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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.12.2025

Pronounced on : 12.02.2026

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

AND

THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

A.S.No.129 of 2017

M/s. Coimbatore Capital Limited,
A Public Limited Company,
Having its office at Stock Exchange Building,
686, 1st Floor, Trichy Road,
Coimbatore – 641 005
Through its Executive Director
T.Balakrishnan

... Appellant / Plaintiff

Vs

M.Ramasamy (Died)

R.Manoharan

... Respondents / Defendants

Substituted the appellant name from
Mr.B.Venkateswaran to
Mr.T.Balakrishnan vide order of Court
dated 04.12.2004 made in CMP
No.27045 of 2024 in A.S.No.129 of
2017.



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This First Appeal is filed under Order XLI Rule 1 read with Section 96 of CPC, to set aside the judgment and decree dated 03.12.2016 in O.S.No.486 of 2004 on the file of the I Additional District and Sessions Judge, Tiruppur and grant a decree as prayed for in O.S.No.486 of 2004 with costs..

For Appellant : Ms.Sadhana V. Shankar
For M/s.Iyer and Thomas

For Respondent : Mr.T.Murugamanickam,
Senior Counsel
for Mr.Govi Ganesan

JUDGMENT

(Judgment of the Court was made by C.V.Karthikeyan, J.)

The plaintiff in O.S.No.486 of 2004 on the file of the I Additional District Court, Tiruppur, aggrieved by the judgment dated 03.012.2016 has filed the present Appeal Suit.



2.The suit in O.S.No.486 of 2004 had been initially filed before the Sub Court, Tiruppur, in O.S.No.433 of 2002 and subsequently transferred to the I Additional District Court, Tiruppur.

3.The suit had been filed by Coimbatore Capital Ltd., formerly known as Coimbatore Capital Market Services Private Limited, against two defendants, M.Ramaswamy and R.Manoharan, seeking a personal decree against the defendants to jointly and severally pay to the plaintiff a sum of Rs.83,88,020.45/- together with future interest on a sum of Rs.56,80,101.59/- at 12% interest per annum and also for a preliminary inter decree against the 1st defendant for payment of a sum of Rs.83,88,020.45/- and further interest at 12% per annum on Rs.56,80,101.59/- and also for cost of the suit and in default of such payment, to pass final decree for sale of the mortgaged property described in the schedule to the plaint.

4.It is to be noted that the 1st defendant was the father of the 2nd defendant. The 1st defendant died during the pendency of the suit.



5. In the plaint, it had been stated that the plaintiff is a Trading Member of National Stock Exchange of India Limited and that Ankal Finance Ltd (hereinafter referred to as Ankal), a Public Limited Company having registered office at Coimbatore. It had been admitted as a constituent of the plaintiff vide Member Constituent Agreement dated 25.05.2000. A Securities Lending and Borrowing Agreement was entered into on 25.05.2000 consequent to which Ankal was permitted to trade on the National Stock Exchange of India Limited through the plaintiff. The 1st and 2nd defendants had extended guarantee performance by Ankal of its obligations and also guaranteed settlement of its liability to the plaintiff by Deeds of Guarantee dated 14.08.2000 and 25.05.2000, executed by them respectively. It had been contended that pursuant to such Deeds of guarantee, the 1st defendant had also mortgaged the suit A and B schedule properties by Deposit of Title Deeds with the plaintiff at their office on 14.08.2000 at Coimbatore.

6. In the plaint, the details of the mortgage had also been given. It was further contended that during the course of the transaction done by Ankal as a constituent of the plaintiff, a sum of Rs.64,52,758/- remained unpaid to the



plaintiff as on 01.10.2000. It had been stated that statements of accounts had been sent to Ankal from time to time and the balance amount due had also been confirmed from time to time. Since there was an arbitration agreement between the plaintiff and the Ankal, the plaintiff instituted arbitration proceedings in A.M.No.CH.015/2001 before the National Stock Exchange of India Limited against Ankal. After due enquiry, an award dated 12.11.2011 was passed directing Ankal to pay a sum of Rs.62,99,170.02/- together with interest on the principal amount of Rs.56,80,101.59/- at 24% interest per annum from 01.10.2000 till 12.11.2011 and thereafter, at 12% per annum from 13.11.2001 till the date of payment. It had been contended that the defendants were not personally impleaded as parties in the arbitration proceedings, since there was no arbitration clause in the Deeds of Guarantee.

7.It was under those circumstances, that a legal notice was issued by the plaintiff to the 1st defendant on 20.02.2002 calling upon the 1st defendant to make payment of the amount due to the plaintiff under the arbitration award of National Stock Exchange India Limited. The notice had been returned with endorsement that intimation had been given.



8.The plaintiff also instituted A.O.P.No.143 of 2000 under Section 9 of the Arbitration and Conciliation Act, 1996 against the 2nd defendant before the Principal Sub Court at Coimbatore, under the bonafide belief that the 2nd defendant would also be covered under the arbitration proceedings. The arbitration proceedings was however taken on file by the National Stock Exchange of India Ltd., only against Ankal and not against the 2nd defendant. It had been contended that the award dated 12.01.2001 had become final. The award had also been become enforceable against Ankal as a decree of a Court.

9.It had been stated that the suit had been filed against the defendants in their capacity as guarantors for the amount due from Ankal. The details regarding the amount due and recoverable from the defendants had also been given in the plaint. It was under those circumstances that the suit had been filed seeking a personal decree against the defendants and a preliminary decree against the 1st defendant for payment of the sums stated above.

10.A written statement had been filed by the 2nd defendant denying and disputing the contentions of the plaintiff. It was stated that the plaintiff



had conducted business only with Ankal. The claim that the defendants had stood guarantee for settlement of liabilities of Ankal had been specifically denied. The 2nd defendant claimed that the defendants had not executed any such guarantee, as stated in the plaint. The allegations regarding creation of mortgage by deposit of Title Deeds was also specifically denied. It had been contended that the 1st defendant had never handed over the original documents with intention to create an equitable mortgage. The details given regarding the mortgage were denied as false. It was stated that the copies of the title deeds were shown to the plaintiff to determine the solvency of the defendants. The specific allegation in the plaint that Ankal was liable to pay a sum of Rs.64,52,758/- was denied. It was contended that the defendants were not liable to any portion of the suit claim. They further stated that Ankal is a Limited Company. There was no personal responsibility for the defendants to discharge the suit claim. The defendants claimed that they are not guarantors as alleged. It was therefore insisted that the suit should be dismissed.

11. On the basis of the above pleadings, the following issues were framed:



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“1. Whether the Arbitration of Ankal as constituent of plaintiff in pursuance of the agreement dt:25.05.2000 is valid and genuine?

2. Whether the guarantees by the defendants on behalf of the Ankal regarding settlement of liabilities to the plaintiff is true and correct?

3. Whether the deposit of title deeds and creation of equitable mortgage by the defendants is true and valid?

4. Whether the plaintiff is entitled to a personal and mortgage decree against the defendants?

5. To what relief, if any is the plaintiff entitled to?”

12. During trial the plaintiff examined one witness namely, T. Balakrishnan who was the Manager in the plaintiff company and marked 24 documents. Ex.A3 dated 24.05.2000 was the certified copy of the Member and Constituent Agreement. Ex.A4 dated 09.06.2000 was the original of the Securities Lending and Borrowing Agreement. Ex.A5 dated 14.08.2000 was the Guarantee Deed in original. Ex.A7 dated 14.08.2000 was the xerox copy of the document reflecting Deposit of Title Deeds. The computerized statement of accounts and detailed statement of accounts were marked as Exs.A10 and A11. A copy of the arbitration award dated 22.11.2001 was marked as Ex.A13. The letter of National Stock Exchange of



India Limited dated 06.04.2001 was marked as Ex.A15. The agreement between the plaintiff and the defendants dated 24.02.2000 was marked as Ex.P20.

13. On the side of the defendants, the 2nd defendant examined himself as DW-1. However, no documents were marked on the side of the defendants.

14. The learned Trial Judge, during the course of the judgment, stated that the defendants had admitted during cross examination about the execution of Ex.A21. By this document, the Board of Directors of Ankal had resolved that a securities account or accounts as would be required. It was further resolved that the defendants can submit an application for registration as a constituent of Coimbatore Capital Market Services Private Ltd., as per Ex.A2. These facts were not disputed during cross examination. The defendants also did not dispute the execution of Ex.A4. It was further resolved that the defendants had no intention to create mortgage and the registers were made available to the plaintiff only to verify solvency of the defendants.



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15.It was held that the plaintiff has to prove execution of Exs.A5 and A7 in manner known to law. He also observed that the attesting witnesses were not examined to prove the execution of Ex.A5 by the 1st defendant. It was held that the plaintiff had not proved execution of Ex.A5, which was the Guarantee Deed. It was further observed that the plaintiff had contended that the 1st defendant had mortgaged certain properties by deposit of Title Deeds. However, such deposit was not drawn in manner stipulated in the Indian Stamp Act. The recitals in Ex.A5 were extracted and it was stated that if there had been a default then the plaintiff could have proceeded against the defendants. With respect to the document reflecting deposit of title deeds, again the case of the plaintiff was rejected by the learned Trial Judge. Finally, by judgment dated 03.12.2016, the suit was dismissed.

16.Challenging the said findings, the present appeal had been filed.

17.Heard arguments advanced by Ms.Sadhana V.Shankar learned counsel for the appellant and Mr.T.Murugamanickam, learned Senior Counsel for the respondents.

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18.It is the contention of the learned counsel for the appellant that, it is a fact that, the plaintiff had an agreement to refer disputes with Ankal for arbitration. The defendants were not parties to the arbitral proceedings. An award had been passed against Ankal. It was contended that for performance of their part of the agreement, the 1st defendant had stood guarantee and in this connection, Ex.A5 had been produced. It was also contended that the Guarantee Deed, which had been notarized, had also been produced and marked as Ex.A6.

19.It is the further contention of the learned counsel for the appellant that the appellant had instituted O.S.No.486 of 2004 before the I Additional District Court at Tiruppur, seeking recovery of the amount due from the respondents herein. It was contended that the respondents were initially set exparte for not filing written statement. Subsequently, the 2nd respondent filed written statement, which was adopted by the 1st respondent. The respondents failed to cross examine the witness for the appellant and the suit was decreed exparte again. Thereafter, an application was filed to set aside the exparte decree. That was allowed on condition to deposit a sum of



Rs.5,00,000/-. In the meanwhile, the 1st respondent died. The appellant had taken steps to implead the other legal representatives of the 1st respondent, quite apart from the 2nd respondent. But however, service could not be completed and therefore, the said application came to be dismissed for default.

20. The learned counsel for the appellant contended that the estate of the 1st respondent was adequately represented by the 2nd respondent and that therefore, there was no procedural lacuna in proceeding with the suit as against the 2nd respondent. It was contended that the 2nd respondent again did not come forward to cross examine the witness for the appellant. The suit was again decreed ex parte decree. Another application was filed to set aside the ex parte decree, which was allowed. The learned counsel for the appellant contended that the ex parte decree was set aside only against the 2nd respondent and the ex parte decree originally granted against the 1st respondent still stood and therefore, it was contended that the suit after trial could be dismissed only as against the 2nd respondent and not against the 1st respondent.



21.It was further contended that the learned Trial Judge had taken up a specious plea in holding that the documents of guarantee should have been proved by the appellant herein. The learned counsel contended that even then, the exparte decree still holds as against the estate of the 1st respondent and therefore contended that the dismissal of the suit in entirety was not proper and that this Court should interfere with the same and allow the appeal suit.

22.The learned Senior Counsel for the 2nd respondent, however, contested and disputed these contentions. According to him, the appellant had business transactions only with Ankal Finance Limited which was an independent entity and the appellant did not have independent transactions with the 2nd respondent. He also contended that the respondents had denied execution of the guarantee document. The execution of the mortgage by deposit of Title Deeds was also denied. The burden was therefore on the appellant to prove these documents. But however, the appellant failed to prove the documents. It was contended that the 2nd respondent was not liable to pay any amount and that the liability can be fastened only on Ankal. It had been contended that subsequently the appellant had also initiated arbitration



proceedings as against Ankal and an award had also been passed and they had also filed an enforcement application as against the said company. It was further contended that the learned Trial Judge had correctly appreciated the evidence on record and had come to a just decision dismissing the suit. It was contended that there was no merit in the appeal suit and therefore, the same should be dismissed.

23. We have carefully considered the arguments advanced and perused the material records.

24. The following points arise for consideration:

“i). Whether the exparte decree could be taken advantage of by the appellant to the disadvantage of the 1st respondent?

ii). Whether the alleged deposit of title deeds and alleged creation of equitable mortgage by the respondents has been proved in manner known to law?

iii). Whether the appellant can seek a personal decree against the 2nd respondent? ”



25. Since the evidence adduced by the parties during the course of trial with respect to the three points taken up for consideration are interlinked, all the three points are taken up for determination together.

26. The appellant had originally filed O.S.No.433 of 2002 before the Sub Court, Tiruppur, which suit was later transferred to the District Court and renumbered as O.S.No.486 of 2004 and made over to the I Additional District Court, Tiruppur. The suit has been filed seeking recovery of a sum of Rs.83,88,020.45/- together with interest. The suit was based on Guarantee Deeds said to have been executed by the respondents. The appellant, is a trading member of the National Stock Exchange of India Limited. The respondents were Directors of Ankal Finance Limited having registered office at Coimbatore. The 1st respondent, who is deceased, is the father of the 2nd respondent. Ankal Finance Limited was a constituent of the appellant vide an agreement dated 25.05.2000. A Securities Lending and Borrowing Agreement was also executed on 25.05.2010. These two documents were marked as Exs.A2 and A3. A further Securities Lending and Borrowing Agreement was executed on 09.06.2000, which was marked as Ex.A4.



27.It is the contention of the appellant that a Guarantee Deed had also been executed on 14.08.2000 in Ex.A5. The main thrust of the arguments of the learned counsel for the appellant was that an exparte decree had been passed on 11.04.2007 in the suit filed by the appellant and only the 2nd respondent had filed an application under Order IX Rule 13 of CPC along with an application to condone the delay and the exparte decree was set aside only against the 2nd respondent. The learned counsel contended that the decree, however, stood against the 1st respondent and since that decree has not been set aside, the impugned judgment of the Trial Court has to be set aside to that extent. It had been further contended that a preliminary decree had been granted with costs on 30.10.2008 and I.A.No.704 of 2010 had also been filed to pass final decree. The learned counsel for the appellant argued that since a preliminary decree had been passed, the parties are bound by such decree unless the same is set aside in manner known to law.

28.In this connection, specific reference was made to the judgment of the Hon'ble Supreme Court reported in ***AIR 1963 SC 992, Venkata Reddy and others V. Pethi Reddy***, wherein it had been held that when a '*decision is embodied in this judgment which is followed by a decree finality must*



naturally attach itself to it in the sense that it is no longer open to question by either party except in an appeal, review or revision petition as provided for by law.'

29.It had been further held as follows:

“5.

A decision is said to be final when, so far as the court rendering it is concerned, it is unalterable except by resort to such provisions of the Code of Civil Procedure as permit its reversal, modification or amendment. Similarly, a final decision would mean a decision which would operate as res judicata between the parties if it is not sought to be modified or reversed by preferring an appeal or a revision or a review application as it permitted by the Code. A preliminary decree passed, whether it is in a mortgage suit or a partition suit, is not a tentative decree but must, in so far as the matters dealt with by it are concerned, be regarded as conclusive. No doubt, in suits which contemplate the making of two decrees a preliminary decree and a final decree – the decree which would be executable would be the final decree.”

30.The learned counsel, therefore, very strongly urged that since a preliminary decree had been passed which is still in force and which had not



been set aside, further proceedings must be permitted and urged that the judgment of the Trial Court dismissing the suit should be interfered with.

31. We have carefully considered this particular line of argument advanced by the learned counsel for the appellant. The only point to be examined is that,

1). Whether the preliminary decree dated 30.08.2008 could be considered to have the force of law or not?.

32. In order to address this issue, it would be appropriate to extract the exparte judgment dated 30.10.2008:

“D2 called Absent set exparte. PW-1 examined. Ex.A1 to A17 marked claims proved. Preliminary decree is passed as prayed for with costs. Time for payment two months.”

33. The cryptic judgment, as extracted above, cannot be considered as valid in the eye of law. Merely because the defendant is absent would not create a presumption that the case of the plaintiff is true.



34. In the instant case, the 2nd defendant had filed a written statement denying execution of the Mortgage Deed and the Deed of Guarantee. Necessary issues would have to be framed under Order XIV Rule I CPC and issues will have to be answered by the Trial Court.

35. It is the very specific case of the respondents that they had not signed either of the two documents. The plaintiff had a responsibility to adduce evidence to prove execution of both Exs. A4 and A5. Merely marking the documents would not indicate that the documents stood proved in the eye of law.

36. In *AIR 2003 SCC 2508 : (2003) 7 SCC 350, Ramesh Chand Ardawatiya v. Anil Panjwani*, the Hon'ble Supreme Court while examining the provisions under Order IX Rule 6 and Order VIII Rule 10 of CPC had stated even when a written statement had not been filed and even if the suit proceeds *ex parte* under Order IX Rule 6 of CPC, the plaintiff would still necessarily have to prove his case. It had been held as follows:

“33.But there is substance in the other limb of this submission made by the learned Senior Counsel for the defendant-appellant. Even if the suit proceeds ex parte and in



the absence of a written statement, unless the applicability of Order 8 Rule 10 CPC is attracted and the court acts thereunder, the necessity of proof by the plaintiff of his case to the satisfaction of the court cannot be dispensed with. In the absence of denial of plaint averments the burden of proof on the plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex parte the court is not bound to frame issues under Order 14 and deliver the judgment on every issue as required by Order 20 Rule 5. Yet the trial court should scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the “points for determination” and proceed to construct the ex parte judgment dealing with the points at issue one by one. Merely because the defendant is absent the court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence.”

37.In **AIR 2002 SCC 2370 : (2002) 5 SCC 377, Sushil Kumar Sabharwal v. Gurpreet Singh**, the Hon’ble Supreme Court had held as follows:



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“12. The provision contained in Order 9 Rule 6 CPC is pertinent. It contemplates three situations when on a date fixed for hearing the plaintiff appears and the defendant does not appear and three courses to be followed by the court depending on the given situation. The three situations are: (i) when summons duly served, (ii) when summons not duly served, and (iii) when summons served but not in due time. In the first situation, which is relevant here, when it is proved that the summons was duly served, the court may make an order that the suit be heard ex parte. The provision casts an obligation on the court and simultaneously invokes a call to the conscience of the court to feel satisfied in the sense of being “proved” that the summons was duly served when and when alone, the court is conferred with a discretion to make an order that the suit be heard ex parte. The date appointed for hearing in the suit for which the defendant is summoned to appear is a significant date of hearing requiring a conscious application of mind on the part of the court to satisfy itself on the service of summons. Any default or casual approach on the part of the court may result in depriving a person of his valuable right to participate in the hearing and may result in a defendant suffering an ex parte decree or proceedings in the suit wherein he was deprived of hearing for no fault of his. If only the trial court would have been conscious of its obligation cast on it by Order 9 Rule 6 CPC, the case would not have proceeded ex parte against the



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defendant-appellant and a wasteful period of over eight years would not have been added to the life of this litigation.”

38.It is seen from the judgment extracted in the instant case that the Trial Court, while passing the preliminary decree had not examined whether the documents produced by the plaintiff were admissible and proved in manner known to law. This is all the more necessary since written statement had been filed denying execution of the said documents. It is to be noted that even if the defendant is set exparte, the plaintiff in his suit has to prove all facts and relevant facts which would entitle him to a decree. This burden has to be discharged by the plaintiff to seek the right to his relief.

39.In **(2015) 5 SCC 588, Maya Devi v. Lalta Prasad**, the Hon’ble Supreme Court had held as follows:

“40. Finally another aspect which has come to the fore, is the approach of the trial court in the adjudication of the suit.

41. The absence of the defendant does not absolve the trial court from fully satisfying itself of the factual and legal veracity of the plaintiff's claim; nay, this feature of the litigation casts a greater responsibility and onerous obligation on the trial court as well as the executing court to be fully satisfied that the claim



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has been proved and substantiated to the hilt by the plaintiff.
Reference *to Shantilal Gulabchand*

Mutha v. TELCO Ltd. [(2013) 4 SCC 396 : (2013) 2 SCC (Civ) 632], will be sufficient. The failure to file a written statement, thereby bringing Order 8 Rule 10 CPC into operation, or the factum of the defendant having been set ex parte, does not invite a punishment in the form of an automatic decree. Both under Order 8 Rule 10 CPC and on the invocation of Order 9 CPC, the court is nevertheless duty-bound to diligently ensure that the plaint stands proved and the prayers therein are worthy of being granted.”

The dictum laid down is very clear that the burden of the plaintiff to prove the case is paramount.

40. In the instant case, the execution of the guarantee had not been proved. The deposit of title deeds was not by a registered documents. These aspects had been pointed out by the learned Trial Judge while dismissing the suit. The learned counsel for the appellant had confined arguments only with respect to the preliminary decree having been granted earlier, but that preliminary decree is no decree in the eye of law. It had been very clearly held that both Exs.A5 and A7 had not been proved in manner known to law.



Further, Ex.A5 requires registration under the Registration Act. We hold that the appellant can never place reliance on the preliminary decree passed on 30.08.2008.

41.With respect to the reasoning of the learned Trial Judge that the plaintiff had failed to prove the execution of Exs.A5 and A7 by not calling upon the attesting witnesses to prove its execution, we hold that the said observation and finding will necessarily have to be sustained. Both Exs.A5 and A7 which are Guarantee Deed and the deposit of Title Deed both dated 14.08.2000 have not been proved in manner known to law. The respondents herein can never be mulcted with a personal decree only because the 2nd respondent was a Director of Ankal Finance Ltd.

42.It is to be further noted that the 1st respondent had died leaving behind other legal representatives apart from the 2nd respondent. They have not been impleaded as parties to the suit, even though an application to implead them had been allowed by the Court. They are necessary parties to the suit.



43. Section 2(11) of CPC defines Legal Representatives as follows:

2(11). "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;

44. The appellant can never claim that the estate of the 1st respondent is represented only by the 2nd respondent. The legal representatives should have been brought on record in the suit also. Having failed to do so, the suit suffers and necessarily has to be dismissed.

45. In view of all these reasons, we hold that there are no merits in the Appeal Suit and the same is dismissed with costs. The judgment and decree of the Trial Court in O.S.No.486 of 2004 dated 03.12.2016 is confirmed.

(C.V.K.,J.) (K.B.,J.)
12.02.2026

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Index: Yes/No
Internet: Yes/No
Speaking order: Yes/No
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C.V.KARTHIKEYAN,J.

AND

KUMARESH BABU, J.

smv

To

- 1.The I Additional District and Sessions Judge, Tiruppur.
- 2.The Section Officer
VR Section,
High Court of Madras.

Pre-delivery Judgment in

A.S.No.129 of 2017

12.02.2026

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