

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2015

CORAM

THE HON'BLE THIRU JUSTICE S. MANIKUMAR
AND
THE HON'BLE THIRU JUSTICE M. VENUGOPAL

OSA No.411 of 2011
and
Cross Objection No.59 of 2012

O.S.A No.411 of 2011

M/s KUMUDAM PUBLICATIONS PVT LTD
Rep by its Managing Director P. Varadharajan
Old No.151, New No.306, Purasawakkam High Road,
Chennai-10
(Cause title amended vide order dt 15.9.2011 in
M.P.No.1 of 2011 in OSA SR No.26833/11)

..... Appellant/Defendant

vs

M/s PAVITHRA PUBLISHERS & PRINTERS (P) LTD
Rep by its Director
S.K. Mansion, No.31, III Cross, H. Siddaiah Road,
Bangalore - 560 027

..... Respondent/Plaintiff

Cross Objection No.59 of 2012

M/s PAVITHRA PUBLISHERS & PRINTERS (P) LTD
Rep by its Director
S.K. Mansion, No.31, III Cross, H. Siddaiah Road,
Bangalore - 560 027

.... Cross Objector/Respondent

vs

M/s KUMUDAM PUBLICATIONS PVT LTD
Rep by its Managing Director P. Varadharajan
Old No.151, New No.306, Purasawakkam High Road,
Chennai-10

... Respondent/Appellant

For Appellant in O.S.A No.
411 of 2011 & respondent
in Cross.Objectn.No.59/12

: M/s R. Amizhghu

For respondent in O.S.A No
411/211 & Cross Objector in
Cross Object No.59/12

: Mr.K. Ravindranath

Appeal filed under Order 36 Rule 1 of Original Side Rules r/w Clause 15 of Letters Patent against the judgment and decree passed in C.S.No.516 of 1997 dated 29.11.2010.

Cross Objection is filed praying that the judgment and decree passed in C.S.No.516 of 1997 dated 29.11.2010 on the file of Original Side, disallowing the cross objector/plaintiff's claim of Rs.10,50,000/- may be set aside and the claim for Rs.10,50,000/- allowed with interest.

C.S.No.516 of 1997:

Plaint filed under order IV Rule 1 of O.S Rules read with Order VII Rule 1 C.P.C. seeking for a Judgment and decree against the defendant (a) directing the defendant herein to pay Rs.46,20,000/- together with interest at 18% per annum on the Principal amount of Rs.30 lakhs from the date of plaint till date of realisation (b) for costs.

COMMON JUDGMENT

(Common Judgment of the Court delivered by S. MANIKUMAR, J.,)

Being aggrieved by the judgment and decree in C.S.No.516 of 1997 dated 29.11.2010, directing Kumudham Publications (P) Ltd, the defendant therein to pay a sum of Rs.46,20,000/- together with interest at 18% p.a on the principal amount of Rs.30,00,000/- from the date of plaint till realisation, Kumudham Publications (P) Ltd has filed the Original Side Appeal.

2. Cross Objection is filed praying that the judgment and decree passed in C.S.No.516 of 1997 dated 29.11.2010 on the file of Original Side, disallowing the cross objector/plaintiff's claim of Rs.10,50,000/- may be set aside and the claim for Rs.10,50,000/- allowed with interest.

3. As both the matter arise out of a judgment and decree, they are disposed of by this Common Judgment.

4. On this day, when the appeal is taken up for hearing, learned counsel appearing for both the parties submitted that on 30.4.2015, the parties have entered into a Memorandum of Understanding. The Memorandum of Understanding dated 30.4.2015, duly signed by both the parties and their respective counsel, shall be treated as part of the record. The Memorandum of Understanding reads as follows:

"MEMORANDUM OF UNDERSTANDING"

The Respondent herein filed the suit against the Appellant herein for recovery of the advance amount of Rs.30,00,000/- paid toward the purchase of printing machineries. C.S.No.516 of 1997 was partly decreed.

The Appellant herein filed appeal against the decree and judgment in O.S.A No.411 of 2011 and also prayed for stay of the execution of decree pending disposal of the appeal. The Hon'ble Court was pleased to grant interim stay on condition that the appellant has to deposit one half of the decreed amount to the credit of the suit within a period of four weeks. The order was passed on 02.01.2012. The deposit of Rs.25,34,250/- was made by way of Demand draft bearing No.644660 dated 23.01.2012 issued by Indian bank, Purasawakkam Branch, Chennai on 25.01.2012 and the Registry had received the same.

The Respondent herein has filed a Cross Objection No.59 of 2012.

Now the parties to this litigation had entered into a compromise and agreed to settle the dispute as per the following terms.

The Respondent agrees to receive a sum of Rs.40,000/- as FULL AND FINAL SETTLEMENT OF THEIR CLAIM TOWARDS THE DECREE OF THE SUIT IN C.S.No.516 OF 1997. The respondent agrees to receive the said amount towards the full satisfaction of the decree and agreed to receive the said sum as full quit of all the claims as against his Appellant and the said sum is full and final settlement of all transactions as against the Appellant.

Towards the above payment the Respondent shall be entitled to withdraw the sum of Rs.25,34,250/- plus interest accrued therein with the permission of this Hon'ble court and the Appellant herein has got no objection for the respondent to receive the same. The balance amount shall be paid by the Appellant after deducting the amount received by the respondent from out of the deposited amount out of the total agreed full and final settlement amount of Rs.40,00,000/-.

The payment of the balance amount by the Appellant after deducting the amount received by the respondent from out of the deposited amount out of the total agreed full and final settlement amount of Rs.40,00,000/- shall be on or before 30th August 2015.

The parties to this proceedings agreed that appellant shall withdraw the appeal by reporting the settlement to this Honble Court

and shall withdraw the Appeal O.S.A.No.411 of 2011 BY REPORTING AS SETTLED OUT OF COURT.

The Respondent shall withdraw the cross objection in CROSS OBJECTION No.59 of 2012 as settled out of court.

The Respondent shall file an application to withdraw the deposited amount and the Appellant shall endorse No objection for the same.

With the fulfillment of the above terms by the respective parties to this case the litigation between the parties shall be treated as finally closed as full and final settlement of all the claims and full satisfaction of the decree.

Agreeing to all the above terms the parties to this Memorandum of understanding subscribe their respective signature in this deed in the presence of their respective Counsels on this 30th day of April 2015.

Dated at Chennai on this 30th day of April 2015

Appellant Counsel for the Appellant

Respondent Counsel for the Respondent

5. After deducting the amount to be received by the respondent/plaintiff in this appeal, from the deposit and towards the payment of the balance amount and full and final settlement, the appellant has taken an Account Payee Cheque bearing No.879460 dated 4.8.2015 for Rs.12,60,750/-, less TDS, drawn on Indian Bank in favour of Pavithra Publishers and Printers (P) Limited.

6. Learned counsel appearing for the appellant has produced a copy of the letter dated 5.8.2015 of the Assistant Vice President - Finance of M/s Kumudam Publications Private Limited addressed to Pavithra Publishers and Printers (P) Limited, Bangalore, stating setting out the payment of the entire amount, as full and final settlement, as against the Memorandum of Understanding, which includes a sum of Rs.12,60,750/- (Rupees twelve lakhs sixty thousand seven hundred fifty only) in the form of Cheque, bearing No.879460 dated 4.8.2015 drawn on Indian Bank, Purasawalkam.

7. Mr.K. Ravindranath, learned counsel for the respondent/plaintiff has acknowledged the receipt of the above mentioned cheque and to that effect, he has also made an endorsement on the Memorandum of Understanding dated 30.4.2015, filed today.

8. Registry is directed to incorporate the receipt of the cheque bearing No.879460 dated 4.8.2015 drawn on Indian Bank, Purasawalkam for Rs.12,60,750/- in the decree.

9. In terms of the Memorandum of Understanding, the respondent is permitted to withdraw the amount of Rs.25,34,250/-, deposited to the credit of C.S.No.516 of 1997 with accrued interest there on.

10. Mr.K. Ravindranath, learned counsel for the respondent/plaintiff has withdrawn the Cross Objection and has also made an endorsement to that effect.

11. As the parties have arrived at settlement and filed a Memorandum of Understanding, there shall be a decree in terms of the same.

12. In view of the above,

(a) In terms of Memorandum of Understanding, the Cross Objection No.59 of 2012 is dismissed as withdrawn, the appeal in O.S.A No.411 of 2011 is disposed of,

(b) Cross objection No.59 of 2012 is dismissed as withdrawn,

No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

sr

To

1.The Sub Assistant Registrar,
Original Side,
High Court, Madras

1 cc to M/s R. Amizhghu , Advocate Sr.No.40466

1 cc to Mr. K. Ravindranath, Advocate Sr.No.40541

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OSA No.411 of 2011
and
Cross Objection No.59 of 2012

sai(co)
pmk.6.8.2015