

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,VELLORE,
VELLORE DISTRICT**

Present :- Tmt.S.Ananthi, B.A., B.L.,
Principal District Judge, Vellore.

Thursday, the 17th day of November 2016

O.S. No.56/2016

J.Chandrasekaran . . . Plaintiff

// versus //

1. Aascar Promoters Private Limited, represented by its Managing Director /
General Manager Thiru.S.Sivakolundhu

2. Thiru.S.Sivakolundhu

3. Tmt.Dhatchayaini Defendants

This suit having stood over for consideration before me and coming on for final hearing on 26.10.2016 in the presence of Thiru.J.Sridharan, learned counsel for the plaintiff and Tmt.T.V.Indhumathi, learned counsel for the defendant, when posted for written statement, written statement not filed and on 19.10.2016, defendants 1 to 3 called absent, set exparte, upon perusing the entire case records, this Court delivered the following:-

JUDGMENT

Suit for Recovery of Money; directing the defendants jointly or severally to pay the suit amount of Rs.8,24,000/- together with future dividend @ 5% p.m. on Rs.6,00,000/- from the date of plaint till full final payment; and also directing the defendants jointly or severally to pay the suit amount of Rs.5,69,166/- together with future dividend @ 2.5% p.m. on Rs.5,00,000/- from the date of the plaint to till full and final payment; directing the defendants to pay compensatory costs U/s 35-A of CPC and for costs.

2) Plaint averments in brief :-

The defendants are jointly running the above said "AASCAR PROMOTERS PRIVATE LIMITED" to deal with Real Estate business by collection amounts from public to invest the said amount to purchase the lands and convert the lands into housing sites and sell the same to general public. The first defendant is the company represented by the second defendant and the third defendant is another directed of the said company as stated by the second defendant herein. Further, the defendants are

publishing paper in the name and style of "சம்பாதிக்கலாம் வாங்க" and often given publication for business investment in local daily paper. due to the canvas made by the second defendant, the plaintiff invested a sum of Rs.10,00,000-00 (Rupees Ten Lakhs only) to the defendants on 18.11.2013 by the way of Cheques bearing No.3341197 and 334198 for Rs.5,00,000-00 (Rupees Five Lakhs only) each cheque. At the time of investment, the second defendant told that they would give 5% divided per month for each and every month and after completion of the Program, the defendants agreed to return the said amount without interest. The defendants executed "A" marked letter for the said amount in the NJS paper on 18.11.2013. After the receipt of the amount from the plaintiff, the defendants purchased land as mentioned in the said 18.11.2013 dated letter and make payment at 5% on the investment amount by the way of cheque to the plaintiff herein. All the divided payment endorsed on the back side of the said 18.11.2013 dated "A" marked letter. The defendants paid the dividend amount at the rate of 5% dividend per month upto 17.09.2014 without default. All the endorsement made on the back side of the said letter. After the last payment on 17.09.2014, the defendants requested the plaintiff to wait till the sale of plots and agreed to settled the entire due amount in one time settlement. But, on 12.10.2015 the defendants paid one year divided for a sum of Rs.6,00,000-00 (Rupees Six Lakhs only) and paid a sum of Rs.4,00,000-00 (Rupees Four Lakhs only) towards the principal by the way of cash and net balance as on 12.10.2015 is Rs.6,00,000-00 (Rupees Six Lakhs only). For that month divided the plaintiff issued 5% amount of Rs.50,000-00 (Rupees Fifty Thousand only) by the way of post dated cheque dated 14.03.2016. the said cheque has been dishonored and the plaintiff undertakes to take separate action for the dishonor of cheque by separate forum. So the defendants are liable to pay a sum of Rs.6,00,000-00 (Rupees Six Lakhs only) with 5% divided per month from 18.09.2015. The defendants are evading to make further divided to the plaintiff inspite of repeated demands on the basis of the "A" marked 18.11.2013 dated undertaking letter. On 18.03.2016, the plaintiff send a letter regarding dishonor of cheque and after the receipt of the letter dated 18.03.2016, the second defendant send a latter to the plaintiff with false and frivolous allegations in his letter dated 10.03.2016 and the same has been posted only on 19.03.2016. Hence, the plaintiff sends a letter dated 28.03.2016 for repayment of the loan from the second defendant for repayment of the loan amount. The second defendant received the said notice and failed to issue any reply to the plaintiff till date. Due the prompt payment and for purchase of further land in different

survey number of business purpose, the plaintiff again invested a sum of Rs.5,00,000-00 (Rupees Five Lakhs only) to the defendants on 16.06.2014 by the way of cheques bearing No.3341199 for Rs.5,00,000-00 (Rupees Five Lakhs only) cheque. At the time of investment, the second defendant told that they would give 2.5% divided per month for each and every month and after completion of the program, the defendants agreed to return the said amount without interest. After the receipt of amount from the plaintiff, the defendants purchased land as mentioned in the said 16.06.2014 dated letter and make payment at 2.5% on the investment amount by the way of cheque to the plaintiff herein. All the dividend payment endorsed on the back side of the said 16.06.2014 dated letter. The defendants paid the dividend amount at the rate of 2.5% dividend per month up to 15.11.2015 without default. The defendants are evading to make further dividend to the plaintiff in-spite of repeated demands on the basis of the "B" marked 16.06.2014 dated undertaking letter. On 05.03.2016, the plaintiff send a letter for repayment of the due amount on the basis of "B" marked letter dated 16.06.2014. The second defendant received the same and there is no reply. Hence, once again on 23.03.2016. the plaintiff sends a letter for repayment of the loan from the second defendant. The second defendant received the said notice and failed to issue any reply to the plaintiff till date. The defendant possess movable and immovable asset of the value of more the Ten crore. They are doing business and earning more a sum of Rs.2,00,000-00 per month. Hence they are not entitling to any relief under any of the Debt Relief Enactments. The defendants incurred the debt for the commercial purpose and the plaintiff advanced the loan for the commercial purpose. Hence the defendants are liable to pay the dividend at 5% per month from 18.09.2014 on "A" marked letter for Rs.6,00,000-00 and 2.5% dividend per month from 16.11.2015 on "B" marked letter for Rs.5,00,000-00 to the date of full and final discharge Under Section 34 of the CPC.

3) Defendants 1 to 3 entered their appearance through their counsel. When the case was posted for written statement, on 19.10.2016, the defendants called absent and hence they were set exparte, The plaintiff was examined in chief as PW1 and Ex A1 to A13 were marked.

4) The plaintiff filed this suit for recovery of money directing the defendants jointly or severally to pay the suit amount of Rs.8,24,000/- together with future dividend @ 5% p.m., on Rs.6,00,000/- from the date of plaint till full final payment; and also

directing the defendants jointly or severally to pay the suit amount of Rs.5,69,166/- together with future dividend @ 2.5% p.m. on Rs.5,00,000/- from the date of the plaint to till full and final payment.

5) The Plaintiff is examined as PW1 and through him Ex A1 to A13 were marked. The plaintiff in his proof affidavit has stated the same averments as in the plaint. The PW1 in his evidence and plaint states that the defendants are running Aascar Promoters Pvt Ltd., and that the 1st defendant is the company represented by the 2nd defendant and the 3rd defendant is another director of the said Company. Based on the advertisement given in July 2015 Edition of Tamil Daily, which has been marked as Ex A1 and A2, due to the canvas made by the 2nd defendant, the plaintiff invested a sum of Rs.10,00,000/- on 18.11.2003 by way of two cheques bearing No.334197 and 334198 for Rs.5,00,000/- each. The defendants promised to pay 5% dividend per month and also executed the "A" marked letter in NJS Paper on the same day, which is marked as Ex A3. The dividend payments endorsed in backside of the letter and the defendants paid the dividend up to 17.09.2014 without default. During the time of last payment, the defendants requested the plaintiff to wait till the sale of plots to settle the entire due. But on 12.10.2015, they paid one year dividend by way of cash and hence the net balance as on 12.10.2015 is Rs.6,00,000/- For the dividend, the defendants issued cheque, but the same was dishonored. Hence, the plaintiff sent a letter on 18.03.2016 regarding the dishonor of cheque, and for which the 2nd defendant sent a reply with false allegation. Hence, again the plaintiff sent a letter on 28.03.2016 for repayment of the loan. The letter dated 18.03.2016 of the plaintiff is marked as Ex A4, the copy of the letter sent by the 2nd defendant dated 10.03.2016 as Ex A6, Postal Cover as Ex A6, letter dated 28.03.2016 of the plaintiff as Ex A7, Postal Acknowledgment of 3rd defendant as Ex A8.

6) The plaintiff further states that due to the prompt payment made by the defendants, he again invested a sum of Rs.5,00,000/- on 16.06.2014 and for which the defendants agreed to give 2.5% dividend and executed "B" marked letter on 16.06.2014. The defendants paid the dividend up to 15.11.2015. The "B" marked letter is marked as Ex A9.. Since the defendants failed to make payment as agreed, the plaintiff sent a letter on 05.03.2016 and also on 23.03.2016. The copy of the letter dated 05.03.2016 is marked as Ex A10, Postal Acknowledgment as Ex A11, copy of the letter dated 23.03.2016 as Ex P12 and the Postal Acknowledgment of 2nd defendant as Ex A13. As per Ex A3 and Ex A9, the defendants has to pay dividend @ 5% and 2.5% to the plaintiff for the invested amounts. But the defendants failed to do so and hence the plaintiff filed this suit. The defendants

even though entered their appearance through their counsel, not come forward to appear before this Court to deny the plaint averments and hence this court automatically draws adverse inference against the defendants. On the other hand, the plaintiff by way of his chief examination and by marking Ex A1 to A13 proved his claim. In the absence of the defendants to contest the case, the case of the plaintiff remains unchallenged and in the above circumstances, this court is inclined to decree the suit as prayed for with costs.

In the result, the defendants 1 to 3 are directed to pay the suit amount jointly or severally a sum of Rs.8,24,000/- together with future dividend @ 5% p.m. on Rs.6,00,000/- from the date of plaint till full final payment; and the defendants are further directed to pay the suit amount of Rs.5,69,166/- jointly or severally together with future dividend @ 2.5% p.m. on Rs.5,00,000/- from the date of the plaint to till full and final payment; Thus, the suit is decreed with costs.

Dictated to the Steno Typist, typed by him directly, corrected and pronounced by me in the Open Court, this day the 17th day of November 2016.

**Principal District Judge,
Vellore District.**

List of Witness on the side of Plaintiff:
PW1/ Thiru.J.Chandrasekaran (On Proof Affidavit)

List of Exhibits on the side of plaintiff:--

Ex A1	---	: Paper Edition
Ex A2	09.05.2015	: Daily Thanthi Paper Edition
Ex A3	18.11.2013	: A Market letter executed by the 2 nd defendant in favor of the plaintiff
Ex A4	18.03.2016	: Copy of the letter sent by the plaintiff
ExA5	10.03.2016	: Copy of the letter sent by the 2 nd defendant
Ex A6	19.03.2016	: Postal Cover
Ex A7	28.03.2016	: Copy of the letter send by the plaintiff
Ex A8	29.03.2016	: Postal Acknowledgment of 2 nd defendant
Ex A9	16.06.2014	: "B" Marked letter executed by the 2 nd defendant
Ex A10	05.03.2016	: Copy of the letter sent by the plaintiff
Ex A11	---	: Postal Acknowledgment
Ex A12	23.03.2016	: Copy of the letter sent by the plaintiff
Ex A13	---	: Postal Acknowledgment

**PDJ.,
VELLORE.**