IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.07.2016

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.S.NO.707 OF 2008

Russel Credit Limited
37, J.L.Nehru Road,
Kolkatta- 700 071
West Bengal
Amended as per order dated 20.06.2016
in A.No.2721 of 2016 .. Plaintiff

Versus

1. M/s.Ravi Shankar Industries Pvt.Ltd
(formerly known as Ravi Shankar Films Private Limited)
2, Sarangapani Street,
T.Nagar, Chennai 600 017.
Represented by its Managing Director

2. A.Manohar Prasad

3. Mukund Vijayan .. Defendants

PRAYER: Amended Plaint filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 CPC read with Sections 134 and 135 of the Trade Marks Act, 1999 and under Sections 55, 56 and 62 of the Copyright Act, 1957, praying for the following judgment and decree against the defendant.

a) Directing the third defendant to execute a sale deed in favour of the plaintiff conveying an undivided share of interest / ownership in the schedule 'A' land to the extent of 5,008.4 sq.ft and transferring a built-up area of 12,521 sq.ft. in the commercial complex constructed in schedule 'A' property;

b) Put the plaintiff in peaceful possession of property mentioned in para 22(a) herein above;

c) Directing the defendants to discharge all its obligations as required under the agreement dated 17th January 2001; or

d) In the alternative, for a money decree in the sum of Rs.4,96,57,846.00 with interest at 12% per annum from the date of the suit till the date of recovery;

e) for costs of the suit;

For Plaintiff : Mr.AL.Somayaji, Senior Counsel
for M/s.S.Ramasubramaniam Asso.

For Defendants : Mrs.R.Maheswari

JUDGMENT

The suit is for specific performance directing the third defendant to execute a sale deed in favour of the plaintiff conveying an extent of 5,008.4 sq.ft in schedule 'A' and transferring a built-up area 12,521 sq.ft. and put the plaintiff in possession of the property and to direct the defendants to discharge all its obligations as required under the agreement dated 17.01.2001 or in the alternative for payment of Rs.4,96,57,846/- with interest @ 12% per annum.

2. The plaintiff is in the business of lease and hire purchase of assets, bill discounting and financial services. The plaintiff had made available certain assets to the first defendant-Company under two hire purchase agreements. In consideration of the plaintiff extending such facilities to the first defendant, the second defendant stood as a guarantor and executed personal guarantee bonds for the performance of the first defendant's obligations under the hire purchase agreements. On the failure of the first defendant to perform its part of the obligations, the plaintiff was constrained to initiate several cases in different Courts in Chennai. After initiation of the cases, the defendants herein approached the plaintiff for a settlement.

3. During the course of the negotiations, the third defendant represented to the plaintiff that he was the general Power of Attorney of 31 land owners, who own the property described in schedule 'A' and was authorised to deal with the same. The third defendant also represented that he had received consideration and entered into various agreements with defendants 1 and 2 for selling the property with the part of superstructure proposed to be constructed to the defendants 1 and 2 or to their nominees. Therefore, the third defendant

proposed to transfer ownership of an undivided share in the schedule property land with built-up area of 16,694 sq.ft. in the commercial complex proposed to be constructed.

4. On the above representation, the third defendant / plaintiff agreed for the same and the plaintiff also had to desist from instituting any fresh legal proceedings. The said agreement was reduced to writing on 17.01.2001. Subsequent to the agreement dated 17.01.2001, the plaintiff requested the defendants to convey a part of the undivided share as agreed to in the agreement in favour of one Credit Lyonnais, who was a creditor of the plaintiff. It was also readily agreed by the defendants and another agreement dated 13.11.2001 was executed making the said Credit Lyonnais as party. Under the said agreement, it was agreed that the third defendant would convey an undivided share 1669 sq.ft in favour of the Credit Lyonnais apart from transferring a built-up area of 4173 sq.ft. Accordingly, the third defendant also executed a sale deed dated 23.11.2001 in favour of Credit Lyonnais. Now, the third defendant is obliged to convey in favour of the plaintiff, the balance of the undivided share of interest in schedule 'A'. As the plaintiff had performed his part of the contract, the defendants were called upon to perform their part of the contract. Despite, the plaintiff approaching the

third defendant and other defendants to perform their part of contract, they have been evading the same. The defendants also are said to have confirmed their pending obligations under the agreement dated 17.01.2001 as per their letters dated 16.01.2004 and 12.01.2007. As the defendants failed to honour their part of obligations, the plaintiff has come up with the above suit for above mentioned reliefs.

5. In the written statement filed by the defendants 1 and 2, it was contended that the suit claim is made well beyond the period of limitation and therefore has to be dismissed. According to the first defendant, the defendants had performed their part of contract by executing a sale deed in favour of Credit Lyonnais, the creditor of the plaintiff towards settlement of dues to the plaintiff by executing a sale deed dated 23.11.2001 by conveying the undivided share 1669 sq.ft. with build-up area 4173 sq.ft. It was also contended that the obligations under the agreement dated 17.01.2001 was fulfilled and that the plaintiff did not press for the further registration of the undivided share. The defendants also denied and disputed the signatures found in the letters addressed to them, alleging them to be a forgery. It is also stated that as the plaintiff was not heard for a fairly long time, the defendants have already created third

party interest by selling the suit property to various purchasers. Hence, prays for dismissal of the suit.

6. This Court, upon perusal of the pleadings and other materials on record, has framed the following issues for consideration:

1. Whether the defendants have fulfilled all their obligations in terms of the agreement dated 17.01.2001?

2. Whether the plaintiff is entitled to decree of specific performance of the agreement dated 17.01.2001 having fulfilled its obligations in terms of the agreement.?

3. Whether the plaintiff is entitled to a money decree in the alternative for a sum of Rs.4,96,57,846/- with interest @ 12% per annum from the date of the suit till the date of recovery.?

4. To what other relief are the parties entitled?

7. On 29.02.2016, the following additional issue was framed for adjudication.

Whether the suit is barred by limitation.?

8. The Manager - Finance of the plaintiff's company examined himself as P.W.1 and in lieu of chief examination, filed his proof affidavit and marked Exs.P1 to P6. The Manager - Legal of the first defendant Company has filed the proof affidavit in lieu of chief examination.

Sl .No.	***Exhibits***	***Description of documents***	***Date***
1	P-1	Notarised copy of the Power of Attorney	24.06.2005
2	P-2	Agreement between plaintiff the plaintiff and defendants	17.01.2001
3	P-3	Notarised copy of the Agreement	13.11.2001
4	P-4	Notarised copy of undertaking	10.11.2001
5	P-5	Notarised copy of the sale deed	23.11.2001
6	P-6	Letters (Original)	16.01.2004 and 12.01.2007

<u>Issue No.1:</u>

(a) From the facts of the case, the agreement dated 17.01.2001 under Ex.P2, which was entered into between the plaintiff and the defendants 1 to 3, is not disputed or denied by any of the parties. Pursuant to the same, on 13.11.2001 under Ex.P3, another agreement was executed between the plaintiff, defendants and one Credit Lyonnais-Bank, who was a creditor of the plaintiff-Company. As per the said agreement, the defendants agreed to convey an undivided share of land to an extent of 1669 sq.ft. with a built up area of 4,173 sq.ft from and out of ***1669** sq.ft. Agreeing under Ex.P2 as the said Credit Lyonnais Bank was a creditor of the plaintiff-Company, in order to settle their dues at the request of the plaintiff, the defendants agreed to oblige the same. Accordingly, Ex.P4 - Sale deed dated 23.11.2001 was executed in favour of the Credit Lyonnais Bank, conveying an undivided share of ***1669** sq.ft and built up area of 4,173 sq.ft.

(b) From the above act of the defendants, it is crystal clear that Ex.P2 was acted upon and a part performance was also done by the defendants. It is only the remaining extent of land under Ex.P2 along with built up area to be conveyed to the plaintiff.

(c). The third defendant has sent a letter to the plaintiff on 16.01.2004, which is as follows:-

> "*This has reference to the agreement dated 17.01.2001, entered into between M/s.Ravishankar Industries Private Limited, M/s.BFIL Finance Limited (BFIL) and the undersigned through with 16694 sq.ft of built up area, in the residential complex at Chennai, was alloted to BFIL towards full and final*

settlement of dues of M/s.Ravishankar Industries Private Limited to BFIL. Out of the allotted 16694 sq.ft of built up area, 4173 sq.ft has already been transferred to M/s.Credit Lyonnais as per your request.

This is to confirm that, as on date, the balance built up area of 12,521 sq.ft is due to be transferred to you."

(d). The first defendant also through the second defendant had sent an identical letter on the same date to the plaintiff confirming their obligation to perform their part of the agreement. Once again, on 12.01.2007, the defendants confirmed their pending obligation to the plaintiff. It is a specific case of the plaintiff that the agreement under Ex.P2 was executed between the parties on the understanding that the plaintiff would withdraw all the cases filed in respect of the monies due to them from the defendants. As the plaintiff had performed its obligation by withdrawing the various litigations filed by it, which was pending in Courts, it was the defendants whose part of performance of the agreement is incomplete. The first defendant filed the written statement denying the liability on the ground of limitation. It was alleged by them that Ex.P6 (series) letters addressed to the plaintiff were fabricated and forged for the purpose of the suit. The said written statement was adopted by the second defendant, but the third defendant was set ex-parte on 09.11.2010. The Senior Manager of the Plaintiff-Company was examined as PW-1, who supported the case of the plaintiff and through him the documents Exhibits P1 to P6 were marked. When it is not in dispute that as per Ex.P2 agreement, the defendants shall execute and register the sale deed in favour of the plaintiff or its nominee, the defendants are duty bound to do the same. When a portion of the property as agreed, was conveyed in favour of the Credit Lyonnais, there is no reason why the defendants have to withhold the conveyance of the balance of the land in complete. It is also specifically admitted by DW-1 that at the direction of the plaintiff, an undivided share of ***4173** sq.ft was transferred in favour of the Credit Lyonnais Bank.

(e) Though the defendants had raised the issue that the documents acknowledging their liability ***are** forged and fabricated, admittedly no steps have been taken by them to establish their contentions. In view of the above facts, issue No.1 finds favour with the plaintiff holding that the defendants failed to fulfill their part of the obligations as per the agreement dated 17.01.2001 under Ex.P2.

Issue No.2:

(a) The disputes between the plaintiff' and the defendants were reduced to writing under the agreement dated 17.01.2001. As per the agreement, the plaintiff agreed to withdraw all the cases filed against the defendants and also undertook not to file any fresh case against them. Agreeing for such conditions, the defendants had entered into the agreement to convey the undivided share of land with the building. Pursuant to the said contract, as stated earlier, the defendants have also conveyed the portion to the plaintiff's Credit Lyonnais. Therefore, the defendants are yet to transfer in favour of the plaintiff, the balance of 12,521 sq.ft. built up space together with proportionate undivided share to complete the obligations under agreement dated 17.01.2001 under Ex.P2. The defendants also had agreed the execution of the agreement under Ex.P2 and the execution of the sale in favour of the Credit Lyonnais under Ex.P5. Excepting, denying the two letters dated 16.01.2004 and 12.01.2007 under Ex.P6 (series), there is no other specific allegations against the plaintiff. Though the defendants have alleged that those documents were forged, admittedly, no steps have been taken by the defendants to establish their contentions. In any event, if the defendants have performed their part of contract, they would have rescinded the same under Section 28 of the Specific Relief Act whereas it has not been done so. On the other hand, having performed the part of the contract, without any just and sufficient cause, the defendants have been postponing the execution of conveyance of the balance of the land and built up area, in favour of the plaintiff. Admittedly, the plaintiff had expressed its readiness and willingness to perform its part of contract, which was only to withdraw the litigations filed by them, as the amounts were already with the defendants recoverable by the plaintiff. Therefore, the plaintiff had complied with the conditions precedent as required under Section 16(c) of the Specific Relief Act.

(b) In this regard, it is also useful to refer the evidence of D.W1, which is as follows:-

> "*A: Out of the built up area 16,694 sq.ft, 4173 sq.ft of the built up area along with proportionate undivided share is agreed to be transferred in favour of the Credit Lyonnais Bank, 3rd party nominee of plaintiff towards settlement of plaintiff accounts.*

It is correct to state that as per Ex.P2 and Ex.P3 agreement dated 17.01.2001 and 13.11.2001 some more extent of property was to be conveyed towards the settlement to the plaintiff by the first defendant Company. As per Ex.P5 the property as mentioned in the agreement was conveyed to the third party on 23.11.2001. It is correct to state that out of 16,694 sq.ft, 4173 sq.ft of property along with proportionate undivided share was conveyed to the third party by the 1st defendant at the request made by the plaintiff."

(c) As the conveyance of the sale deed in favour of Credit Lyonnais Bank is not in full satisfaction of the debt due to the plaintiff, the obligation of the defendants is not fully discharged. In view of the clear admission made by D.W1, the issue No.2 is also decided in favour of the plaintiff.

<u>Issue No.3:</u>

Whether the plaintiff is entitled to a money decree in the alternative for a sum of Rs.4,96,57,846/- with interest @ 12% per annum from the date of the suit till the date of recovery?

a) The plaintiff has sought for specific performance of the agreement dated 17.01.2001 or in the alternative for a money decree for a sum of Rs.4,96,57,846/- with interest @ 12% per annum.

b) The learned counsel for the defendants submitted that the said claim is not maintainable as it is barred by limitation. It is also further contended that the plaintiff has not filed any supportive documents to that effect. The agreement dated 13.11.2011 executed between the plaintiff, defendants and one Credit Lyonnais is marked as Ex.B3.

c) Clause 4 of the agreement dated 13.11.2011, which reads as follows:-

> *The aggregate of the sale consideration of undivided 1,669 sq.ft. area together with the cost of the constructing the 4,173 sq.ft of built up area amounting to Rs.93,89,250/ - (Rupees ninety three lakhs eighty nine thousand two hundred fifty only) shall be applied in full and final satisfaction and discharge of the total indebtedness and liability of the Borrower-II to the Bank viz., Rs.1,05,20,000/- (One crore five lakhs twenty thousand only) and the partial discharge of the Borrower-I to the Borrower-II to the extent of Rs.93,89,250/- (Rupees ninety three lakhs eighty nine thousand*

two hundred and fifty only) out of the total liability of Rs.3,75,61,500/- (Rupees three crores seventy five lakhs sixty one thousand five hundred only).

The reading of the above clause goes to prove that the plaintiff, who is shown as Borrower-II, is entitled for Rs.3,75,61,500/- (Rupees three crores seventy five lakhs sixty one thousand five hundred only). Even in plaint, para 20, the plaintiff has given explanation for arriving at a sum of Rs.4,96,57,846.00 by adopting valuation of Rs.3,750 per sq.ft for the extent of 12,521 sq.ft built up area together with the undivided share of land of 5,008.40 sq.ft. When the fact of claim of Rs.4,96,57,846.00 with interest @ 12% per annum, which has not been specifically disputed by the defendants, the plaintiff is entitled for the same.

d) In the written statement, it has been admitted by the defendants that it is impossible to perform their part of contract, as admitted in Ex.P.2 as they had already sold properties to various buyers by creating third party interest. That being the case, the plaintiff is entitled to be paid in terms of money to the value of the property. Accordingly, the issue No.3 is also held in favour of the plaintiff.

<u>The additional issue is whether the suit is barred by limitation:</u>

(a) Though the defendants have agreed the execution of the agreement dated 17.01.2001 and also performed their obligation in part, they have raised the plea of limitation. A perusal of the Ex.P2 does not fix any time for the defendants to perform their part contractual obligations towards the plaintiff. Therefore, the plaintiff contends that as per the agreement under Ex.P2, the time was not the essence of the contract.

(b) The plaintiff also places its reliance on a judgment of the Honourable Supreme Court in ***RATHNAVATHI AND ANOTHER VS. KAVITA GANASHAMDAS [2015 (5) SCC 223]*** for the principle that in case of conveyance of immovable property, the time is not the essence of the contract. After considering the decision reported in ***1997 (3) SCC 1 [K.S.VIDYANADAM VS. VAIRAVAN]*** and also in ***1999 (5) SCC 77 [*****K.NARENDRA VS RIVERA APARMENTS (P) LTD]** and after referring to Article 54 of the Limitation Act, the Honourable Supreme Court has held as follows:

> *"41. Article 54 of the Limitation Act which prescribes the period of limitation for filing suit for specific performance reads as under:*

"54	For specific performance of a contract	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused."

42. A mere reading of Article 54 of the Limitation Act would show that if the date is fixed for performance of the agreement, then non-compliance with the agreement on the date would give a cause of action to file suit for specific performance within three years from the date so fixed. However, when no such date is fixed, limitation of three years to file a suit for specific performance would begin when the plaintiff has noticed that the defendant has refused the performance of the agreement.

43. The case at hand admittedly does not fall in the first category of Article 54 of the Limitation Act because as observed supra, no date was fixed in the agreement for its performance. The case would thus be governed by the second category viz., when the plaintiff has a notice that performance is refused."

(c). In this regard, the evidence of D.W1, reads as follows:-

"A. The plaintiff had approached us before filing of this suit asking to perform the

contract as per the agreement but we refused stating time has lapsed.

It is correct to state that we refused perform the suit contract on the only ground that the time stipulated in the contract has lapsed. It is correct to state that as per Ex..P2 agreement there is no prescribed time for performance of agreement within 3 years has lapsed and as such we refused to perform the contract. I deny the suggestion that as per Ex..P6 series of letters we have agreed to perform our contract since those letters are not sent by us. As on date we have not taken any legal action against the said letters Ex..P6 series. I deny the suggestion that we refused to perform the suit agreement since the suit property has been involved in several litigations and is subject matter of the interim orders passed by the Hon'ble Court. I deny the suggestion that any interim order is in force against the subject matter of the suit. I deny the suggestion that letters under Ex..P6 series are denied by us an after though for the purpose of the suit. I deny the suggestion that we wantonly refused to execute the contract under suit agreement without any basis."

(d) The defendants also placed their reliance on Ex.P6 (series) contending that they are fabricated and created for

the purpose of the suit to overcome the question of limitation. As extracted above, in the evidence of D. W.1, he had specifically stated that no steps have been taken by them to prove that Ex.P6 (series) is fabricated documents. In the absence of any evidence to show that Ex.P6 (series) letters are fabricated, the contents of the same are deemed to be proved, as the defendants have categorically admitted in those letters that the remaining part of the contract is yet to be performed. Based on the said admissions, the plaintiff is entitled to the relief of specific performance. However, it is stated that the entire built up portion and the undivided share in the said property was already sold to the third parties and there is nothing remaining to be conveyed to the plaintiff. The plaintiff shall be entitled for the alternate relief of money decree for a sum of Rs.4,96,57,846.00 with interest @ 9% per annum. Though the plaintiff had categorically asked for recovery of money in the alternative specifying a definite sum, the defendants have not raised any objections with respect to the same.

9. In view of the findings above, the plaintiff is entitled to a decree directing the third defendant to execute a sale deed in favour of the plaintiff conveying an undivided

share of interest / ownership in the schedule 'A' land to the extent of 5,008.4 sq.ft and transferring a built-up area of 12,521 sq.ft. in the commercial complex constructed in schedule 'A' property. In the event of the defendants not able to convey the balance of the undivided share and proportionate built up area as agreed under Ex.P2, the plaintiff is entitled for a money decree for the said sum of Rs.4,96,57,846.00 with interest 9% per annum *** from the date of suit fill the date of decree i.e., pendente lite and 6% from the date of decree till recovery**"

10. In the result, the suit is decreed as prayed for with costs.

- **corrected as per order dated 20/07/2016**
- **made in C.S.No.707/2008 by PSNJ**

LIST OF WITNESSES EXAMINED ON THE SIDE OF THE PLAINTIFF

P.W.1 -M.Yelamana

LIST OF EXHIBITS MARKED ON THE SIDE OF THE PLAINTIFF

Sl.No.	***Exhibits***	***Description of documents***	***Date***
1	P-1	Notarised copy of the Power of Attorney	24.06.2005
2	P-2	Agreement between plaintiff the plaintiff and defendants	17.01.2001
3	P-3	Notarised copy of the Agreement	13.11.2001
4	P-4	Notarised copy of undertaking	10.11.2001
5	P-5	Notarised copy of the sale deed	23.11.2001
6	P-6	Letters (Original)	16.01.2004 and 12.01.2007

LIST OF WITNESSES EXAMINED ON THE SIDE OF THE DEFENDANT

D.W.1 - C.S.Ganesan

LIST OF EXHIBITS MARKED ON THE SIDE OF THE DEFENDANT - NIL

sd/.P.S.N.J

12.07.2016

//Certified to be a true copy//
Dated this the day of 2016.

R.s/15.12.2016 COURT OFFICER
From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.