

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.01.2017

CORAM

THE HONOURABLE MR. JUSTICE **N.SATHISH KUMAR**

C.S.No.393 of 2011

Prasath Rajendran
rep. by his General Power of
Attorney Holder,
Rajendran Singaram

... Plaintiff

Vs.

1.Rajeswari

2.Rajkumar Thangavel

3.Rathinasamy

... Defendants

PRAYER: Plaint under Order IV Rule 1 of O.S. Rules and Order VII Rule 1 of C.P.C. praying to (i) direct the defendants 1 to 3 jointly or several to pay a sum of Rs.25,73,010/- together with future interest at the rate of 24% per annum on the principal amount of Rs.16,71,500/- and (ii) direct the defendants to pay the costs of the suit.

For Plaintiff : M/s.K.Martin Associates

For Defendants : Ex-parte

JUDGMENT

This suit has been filed by the plaintiff for recovery of a sum of Rs.25,73,020/- together with future interest at the rate of 24% per annum on the principal amount of Rs.16,71,500/-.

2.The gist and kernel of the plaintiff's case is as follows:

a)The plaintiff is working as an Engineer at U.A.E. Dubai.

In the month of February 2008, the defendants 1 and 2 approached the plaintiff stating that they are doing construction work and promoting houses and insisted him to purchase the same. Believing the words of the defendants 1 and 2 to be true, the plaintiff agreed to invest the amount for purchasing of two flats, one for himself and another for his younger brother. Based on the negotiations, plaintiff has directed his brother Brinda to pay Rs.1,00,000/- towards advance and membership amount of the project. Accordingly, his brother paid the above said amount on 01.04.2008 to the first defendant. Thereafter, when the plaintiff returned to India and contacted the defendants 1 and 2, they have shown the flats at Nesappakkam near West K.K. Nagar, and the rate of the two flats was fixed at Rs.50 lakhs. Defendants insisted the plaintiff to pay

the land costs of Rs.20 lakhs in four monthly instalments and the remaining amount to be paid at the time of execution and registration of the sale deed. Defendants also gave their account number of ICICI Bank for the purpose of depositing the said amount.

b)Accordingly, a total sum of Rs.16,71,500/- has been transferred by the plaintiff to the defendants' account on various dates i.e., from 01.03.2008 to 17.07.2008. When the plaintiff directed his brother to inspect the project, it was found that the property shown to the plaintiff was purchased by a third party. Defendants have cheated the plaintiff. Hence, he lodged a complaint dated 08.09.2008 before the Commissioner of Police, Chennai. In fact, the defendants using the amount sent by the plaintiff had purchased the property in the name of the second defendant. Hence, the present suit for recovery of the said amount has been filed before this Court.

3.The defendants remained ex-parte. Plaintiff's father was examined as P.W.1 and he spoke about the entire transaction between the plaintiff and the defendants. He has spoken about the

pressure made by the defendants to the plaintiff and the details of the amount received by them on various dates and stated that instead of registering the property to the plaintiff, the defendants utilised the amount paid by his son, executed a sale deed and registered a property at Tondiarpet in the name of the second defendant.

4.The evidence of P.W.1 remained unchallenged. To prove their case, the following documents namely, Exs.P1 to Ex.P5 were marked:

i)Ex.P1 series is the certified copy of the bank receipts of the Western Union, which shows that the plaintiff has transferred the money to the defendants on various dates. It also reveals that the plaintiff has repeatedly sending the money to the defendants from 01.03.2008 to 17.07.2008 to the tune of Rs.16,71,500/-. Ex.P2 would clearly shows that the second defendant purchased the property in his name at the relevant point of time. Ex.P3 is the certified copy of the complaint given by the plaintiff in this regard. Ex.P4 is the certified copy of the FIR registered against the defendants.

5.The suit has been filed in the year 2010, which is within the period of limitation. It is seen from Ex.P1 (series) that the defendants have parted with a sum of Rs.16,71,500/-. Evidence of P.W.1 also remained unchallenged. From the aforesaid documents namely, Ex.P1 to Ex.P4, the plaintiff has proved his case. Hence, the plaintiff is entitled to recover the principal amount.

6.Though plaintiff has claimed interest at the rate of 24% for the principal amount, it is to be noted that there is no evidence whatsoever available on record to show that the parties agreed to pay the interest at the relevant time and therefore, in the absence of any agreement between the parties at that time, i.e., without making demand for any interest, the interest cannot be awarded by this Court as per Section **3 of the Interest Act, 1978**, which reads as follows:

"3.Power of Court to allow interest:-

(1)In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the

debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say,-

a)if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

b)if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings:

Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment."

7.In view of the aforesaid section of the Interest Act, the plaintiff is not entitled to claim interest from the date of filing of the plaint till the date of realisation. However, this Court, by invoking Section 34 of the Civil Procedure Code, award interest at the rate of

6% p.a. to the principal amount from the date of filing of the suit till the date of realisation.

8. Accordingly, the suit is decreed in respect of recovery of the principal amount i.e., Rs.16,71,500/- along with interest at the rate of 6% p.a. from the date of plaint till the date of realisation. No costs.

12.01.2017

Index:Yes/No
Internet:Yes/No

DP

N.SATHISH KUMAR.J,

DP

C.S.No.393 of 2011

12.01.2017

<http://www.judis.nic.in>