



A.S.No.96 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

A.S.No.96 of 2024

and

C.M.P.No.3261 of 2024

1.The Registrar of University of Madras,
University of Madras, Chepauk,
Chennai – 600 005.

2.The Director, IDE,
University of Madras, Chepauk,
Chennai – 600 005.

... Appellants/Defendants

Versus

Jeyanthi Srinivasan,
Co-ordinator, Anna Nagar Study Centre (605),
University of Madras,
“Academy of Design & Research Industrial School”,
No.W-12, Old No.E-57,
3rd Main Road,
Anna Nagar, Chennai – 600 040.

... Respondent/Plaintiff

Appeal Suit filed under Section 96 of CPC r/w Order XLI, XLI-A of CPC, against the judgment and decree passed in O.S.No.2056 of 2020, dated 25.04.2023 by the learned XVII Additional Judge, City Civil Court, Chennai.

For Appellants : Mr.T.S.Rajamohan

For Respondent : Mr.C.T.Prabhakar



A.S.No.96 of 2024

JUDGMENT

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This Appeal Suit has been filed to set aside the Judgment and Decree passed by the learned XVII Additional Judge, City Civil Court, Chennai in O.S.No.2056 of 2020, dated 25.04.2023.

2. The averments in the plaint filed by the Plaintiff briefly are as follows:-

2.1. The Plaintiff is the Co-ordinator at Academy of Design & Research Industrial School, a Proprietorship firm situated at Anna Nagar, as such, it entered into an Agreement dated 08.09.2010 with the 1st Defendant for conducting distance education courses for the University of Madras, with centre number as 605. As per the said Agreement, the Defendants shall share the revenue with the Plaintiff at the rate of 50% for all courses i.e., U.G, P.G, Professional courses, Certificate Diploma, P.G Diploma and all other courses. The syllabus and course materials were all provided by the Defendants and the Plaintiff had to admit students and inform them about the rules and regulations, provide the study materials, conduct classes, inform the examination date and schedule to the students. The Plaintiff further states that they were doing all the activities as per the requirement of the Defendants



without any complaint whatsoever till the Defendants withdraw the centre as per the directions from UGC. They have paid all the necessary charges for Affiliation and Renewal of Memorandum of Understanding dated 31.10.2012 etc on time, and similarly all these years, the Plaintiff had renewed the contract and was running the academy. The Defendants who were fully satisfied on the Plaintiff's proper conduct had paid the share amount of tuition fee and special fee from the inception of the contract in a manner based on approved number of students and approved bills for each batch of students.

2.2. The payments were made so far, as follows:

S.No.	Batches	No. of students	Share amount received from UNOM
1.	AY 13-14 I year	296	3,76,740
2.	AY-14-15 I year	289	3,90,373
3.	CY-15 I year	95	1,15,295
4.	CY-16 I year	61	67,914
5.	AY-16-17 I year	222	2,54,510
6.	AY15-16 I year	228	2,53,557
7.	C17-I year	67	65,480
8.	C14-I year	111	1,22,316
9.	Retention Amount of all 8 batches of the Course [10%] on 06.09.2019	-	1,82,072
	Total	1369	Rs.16,46,185

2.3. The Defendants were not regular in making the payments of their



A.S.No.96 of 2024

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claim of share in tuition fee and due to the same, as on date, the Defendants are liable to pay arrears of Rs.12,98,960/- as per the claim of the share made by the Plaintiff and the same was accepted by the Defendants as pending share of tuition fees to the Plaintiff. The Plaintiff further states that the Defendants are liable to pay 24% interest on the balance payable share as this is a Commercial Transaction. Being an Authorized Study Centre of the Defendants University (i.e. University of Madras) from the year 2010-2017 and running the Study Centre which was withdrawn from the academic year 2017-2018 by the Defendants as per the directions of UGC, without settling the pending claim of the share of the Plaintiff. The Plaintiff claimed the balance payment of share amount of tuition fees from the Defendants stating that the Plaintiff had paid the full fee collected from students from academic year 2013-2014 onwards and as such, from the paid amounts pending part payments upto 2017-2018 amounts to Rs.12,98,960/- and the same is to be received by the Plaintiff from the Defendants. From the year (2017-2018) the Study Centre was withdrawn by the Defendant, the sum of Rs.12,98,960/- is pending from the Defendants, though part amounts were paid, for those periods time to time till 16.09.2019 and the same is being claimed continuously from the year 2017 upto 2020 vide letters dated 22.05.2018, 19.12.2019 and also by emails dated 27.08.2019, 04.02.2020, 24.02.2020 and 07.03.2020. The 2nd Defendant had



A.S.No.96 of 2024

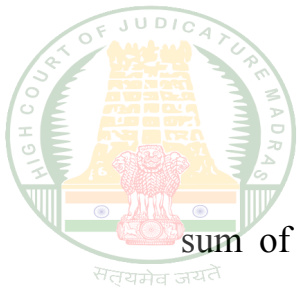
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made payments of the share in part from the year 2013-2014 continuously on the respective dates i.e., 06.09.2019, 02.03.2015, 13.05.2016, 05.09.2017, 31.10.2017, 09.11.2017, 29.11.2017, 28.03.2018 and 31.03.2018, and thereafter did not made any payments. The Defendants, who had accepted the Plaintiff's claim of the share money, had also paid part of the claim of the Plaintiff's share but did not make the balance payments for the academic years as follows:

PENDING SHARE AMOUNT TILL 20.02.2020

S.No.	Batches	No. of students	Share amount pending from UNOM
1.	AY 12-13 II year	227	3,60,080.00
2.	AY-11-12 III year	51	49,560.00
3.	CY-12 III year	18	15,000.00
4.	CY-13 II year	84	1,33,320.00
5.	AY 14-15 II year	188	3,10,560.00
6.	AY 13-14 III year	59	74,480.00
7.	CY 15 - II year	62	95,888.00
8.	CY – 14 III year	7	8,440.00
9.	AY 14-15 III year	44	40,320.00
10.	AY 15-16 II year	153	2,11,320.00
	Total	893	Rs.12,98,960.00

2.4. The Defendants were making the payments for all these years upto September, 2019. However, for the past six months, the Defendants have not made any payment despite demand in writing to pay the balance share of tuition fee which amounts to Rs.12,98,960/-. However, the Defendants paid a

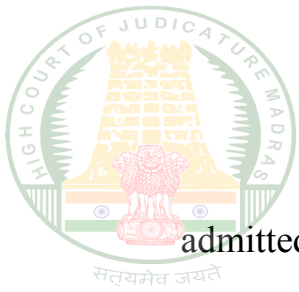


A.S.No.96 of 2024

sum of Rs.1,82,072/- being 10% retention amount of the payments already made on 16.09.2019. They have written letters on various dates as aforesaid for which there was no answer and no payments were also made.

3. The averments of the Defendants filed in the written statement as counter claim in brief are as follows:

3.1. The Plaintiff under the Agreement dated 08.09.2010 executed between the 1st Defendant and the Plaintiff agreed to cooperate and support course offerings as per the terms and conditions in the said agreement for two academic years i.e., 2010-2011 and 2011-2012, under which the tuition fees is as fixed by the University. The Agreement dated 08.09.2010 was renewed on 08.09.2012 modifying the tuition fees. Apart from the above, a clause was also incorporated that if any of the students enrolled opted not to attend the Personal Contact Programme (PCP) in theory 20%, of the tuition fee paid by the students shall be paid to the University by the Plaintiff. Thereafter, by a circular dated 23.07.2013, the University instructed all Study Centers to collect fee from the students and remit the same in full to the University of Madras, and that the Centers should claim their Institutional share at the end of each academic year. The University would arrange for the disbursement of the share of the Center after verifying the records. That is, the number of students

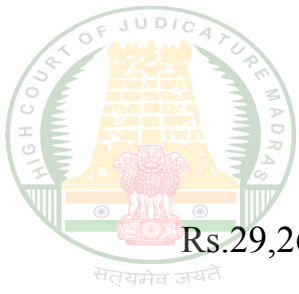


A.S.No.96 of 2024

admitted to the course of study, fee collected, fee remitted to the University.

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The Defendants were not fully satisfied with the Plaintiff since the Plaintiff failed to send the PCP attendance sheet to the University for calculating the share amount, the Plaintiff failed to submit both the details of the students who opted out of PCP class and also remit 20% of the tuition fees. The Plaintiff had no right to retain these amounts contrary to the terms and conditions agreed upon. The Plaintiff had collected the tuition fees from the students but the same was never remitted on time to the University. The Plaintiff remitted the payments due to the University often with a delay of 4 to 5 months after the last date prescribed by the University for the remittance of tuition fee. The Plaintiff admitted students at the Study Center but has omitted to remit the tuition fees in respect of a large number of students. From 2014 to 2017, a total sum of Rs.40,36,755/- has been collected from the students by the Study Centre of the Plaintiff, but the Plaintiff has completely failed to remit the same to the University of Madras. The Plaintiff ought to have remitted the entire sum of Rs.40,36,755/- as per the due dates in the prospectus and ought to have claimed and collected its share of Rs.11,10,400/- instead had retained the entire sum of Rs.40,36,755/- together with the share of the University of Madras i.e., Rs.29,26,355/- as detailed above. The Defendants are entitled to set off the sum of Rs.12,98,960/- claimed by the Plaintiff as against the sum of



A.S.No.96 of 2024

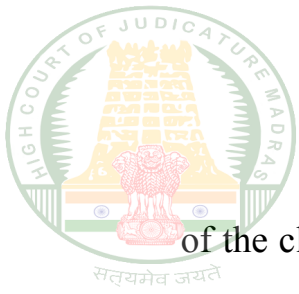
Rs.29,26,355/- and further the Plaintiff is liable to pay the 1st Defendant

University the balance sum of Rs.16,22,975/- together with interest at 12% per annum till the date of payment and realisation. The Plaintiff has failed to make due payments to the University of Madras as per the terms and conditions of the agreements and is liable to pay the share amount of Rs.16,22,975/- due to the University of Madras. The Plaintiff has deliberately concealed several facts and failed to disclose material particulars. Therefore, the Defendants seek dismissal of the suit filed by the Plaintiff and prays the Court to decree the counter claim of the Defendants.

4. Based on the pleadings in the plaint and in the written statement, the learned XVII Additional Judge, City Civil Court, Chennai, framed the following issues:

- i) Whether the Plaintiff is entitled to the suit claim as prayed for?
- ii) Whether the Defendants are entitled to the counter claim?
- iii) To what relief the Plaintiff is entitled to?

5. Before the Trial Court, the Plaintiff, Jeyanthi Srinivasan, examined herself as P.W-1. The affidavit of the Plaintiff was filed as examination-in-chief of P.W-1. On perusal of the same, it is found that the contents of the plaint in O.S.No.2056 of 2020 are stated in it as it is. In support



A.S.No.96 of 2024

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of the claim of the Plaintiff in the plaint, the documents were marked as Ex.A-

1 to Ex.A-13. Ex.A-1 is the memorandum of understanding signed between the Plaintiff and the first Defendant, University of Madras dated 08.09.2010.

Ex.A-2 is the copy of the request letter signed by the Plaintiff to the Defendants dated 31.10.2012 seeking renewal of the contract between the

Plaintiff and the Defendants. Ex.A-3 is the copy of the email message dated 27.08.2019 sent by the Plaintiff to the second Defendant. Ex.A-4 is the series

of receipts received from the second Defendant regarding the payment of the amounts to the Plaintiff dated 06.09.2015. Ex.A-5 is the copy of the letter

dated 19.12.2019 addressed by the Plaintiff to the second Defendant seeking the outstanding dues of the Plaintiff. Ex.A-6 is the requisition of the Plaintiff

to the second Defendant through email dated 04.02.2020. Ex.A-7 is the copy of the letter addressed by the Plaintiff to the second Defendant seeking

payment of dues dated 07.03.2020. Ex.A-8 is the statement of the amount paid to the Plaintiff by the Defendants dated 20.02.2020. Ex.A-9 is the statement of

the amount paid to the Plaintiff by the Defendants dated 20.02.2020. Ex.A-10 is the e-mail communication dated 17.06.2017 from the Defendants to the

Plaintiff reporting closure of the Study Centre of the Plaintiff. Ex.A-11 is the statement of the tuition fees paid by the students. Ex.A-12 is the statement

showing the default in payment of the tuition fees by the students. Ex.A-13 is



A.S.No.96 of 2024

the copy of the Aadhar card in the name of P.W-2.

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6. The Section Officer of the University of Madras by name, Dhanesh Murugan had examined himself as D.W-1. The affidavit filed by D.W-1 is examination-in-chief of D.W-1. The averments filed by Defendants 1 and 2 along with counter claim and set off were stated in the affidavit filed as examination-in-chief of D.W-1.

7. In support of the contention of the Defendants in the written statement, the documents on the side of the Defendants were marked as Ex.B-1 to Ex.B-7. Ex.B-1 is the contract entered into between the Plaintiff and the first Defendant dated 14.12.2010. Ex.B-2 is the renewed contract entered into between the Plaintiff and the Defendants dated 03.06.2016. Ex.B-3 is the statement showing the amount paid in the Bank account of the Defendants Study Centre run by the Plaintiff dated 19.03.2015. Ex.B-4 is the statement showing the amount paid by the Plaintiff to the Defendants dated 22.05.2018. Ex.B-5 is the statement showing the outstanding dues pending with the Plaintiff towards payment of outstanding dues to the Defendants. Ex.B-6 is the renewal of Memorandum of Understanding signed between the Plaintiff and the Defendants dated 31.10.2012. Ex.B-7 is the authorization letter issued



A.S.No.96 of 2024

to the Section Officer, Institute of Distance Education to depose evidence
before the learned XVII Additional Judge, City Civil Court, Chennai.

8. After hearing the arguments of the learned Counsel for the Plaintiff and the learned Counsel for the Defendants, the learned XVII Additional Judge, City Civil Court, Chennai, had decreed the suit of the Plaintiff granting decree for recovery of Rs.12,98,960/- and dismissed the counter claim of the Defendants.

9. Aggrieved, the Defendants 1 and 2 had filed this appeal seeking to set aside the judgment of the learned XVII Additional Judge, City Civil Court, Chennai, in O.S.No.2056 of 2020 dated 25.04.2023.

10. The learned Counsel for the Appellants submitted that O.S.No.2056 of 2020 was filed by the Plaintiff for judgment and decree, to direct the Defendants to pay Rs.12,98,960/-, payable to the Plaintiff towards the pending payment of claim of share amount of tuition fees together with interest at the rate of 24 percent per annum till the payment is made and for consequential relief. The Defendants, who are the Appellants herein, raised counter claim besides set off and accordingly, prayed for judgment and decree



A.S.No.96 of 2024

to direct the Plaintiff to pay a sum of Rs.16,22,975/- together with interest at the rate of 12% per annum and for consequential relief.

11. The Trial Court allowed the above suit in O.S.No.2056 of 2020 as prayed for, by directing the Defendants to pay interest at the rate of 9% per annum on the suit claim from the date of filing the suit until the date of judgment and thereafter, to pay six percent on the suit claim. Moreover, the Trial Court dismissed the counter claim. Challenging the above Judgment and Decree passed in O.S.No.2056 of 2020, dated 25.04.2023 the Defendants have filed the above Appeal. At the outset, the relief claimed by the Plaintiff as against the Defendants was based squarely on agreement falling within the definition of commercial transaction under the Commercial Courts Act. Admittedly, the claim by the Plaintiff is based on Memorandum of Understanding and on performance of contract. Unfortunately, the Trial Court has usurped jurisdiction and tried the suit amounting to excessive jurisdiction. Under Section 12-A of the Madras University Act, 1923, in all suits and other legal proceedings by or against the University, the pleadings shall be signed and verified by the Registrar and all processes in such suits and proceedings shall be issued and served on the Registrar, University of Madras, who is the 1st Defendant in the above suit. The suit is as such not maintainable in law



A.S.No.96 of 2024

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against the 2nd Defendant, namely, the Director, IDE, University of Madras and the suit ought to be dismissed as against the 2nd Defendant in view of the above said statutory provision. The 1st Defendant and the Plaintiff entered into an Agreement dated 08.09.2010 under Ex.A-1 whereby the Plaintiff agreed to become a Learning Study Centre of the Institute of Distance Education, University of Madras, the 1st Defendant. Under the said Agreement, the 1st Defendant, referred to as Party No.1 under Ex.A-1, had proposed to provide various courses offered by the Institute of Distance Education, and the Plaintiff, referred to as Party No.2 under Ex.A-1, agreed to co-operate and support the course offerings. The Plaintiff was to provide complete information about various courses of IDE, fee structure, eligibility conditions for various courses, distribute study materials, conduct Personal Contact Classes, Practical session and other student support services as prescribed by the 1st Defendant.

12. The Agreement under Ex.A-1 provided for Fee Structure and Revenue sharing in Clause 5 are as follows:

"The fee structures for various courses are prescribed by Party No.1 and will be intimated to potential students at the time of purchase of applications. The same should be displayed at the centre by Party No.2. It is the sole responsibility of Party No.2 to abide by the rules and regulations framed by Party No. 1 in respect of the agreed fee structures and shall also abide by any increase in fees which will be duly intimated by Party No.1 to Party No.2. Party No.2 will collect the fees prescribed by the University in the prescribed manner from the students



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and remit the same to Party No. 1 within the prescribed time Proposed by Party No.1. Party No.2 should not collect any fees in the name of students support services, conducting theory and practical sessions, model exams, coaching, study materials or any service related to the IDE Courses, other than the fees prescribed by Party No.1 Party No.1 will share the revenue (It means course fees only) with Part No.2 in the following manner:

Nature of Course	University Share in Course fees	Centre Share in Course fees
UG, PG proccessional courses	50% of Tuition Fee only	50% of Tuition Fee only
Certificate Diploma, P.G. Diploma and other courses offered by the IDE	50% of Tuition Fee and Special Fee	50% of Tuition Fee and Special Fees

13. It is submitted that in Clause 19 of the Agreement under Ex.A-1, it was agreed as follows:

"However, it is the responsibility of Party No. 1 and Party No. 2 to enable the students admitted to various programmes to complete their studies. All liabilities arising out of the conduct of such courses, such infrastructure facilities, conduct of practical and theory classes shall be borne by Party No. 2 only."

14. Moreover, under Clause 10 of the Agreement under Ex.A-1, the following clause was incorporated:

"10 Prospectus and Application Forms Party No. 2 will obtain the minimum number of applications on payment basis as from Party No. 1. Party No. 2 will sell the applications to the eligible candidates on cost basis as prescribed by Party No. 2. Party No. 2 will not collect any service charge for selling the applications from eligible candidates. Party No. 2 will have to admit a minimum of 300 candidates in a year (January to December). The Agreement between the Plaintiff and the 1st Defendant was renewed under Ex.B-6 titled "Renewal of Memorandum of Understanding" dated 29-10-2012 modifying the tuition fees sharing."

15. Clause 5 of Ex.B-6 is as follows:

"The Revenue sharing is permitted only in respect of the tuition fee prescribed. Other fee prescribed shall be paid in full to the Institute of Distance Education, University of Madras, Chepauk, Chennai - 600 005 Under Clause 6 of the said Exhibit, it was agreed as follows:

" Further all other terms and conditions in the parent



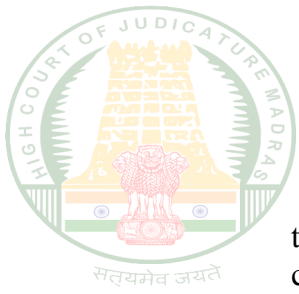
A.S.No.96 of 2024

Memorandum of Understanding will remain unchanged for the renewal period upto 31-10-2012 unless and otherwise specific changes if any, are made on mutual consent."

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16. Under Ex.A-1, the Plaintiff has furnished details regarding students admitted along with drop out students. Under Ex.B-4, the Statements submitted by the Plaintiff to the Defendants gives the details regarding students whose fees has not been remitted as though the students have not paid fees. The Defendants have prepared a Statement of Dues based on the candidates admitted to various courses under Ex.B-5. The Fee Payment Challans used by the Plaintiff to remit fees to the University through Bank have been marked under Ex.B-3 which will prove and establish that the Plaintiffs collected fees from the students and remitted the same to the University. P.W-1 was recalled and cross-examined on 30.03.2022 wherein it was stated that P.W-1 was managing the Study Centre and one Shenbagapriya and after her one Nirmala had worked as Assistants in the Study Centre. The Fee Payment Challans filed under Ex.B-3 prove and establish that P.W-1 along with the Assistant by name Nirmala had collected fees from students and remitted the same to the University and had themselves signed the Fee Payment Challans in para 17 of the Proof-Affidavit filed by P.W-1, it has been admitted as follows:

"I state that the exact list of students admitted was already periodically submitted to the Defendants and list of students dropped out in the Annual and Calendar Year C14, A14-15, C15, A15-16, C16, A16-17 and C17 from the centre which was wantonly used by the Defendants to make a false claim,

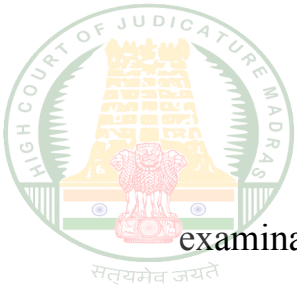


A.S.No.96 of 2024

though few entries are correct, We had given the detailed accounts of wrong claim made by the Defendant along with this reply as document".

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17. The Plaintiff admitted having furnished the list of students admitted to various courses that has been used by the Defendants to calculate the dues payable by the Plaintiff to the 1st Defendant. The Plaintiff having collected the fees from the students failed to remit the same to the University in accordance with the terms and conditions in the Agreement under Ex.A-1. As per the renewed Memorandum of Understanding under Ex.B-6, if any of the students enrolled opted not to attend the Personal Contact Programme (PCP) in theory, 20% of the tuition fee paid by the students shall be paid to the University by Party No.2. The Plaintiff failed to furnish the details required to be furnished in accordance with the Renewed Memorandum of Understanding under Ex.B-6 and only because of the non-remittance of fees in respect of admitted and enrolled students and failure to furnish details, the amount of Rs.12,98,960/- has not been settled. The University could arrange for the disbursement of the share of the centre only after verifying the records. That is, the number of students admitted to the course of study fee collected, fee remitted to the University. The Plaintiff failed to send the PCP attendance sheet to the University for calculating the share amount, and the Plaintiff both failed to submit the details of the students who opted out of PCP class and also remit 20% of the tuition fees. P.W-1 had admitted during her cross-



A.S.No.96 of 2024

examination as follows: “22-05-2018க்கு முன்பாக பிரதிவாதிக்கு மாணர்கள்

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படிப்பை தொடராக விளத்தை தெரியப்படுத்தவில்லை". The Plaintiff had no right to retain these amounts contrary to the terms and conditions agreed upon. Unfortunately, the Trial Court totally ignored the specific covenants contained in the Memorandum of Understanding and has allowed the Suit filed by the Plaintiff leading to absolute perversity.

18. The circular dated 23.07.2013 of the University to the Plaintiff was never taken into consideration by the Trial Court. In and by the said circular, the Plaintiff was specifically instructed to collect the fees from the students and remit the same in full to the University of Madras and thereafter, claim their share. Thus it could be seen that when it is evident by reading of documents that the Plaintiff has not discharged her part of contract, the Trial Court ought to have dismissed the above Suit. Thiru E.Dhanesh Murugan, Section Officer, Study Centre, Admission Section, Institute of Distance Education, was deputed and authorised to appear as a witness on behalf of the University of Madras, under Ref.No.IDE/SCAS/SC605/OS.2056 of 2020 dated 19-08-2021 marked as Ex.B-7 and has been examined as D.W-1 on behalf of the University. The said authorisation has also been affirmed by the 1st Defendant in I.A.No. 4 of 2022 in the above O.S.No.2056 of 2020. The



A.S.No.96 of 2024

WEB C said D.W-1 has deposed regarding the dues in a cogent manner. For the Calendar and Academic Years from 2014 to 2017, a total sum of Rs.40,36,755/- has been collected from the students by the Study Centre of the Plaintiff, but the Plaintiff has completely failed and neglected to remit the same to the University of Madras. The Plaintiff ought to have remitted the entire sum of Rs.40,36,755/- as per the due dates in the prospectus and ought to have claimed and collected its share of Rs.11,10,400/- but instead has retained the entire sum of Rs.40,36,755/- together with the share of the University of Madras that is Rs.29,26,355/- as detailed above. Therefore, the Defendants are entitled to set off the sum of Rs.12,98,960/- claimed by the Plaintiff as against the sum of Rs.29,26,355/- and the Plaintiff is liable to pay the 1st Defendant University the balance sum of Rs.16,22,975/- together with interest at 12% per annum till date of payment and realisation. Unfortunately, the Trial Court failed to take into consideration the above clinching facts, thereby rejecting the counter claim and set off. The Plaintiffs have categorically admitted the enrolment of students in its statements furnished to the Defendants and are strictly liable to pay the fees in respect of the students admitted as per the terms and conditions in Ex-A-1. Unfortunately, the Trial Court failed to take into consideration the said admission. The trial Court failed to take into consideration the fact that the Plaintiff has deliberately



A.S.No.96 of 2024

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concealed several facts and failed to disclose material particulars. Admittedly, the University issued study materials to all the students, who enrolled through the Plaintiff's Study Centre and the PCP classes were conducted, and examinations were also conducted even in respect of the students, who paid fees that the Plaintiff failed to remit to the University, taking into consideration the welfare of the said students. Unfortunately, the Trial Court failed to take into consideration such clinching facts. The counter-claim is based on running account between the Plaintiff and Defendants and therefore it is not barred by limitation. Under Article 1 of the Limitation Act, 1963, time runs from the close of the year in which the last item admitted or proved is entered in the account and in this case, the Plaintiff in para 13 of the plaint has admitted that the Defendants paid a sum of Rs.1,82,072/- (Rupees One Lakhs Eighty Two Thousand and Seventy Two Only) on 16-09-2019 and the plaint has been filed on 12.03.2020 and counter claim has been filed on 01.02.2021 well within the prescribed period of three years. So far as the Counter claim is concerned, the Trial Court has not given specific findings and has simply dismissed the same resulting in serious infirmities. Even though the trial Court held that both the parties are bound by agreement, still the fact that the Plaintiff has not performed her part of contract, even by the own admission of P.W-1 was ignored by the trial court. Moreover, the evidence of D.W-1 that



A.S.No.96 of 2024

the Plaintiff has not reported belated payment in writing was not considered by the trial court for which separate tabulation was enclosed.

19. The learned Counsel for the Respondent submitted that the O.S.No.2056 of 2020 filed by the Plaintiff is to direct the Defendants to pay Rs.12,98,960/- the share payable to the Plaintiff towards the pending payment of claim of share amount of tuition fees by the Defendants, together with interest at the rate of 24% per annum till the payment of the said amount.

20. The judgment of the trial Court has dealt with the complaint and the rival claims raised by the Appellants/Defendants, examined all the documents filed therein and allowed the Appellants/Defendants to bring the evidence on their side and after considering the depositions of evidence on both sides, the Trial Court has passed an elaborate well reasoned judgment. Hence, the judgment of the trial Court is not against the law. The judgment of the trial Court in O.S.No.2056 of 2020 is a well reasoned judgment that does not warrant any interference by this Court to set aside the same. The appeal grounds are contrary to each other. The Appellants herein had never raised any objection or ground concerning the jurisdiction before the trial Court, coming before this Court they had taken the ground of alleged excessive jurisdiction

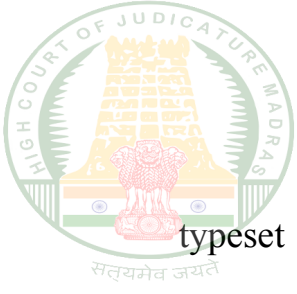


A.S.No.96 of 2024

and at the same time, they have raised allegation that their alleged "counter claim" in the original suit was not taken into consideration by the trial Court.

If it is a case of alleged excessive jurisdiction, the Appellants should have filed petition for rejection of Plaint and filed his counter claim before the appropriate Court, which had jurisdiction or the Appellant should have taken a stand against before the Trial Court. The Appellants can not blow hot and cold at the same time. If they agree that their counter claim is maintainable, then the suit is also maintainable. Having filed counter claim and then alleging that the trial Court lacks jurisdiction is like blowing hot and cold at the same time. Therefore, the trial Court never exceeded its jurisdiction. The 2nd Appellant/2nd Defendant, who is the Departmental Head with specific responsibility, is the necessary and proper party to the suit in addition to the overall administrative head. Moreover, the Madras University Act does not say anything that restricts filing of cases only against the Registrar. Therefore, the learned Counsel for the Respondents submits that the Appellants contention lacks legal foundation and is liable to be dismissed.

21. The said claim amount of the Plaintiff is accepted to be paid by the Defendants in Para No.11 of their written statement which is in page No.251 in the Appellants typeset and also in Line No.12 of the cross examination dated 05.07.2022, which is in page No.290 of the Appellants



A.S.No.96 of 2024

typeset which reads as "எனது எதிர் வழக்குரையில் வாதி கோரியுள்ளவாறு

ரூ.12,98,960/- ஐ வாதி எங்களுக்கு கொடுக்க வேண்டிய தொகையில் இருந்து கழித்து கொள்ள ஒப்புக் கொண்டுள்ளேன் என்றால் சரிதான்."

22. The judgment of the trial Court clearly states that the Respondent/Plaintiff had clearly proved her case as found in the Judgment in O.S.No.2056 of 2020 at Para 11-17 and given its finding in para 18 & 19. The counter claim of Rs.16,22,975/- together with interest at 12% by the Appellants/Defendants is nothing but the alleged claim of tuition fee amount of those dropout students from the Respondent/Plaintiff's Study Centre. It is unethical to make this illegal claim to delay the process and thereby delay the legitimate payments to the Plaintiff. The Respondent/Plaintiff further submits that the tuition fees are directly paid into the Appellants/Defendants University Bank account as per clause 5 of the Agreement dated 08.09.2010 (Ex.A-1 in page No.62 of Appellants typeset). Thereafter only, the Appellants/Defendants have to pay back the Respondent/Plaintiff's share to the Respondent/Plaintiff. Therefore, there are no chances of misappropriating the student's fees by the Respondent/Plaintiff as alleged by the Appellants/Defendants. This fact will be proved by the receipts (Ex.B-3 start from page Bo.82 of Appellants typeset) filed by the Defendants wherein only students name will be found.



A.S.No.96 of 2024

WEB COPY23. The counter claim of the Appellants/Defendants is barred by Limitation since the counter claim is for the alleged tuition fees paid in the year 2014 to 2017. The Respondent/Plaintiff further submit that the Appellants/Defendants never claimed their alleged claim amount till the Respondent/Plaintiff filed the suit, whereas the Respondent/Plaintiff have been claiming their pending share to the Appellants/Defendants on several dates as such 27.08.2019, 19.12.2019, 04.02.2020, 24.02.2020 and 07.03.2020 through E-mails and letters and in the cross examination dated 05.07.2022, (9th line, page No.291 of Appellants typeset), the Appellants/Defendants had allegedly said that in the year 2016-2017 they have received complaints from students that Respondent/Plaintiff had obtained fee from them and not given it back to the Appellants/Defendants University, but they never claimed anything till the Respondent/Plaintiff filled the suit. Therefore, the act of the Appellants/Defendants proves their *mala fide* intention.

24. The Appellants/Defendants had not approached this Court with clean hands. They suppressed all the material facts and failed to produce even a single piece of evidence to prove their counter claim. Moreover, they had accepted their liability to pay the balance amount to the Respondent/Plaintiff.



A.S.No.96 of 2024

Further, it is respectfully submitted that all the allegations raised by the Appellants/Defendants had already been properly examined and considered by the Trial Court and passed a well reasoned judgment in O.S.No.2056 of 2024. It is to simply delay and with *mala fide* intention the Appellants/Defendants filed this appeal before this Hon'ble Court. Hence, this appeal lacks merits and is to be dismissed.

Point for Determination:

Whether the judgment of the learned XVII Additional Judge, City Civil Court, Chennai, in O.S.No.2056 of 2020 dated 25.04.2023 decreeing the suit of the Plaintiff and dismissing the counter claim of the Defendants is perverse warranting interference by this Court?

25. In the discussion of the evidence here afterwards the parties in the Appeal will be referred as per their status before the trial Court as Plaintiff and Defendants. The Appeal herein is preferred by the Defendants in O.S.No.2056 of 2020 before the learned XVII Additional Judge, City Civil Court, Chennai. The Appellants before this Court will be referred as Defendants. The Respondent herein will be referred as Plaintiff.

26. Heard Mr.T.S.Rajamohan, learned Counsel for the Defendants and Mr.C.T.Prabhakar, learned Counsel for the Plaintiff.



A.S.No.96 of 2024

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28. On perusal of the evidence of the Plaintiff, it is found that she was cross examined regarding the contention raised in the written statement/counter claim that she had not acted as per the Memorandum of Understanding between the Plaintiff and the Defendants. As per the renewed Memorandum of Understanding, she had not informed the Directorate of Distance Education regarding the number of students who had not paid fees in the Study Centre of the Plaintiff. She had not given the particulars of the students who had dropped out of the programmes. She had not furnished the details of the fees collected by the Study Centre run by her promptly to the Directorate of Distance Education. These suggestions and pleadings in the written statement were denied by the Plaintiff as P.W-1. Further, she had stated that students had paid fees belatedly, for which, she obtained clearance from the Directorate of Distance Education to accept belated payments. The counter claim made by the Defendants in the written statement is that the Plaintiff had caused loss to the Defendants by her conduct in not



A.S.No.96 of 2024

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communicating to the Directorate of Distance Education regarding the number of students who had not paid their tuition fees. Therefore, it is the otherway round she cannot claim amount. On the contrary, she had to pay the Directorate of Distance Education towards the counter claim for having caused loss due to her conduct, which she had denied. Also, she would submit that only after filing of the suit, the Defendants have come forward with the counter claim. In all the letters which she had addressed to the Directorate of Distance Education to furnish her dues, there was no reply stating that the Plaintiff had to pay the Defendants the amounts, and not the Plaintiff to be paid by the Defendants. Only after institution of the suit, the Defendants had come forward with the new claim as though the Plaintiff had to pay the Defendants.

29. It is the contention of the Plaintiff that in the written statement the Defendants had not furnished any documents to claim counter claim from the Plaintiff. She had relied on the communication sent by her dated 22.05.2018.

30. The contents of the written statement/counter claim was stated in the affidavit filed by the Section Officer, Dhanesh Murugan, who had deposed evidence as D.W-1 when he was confronted in the cross examination by the



A.S.No.96 of 2024

WEB CONFERENCE

learned Counsel for the Plaintiff for the claim made in the counter claim that the Plaintiff had not deposited the fees paid by the students undergoing various courses under the Plaintiff Study Centre. He was asked whether he or the Institute of Distance Education had issued any notice calling upon the Plaintiff to deposit the amount paid as fees by the students who had registered with the Plaintiff's Study Centre. D.W-1 denied the suggestions but admitted that there is no notice issued to the Plaintiff calling upon her for payment of the fees. D.W-1 admitted that there had been belated payment but there is no proof filed as documentary proof regarding the claim made by the Defendants that the Plaintiff had not paid or deposited amount to the University for the amounts paid by the students. The Plaintiff had marked Ex.A-11 and Ex.A-12 which reflects the students who had dropped out of the courses midway without paying fees. For which the reply of the D.W-1 was that the same was not received by the Defendants. He admits that the Institute of Distance Education owes to pay the dues to the Plaintiff from the years 2012, 2013 to 2015, 2016 academic years. He denied the suggestion that there is no proof either with the Plaintiff or with the Defendants regarding the number of students who dropped out of the program. D.W-1 in his cross-examination admitted that Ex.B-6 does not contain the date and seal of the authorities who had issued it. The suggestion that Ex.B-6 cannot be relied by the Court as it did not contain the



A.S.No.96 of 2024

date was also denied by him. The suggestion that the Defendants counter claim

is not supported with the documents was also denied by him.

31. It is the contention of the Defendants in the written statement/counter claim that the fees collected from the students was not forwarded to the Institute of Distance Education by the Plaintiff. Though, the students had dropped out of the courses, the Plaintiff had still received fees from them. For this pointed allegation in the counter claim, the Section Officer, D.W-1 of the Institute of Distance Education, Dhanesh Murugan had stated that they had received only oral complaints from the dropped out students. To the pointed question whether the Defendants had issued any notice warning the Plaintiff of the consequences for not depositing the amount into the Institute of Distance Education. D.W-1 admits that till the date of filing of the suit there was no written complaint from the Defendants. The next suggestion that the so called misappropriation or belated payment was made only for the purpose to defeat the Plaintiff's claim, was denied by D.W-1 in his cross-examination.

32. On perusal of the documentary evidence, it is found that the Plaintiff had filed the suit after exchange of communication between the



A.S.No.96 of 2024

Plaintiff and the Defendants over a period of time. The documents under Ex.A-1 to Ex.A-14 indicates that the Plaintiff had been pursuing repeatedly over a

period of time for her dues since there was no communication received from the Defendants, the Plaintiff had filed the suit. Even though the Defendants had filed a counter claim, the Defendants were unable to prove that the conduct of the Plaintiff in not communicating about the number of students who had dropped out caused loss to the Defendants. In the absence of such documents, merely claiming some amounts without the support of any documents or registers maintained by the Defendants in the Institute of Distance Education will not help the Defendants to get a decree from the competent Civil Court for counter claim. Therefore, it is found that the judgment of the learned XVII Additional Judge, City Civil Court, Chennai, rejecting the counter claim and decreeing the suit of the Plaintiff is found proper and it is not perverse.

33. The counter claim of the Defendants in the written statement is not supported with the documentary evidence. Therefore, in the absence of such proof the Defendants in the case cannot expect the Court to decree the counter claim and dismissed the suit. It is to be noted that in the course of the cross-examination, D.W-1 admitted the claim of the Plaintiff that she is to be



A.S.No.96 of 2024

paid the amount due from 2013 to 2015, 2016 academic year. Therefore, what are all claimed in the written statement of the Defendants will not hold good.

34. As per the guidelines of the Hon'ble Supreme in the reported decisions in *Betal Singh -vs- State of M.P.* reported in (1996) 8 SCC 205 and in *V.Sejappa - Vs - State* reported in 2016 (12) SCC 150, the Court of First Appeal, on independent assessment of the evidence from the learned Trial Judge, may arrive at a different opinion or different conclusion on the same set of evidence. However, the Appellate Court shall not disturb the finding recorded by the learned Trial Judge, if the learned Trial Judge had arrived at a conclusion based on proper appreciation of evidence. Under those circumstances, the judgment of the learned XVII Additional Judge, City Civil Court, Chennai, is found to be a well reasoned judgment that does not warrant any interference by this Court.

35. On perusal of the judgment of the learned XVII Additional Judge, City Civil Court, Chennai, it is found that she had on proper appreciation of evidence arrived at a conclusion based on which she had rejected the counter claim of the Defendants and decreed the suit of the Plaintiff. The fact that the students who had enrolled with the Plaintiff Study Centre opted out is



A.S.No.96 of 2024

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admitted by the Plaintiff for which the Plaintiff cannot be penalised. The claim of the Defendants in the counter claim is found unacceptable and is not based on any rules of the University or the Institute of Distance Education, but rather the Defendants had filed counter claim just because the Plaintiff had filed the suit seeking for her rightful claim that is entitled to her from the share of the tuition fees deposited by the students who had enrolled with the Plaintiff's Study Centre, for which the Plaintiff cannot be penalised. It is unacceptable from the point of view of an ordinary prudent man. It is unacceptable in the principles of fairness, equity and good conscience which governs the Civil Court in granting relief. Therefore, the counter claim is filed without any legal basis. Hence, the counter claim was rightly rejected by the learned XVII Additional Judge, City Civil Court, Chennai, in O.S.No.2056 of 2020 dated 25.04.2023.

36. This Court on reappraisal of the evidence does not accept the contention raised by the Defendants as Appellants before this Court. Till the date of filing of the suit there was no complaint from any of the former students of the Plaintiff with the Institute of Distance Education or with the University of Madras. The claim made by D.W-1 in his cross-examination that there were no written complaints but only oral complaints were given, also



A.S.No.96 of 2024

WEB COPY

will not help the Defendants to seek counter claim. The marking of documents on the side of the Defendants will not help the Defendants to seek counter claim in the light of the specific admission made by D.W-1 in his cross-examination that the Plaintiff is entitled to her claim even after deduction of the amount. As per the claim of the Defendants, the Plaintiff is entitled to her share of the tuition fee from 2012-2013 to 2015-2016 academic years. The suit was decreed. Merely now that the Defendants had filed a counter claim, the Court cannot grant a decree for the counter claim in the absence of specific materials as till the date of filing of the suit there had been no communication from the Institute of Distance Education or from the University calling upon the Plaintiff to deposit the amount neither had they specified the amount nor had sought explanation from the Plaintiff that there is dereliction of duty on the part of the Plaintiff regarding the students dropping out of the Study Centre without paying the dues.

37. Under those circumstances, this Court as Appellate Court on independent re-appreciation of evidence before the Trial Court, is unable to grant decree in favour of the counter claim of the Defendants and dismiss the claim of the Plaintiff. The Plaintiff had been agitating her right as can be seen from the documents marked in Ex.A-6 wherein she had repeatedly sent

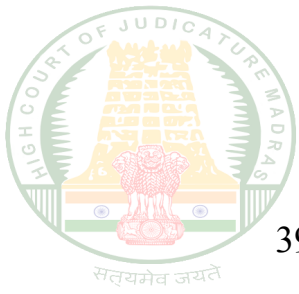


A.S.No.96 of 2024

reminders seeking her dues.

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38. The documents furnished as Ex.B-5 did not contain any seal either from the Directorate of Distance Education or from the Registrar of the University of Madras. Not only that, except Ex.B-5, there are no evidence through any show cause notice or any other notice from the Defendants to the Plaintiff calling upon the Plaintiff seeking explanation for not depositing the amount to the Institute of Distance Education either from the University or from the Institute of Distance Education. Merely filing a written statement as though the Defendants owe Rs.1,51,410/- will not help the Defendants to claim counter claim from the Plaintiff in the absence of any specific communication from the Defendants to the Plaintiff prior to filing of the suit by the Plaintiff. The Defendants are not entitled to counter claim from the Plaintiff under Ex.B-5. Therefore, the learned XVII Additional Judge, City Civil Court, Chennai, had rightly rejected the counter claim of the Defendants. The judgment of the learned XVII Additional Judge, City Civil Court, Chennai, is found proper and well reasoned. It does not warrant interference by this Court exercising the power of Appellate Court under Section 96 r/w Order XLI of CPC.



A.S.No.96 of 2024

39. In the light of the above discussion from paragraphs 27 to 38, the point for determination is answered in favour of the Plaintiff and against the Defendants. The judgment of the learned XVII Additional Judge, City Civil Court, Chennai, in O.S.No.2056 of 2020, dated 25.04.2023 decreeing the suit of the Plaintiff and dismissing the counter claim of the Defendants is not perverse. It is a well reasoned judgment that does not warrant any interference by this Court as Appellate Court.

In the result, the **Appeal Suit stands dismissed with costs throughout.** The judgment of the learned XVII Additional Judge, City Civil Court, Chennai, in O.S.No.2056 of 2020, dated 25.04.2023 is confirmed. Consequently, connected Miscellaneous Petition is closed.

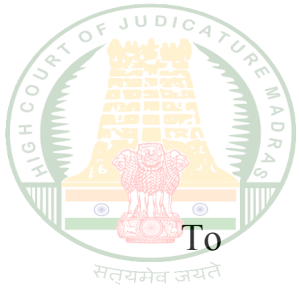
27.06.2025

cda

Index : Yes/No

Speaking/Non-speaking order

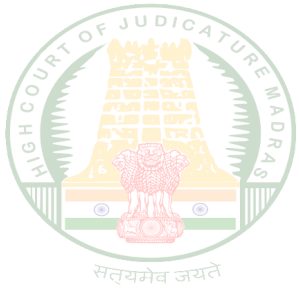
Neutral Citation : Yes/No



A.S.No.96 of 2024

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- 1.The XVII Additional Judge,
City Civil Court, Chennai.
- 2.The Registrar of University of Madras,
University of Madras, Chepauk,
Chennai – 600 005.
- 3.The Director, IDE,
University of Madras, Chepauk,
Chennai – 600 005.
- 4.The Section Officer,
VR Section, High Court,
Chennai.



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A.S.No.96 of 2024

SATHI KUMAR SUKUMARA KURUP, J.,

cda

Pre-Delivery Judgment made in
A.S.No.96 of 2024

27.06.2025