

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.11.2016

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.S.No.60 of 2011

M/s.Integrated Finance Company Limited  
"Vairams"  
112, Thyagaraya Road, 4th Floor,  
T.Nagar, Chennai 600 017

.. Plaintiff

***Versus***

1. Coronation Printing Ink Mfg.Co.,  
Rep by its Partner D.Gnanagiri Babu  
2. D.G.Dharmar  
3. G.D.Leelavathi  
4. G.Banumathy  
5. D.Ganagiri Babu  
6. Gnanagi Ganesan

.. Defendants

**PRAYER:** Plaint filed under Order IV Rule 1 of the Original Side Rules, 1956 read with Order VII Rule 1 of the C.P.C praying to grant a judgment and decree in favour of the plaintiff against the defendants.

a) for a sum of Rs.74,84,375.35 with interest therein at the rate of 36% per annum from date of plaint till realisation; and (b) for costs of the suit.

For Plaintiff : Mr.P.J.George

For Defendants 2 and 4 : Died

For Defendants 1,3,5  
and 6 : Set ex-parte

### **J U D G M E N T**

The suit is filed for recovery of money based on an Hire Purchase agreement.

2. The plaintiff is the Company carrying on business of Hire Purchase and Lease financing having branches all over the country. The first defendant, who is in manufacture of printing ink, approached the branch office of the plaintiff for Hire Purchase Finance facility, which was favourably considered by the plaintiff. Accepting and considering the proposal made by the defendants, a cheque was drawn in favour of the first defendant. Thereafter, the first defendant executed a Hire Purchase Agreement No.HP95COR00050 in respect of the asset described in the Schedule (Item-1) of the plaint for a total sum of Rs.28,69,992/- payable in 36 equated monthly instalments of Rs.79,722/-. The first of such instalment payable was on 14.09.1995 and the last instalment was due on

01.08.1998. The second defendant stood as a guarantor for the due performance of the terms and conditions of the agreement, binding himself jointly and severally liable along with the first defendant.

3. The case of the plaintiff is that the first defendant, defaulted in payment, as agreed. Therefore, the Original Hire Purchase Agreement in HP95COR00050 was rescheduled and a fresh agreement in HP96MAA00210 dated 30.09.1996 was entered rescheduling the payment. Therefore, on the request from the defendants, considering the remaining over dues and the Additional Finance Charges, the earlier agreement was again rescheduled into a Hire Purchase Agreement in HP98MAA00232 dated 30.09.1998. The second defendant also joined in the execution of the Hire Purchase Agreement dated 30.09.1998 as a guarantor, guaranteeing the due performance of the terms and conditions of the agreement. Therefore, according to the plaintiff, the last payment made by the first defendant in respect of the said agreements were on 15.07.1998, 11.06.1998 and 10.05.2000 respectively. Thereafter, several reminders were sent to the defendants to make the payment. But the defendants did not do so. Therefore, the above agreements have come to an end by

efflux of time on 01.08.1998, 01.09.1998 and 01.08.2001 respectively. The attempt of the plaintiff to repossess the asset also was futile, as the defendants had shifted the assets without the permission of the plaintiff contrary to the terms and conditions of the Hire Purchase Agreement. In the meanwhile, the Hire Purchase Agreement dated 14.09.1995 and 30.09.1996 respectively became time barred. The only agreement on which the claim was alive was dated 30.09.1998 and therefore, the plaintiff has restricted its claim only with respect to the Hire Purchase Agreement dated 30.09.1998 and the suit was filed within time. The second defendant is a guarantor and a partner of the first defendant-Company and defendants 3 to 6 are partners of the first defendant, who are jointly and severally liable for the amounts due. Being the commercial transaction, the defendants have made a claim of interest at the rate of 36%p.a. from the date of plaint till the date of realization.

4. The plaintiff has marked the exhibits as Exs.P1 to P8, which are the Hire Purchase Agreements, Invoices and the Statement of Accounts.

5. The Assistant, Vice President (Legal) and authorised signatory of the plaintiff Company has been examined as P.W.1 and through him, the above documents were marked.

6. The plaintiff-Company itself has restricted its claim only with respect to the third Hire Purchase Agreement. It is also stated that it could not re-possess the machinery from the defendants, after the default committed by the defendants. Therefore, the plaintiff is entitled to the decree as prayed for.

7. Accordingly, the suit is decreed as follows:

(i) The plaintiff is entitled to recover a sum of Rs.74,84,375.35.00 from the defendants in the interest at the rate of 9% per annum from the date of filing of the suit, till the date of decree, i.e. *pendente lite*;

(ii) The plaintiff is also entitled to recover the interest at the rate of 6% p.a. from the defendants from the date of decree till its realisation.

No costs.

**29 / 11 / 2016**

Index : Yes/No  
Internet : Yes/No  
srn

PUSHPA SATHYANARAYANA, J,

srn

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