

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

OSA No.43 of 2020

and CMP Nos.1566, 7462 and 8305 of 2020

1. M/s.Gemini Film Circuit,
Rep. by its Managing Partner,
Mr.A.Manohar Prasad,
28, New Bangaru Colony,
West K.K.Nagar, Chennai 600 078.

2. A.Manohar Prasad

3. A.Sai Siva Jyothi

4. A.Lakshmi Anandi

5. A.Anand Prasad

6. Kovelamudi Bapaiah

7. A.Chandini

8. Kiran Parvataneni

... Appellants

-vs-

1. M/s.Venkateswara Financiers
Hyderabad Private Limited,
Rep. by its Managing Director,
Mr.A.Venkatesh Reddy, H.No.8-2-269/S/90,
Plot No.90, Sagar Co-operative Housing
Society, Road No.2, Banjara Hills,
Hyderabad – 500 034.

2.M/s.Gemini Industries & Imaging Limited,
Rep. by its Managing Director,
Mr.A.Manohar Prasad,
28, New Bangaru Colony, West K.K.Nagar,
Chennai 600 078.

... Respondents

Appeal filed under Order XXXVI Rule 1 of OS Rules read with Clause 15 of the Letters Patent against the judgment and decree dated 04.12.2019 passed in C.S.No.99 of 2018 on the file of original side of this court.

For the Appellants : Mr.V.Prakash
Senior Counsel
for Mr.G.Rajesh

For the Respondents : Mr.Krishna Ravindran
for R-1

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J U D G M E N T

(Delivered by the Hon'ble Chief Justice)

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The appeal has been needlessly dragged by the appellants and in course of the last few months, both the court and the respondent plaintiff have been deceived by false promises made by or on behalf of

the appellants without, as it now turns out, any intention to abide by the same.

2. Adjournments had been sought and obtained over the last year while making promises for payment, but the payment has not been forthcoming. However, that aspect may now be forgotten since the appeal has been heard out on merits. It may only be recorded that the appellants may have avoided the subterfuge that was resorted to in the appellants' attempt to give an impression that they intended to satisfy the claim of the respondent.

3. On merits, there is nothing much that the appellants have to show. It is the admitted position that a loan for Rs.7.5 crore was obtained by the appellants in the year 2012 upon agreeing to pay interest at the rate of 27 per cent per annum. Till date, inclusive of interest, a sum of Rs.12.85 crore has been paid and the payments received have to be credited against the interest first before the principal sum is adjusted. By the judgment and order impugned dated December 4, 2019, the claim has been summarily allowed upon the appellants herein failing to file the written statement and, further,

upon the appellants herein failing to deal with the applications for summary judgment filed under Order XIII-A of the Code, as amended by the Commercial Courts Act, 2015, on merits. The impugned judgment records that it was indicated in the counter-affidavit to the application for summary judgment that the suit may not have been maintainable, that the plaintiff was not entitled to any payment, but the averments leading upto the claim and the substance of the claims were not dealt with at all.

4. Indeed, the trial court recorded that while dealing with the application for summary judgment in A.No.1601 of 2019, the claims or the documents relied upon in support of the claims had not been dealt with. The trial court observed that multiple applications were taken out by the defendants to subvert the spirit of Order VIII Rule 1 of the Code.

5. The trial court was satisfied that the writ of summons had been duly served on the defendants and recorded the respective dates. The summons were served between February 2018 and June 2018.

6. The trial court recorded that sufficient time had been afforded to the defendants to file their written statement "even beyond the time prescribed" and the defendants forfeited their right to file the written statement on November, 2019. The trial court found that there was no credible challenge to the agreement of July 23, 2012, the registered mortgage deed of May 27, 2014 or the supplemental agreement of February 5, 2015. The mortgage was registered. In addition, the rights pertaining to the negative of the film by the name of "Madha Gaja Raja" had been furnished by way of security.

7. However, in course of the present appeal, upon the appellants' assurance that a certain sum of money would be paid to the plaintiff by March 31, 2020, the plaintiff was induced to allow the film to be released by the appellants herein though the promised payment has not been made despite the passage of more than 18 months after the promised date.

8. The trial court referred to the applicable provisions of the Code, particularly to Order XIII-A as amended. Order XIII-A permits a summary judgment to be pronounced in a commercial suit, whether

for a part or the entirety of the claim. Rule 3 of such Order permits the court to pronounce summary judgment on a claim if it considers that the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be, and there is no compelling reason why the claim should not be disposed of before recording of oral evidence. Rule 6 under Order XIII-A permits the court to pass a judgment on the claim or a conditional order. In any event, upon the defendants not filing any written statement, particularly when the time to file the written statement was mandatory and no extension could be granted therefor, the claim as made out in the plaint stands virtually admitted. There is no real dispute in this case about obtaining the loan or as to the terms of the loan or the nature of the security furnished or the quantum of repayment made. On the basis of what was evident before the trial court, the discretion exercised was perfectly in order and it does not lie in the mouth of the appellants to complain that there has been any flawed procedure or perverse exercise of discretion, particularly since no shred of any possible defence to the claim was indicated by way of any affidavit or document placed before the trial court.

9. Though Learned Senior Counsel appearing for the Appellant endeavoured to impeach the judgment under appeal citing the decision of this Court in **Syrma Technology Private Limited -vs- Powerwave Technologies Sweden AD** (Order dated 13.03.2020 in O.S.A. No. 345 of 2019), nothing has been shown on facts or in law that could have disentitled the plaintiff from obtaining summary judgment as claimed. There is no dispute as to the quantum of money received, no dispute as to the rate of interest and no dispute as to how much has been repaid and what remains due.

10. Defaulting borrowers, like the present Appellants, take advantage of the existing judicial system and prey on its shortcomings. This is because more often than not, courts do not pass appropriate order for costs and do not take matters to their logical conclusion by taking action in perjury in respect of false affidavits. The entire object of the Act of 2015 would be defeated if commercial matters are not dealt with by applying commercial principles and by awarding appropriate costs and interest. There is no doubt that the appellants here took advantage of the system and its delays in dragging the matter over a long period and being bold enough to submit to court

that cheques had been issued which were to arrive the next day only to proffer some further specious excuse for the non-arrival of the cheques the following day. There is no ground for interfering with the judgment and order impugned.

11. It is made clear the amounts paid during the pendency of the suit and appeal will be adjusted first against the interest due in terms of the decree before being adjusted against the principal.

12. OSA No.43 of 2020 is dismissed as being completely devoid of merit. The appellants will pay costs assessed at Rs.25 lakh to the respondent in addition to whatever is due in terms of the decree that has been upheld. CMP Nos.1566, 7462 and 8305 of 2020 are closed.

(S.B., CJ.) (P.D.A., J.)

22.10.2021

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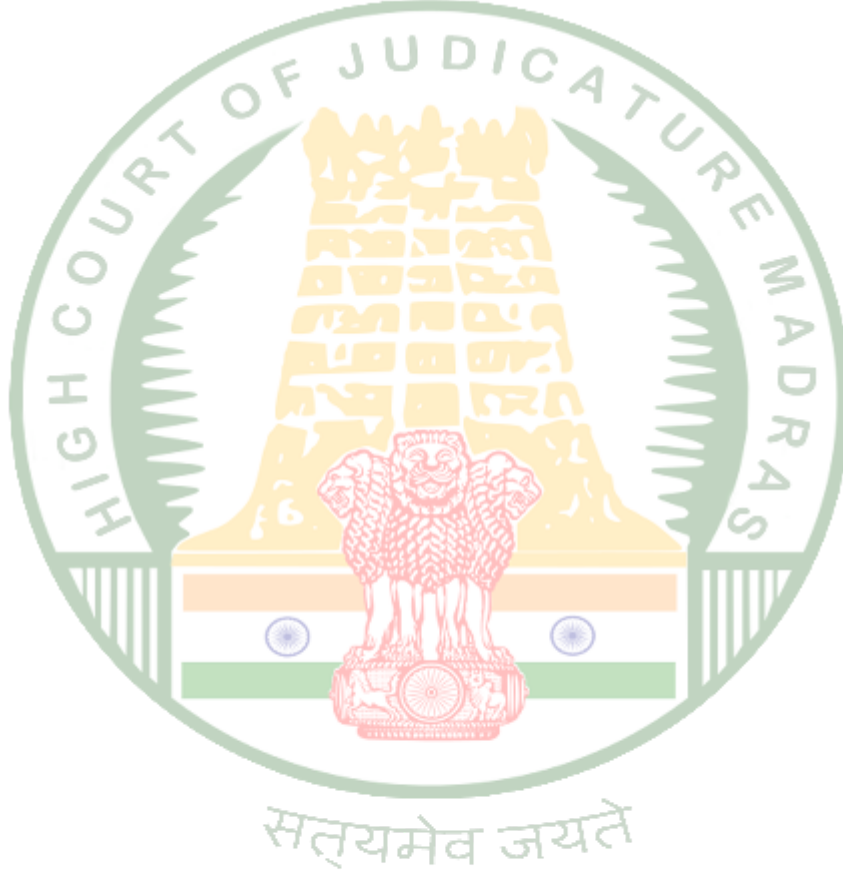
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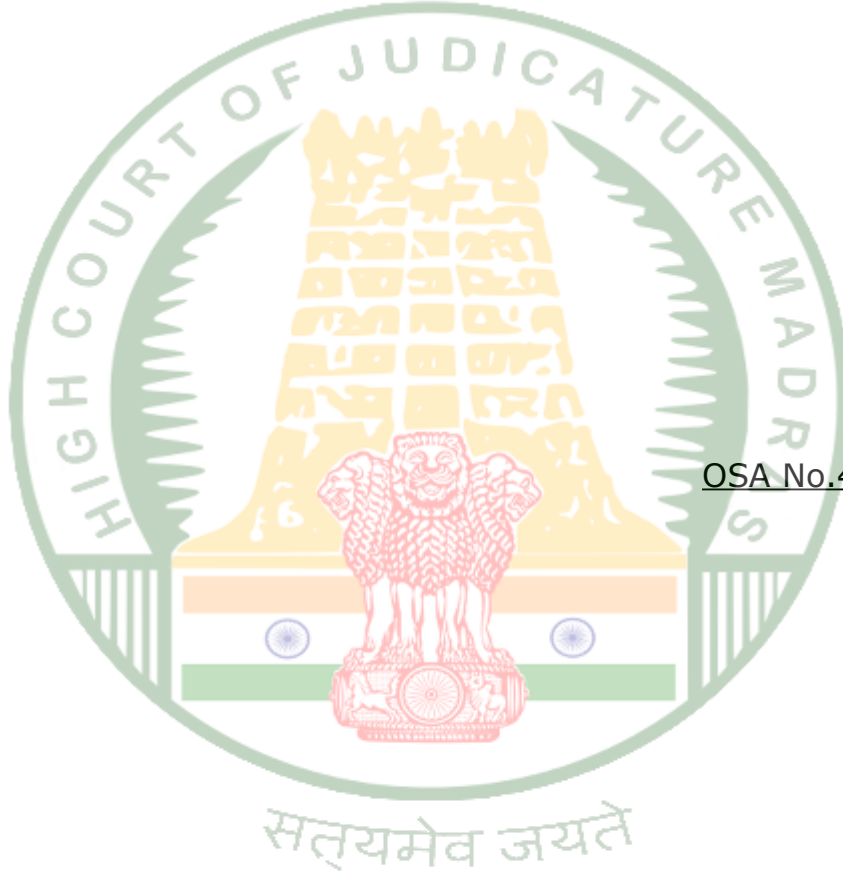


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OSA No.43 of 2020

THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKEVALU, J.

(sra)



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