
(1991) 02 MAD CK 0064
In the Madras High Court

Union Bank of India

APPELLANT

Vs

S. Pavai and Others

RESPONDENT

Date of Decision : 19-02-1991

Acts Referred:

Registration Act, 1908 — Section 17

Transfer of Property Act, 1882 — Section 58(f), 59

Citation : (1992) 1 MLJ 371

Hon'ble Judges : Arumugham, J

Bench : Single Bench

Judgement

Arumugham, J.—The suit is for recovery of a sum of Rs. 1,01,697.25 with future interest at 15% per. annum against the first defendant, for a mortgage decree against the defendants 2 to 4 for the said amount and for a personal decree against the defendants 2 to 4 for the said amount with subsequent interest and costs.

2. The substance of the plaintiffs case as gathered from the plaint is as follows:

The plaintiff is a Bank constituted under Central Act 5 of 1970, having its head office at Bombay with the several branches throughout the country and among which, a branch at Ennore, Saidapet Taluk, Chengalpattu District, is being represented by its Principal Officer and Manager. The first defendant being the fisherman, approached the plaintiff for the grant of loan under the finance programme to his business in fishing, particularly for purchasing a fishing boat and that for the said loan, the defendants 2 to 4 who were also doing the same business, undertook to repay the loan to be granted to the first defendant and that thereby, they deposited title deeds on 17.1.1977 of their property situate in Door No. 80, Albert Colony, Royapuram, Madras, with the intention of creating a security over the said property for the loan to be advanced to the first defendant. Accordingly a sum of Rs. 58,000 was granted to the first defendant by the plaintiff bank by way of loan on 20.1.1977 and that for which, the first defendant executed a promissory note for the abovesaid amount on 20.1.1977 and that the

defendants 2 to 4 also executed a Letter of Continuing Guarantee, making themselves liable for the loan to be advanced to the first defendant on the same date. Thus, all the defendants agreed to repay the said loan amount with interest at 15% per annum.

3. It was further agreed that the suit loan should be repaid in 48 monthly in statements commencing from April, 1977. With the loans secured, the first defendant purchased a Fishing Boat by name, S.T.B. James-I and the said boat was used for his business of fishing in the sea. Accordingly, on 13.5.1977 the first defendant paid a sum of Rs. 1,000 and on 25.5.1977, another sum of Rs. 1,000 was paid by him. Again on 12.7.1977, he has paid a sum of Rs. 2,000 to the plaintiff bank towards the suit loan and thus in all, he has paid a total amount of Rs. 4,000 only and that thereafter, no amount was paid by the first defendant towards the suit loan by the first defendant or the other defendants.

4. As per the rules and regulations, the fishing boat, purchased by the first defendant, was insured with the United India Insurance Company, Madras, against the accident risks and that subsequently, it was alleged that the said boat was capsized into the sea and was lost on 8.8.1978 by the first defendant. Consequently, the plaintiff issued several notices to the defendants, calling upon them to discharge the loan and that in such course, the first defendant set up untenable and vexatious pleas and that the defendants had not discharged the suit loan. As per the accounts of the loan in the plaintiffs records, as on 17.12.1979, after deducting the payments made by the first defendant, a sum of Rs. 67,008.50 was found due and that the first defendant had acknowledged the said amount by executing a promissory note for the said amount in favour of the plaintiff, on 17.12.1979. Despite repeated demands, the defendants had failed to discharge the suit loan. Since the defendants 2 to 4 had created a security of mortgage for the repayment of the suit loan by depositing their title deeds over their property and since they had not paid the same as agreed to pay the same with interest, all the defendants are liable to pay the suit claim with the interest which comes to Rs. 1,01,697.25 upto 30.11.1981 and the plaintiff is entitled to collect the said amount.

5. The plaintiff has caused a search in the Office of the Registrar of Assurances regarding the hypothecated property and came to know that there were no other encumbrances than the one mentioned in the suit. Since the promissory note was executed by the first defendant on 17.12.1979, for the suit principal amount, the suit claim against the first defendant has not been barred by Law of Limitation and the claim against the defendants 2 to 4 on the basis of the equitable mortgage created on 17.1.1977 is also within the time.

6. On the abovesaid pleadings, the plaintiff prays for a personal decree against the first defendant for the suit claim and for a mortgage decree against the defendants 2 to 4 with future interest and costs.

7. The first defendant resisted the claim of the plaintiff by filing a separate

written statement on his behalf, on the following main contentions.

This defendant inter alia contends that the several averments made in the plaint are not true, but admits that he had approached the plaintiff bank for the grant of loan for the purpose of his fishing business but denied the undertaking given by the defendants 2 to 3 as well as the deposit of title deeds by them on 17.1.1977 over their property bearing Door No. 80, Albert Colony, Royapuram, Madras, with the intention of creating security and mortgage over the suit property for the suit loan given to the first defendant by the plaintiff and that the defendants 2 and 3 never had any intention whatsoever to create any equitable mortgage in respect of the suit property as a security for the repayment of the loan. This defendant contends further that the defendants 2 and 3 were also trying to get loan from the plaintiff at that time and that for the perusal of the title deeds, the defendants 2 and 3 left their title deeds with the plaintiff for their legal opinion and that somehow or other, the said loan was not materialised and that since the defendants 2 and 3 were also approached the plaintiff at the same time when the first plaintiff was transacting with the plaintiff, the said position was taken advantage of by the plaintiff to create the suit claim, that all the three defendants were meeting the plaintiff and that subsequently, it appears that the plaintiff bank had utilised that opportunity to create the suit claim on the basis of the title deeds as if the defendants 2 and 3 had deposited the same for the repayment of the loans secured by the first defendant and that the defendants 2 and 3 had no intention to create any equitable mortgage in favour of the plaintiff at any time and that the defendants 2 and 3 did not get any monetary benefit and that there was no necessity for them to guarantee the plaintiff for any amount, if at all paid to the first defendant and that in the said circumstances, the defendants 2 and 3 are not liable to the suit claim and so it follows that the property belongs to the defendants 2 and 3 cannot be the subject matter between the plaintiff and the first defendant and that as such, the defendants 2 and 3 had to be exonerated from the suit.

8. This defendant contends further that the plaintiff taking advantage of the illiteracy of the defendants manoeuvre to get the signature of this defendant in a number of blank printed forms stating that the signatures on these blank forms are only a mere formality and that except signing the papers when the loan was advanced to the first defendant, this defendant did not sign any other papers subsequently.

9. This defendant adds further that he could not repay the suit loan in view of the fact that the output in the fishing business was not profitable and even so on 8.8.1978, the boat purchased by him was capsized and sank in the high seas and it was a total loss and that upon this factum, he approached the plaintiff with the request to assist him or help him to take up the matter with the United India Fire and General Insurance Company with whom the boat was insured and that since the plaintiff did not co-operate, he could not successfully institute the recovery proceedings against the Insurance Company which resulted in a suit filed by him

in forma pauper is. He contends further that since the plaintiff though bound to co-operate the first defendant in the process of getting the compensation from the Insurance Company, but refused to do so, he is estopped from making the claim as against this defendant and other defendants.

10. This defendant denies the very allegation of executing a promissory note on 17.12.1979 and states further that he never acknowledged the demand for the suit claim on that date, that with the blank papers, the plaintiff who was in possession of the same, might have created the suit documents to suit his conveniences and that even otherwise, it was contended by this defendant that even accepting the promissory note dated 17.12.1979 and that in view of the same, the defendants 2 and 3 are not liable to pay the suit claim and that in view of the said promissory note, the liability of defendants 2 and 3 was absolved. In another stroke, this defendant contends that the plaintiff is not entitled to collect any interest which is compound in nature.

11. On the basis of the above said pleas, the first defendant prays that the suit of the first defendant should be dismissed.

12. The defendants 2 to 4 by filing a memo, have adopted the written statement filed by the first defendant to the above suit and they did not file any separate written statement.

13. On the abovesaid pleadings, the following issues were settled for trial:

(1) Whether the guarantee by defendants? and 3 has been discharged for the reasons mentioned in the written statement?

(2) Whether the defendants 2 to 4 are not liable for the suit claim?

(3) Whether the interest claimed is exorbitant as contended by the defendants?

(4) To what relief, if any, is the plaintiff entitled?

14. Thiru S. Srinivasan was examined as P.W.1 and gave evidence on behalf of the plaintiff and through whom Exs.P-1 to P-29 were marked and that the same are the following.

15. Ex.P-1, dated 17.1.1977 is the memorandum of the deposit of title deeds executed by defendants 2 to 4 in favour of Union Bank of India: Ex.P-2, dated 20.1.1977 is the promissory note executed by the 1st defendant in favour of the Union Bank of India; Ex.P-3, dated 28.4.1965 is the original registered settlement deed executed by one Raman Chettiar in favour of the defendants 3 and 4. Ex.P-4, dated 10.1.1977, 7.1.1977 and 28.9.1973 is the encumbrance certificate. Ex.P-5, dated 20.1.1977 is the letter of continuing guarantee executed by the defendants 2 to 4 in favour of the plaintiff. Ex.P-6, dated 17.12.1979 is the promissory note executed by the 1st defendant in favour of the plaintiff for a sum of Rs. 67,008.10; Ex.P-7, dated 24.8.1980 is the office copy of the legal notice sent by the first defendant to the plaintiff and others; Ex.P-8, dated 1.10.1980 is the reply notice sent by the plaintiff's counsel to the

counsel for the 1st defendant; Ex.P-9, dated 11.10.1980 is the copy of the notice sent by the plaintiff's counsel to the first defendant; Ex.P-10 is the served postal acknowledgment on the first defendant; Ex.P-11, dated 31.12.1980 is the copy of the registered notice sent by the plaintiff's counsel to the defendants-1 to 4; Ex.P-12 is the served acknowledgment on the defendant; Ex.P-13 is also the served postal acknowledgment on the 3rd defendant Ex.P-15 is the unserved registered postal cover containing notice, sent to the 4th defendant herein by the plaintiff's counsel; Ex.P-16, dated 2.1.1981 is the reply notice sent by the defendant's counsel through the plaintiff's counsel; Ex.P-17, dated 10.1.1981 is the registered rejoinder sent by the plaintiff's counsel to the defendant's counsel; Ex.P-18 is the served postal acknowledgment received by the plaintiff's counsel; Ex.P-19 is the true copy of the statement of account maintained by the plaintiff for the first defendant detailing the suit claim; Ex.P-20, dated 8.8.1977 is the letter sent by 1st defendant to the plaintiff's bank; Ex.P-21, dated 8.8.1977 is the copy of letter addressed to the Regional Manager, Madras, by the plaintiff/bank with enclosures of Insurance Policy and the copy of the letter addressed by the first defendant; Ex.P-22, dated 8.8.1977 is the copy of another letter sent by the plaintiff bank to the first defendant; Ex.P-23, dated 8.8.1977 is the letter addressed by the plaintiff to the Development Officer, United India Fire and Insurance Company; Ex.P-24, dated 21.9.1977 is a letter written by the Union Bank of India to the plaintiff; Ex.P-25, dated 8.5.1978 is the letter addressed by the United India Fire and General Insurance Company Limited, Madras, to the first defendant herein with a copy to the plaintiff bank; Ex.P-26, dated 23.12.1978 is the letter addressed to the first defendant by the Regional Office of the plaintiff bank; Ex.P-27, dated 20.7.1979 is the letter addressed by the plaintiff to the Regional Office of the plaintiff bank; Ex.P-28, dated 8.9.1980 is the letter addressed by the plaintiff's Zonal Office to the plaintiff bank; and Ex.P-29, dated 8.1.1981 is the copy of the letter addressed by the plaintiff bank to its counsel.

16. Though the first defendant who alone filed the written statement and resisted the claim of the plaintiff through the suit, the other defendants have adopted the said written statement as that of their own; none of the defendants had come to the witness box to give evidence in support of the contentions and no witnesses were examined and no documents were marked on their behalf.

17. On the abovesaid pleadings and the tendered evidence, the above four issues were alone framed and that even so, the proper and relevant issue for the apt adjudication of the matter in view of the various contentions raised in the written statement will be that as to whether the defendants-1 to 4 are liable to the suit claim and that this issue has not been framed. Since the oral and documentary evidence were adduced during the trial and I find the above issue has not been framed, in the interest of justice, I framed the additional issue, whether the defendants-1 to 4 are liable to pay the suit claim?" as the additional issue in this case. As no separate oral and documentary evidence are necessary for framing this additional issue, the respective parties in the suit will not be put to any

prejudice on this score.

18. Additional Issue:

Whether the defendants 1 to 4 are liable to pay the suit claim to the plaintiff?

19. Findings on Additional Issue No. 1 and Issues 1 and 2:

Besides the pleadings, Thiru S. Srinivasan, the Manager of the plaintiff bank was examined himself as P.W.1 and he gave the evidence on behalf of the plaintiff bank.

[After analysing the evidence of P.W. 1 and the documentary evidence in the case, His Lordship proceeded: - Ed.]

20. P.W.1 has given his evidence in support of the plaintiff's case and also substantiated the documentary evidence and proves the documentary evidence also. A careful analysis of the oral evidence of P.W.1 and the documentary evidence marked as Exs.P-1 to P-29 which are very cogent and convincing, substantiated the averments made in the plaint. During the said evidence, the plaintiff has established the fact that by executing the promissory note, the first defendant had availed of the loan under the Fishing Financial Scheme from the plaintiff bank to the extent of Rs. 58,000 by executing the suit promissory note under Ex.P-2 and that for the due repayment of the same, the defendants 2 to 4 had deposited their title deeds, Exs.P-3 and 4 as well as given a continuing guarantee Letter under Ex.P-5 and that after the loss of the suit boat in the accident, the balance due as on 17.12.1979, a sum of Rs. 67,008.10 with the interest accrued as agreed was confirmed and acknowledged by the first defendant by executing another promissory note Ex.P-6 and that the defendants 2 to 4 had created an equitable mortgage in favour of the plaintiff bank by depositing their title deeds over their house property for the due repayment of the suit loan by the first defendant. It appears further with regard to the claim of the party-payments made by the first defendant towards the suit loan to the extent of Rs. 4,000 in all, was not challenged nor controverted by the defendants.

21. In fact, P.W.1 was cross-examined by Thiru K.N. Thambi, the learned Counsel appearing for the defendants. But this witness has not been cross-examined with reference to any of the contentions made in their written statement. Brief suggestions alone were made to this witness by the learned Counsel appearing for the defendants and that even for which, P.W.1 has categorically denied the same. One another significant aspect available in this case is that though the first defendant has filed a written statement through his counsel and the defendant 2 to 4 have adopted the same, none of them had come forward to give any evidence in support of their claim, but conveniently avoided the witness box to give any evidence and face the cross-examination by the opposite side and the reason for the same is very obvious for the defendants. In this context, I may straightaway observe that the case of the plaintiff with regard to the suit loan

obtained by the first defendant on the security and deposit of the title deeds by defendants 2 to 4 is in favour of the plaintiff as the suit loan has been duly and totally proved beyond any realm of doubt. There was no shred of evidence on the part of the defendants herein by way of rebuttal or denial basing upon the contentions made in the written statement. Therefore, I may state that the proved facts of the plaintiff regarding the suit claim remains unchallenged. Simply because it was alleged that the signatures of the defendants were obtained by the plaintiff in the blank printed forms and that the plaintiff had filled up the same subsequently, it cannot be accepted since it has no relevance in the context that the first defendant had admitted that he had availed of the suit loan and that by which he has purchased the mechanised fishing boat and insured the same with the insurance company under the policy mentioned in Ex.P-22 and that under the circumstances, I am able to see that the defendants have miserably failed to substantiate their defence in any manner provided by law and that I am not satisfied with the attitude and conduct of the defendants herein. The very fact that none of the defendants had preferred to come forward to this Court and offer their evidence by way of rebuttal or denial to the claim of the plaintiff, clinches the fact that the defendants are putting false and evasive defence in this case. One another important fact is that no point was urged by or on behalf of the defendants during the course of the arguments in furtherance of their contentions made in the written statement. It appears further from the oral and documentary evidence adduced in this case and the proved facts that after availing of the suit loan, except the part-payments made to the extent of Rs. 4,000, and as per Ex.P-19, the statement of account, nothing has been paid either towards the principal or interest by the first defendant, the principal debtor, or by the other defendants 2 to 4, the guarantors on the basis of their equitable mortgage created by them inspite of the repeated demands made under the registered letters sent by the plaintiff to all of them. Since the attempts made by the plaintiff's had become futile by not recovering the suit loan, the present suit has been filed by the plaintiff. So far as the interest claimed in the suit is concerned, it was only on the basis of the agreed rate made in the promissory note itself, the claim has been made in the plaint to which the plaintiff is entitled and that the defendants-1 to 4 are liable to pay the suit claim to the plaintiff herein.

22. Before parting with my considerations on the above issues, I have to refer the admissibility and validity of Ex.P-1, the memorandum of deposit of title deeds pertaining to the property hypothecated by the defendants 2 to 4 on 17.1.1977 by way of security for the due repayment of the suit loan obtained by the first defendant herein. Though this document is not a registered one, it reflects the acknowledgment of the receipt of the deposit of the title deeds of defendants 3 and 4 under the cover of Exs.P-3 and P-4 by the plaintiff bank and counter-signed by the defendants 2 to 4. A careful perusal of the contents of Ex.P-1 clinches the fact that Exs.P-3 and P-4, the title deeds of defendants 3 and 4, were deposited prior to the execution of Ex.P-1 and that the said deposit of title

deeds was made as a security by way of equitable mortgage for repayment of the loan amount to be advanced to the first defendant. Even so, the evidence of P.W.1 regarding this Ex.P-1 and the creation of the equitable mortgage by defendants 2 and 3 in favour of the plaintiff bank for the repayment of the loan availed by the first defendant was not challenged nor controverted by the defendants in this case. P.W.1 has not been cross-examined on this aspect as well as the other important aspects which have been contended through the written statement filed by the defendants. In this context, Thiru Subramaniam, the learned Counsel appearing for the plaintiff contends that this Ex.P-1 does not require any registration as it did not form part of the loan transaction availed of by the first defendant on executing the suit promissory note under Ex.P-2 on 20.1.1977, three days later. In support of his contention, he has relied on a Privy Council ruling reported in *Obla Sundarachariar and Ors. v. Narayana Ayyar and Ors.* ILR 1931 Mad. 257. It was held in the abovesaid Privy Council ruling that, "A memorandum signed by the mortgagor in relation to a mortgage by deposit of documents of title may be a document which the Indian Registration Act (1908), Section 17 requires to be registered, even though it does not embody all the particulars of the transaction, but registration is not so required unless the memorandum on its face embodies such terms, and is signed and delivered at such time and place and in such circumstances, as to lead legitimately to the conclusion that so far as the deposit is concerned it constitutes the agreement between the parties." It was held further by the Privy Council, "that the memorandum was not a document which required registration, even if the agreed advance was conditional upon it being given; and that, there being no written agreement, the memorandum as well as oral evidence was admissible in evidence to prove the intent to create a security by deposit of the documents named."

23. The learned Counsel Mr. Subramanian, has then relied on another case law reported in *The United Bank of India Ltd. v. Lekharam Sona Ram and Company and Ors.* (1965) 2 S.C.J. 91, and the head note of which is as follows:

A mortgage by deposit of title deeds is a form of mortgage recognized by Section 58(f) of the Transfer of Property Act which provides that it may be effected in certain towns where a person "delivers to a creditor or his agent documents of title to immovable property with intent to create a security thereon." In other words, when the debtor deposits with the creditor, title deeds of his property with an intent to create a security, the law implies a contract between the parties to create a mortgage and no registered instrument is required u/s 59 as in other classes of mortgage. The essence of a mortgage by deposit of title deeds, is the actual handing over by a borrower to the lender of documents of title to immovable property with the intention that those documents shall constitute a security which will enable the creditor ultimately to recover the money which he has lent. But if the parties chose to reduce the contract to writing, this implication of law is excluded by their express bargain, and the document will be the sole evidence of its terms. In such a case, the deposit and the document

both form integral parts of the transaction and are essential ingredients in the creation of the mortgage. It follows that in such a case, the document which constitutes the bargain regarding security requires registration u/s 17 of the Registration Act, 1908, as a non-testamentary instrument creating an interest in immovable property, where the value of such property is one hundred rupees and upwards. If a document of this character is not registered, it cannot be used in evidence at all and the transaction itself cannot be proved by oral evidence either.

The letters written by the mortgagors to the mortgagee in the instant case were not intended by the parties to be an integral part of the transaction of the mortgage by deposit of title deeds and did not, by themselves, operate to create an interest in the immovable properties mortgaged and so they did not require registration u/s 17 of the Registration Act....

24. One another case reported in *L. Ah. N. Alagappan v. Kalyanasundaram Iyer and Ors.* ILR 1977 Mad. 178, was relied on by the counsel for the plaintiff, in support of his contention. In the saying, a Bench of this Court has held as follows:

If there is evidence, either extrovert or introvert which would compel a court to hold that under a single bargain the borrowing and the deposit of title deeds were effected and that the intention is made clearer and public only in a contemporaneous transaction, then a memorandum evidencing such a bargain needs registration. It may be that the memorandum contains a recital as to the quantum of the amount borrowed. That would not make the memorandum any the less a non registerable one, provided it is an independent transaction and not the sole bargain to evidence the deposit of title deeds. The only important feature on which the court should pay its concentrated attention is that the deposit of title deeds should have taken place earlier than the time of the writing of the memorandum. If such a dissociation in point of time is apparent from the memorandum itself, or if it would be discovered from the totality of the facts and appreciation of the surrounding circumstances, then the plaintiff can successfully pilot his case, on the foot of an equitable mortgage and obtain a mortgage decree.

25. In another case law reported in *H.G. Nanjappa v. M.F.C. Industries (P) Ltd.* 100 L.W. 5, it was held, that the liability which was sought to be secured by the mortgage in question was already existing on the date on which the memorandum was written. It will depend on the manner in which the memorandum is worded and there may be a case like the instant one in which notwithstanding that the deposit of title deeds is made contemporaneously with the memorandum, if the memorandum was not intended to create the mortgage and was merely intended to convey to the defendant like a forwarding letter that the necessary title deeds are deposited with the plaintiff as security for the liability, the mere mention of such liability would not make the document a register-able one." It was further held that "if there is a debt and if title deeds are deposited by the debtor with an intention that the title deeds shall be

security for the debt, then by the mere fact of deposit of those title deeds, a mortgage comes into being. However, sometimes a deposit is accompanied by a memorandum in writing and even though physical delivery of the documents of title is sufficient, the question arises as to whether a memorandum which accompanies the deposit of title deeds requires registration. In such a case, the essential question which falls for consideration is whether the memorandum by itself constitutes bargain between the parties or whether it constitutes evidence of the contract between the parties."

26. Considering the rationale of the case laws held in the above cases to the facts of the present one, and since Ex.P-1 was executed on 17.1.1977 acknowledging the deposit of title deeds made prior to for the loan to be availed of by the first defendant on 20.1.1971, I am fully satisfied to hold that this memorandum Ex.P-1 signed by the defendants 2 to 4 cannot be construed as an integral part of the transaction of mortgage or intended to create an interest in the subject matter of the mortgage. Therefore, in the context of the well-settled proposition of law and having considered the contents of Ex.P-1, with reference to Exs.P-2 to P-4, I am inclined to hold that Ex.P-1, the memorandum which acknowledges deposit of title deeds by defendants 2 to 4 does not, require any registration as contemplated by law and as such in the context of proved facts and circumstances, I hold that a valid mortgage by deposit of title deeds by the defendants 2 to 4 had been created in favour of the plaintiff and that accordingly, the defendants 2 to 4 are equally liable to pay the suit claim as the first defendant had failed to discharge the loan due to the plaintiff.

27. Having regard to the entire oral and documentary evidence adduced in this case, the prayed facts, the written pleas and the established circumstances and the proposition of law, I am fully satisfied that the evidence and the proof offered by the plaintiff made through the claim and that accordingly, I am inclined to hold under the additional issue that all the defendants 1 to 4 are jointly and severally liable to pay the suit claim and that accordingly, I answer in favour of the plaintiff and against the defendants 1 to 4 and that on Issue No. 1, I hold that the guarantee given by the defendants 2 to 4 has not been discharged in any manner and that accordingly, I answer this issue in favour of the plaintiff and against the defendants 2 to 4 and that on Issue No. 2, I hold that the defendants 2 to 4 are jointly and severally liable for the suit claim and that as such, I answer this issue in favour of the plaintiff and against the defendants 2 to 4.

28. Findings on Issue No. 3. Besides of the evidence of P.W.1 the first defendant has agreed to repay the principal amount of loan, viz., Rs. 58,000 with interest at the rate of 15% per annum with quarterly rests under Ex.P-2. Then again, he has confirmed the balance of the principal and the interest which comes to Rs. 67,008.10, repayable with the interest at the rate of 6% over and above the minimum of 15% per annum with quarterly rests. It has to be noted that in accordance with the contract agreed under Ex.P-2 and P-6 deducting part-payment made by the first defendant, the suit claim has been made on the basis

of Ex.P-19, the true copy of the statement of accounts maintained in the regular course of the business of the plaintiff. To allege that the plaintiff is not entitled to make the suit claim with the interest as agreed, no evidence was adduced nor any circumstances with facts were established by the defendants herein. Therefore, under the circumstances, I am satisfied that the interest claimed by the plaintiff in the suit is not exorbitant as contended by the defendants in the written statement and I am inclined to hold that the plaintiff is entitled to claim the interest at the agreed rate. Accordingly, I answer this issue against the defendants.

29. Findings on Issue No. 4 : In the result, the suit of the plaintiff against all the defendants is decreed as prayed for with costs. Time for payment of the decretal amount is three months.