

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 7th DAY OF JULY 2015

THE HON'BLE MRS. JUSTICE S.VIMALA

A.No.5894 of 2014

In the matter of
Agreement
dated March 2007 between
Mr.Muthiah and
M/s.Alliance Retreat Pvt.
Ltd And
In the matter of The
Arbitration &
Conciliation Act 1996.

Mr.M.Muthaiah,
S/o.M.Manikam,
No:12, 3rd Cross Street,
Karapagam Garden,
Adyar,
Chennai-600 020.

.... Applicant

VS

M/s.Alliance Retreat Pvt.Ltd.
Rep by:its Director,
Plot No:Á'No:36/1,
Gandhi Mandapam Road,
Kotturpuram,
Chennai- 600 086.

... Respondent

Application praying that this Hon'ble Court be
pleased to direct the respondents to receive the
balance admitted amount of Rs.25,57,028/- (Rupees Twenty
Five Lakhs Fifty Sevan Thousand and Twenty Eight only) as
per the original and final demad dated 10/01/2013 and
13/5/2014 and execute and register sale deed and handover
possession of the Villa No:II, more fully described in

Schedule 'A', 'B', 'C' of the Construction Agreement dated March 2007 pending disposal of the Arbitration proceedings.

Schedule

SCHEDULE "A" PROPERTY

All the piece and parcel of the residentially converted lands, in all in an extent of Acres 11=18 Cents, comprised in Sy. Nos.101, 102, 103/1, 103/2, 104,105/1,110, 110/1, 111/3 111/3B, 111/4, 111/4B, 112/1 112/2, 112/3, 113/1B, 150/2B, 151/3B, 111/1, 111/1B, 111/2A, 111/2A2, 111/2B, 152/1, 152/2, 152/3, 152/4, 152/5, 152/6, 152/7 of Srinivasapuram Village, Sriperumbudur Taluk, Kancheepuram District with the Jurisdiction of Chennai-south and Registration Sub-District of Kundrathur with common boundaries.

SCHEDULE "B" PROPERTY

All the piece and parcel of the residential site bearing no.II comprised in survey No.112/1 of Schedule "A" property measuring 1615 sq.ft. and bounded on the:

East by : Road
West by : Plot Nos.55 &57
North by : Plot No.56
South by : Plot No.I

The measurement of the Plot area is subject to the actual measurement at the time of the execution of sale Deed.

SCHEDULE 'C' PROPERTY

Independent Residential Villa/House No.II Consisting

of Ground floor and First Floor to be constructed on the Schedule "B" property comprised in "A" Schedule property above, consisting of living, dining and bedrooms having a total built up area of 1662 sq.ft, approx as per construction agreement.

The measurement of the Built up area is subject to the actual measurement at the time of handing over the possession.

This Application coming on this day before this court for hearing the court made the following order:

This Application has been filed by the Applicant / Purchaser, seeking a direction to the respondent / developer to receive the balance admitted amount of Rs.25,57,028/-, as per the original and final demands, dated 10.01.2013 and 13.05.2014 and to execute and register the sale deed and handover possession of Villa No.II, morefully described in Schedules A, B, C of the Construction Agreement, dated March 2007, pending disposal of the Arbitration Proceedings.

2. According to the case of the Applicant, he has already paid a sum of Rs.57,00,000/- towards the agreement and the balance payable is Rs.25,57,028/- and the Applicant is willing to pay the amount immediately and therefore, the respondent should be directed to receive the amount, to execute and register the sale deed and to handover possession.

3. It is contended by the learned counsel for the respondent that possession cannot be handed over, when the claim for interest is pending; it is an undisputed fact that the dispute with regard to interest is pending before the Arbitrator, and therefore, it is for the arbitrator to decide in one way or other with regard to the two aspects, namely, whether the interest is payable, and if so, by whom, and if the interest is payable by the Applicant, what is the rate at which the interest is payable and the quantum of interest payable; till these matters are adjudicated by the Arbitrator, the respondent is not willing to handover the possession.

4. This Court considered the submissions made by the learned counsel for both sides and perused the materials available on record.

5. It is to be noted that in the agreement, dated 30.03.2007, (agreement to sell) executed between the respondent (Representing the M/s. Sri Sai Enterprises, as Power of Attorney) and the Applicant, there is a clause providing for Arbitration.

5.1. There is a similar clause providing for Arbitration in the Construction Agreement, dated 30.03.2007, which reads as under:-

"ARBITRATION

<https://hcservices.ecourts.gov.in/hcservices/>

In the event of breach of the terms of

this Construction Agreement or in the event of any differences or disputes arising between the parties in regard to this Agreement or any matter relating thereto, the same shall be referred to and settled by Arbitration under the provisions of the Arbitration and Conciliation Act in force. The Courts at Chennai alone shall have jurisdiction in all matters relating to this agreement."

5.2. As per this clause, in the event of dispute / differences arising between the parties, in regard to this agreement, the parties have to resort to Arbitration. This agreement is also relied upon by the Applicant.

6. It would be appropriate to mention the purpose of granting interim order, when the Arbitration is pending.

6.1. Section 9 confers wide ranging powers on the Court to order interim measures of protection in respect of: (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement; (b) securing the amount in dispute in the arbitration; (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or

building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence; (d) interim injunction or the appointment of a receiver; (e) such other interim measure of protection as may appear to the court to be just and convenient to the Court.

6.2. In the case of **Sundaram Finance Limited v. NEPC India Limited**, reported in (1999) 2 SCC 479, the Supreme Court stated that the Court has got ample powers to pass appropriate orders including ad-interim and exparte orders if the facts and circumstances so warrant. It was also held that interim order under Section 9 of the said Act can be passed even before the commencement of arbitration and need not be preceded by issuance of notice invoking the arbitration clause.

7. The learned counsel for the Applicant would submit that keeping the property vacant has made the culprits in the surrounding area to use it as a place of hoarding and that day-in and day-out, damage is being caused to the windows, doors and the top of the floor also. It is pointed out that the value of the property is getting deteriorated because it is kept vacant; the property deserves to be protected and preserved.

8. Handing over possession cannot be postponed for

an indefinite period, especially when it is shown to the Court that the building is likely to become dilapidated, if not put into use. It is also to be noted that the liability of the Applicant to pay interest will also increase day-by-day, if possession is allowed to be retained with the respondent.

8.1. Grant of injunction is an equitable remedy. Considering the circumstances expressed, the respondent is directed to receive the amount of Rs.25,57,028/-, and to execute and register the sale deed and handover possession to the Applicant, within a period of one week from the date of receipt of a copy of this order.

9. An apprehension is expressed by the learned counsel for the respondent that if possession is handed over to the Applicant, the Applicant is likely to alienate the property and in that event, there would be impediment for the respondent to realize the interest, to be awarded by the Arbitrator.

9.1. In view of the circumstance stated, the Applicant is directed not to alienate the property, till the claim for interest by the respondent is decided one way or other by the Arbitrator and till it is settled.

10. Accordingly, this Application stands disposed of.

Sd/.S.V.J

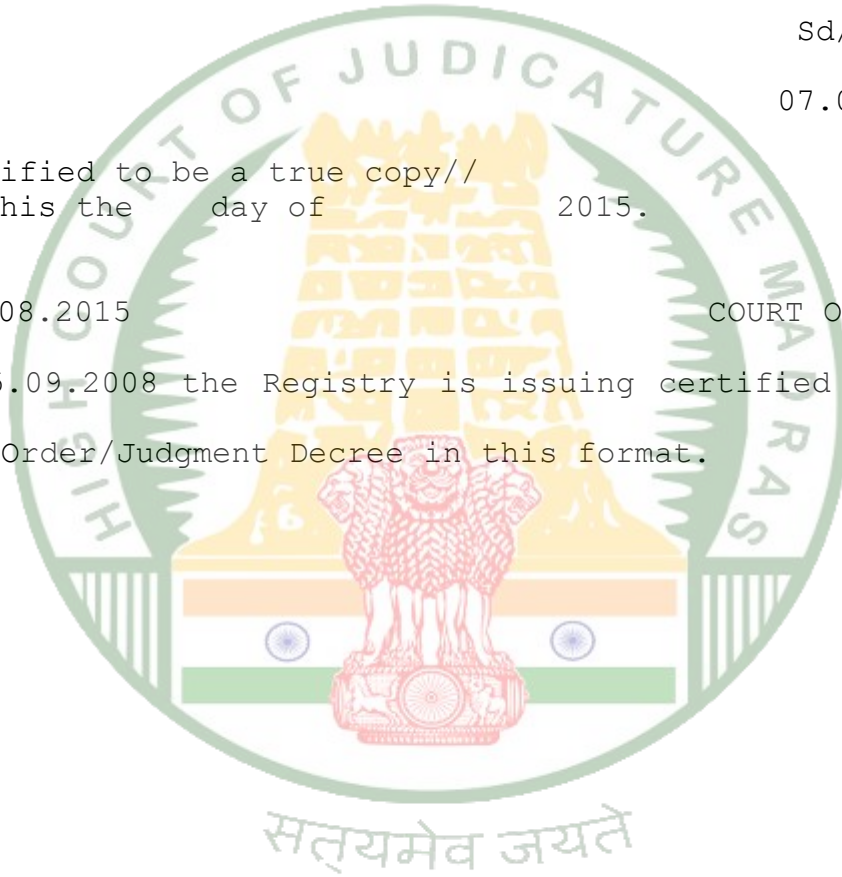
07.07.2015

//Certified to be a true copy//
Dated this the day of 2015.

R.s/11.08.2015

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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