

(2017) 08 MAD CK 0082
In the Madras High Court
Case No : 943 of 2001

M/s.Sundaram Finance Limited

APPELLANT

Vs

PCAC Limited (In liquidation) represented by Official
Liquidator, High Court, Madras, & Ors.

RESPONDENT

Date of Decision : 16-08-2017

Acts Referred:

Citation : (2017) 08 MAD CK 0082

Hon'ble Judges : C.V.Karthikeyan

Bench : SINGLE BENCH

Advocate : C.V.Karthikeyan

Judgement

1. This civil suit has been filed by the Plaintiff, M/s.Sundaram Finance Limited, to pass a judgement and decree, against the Defendants:- (a) granting a preliminary decree, directing the Defendants to pay the Plaintiff a sum of Rs.4,80,78,862/- together with interest at 18% p.a. from the date of the suit till realisation, within such time this court may stipulate and in default, to pass a final decree for sale of the properties in the Schedules "A" to "F".

(b)if the sale proceeds under such sale are found to be sufficient, to satisfy the decree, to pass a personal decree against the Defendants.

(c) directing the Defendants to pay the costs of the suit to the Plaintiff.

2. During the course of hearings and trial, the defendants had given up the relief against the 6th and 7th defendants. The 1st defendant company had suffered orders of liquidation and consequently, the Official Liquidator had been impleaded to represent the 1st defendant. The properties against, which the plaintiff proceeded, were described in the Schedules B, C, and D of the plaint. The 2nd defendant filed a written statement, but since the Official Liquidator took charge of the assets, the other defendants did not contest the proceedings.

3. During the trial, on the side of the plaintiff, N.Madhusudhanan, Senior

Manager - Legal was examined as PW.1 and He marked Ex.P1 to Ex.P97 documents. The authorization letter with Board resolution was marked as Ex. P.1.

4. It is the case of the plaintiff that they are carrying on business of loan/hire purchase/lease of motor vehicles/automobiles/machinery/equipments and lends money to prospective purchasers of motor vehicle/machinery/ equipment on the security of the asset to be purchased. The 1st defendant PCAC Limited is a company registered under the Companies Act, 1956. However, since it had gone into liquidation, the Official Liquidator had been impleaded to represent the 1st defendant.

5. The 1st defendant sought bill discounting facilities from the plaintiff and executed a letter of undertaking indemnity, Ex. P.2 on 18.08.1994. The 1st defendant proposed to purchase various items of equipment, components, raw materials, tools, spares from different suppliers and also other consumer articles like garments, fabrics from several suppliers. Bills of Exchange, for not more than 90 days validity shall be drawn by the suppliers. The plaintiff was to provide financial assistance to the 1st defendant. The limit was Rs. 50 lakhs. A letter dated 31.12.1998 relating to bills discounting was executed by the 1st defendant. This was Ex.P3. The 1st defendant purchased fabrics and garments from J.K. Enterprises, and the invoices were Ex.P4 to P9 and the Bills of Exchange were Ex. P10 to P15. They also purchased products from A.K.Marketing and the invoices were Ex.P16 to P19 and the Bills of Exchange were Ex.P20 to P21. They also purchased products from Parthasarthy Agencies Pvt. Limited and the invoices were Ex.P22 to P31 and the Bills of Exchange were Ex.P32 to P36. They also purchased products from National Traders and the invoices were Ex.P 37 to P43 and the Bills of Exchange were Ex.P44 to P50. They also purchased products from Anandan International and the invoices were Ex.P51 to P62 and the Bills of Exchange were Ex.P63 to P74.

6. By letter dated 20.08.1996, Ex.P75, the 1st defendant offered immovable as collateral. They had deposited title deeds earlier on 19.12.1994. The 3rd to 7th defendants had appointed the 2nd defendant as their power of attorney by a registered document and had also created equitable mortgage by deposit of title deeds. The documents relating to the power of attorney and creation of equitable mortgage by the 3rd defendant were marked as Ex.P76 to P79. The documents relating to the power of attorney and creation of equitable mortgage by the 4th defendant were marked as Ex.P.80 to P.81. The documents relating to the power of attorney and creation of equitable mortgage by the 5th defendant were marked as Ex.P.82 to P.84.

7. The 6th and 7th defendants had also executed similar documents, but during the course of hearing and trial, the plaintiff had given up their claims against the 6th and 7th defendants.

8. The 2nd defendant deposited the title deeds with the plaintiff in respect of the B, C and D Schedule properties and created equitable mortgages, by letters

dated 28.01.1997. It had been stated in the plaint, and substantiated through the evidence of P.W.1, that the 1st defendant, who had availed bills discounting facility had failed and neglected to pay the amounts to the plaintiff. A legal notice, Ex. P.85, dated 03.08.2001 was issued by the plaintiff. The 1st defendant sent a reply, Ex. P.88, dated 07.08.2001 promising to settle the dues. A one time settlement was offered by the plaintiff by letter in Ex. P.89. The 1st defendant had acknowledged their liability by letter dated 12.10.1998, Ex. P.90. The Encumbrance Certificates for the properties had been produced as Ex. P.91 to Ex. P.94.

9. The 2nd defendant filed a written statement, stating that since the 1st defendant was wound up, the suit would not lie. However, the suit was instituted before the filing of CP.No. 143 of 2001 on 17.06.2001. Further, the Official Liquidator had been impleaded to represent the 1st defendant.

10. The plaintiff is a secured creditor. The plaintiff can remain outside the winding up proceedings. The suit had also been filed within the period prescribed by the law of limitation. The plaintiff did not seek any relief against the 6th and 7th defendants. After the payments made by the 6th and 7th defendants amounting to Rs. 24 lakhs and Rs. 10 lakhs respectively, and also a sum of Rs. 20 lakhs by the 2nd defendant, the plaintiff has sought for a preliminary decree for Rs. 4,26,78,862/-. The statement of accounts had been filed as Ex. P.97. In view of the overwhelming documentary evidence, I hold that the plaintiff had substantiated the case.

11. Accordingly, this civil suit is decreed as prayed for with costs. There will be a preliminary decree, directing the 1st to 5th defendants to pay to the plaintiff jointly and severally Rs.4,26,78,862/- (Rupees four crores twenty six lakhs seventy eight thousand eight hundred and sixty two only) together with interest at 18% p.a. Time for payment is three months. In default of the 1st to 5th defendants failing to do so, the plaintiff is at liberty to file an application to pass a final decree for sale of the properties described in the B C and D Schedules to the plaint and to appropriate the sale proceeds towards the suit claim and in the event the sale proceeds are found to be insufficient, seek orders to pass a personal decree against the 1st to 5th defendants.