10.2020 and for the principal amount of Rs.1,50,00,000/- borrowed by the plaintiffs, the plaintiffs have repaid the total sum of Rs.3,87,21,482/- and the last payment was made to the tune of Rs.74,69,232/- on 29.10.2020 and the plaintiffs have also filed the Audited Statement of Accounts, which discloses that the entire payment made by the plaintiffs, was only through Bank transactions and none of the transactions was made through cash. So, the defendants submitted self-serving Statement of Accounts during 2020-2021 and demanded re-payment of total sum of Rs.7,05,19,852/- and notwithstanding the receipt of amount of Rs.3,87,21,482/- availed by the plaintiffs,



the defendants calculated interest @ 27% p.a. Even otherwise, if the amount payable by the plaintiffs is calculated @ 27% interest per annum, the amount payable by them as on 01.10.2020, would be Rs.1,55,97,268/-, but the plaintiffs have so far paid totally only Rs.3,87,21,482/-, which is over and above the amount they are liable to pay to the defendants for the first mortgage deed. The defendants are entitled to levy the rate of interest @ 9% p.a. simple interest as per Section 7(1) of the Tamil Nadu Money Lenders Act, but the rate of interest charged by the defendants, is contrary to the provisions of Section 7(1) of the said Act. In any event, the plaintiffs have discharged their liability towards the first mortgage deed, dated 16.04.2012, and therefore, they are entitled to redemption of the first mortgage deed. The defendants have received the excess amount of Rs.1,91,67,279/- jointly and severally, liable to return the same to the plaintiffs, with reasonable interest, since the debt has already been discharged by the plaintiffs.

39. According to the defendants, they have not demanded any exorbitant interest @ 27% p.a. and the Audited Statement of Accounts is a self-serving document filed by the plaintiffs, over which no reliance can be placed and it was prepared to suit the convenience of the plaintiffs. The plaintiffs have not paid more amount that they are entitled to pay the defendants by calculating interest payable by them @ 9% p.a. and it is not legally sustainable.



40. The plaintiffs have agreed to pay the interest as per the recital and the terms and conditions contained in the first mortgage deed, dated 16.04.2012 and they are bound to pay the same to the defendants. The first defendant is not a money lender and he never demanded payments made to the members of the family and his company. There is no "Whatsapp" chat between the plaintiffs and the first defendant and the same cannot be treated as a piece of evidence to prove the case of the plaintiffs. The entire amount received by the plaintiffs from the defendants, towards the loan, had not been used for their business purpose. But the plaintiffs lavishly spent the amount for their personal needs. The first plaintiff has utilised the money luxuriously including purchase of BMW 5 series, Mercedes ML 250, Mercedes AMG Sports car, Lamborghini Sports Car, BMW 3 series and Kona Electric Car, etc., during the years 2012, 2014, 2016, 2019 and 2021. Therefore, the plaintiffs cannot state that interest claimed by the defendants, is exorbitant. Though the interest rate is mentioned as 27% on the mortgage deeds on various instances, the plaintiffs requested to reduce the rate of interest. The Statement of Account in respect of the amount borrowed by the plaintiffs from the individual defendants, disclose that the plaintiffs have repaid the loan amount only @ 18%, 15% or 12% interest p.a. The defendants have never calculated interest at quarterly compounding rest, as alleged by the plaintiffs. Even under the special mortgage deed, the interest was only simple interest and the plaintiffs have resorted to



compound interest. Even otherwise, the first mortgage deed as well as the second mortgage deed, show that the first plaintiff agreed to pay the mortgage money with interest within a period of 15 months or 12 months respectively and also to repay the interest once in three months. On the contrary, without making the payment as agreed and redeem the mortgage within the time stipulated, the plaintiffs have come forward with the present vexatious suit and it is liable to be dismissed.

41. The communication between the second plaintiff and the first defendant in respect of payment of loan amounts, is available in "Whatsapp" chat. However, when the first defendant sent the Statement of Accounts outstanding as on 31.07.2021, which consists of both principal amount of Rs.5.70 crores and interest of Rs.1.41 crores. The second plaintiff sent a reply assuming that they are working it out to clear as "one time payment" and get the loan closed at the earliest. However, contrary to the same, now the plaintiffs pray for releasing the mortgage by treating the payments already made by them as surplus or excess and that the entire amount had been repaid. The plaintiffs have not approached the Court with clean hands and the allegation that the defendants are liable to pay Rs.1,91,67,279/- towards the excess amount paid by the defendants, is not legally sustainable. The defendants as mortgagees under the two registered mortgage deeds, have every right to bring the properties for auction sale to release the amount due and paid as per law and such a right is inherent on the deeds of mortgages



executed by the plaintiffs.

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42. On a perusal of the pleadings of either parties and the proof affidavit filed by the witnesses and also the cross-examination of the witnesses, since the plaintiffs have admitted that they have borrowed Rs.1,50,00,000/- from the defendants and executed the first mortgage deed on 16.04.2012 and the amount was paid through the Bank transactions. But even the mortgage deed, dated 16.04.2012 was marked as Ex.P-1. Further, as per the mortgage deeds, the plaintiffs agreed to pay interest @ 27% p.a. being simple interest with quarterly rest. Therefore, when once the plaintiffs admitted Ex.P-1 being the first mortgage deed, dated 16.04.2012, and D.W.1 stated that there were multiple transactions between the parties as registered mortgages, hand loans and other loans against the car, for which interest was repaid @ 20% p.a. Ex.P-12 "Whatsapp" chat between the second plaintiff and the first defendant on 02.08.2021, which is prior to the institution of the present civil suit and the second plaintiff had admitted that sum of Rs.5,70,00,000/- is due towards the principal and Rs.1.44 crores is due towards the interest. The second plaintiff had also sent a reply stating that they are working on it to clear the due as "one time payment" and get it closed. Even P.W.2 during cross-examination admitted that he had sent the Whatsapp communication on 02.08.2021, admitting the liability as mentioned therein, but it has not been suppressed by the plaintiffs. The plaintiffs have also admitted that some of the cheques got



dishonoured and therefore, the proceedings under Section 138 of the Negotiable Instruments Act, have already been initiated.

43. Further, the evidence of P.W.3 clearly shows that he is not aware of the transactions between the plaintiffs and the defendants. P.W.3 also admitted that the main avocation of the defendants is garment exports and chain of hotels. Therefore, there is no iota of evidence to prove that the defendants are money lenders. Exs.D-1 to D-3 were also marked through P.Ws.1 and 2 and it clearly shows that the plaintiffs are leading luxurious life by purchasing several cars and importing the same to India and abroad and through the social media also. The second plaintiff has also taken up a road trip to London and had shared the same in the social media. The defendants have demonstrated that the mortgage loan of Rs.1,50,00,000/- was taken by the plaintiffs to clear the dues which they owe to the financier, but they charged rate of interest. Therefore, in order to clear the interest charged by the financier, the plaintiffs approached the defendants and borrowed the loan. The plaintiffs have not proved that the defendants have demanded interest rate in respect of the first mortgage deed. When once the plaintiffs have admitted the borrowal of Rs.1,50,00,000/- and admitted the execution of registered mortgage deed on 16.04.2012, they cannot make any oral plea to contradict the written recitals mentioned in the documents, and the same is not tenable in terms of Section 91 of the Indian Evidence Act.



44. Further, the defendants have also demonstrated that they have not collected 27% compound interest and it is for the plaintiffs to prove that the defendants demanded and received the interest over and above the contractual rate and therefore, it is for the plaintiffs to prove their case, whereas, from the evidence of the defendants through D.W.1, the defendants have clearly demonstrated that they had paid the interest @ 18% p.a., 15% p.a., and 12% p.a., which is not over and above the contractual rate of interest as mentioned in the first mortgage deed. The plaintiffs and the defendants are governed by the provisions of Order 34 Rule 11 CPC, for which, the learned counsel for the defendants had placed reliance on the judgment of the Honourable Supreme Court reported in 1998 (2) SCC 317 (N.M.Veerappa Vs. Canara Bank and others), wherein, it was authoritatively held that the Court may order payment of interest after institution of the suit, but the parties are bound to pay the contractual rate of interest agreed by them prior to the institution of the suit.

45. Under Order 34 Rule 11 CPC, a discretion has been conferred upon the Court to fix the quantum of interest from the date of suit. While that being so, the plaintiffs cannot seek to declare the defendants as money lenders. The plaintiffs having agreed to pay the contractual rate of interest upon execution of two mortgage deeds and have repaid the loan amount after 16.04.2012 being the date of the first mortgage deed, now the plaintiffs are estopped from seeking the relief of declaring the defendants as money



lenders and to direct the defendants to return the so-called excess amount paid by the plaintiffs to the defendants. Even P.W.3 has admitted that the main avocation of the plaintiffs is garment export and chain of hotels and the plaintiffs have not proved as alleged/pleaded that the defendants are money lenders. Having availed several loans/mortgage and other hand loans and executed the mortgage deeds and also the cheques and pro-notes and the plaintiffs have also admitted the borrowal of Rs.1,50,00,000/- and also admitted the execution of mortgage deeds, they cannot now say that the amount paid by the plaintiffs is excess to the same and therefore, this Court finds that the plaintiffs have not proved their case to get back the amount of Rs.1,91,67,297/- from the defendants along with interest therein. The first issue is answered accordingly against the plaintiffs.

Issue No.2: Whether the plaintiffs are entitled to the declaration that the defendants are money lenders as defined under Section 2(8) of the Tamil Nadu Money Lenders Act, 1957 ?

46. According to the plaintiffs, the defendants demanded and received exorbitant rate of 27% interest p.a. and therefore, the defendants have to be declared as "money lenders". The defendants denied the same and as already discussed, the plaintiffs admitted that they have borrowed the loan for their urgent business expenditure and executed the first mortgage deed, dated 16.04.2012. They have also deposited title



deeds of one of the suit properties. Though the plea taken by the plaintiffs that in the mortgage deed, dated 16.04.2012, there was no reference made to the quantum of the amounts paid by the defendants 1 to 3. The defendants have admitted the payment by way of cheques and the plaintiffs have received Rs.1,50,00,000/-, and though the plaintiffs have stated that the defendants levied compound interest @ 27% p.a. quarterly, the same cannot be levied which is against law. The plaintiffs have also stated that they have repaid the amount in total a sum of Rs.3,87,21,482/-, out of Rs.1,50,00,000/- borrowed by the plaintiffs from the defendants. However, the defendants denied the same that they did not receive 27% compound interest p.a. The plaintiffs borrowed amount from the defendants, by utilising the amount paid by the defendants as loan transaction. The plaintiffs have also borrowed a loan amount of Rs.1,50,00,000/- on 16.04.2012 only, re-paying the loan borrowed by them from one Suresh Kumar Ostwal, in whose name they have executed a mortgage deed, dated 16.04.2012. The plaintiffs had also borrowed the amount from the said Suresh Kumar Ostwal with interest @ 36% p.a. by utilising the amount paid by the defendants as loan. The plaintiffs have redeemed the earlier mortgage deed dated 16.04.2012 executed with the said Suresh Kumar Ostwal in favour of the defendants. The plaintiffs have also admitted due execution of the first mortgage deed, dated 16.04.2012 and for receipt of the mortgage money, they have never demanded interest @ 27% p.a., and even if



interest is calculated at 27% p.a., the outstanding amount was Rs.1,55,97,268/- on the basis of the Audited Statement of Accounts filed by the plaintiffs. Admittedly, the plaintiffs have not only borrowed the said mortgage money, but have also borrowed money for the other loan also. Therefore, when once the plaintiffs admitted the mortgage deeds and borrowal of the money and executed the registered mortgage deeds, the plaintiffs are liable to pay the amount as per the interest mentioned in the mortgage deeds and now the plaintiffs have not proved that the defendants are money lenders and they have calculated the exorbitant rate over and above the interest as mentioned in the mortgage deeds. When the plaintiffs pleaded that the defendants have to be declared as "money lenders" under Section 7(1) of the Tamil Nadu Money Lenders Act, the defendants have collected the exorbitant rate of interest under the provisions of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act. It is the duty of the plaintiffs to prove the same and the plaintiffs have not proved, as contended by the defendants, that the plaintiffs earlier mortgaged the property with interest @ 36% p.a. The mortgage deed executed by the plaintiffs in favour of the said Suresh Kumar Ostwal, dated 16.04.2012 is very clear, whereas the defendants have lent the money of Rs.1,50,00,000/-, for which, the plaintiffs have executed the first mortgage deed, dated 16.04.2012 and the plaintiffs have not proved that the defendants have demanded and received the amount over and above the interest as mentioned in the first mortgage



deed, and therefore, it is the duty of the plaintiffs to substantiate the allegations/averments made in the plaint by way of oral and documentary evidence.

Even the audited Statement of Accounts filed by the plaintiffs themselves show that the plaintiffs have not paid over and above the interest mentioned in the mortgage deeds.

47. This Court finds that the plaintiffs are not entitled for declaration that the defendants are the money lenders under Section 2(8) of the Tamil Nadu Money Lenders Act. Since the plaintiffs executed the mortgage deeds and also issued cheques and also executed promissory note(s), the defendants are not coming within the definition of "money lender" under Section 2(8) of the Tamil Nadu Money Lenders Act.

48. Admittedly, the plaintiffs have executed two mortgage deeds and they have also issued the cheques for re-payment of the amount, but admittedly, the defendants have also invoked Section 138 of the Negotiable Instruments Act and the proceedings therein are pending before competent Court, and therefore, the plaintiffs admitted execution of the mortgage deeds and having agreed to repay the said 27% interest p.a., they cannot invoke the provisions of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act or the Tamil Nadu Money Lenders Act. The contract between the plaintiffs and the defendants, is based on the mortgage deeds and the plaintiffs have also issued 39 cheques mentioned in the B-schedule of the plaint towards refund of the amounts under the suit mortgage deeds. The transaction arising out of the Negotiable

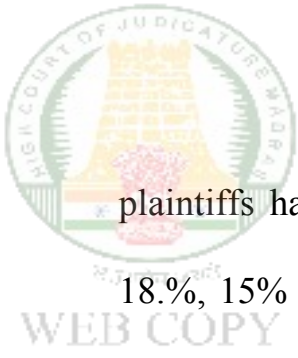


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Instruments Act, is exempted under the Tamil Nadu Money Lenders Act and the learned counsel for the defendants placed reliance on the judgment of a Division Bench of this Court in the case of Sri Kalpatharu Financiers by its Partner Mr.K.Selvaraj Vs. V.Natarajan, reported in CDJ 2012 MHC 2307, wherein it has been held that when the transaction between the parties is based on the registered mortgage deed and payments being made towards the same, the parties are not governed by the provisions of the Tamil Nadu Money Lenders Act and the plaintiffs are bound to pay accrued contractual interest. Therefore, the plaintiffs are not entitled to the relief sought for in the second issue, which is answered against the plaintiffs.

Issue No.3: Whether the defendants are liable to charge only up to 9% simple interest per annum on the money borrowed under the simple mortgage deed, dated 16.04.2012 ?

49. As already stated, the plaintiffs admitted that they have borrowed a sum of Rs.1,50,00,000/- on 16.04.2012 and executed the simple mortgage deed, which is registered, in which, it is also mentioned that the plaintiffs are liable to pay 27% interest p.a. The plaintiffs have admitted the execution of the said mortgage deed and agreed to re-pay the amount with 27% interest p.a. and the defendants have also stated that the



plaintiffs have not re-paid 27% interest p.a., but they have re-paid interest only with 18%, 15% and 12%. But however, it is for the plaintiffs to prove that they had paid over and above the contractual rate of interest as mentioned in the plaint, which is over and above the interest mentioned in the first mortgage deed. It is the duty of the plaintiffs to prove and substantiate the allegations levelled in the plaint.

50. Therefore, when once the plaintiffs admitted the first mortgage deed executed on 16.04.2012, they are liable to pay the contractual rate of interest. As pointed out by the learned counsel for the defendants, the plaintiffs and defendants are governed by the provisions of Order 34 Rule 11 CPC, for which also, the learned counsel for the defendants has placed reliance on the decision of the Honourable Supreme Court reported in 1998 (2) SCC 317 (N.M.Veerappa Vs. Canara Bank and others) and contended that the Court may order payment of interest after institution of the suit, but the parties are bound to pay the contractual rate of interest agreed upon by them prior to the institution of the suit. Therefore, the defendants are entitled to get the contractual rate of interest. As per the said decision, prior to the filing of the suit, this Court has no authority to reduce the rate of interest and only pending litigation and subsequent litigation, the Court shall exercise the discretionary power in respect of the rate of interest. Therefore, the plaintiffs are not entitled to get the relief as sought for. This issue is answered accordingly.



Issue No.4: Whether consideration was received by the defendants in accordance with the mortgage deed, dated 13.03.2020?

51. The defendants also admitted that they have executed a registered mortgage deed, namely the second mortgage deed, dated 13.03.2020, but however, though the plaintiffs have denied that the defendants have not paid the amount for the amount mentioned in the second mortgage deed, however, the defendants have demonstrated that all the payments were made only through the Bank transactions. Exs.C-1 to C-4 reports of the Chartered Accountant contain the details of the payments made to the plaintiffs. Ex.C-3 report specifically discloses the Bank details and the loan borrowed by the plaintiffs under the two mortgage deeds. When once the plaintiffs have admitted that they have executed the mortgage deeds, and the same were registered, and that the plaintiffs have also made a complaint against the defendants, they cannot let in oral evidence contrary to the recitals mentioned in the written contracts/written agreements. The plaintiffs have also not established that the defendants have received the said amount and mere pleadings and oral evidence, are not proof showing the re-payment of the amount borrowed, which is especially contrary to the written agreement/documents. Unless the plaintiffs contrarily prove that as against the recitals of the written agreement, the plaintiffs are not entitled to a decree as sought for. In this case, the



plaintiffs have admitted both the registered documents, though the plaintiffs admitted consideration for the first mortgage deed, denied consideration for the second mortgage deed, but the defendants were able to substantiate their defence that the second mortgage deed was supported by consideration. Even Ex.D-2, being "Whatsapp" communication between the second plaintiff and the first defendant, dated 02.08.2021, and the said "Whatsapp" communication is prior to the institution of the suit and the second plaintiff admitted Rs.5.70 crores is due towards the principal amount and Rs.1.44 crores is due towards the interest. The second plaintiff has also sent a reply stating that they are working on it to clear as "one time payment" and get it closed. Even during the cross-examination, P.W.2 admitted that he has sent the "Whatsapp" communication on 02.08.2021 admitting the liability as mentioned therein. Therefore, the above aspects clearly show that the plaintiffs have suppressed the material facts, for which the learned counsel for the defendants has placed reliance on the judgment of the Apex Court reported in 2000 (7) SCC 120 (Uttam Singh Duggal and Co. Ltd. Vs. United Bank of India and others).

52. The plaintiffs are not entitled for judgment and decree in respect of those admitted statements made by them as per Order 12 Rule 6 CPC. The pleadings made in the plaint are contrary to the documentary evidence and the plaintiffs have not come to Court with clean hands, and therefore, they are not entitled to the relief sought for in the



plaint. This issue is answered accordingly.

Issue No.5: If the issue No.4 is answered in the affirmative, whether interest was charged by the defendants, in accordance with the mortgage deed, dated 13.03.2020 ?

53. Since issue No.4 is answered against the plaintiff, i.e. negatively decided against the plaintiffs, they are liable to pay the interest as mentioned in the second mortgage deed, dated 13.03.2020. This issue is answered accordingly.

Issue No.6: Whether the plaintiffs are entitled to the relief of cancellation of the mortgage deed, dated 13.03.2020 as null and void ?

54. As already decided in Issue No.4, it is already stated that the plaintiffs have admitted that they have executed the registered second mortgage deed, dated 13.03.2020 and the defendants have also demonstrated that the mortgage deeds are supported by consideration. D.W.1 himself admitted during the cross-examination that the amount mentioned in the second mortgage deed was paid, but the defendants admitted that Rs.1,56,50,000/- was paid back by the plaintiffs and the defendants also admitted that the first mortgage deed is not in force at the instance of the plaintiffs and numerous hand loans were made, which were also paid back. This was also pointed out by the Auditor and the amount mentioned in Annexure-11, has in fact been paid back to various parties as per the choice of the first defendant. After a period of time, no



amount is shown in Annexure-11, which are related to the second mortgage deed. Even the Court appointed Auditor has recorded such transaction as being the member for loan as per Annexure-11, which is completely unfounded and the same was admitted by the defendants on full core. Exs.P-16 to 36 are e-mail communications exchanged by the parties to show that the advance amount received towards hand loan and even as per the e-mails, totally, a sum of Rs.86,00,000/- had been received. Though the plaintiffs have stated that a sum of Rs.2.5 crores was paid in cash to the defendants from the date of first mortgage deed, but the plaintiffs have not re-paid the same till filing of the suit. However, even the plaintiffs have admitted that all the transactions relate to the first loan transaction, which was transacted only through Bank transfer and the other transactions including the hand loans which had large components as cash and those transactions do not form part of the first and second mortgage deeds. D.W.1 also stated that there were multiple transactions between the parties through registered mortgage loans and hand loan and the other loans for cash, for which, interest was levied @ 27% p.a.

55. Further, P.W.1 has admitted regarding execution of both the mortgage deeds and though he admitted the borrowal of Rs1,50,00,000/- for the first mortgage, however, he has stated that they have paid over and above the principal amount, with interest. However, the plaintiff has also admitted in Ex.D-2 "Whatsapp" communication



between the second plaintiff and the first defendant on 02.08.2021 prior to institution of the suit and the second plaintiff also admitted that Rs.5.70 crores are due towards the principal amount and also Rs.1.44 crores are due towards interest. The second plaintiff also sent a reply that they are working out to clear the dues by "one time payment" and get it closed. During cross-examination, P.W.2 also admitted that he has sent Whatsapp communication on 02.08.2021 admitting the liability mentioned therein. According to the plaintiffs, in respect of the first mortgage, they have paid over and above the amount, but however, in Ex.D-2 "Whatsapp" communication, the plaintiffs had admitted due of Rs.5.70 crores for the principal amount and Rs.1.44 crores for the interest due. This clearly shows that the plaintiffs have admitted consideration passed through the second mortgage deed, otherwise, they could not have accepted and admitted that they are working out to clear the "one time payment" to get the account closed. P.W.2 also admitted the "Whatsapp" communication was made on 02.08.2021 admitting the liability as mentioned therein. The defendants have clearly stated that under the first mortgage, they have paid the amount and they have also paid all the other hand loans, but however, they have stated that they have received a sum of Rs.4,15,00,000/- at the time of the execution of the second mortgage deed. Therefore, subsequently P.W.2 admitted under Ex.D-2 "Whatsapp" communication between the second plaintiff and the first defendant about the liability. Therefore, this Court finds



that the second mortgage deed is supported by consideration. When once the defendants have admitted both the first and second mortgage deeds and they have also not let in any contra evidence to show that the mortgage deeds were not supported by consideration and when once the plaintiffs have admitted Ex.D-2 and also admitted the execution of the second mortgage deed, this Court finds that the plaintiffs have not proved anything contra to the recitals mentioned in the mortgage deeds.

56. Therefore, the plaintiffs have not proved the reasons for cancellation of the second mortgage deed, dated 13.03.2020 as null and void. The plaintiffs have also not filed any of the complaint against the defendants or otherwise immediately sent after execution of the second mortgage deed, and the plaintiffs have also made certain payments in respect of the first mortgage deed and the plaintiffs have not even made any communication to the defendants that the second mortgage deed, was not supported by consideration. Therefore, in the absence of any contra evidence, this Court finds that the plaintiffs are not entitled to the relief sought for in the suit and this Court also finds that the second mortgage deed, dated 13.03.2020 is a registered one and the same is valid. This issue is answered accordingly.

Issue No.7 : Whether the plaintiffs are entitled to redeem Schedule-A of the suit schedule properties ?

57. Since already the defendants admitted Ex.D-2 "Whatsapp" communication



and the plaintiffs also admitted through P.W.2 that he has sent the "Whatsapp" communication on 02.08.2021 and admitted the liability as mentioned therein, as already discussed, the second mortgage deed is also supported by consideration and as admitted by P.W.2 in the evidence in Ex.D-2 "Whatsapp" communication that Rs.5.70 crores are due towards the principal amount of Rs.1.44 crores are due towards interest. Unless the plaintiffs paid or deposited the amount, they are not entitled to redeem the Schedule-A of the suit properties. This issue is answered accordingly.

58. As already discussed, the plaintiffs had admitted execution of the first mortgage deed, dated 16.04.2012 and 13.03.2020 being the second mortgage deed and both are registered documents and also they have admitted Ex.D-2 "Whatsapp" communication, admitting the liability also and therefore, they have admitted and the admitted facts need not be proved, and it is for the plaintiffs to prove that there is contra-evidence to the recitals mentioned in a registered mortgage deeds. Therefore, when once the plaintiffs admitted the registered mortgage deeds, they are bound by the terms and conditions mentioned in the mortgage deeds, dated 16.04.2012 and 13.03.2020, which are registered and so far, prior to the filing of the suit, the plaintiffs have not made any complaint against the defendants. This issue is answered accordingly.



Issue No.8: Are not the plaintiffs bound by the terms agreed under the mortgage deeds dated 16.04.2012 and 13.03.2020 ?

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59. Though the defendants have established that the plaintiffs executed two mortgage deeds and the plaintiffs have also admitted that they have issued the cheques, and though they have stated that the cheques are issued for security purpose, the defendants have stated that the cheques were issued only for redeeming the mortgage amount, however, when the cheques were presented for collection, the same were returned, as the said cheques dishonoured and therefore, a case was registered before the Magistrate by invoking Section 138 of the Negotiable Instruments Act and since the cheques have been dishonoured, the proceedings under Section 138 of the Negotiable Instruments Act, have also been initiated, as contended by the learned counsel for the defendants, in order to overcome the criminal proceedings, the plaintiffs have filed the present suit.

60. Earlier to the filing of the suit, under Section 138 of the Negotiable Instruments Act, the plaintiffs have not taken any stand or had not made out any complaint against the defendants. The defendants are demanding exorbitant rate of interest and received the amount over and above the contractual interest, and further, the defendants have admitted the mortgage deeds and cheques, under Section 2(8) of the Tamil Nadu Money Lenders Act. This issue is answered against the plaintiffs.



Issue No.9 : Are the defendants are money lenders under the Tamil Nadu Money

Lenders Act, 1957:

61. A perusal of the pleadings and oral and documentary evidence and the admission made by the plaintiffs and the witnesses and also that P.W.3 who introduced the plaintiffs to the defendants, had stated that whatever the amount borrowed from the defendants 1 and 2, have been repaid by the plaintiffs, but however, he has stated that he is not aware that the plaintiffs are engaged in various businesses including garment export, hotels, etc. P.W.3 also admitted that he is not aware of the transaction between the plaintiffs and the defendants. He also admitted that the main avocation of the plaintiffs is garment export and a chain of hotels. Further, he also stated that as per Exs.D-1 and D-3, marked through cross-examination of P.Ws.1 and 3 respectively. It was brought to the notice of this Court through those documents that the plaintiffs are leading a luxurious life by purchasing several cars by importing the same in India and portrayed the same in his social media pages. He has purchased several sophisticated cars and he borrowed money from the defendants, for only leading luxurious life. Therefore, the plaintiffs are not entitled to get sympathetic relief and he having admitted all the documents and issuance of cheques and borrowal of the money, on the other hand, the plaintiffs have not substantiated their case through documentary evidence that they have paid over and above the contractual rate of interest.

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62. In the above said circumstances, considering the earlier mortgage deed executed by the plaintiffs in favour of Suresh Kumar Ostwal and also in order to discharge that mortgage deed, he borrowed money from the plaintiffs and executed the first mortgage deed, in which only the rate of interest mentioned as 27% p.a. Further, the plaintiffs have not established that they have paid over and above the rate of interest at 27% p.a. The ninth issue is answered in the above terms.

63. Hence, under the above circumstances, this Court finds that the defendants 1 to 3 demonstrated that the plaintiffs are doing textile business and also hotel business. The plaintiffs are not able to substantiate that the defendants are the money lenders. Therefore, the plaintiffs are not entitled to any of the reliefs prayed for in the plaint. The suit is liable to be dismissed.

64. Further, the decisions relied on by the learned counsel appearing for the parties, are distinguishable on facts and hence they are not applicable to the case on hand.

65. Accordingly, this suit is dismissed with costs.

03.01.2025
(1/2)

Index: Yes/no
Speaking Order: Yes/no
Neutral Case citation: Yes/no
cs



List of witnesses examined on the side of plaintiff:

P.W.1 B.Vinayak Nilesh

P.W.2 T.Baburaj

P.W.3 Karthik Krishnan

P.W.4 S.Sudharsan

List of exhibits marked on the side of plaintiff

<i>Exhibit</i>	<i>Description of exhibit</i>
P.1	Certified copy of the simple mortgage deed Doc.No.885 of 2012, dated 16.04.2012
P.2	Photocopy of the simple mortgage deed Doc.No.722 of 2020, dated 13.03.2020
P.3	Print-out of the Bank statement of the first plaintiff for the period 01.04.2012 to 30.04.2012
P.4	Print-out of the HDFC Bank current account statement of the first plaintiff for the period 01.04.2012 to 31.03.2021
P.5	Print-out of the IDBI Bank Account statement of the first plaintiff for the period 01.01.2012 to 05.08.2021
P.6	Print-out of the HDFC Savings Bank Account statement of the first plaintiff for the period 01.04.2012 to 31.03.2021
P.7	Original Auditor's Certificate 6 pages reflecting dues as per 27% compound interest on 1st mortgage dated 27.10.2021
P.8	Original Auditor's Certificate 6 pages reflecting dues as per 27% simple interest dated 27.10.2021
P.9	Original Auditor's Certificate 3 pages reflecting dues as per 9% simple interest on 1st mortgage dated 27.10.2021
P.10	65-B Certificate of the 1st plaintiff, dated 01.11.2021 for Ex.P-3 to Ex.P-6 and Ex.P-11
P.11	Print-out of the Encumbrance Certificate from January 2009 to 17.11.2022
P.12	Print-out of the screen shot of Whatsapp chat produced by the first defendant, dated 07.08.2018 to 25.12.2020
P.13	Print-out of the screen shot of Whatsapp chat produced by the first defendant, dated July 2021
P.14	Print-out of the screen shot of Whatsapp chat produced by the first defendant, dated July 2021



<i>Exhibit</i>	<i>Description of exhibit</i>
P.15	Print-out of the screen shot of Whatsapp chat between 1st defendant and 2nd plaintiff between August 2021 to September 2021
P.16	Copy of the e.mail communication dated 13.04.2012 between the plaintiff and the first defendant
P.17	Copy of the e.mail communication dated 25.06.2012 between the plaintiff and the first defendant
P.18	Copy of the e.mail communication dated 05.04.2013 between the plaintiff and the first defendant
P.19	Copy of the e.mail communication dated 21.06.2013 between the plaintiff and the first defendant
P.20	Copy of the e.mail communication dated 21.09.2023 between the plaintiff and the first defendant
P.21	Copy of the e.mail communication dated 10.01.2024 between the plaintiff and the first defendant
P.22	Copy of the e.mail communication dated 24.03.2024 between the plaintiff and the first defendant
P.23	Copy of the e.mail communication dated 26.03.2024 between the plaintiff and the first defendant
P.24	Series are copies of the e.mail communication dated 16.07.2024 between the plaintiff and the first defendant
P.25	Copy of the e.mail communication dated 12.08.2024 between the plaintiff and the first defendant
P.26	Copy of the e.mail communication dated 22.09.2024 between the plaintiff and the first defendant
P.27	Copy of the e.mail communication dated 23.09.2024 between the plaintiff and the first defendant
P.28	Copy of the e.mail communication dated 08.10.2014 between the plaintiff and the first defendant
P.29	Copy of the e.mail communication dated 22.12.2024 between the plaintiff and the first defendant
P.30	Copy of the e.mail communication dated 18.02.2015 between the plaintiff and the first defendant
P.31	Copy of the e.mail communication dated 19.03.2015 between the plaintiff and the first defendant
P.32	Series are copies of the e.mail communication dated 04.04.2015 between the plaintiff



Exhibit	Description of exhibit
	and the first defendant
P.33	Series are copies of the e.mail communication dated 30.09.2015 between the plaintiff and the first defendant
P.34	Series are copies of the e.mail communication dated 05.01.2016 between the plaintiff and the first defendant
P.35	Series are copies of the e.mail communication dated 18.05.2016 between the plaintiff and the first defendant
P.36	Series are copies of the e.mail communication, dated 20.08.2016 between the plaintiff and the first defendant
P.37	Copy of the Whatsapp communication between the first defendant and the second plaintiff
P.38	Certificate under Section 65.B of the Indian Evidence Act
P.39	Certificate dated 27.03.2023 under Section 65.B of the Indian Evidence Act
P.40	Series are the print-out of the Whatsapp chat between the plaintiff and the fourth defendant
P.41	Certificate under Section 65.B of the Indian Evidence Act for Ex.P-40
P.42	Copy of the decree in O.S.No.9240 of 2021
P.43	Photocopy of the complaint in SFC.No.2334/2022 before the Metropolitan Magistrate-cum-Fast Track Court, Allikulam
P.44	Copies of the complaint under Section 138 of the Negotiable Instruments Act, against the 2nd plaintiff before the Metropolitan Magistrate Court, Allikulam
P.45	Copy of the complaint under Section 138 of the Negotiable Instruments Act against the 2nd plaintiff before the Metropolitan Magistrate Court, Allikulam

List of witnesses examined on the side of defendant:

D.W.1 Rakesh Harlalka

D.W.2 A.P.Kumar



C.S.94 (Comm.Div.)

List of exhibits marked on the side of defendant:

<i>Exhibit</i>	<i>Description of documents</i>
D.1	Print-out of the screen-shots (6 numbers)
D.2	Print-out of the Whatsapp chat dated 02.08.2021
D.3	Print-out of the Whatsapp chat dated 03.04.2018
D.4	Copy of the RC Book
D.5	The print-out of the Whatsapp chat dated 02.04.2020
D.6	Auditor Report No.1, dated 23.03.2022
D.7	Auditor Report No.2, dated 23.03.2022
D.8	Auditor Report No.3, dated 23.03.2022
D.9	Auditor Report No.4, dated 23.03.2022
D.10	1st to 8th defendants Bank Statements
D.11	Clarifications and the responses

Court documents:

<i>Exhibits</i>	<i>Description of documents</i>
C.1	Auditor Report, dated 22.07.2022
C.2	Auditor Report, dated 24.06.2022
C.3	Auditor Report, dated 16.08.2022
C.4	Auditor Report, dated 11.07.2022

03.01.2025

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C.S.94 (Comm.Div) of 2021

P. VELMURUGAN, J

CS

Pre-delivery Judgment in
C.S.(Comm.Div).94 of 2021

Judgment delivered

on 03.01.2025