

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.01.2017

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.696 of 2011

Dr(Mrs).Premila Nrasimhan

.. Plaintiff

.Vs.

M/s.Rasika Ranjani Sabha
rep.by its Secretary

..Defendant

The plaint is filed and numbered as Civil Suit under order IV Rule 1 of Original Side Rules r/w Order VII Rule 1 of Civil Procedure Code, praying for a judgment and decree:

a) for a sum of Rs.30,00,000/-, together with interest at the rate of 12% per annum, from the date of plaint, till the date of realization.

b) for cost of the suit;

For Plaintiff : No Appearance

For Defendant : Exparte

JUDGMENT

Suit is filed for recovery of Rs.30,00,000/- (Rupees Thirty lakhs only) together with interest at the rate of 12% per annum.

2.The plaintiff belongs to the illustrious "Swadesamithran"

family. She has decided to install statues of her husband and her father. Bearing this in mind, she was in the look out for a suitable venue. At that time, the office bearers of the defendants were informed of the plaintiff's common acquaintances. The office bearers agreed to provide necessary space to install the statues of Mr.C.S.Narasimhan and his father late Mr.C.R.Srinivasan and also requested the plaintiff to contribute to their proposed construction project. The plaintiff was very particular that if the requirements relating to installation of statues etc ., are not met as agreed, then the money should be returned. Accordingly, it was agreed by the office bearers of the defendant in the Memorandum of Understanding dated 10.03.2007 entered into with the plaintiff, that the Sabha will use the funds received from the plaintiff and the Mini Auditorium can be constructed in the name of Sabha in the name of "Kalpagam Hall", besides other conditions.

3.Accordingly, the plaintiff has agreed to provide a sum of Rs.45,00,000/-(Rupees Forty five lakhs only). The first instalment is to be paid at the time during beginning of the construction, the second instalment in the middle of the construction and the last instalment, after completion of the construction. The defendant-Sabha has agreed

to complete the construction by April 2008. They have also agreed in the Memorandum of Understanding, that the same would become null and void, if the construction does not commence by 01.06.2007, and the money is to be given back to the plaintiff. The plaintiff has parted about Rs.30 Lakhs (Rupees Thirty lakhs only) and had also made ready the statues for installation. However, the defendant-Sabha did not construct the building as agreed and inspite of several requests and reminders, they have not completed the construction as stated in the Memorandum. On 07.12.2010, the defendant acknowledged the previous letters expressing their internal problems left with no other option, she had issued a legal notice dated 02.03.2011. Hence the suit.

4.The defendants remained ex-parte. The plaintiff was examined as PW-1. Memorandum of Understanding between her and the defendant also filed, she also spoken about the payment of Rs.30 lakhs(Rupees Thirty lakhs only) to the defendant, at the time of beginning the construction as agreed by them. PW-1 has also spoken about the statues of her husband and her father who expired. As per the agreement between the parties, the defendant has not began the construction and failed to return the amount. As per Ex.P-1 Memorandum of Understanding, the plaintiff has agreed to pay a sum

of Rs.45,00,000/-(Rupees Forty five lakhs only) for construction and specifically it was agreed by the parties, that the agreement is null and void, if the construction does not commence by 01.06.2007 and any monies given as a donation to be refunded. Ex.P-2 receipt issued by the defendant is payments of Rs.15,00,000/- (Rupees Fifteen lakhs only) dated 31.03.2007. Exs.P-3 & 4 are receipts for another payment of Rs.15 lakhs (Rupees Fifteen lakhs only). Ex.P-5 is the corresponding letter between the plaintiff and the defendant. As per Ex.P-6 letter dated April 2, 2009, the plaintiff addressed a letter requesting the defendant to inform as to when the construction would be completed. Similarly, Ex.P-7 addressed by the plaintiff duly on 20.04.2009 by e-mail from 2007. As per Ex.P-8 letter dated 19.11.2009, the defendant informed the plaintiff that the building project was not completed due to certain unforced developments, and the above letter was acknowledged by the defendants. Ex.P-9 letter addressed to the plaintiff shows that in fact, the defendant received the money. Similarly another letter was sent on October 2010. The defendant's letter dt.07.12.2010 informing the plaintiff that the building construction problems can be solved and requested the plaintiff to wait for some more time. Finally, the plaintiff sent a legal notice which is seen in Ex.P-12 & 13, in which it was specifically agreed to receive the donation

only for the purpose of construction within a particular period and also having agreed to commence the construction on or before 01.06.2007. The defendant has not even started construction till the legal notice was sent Memorandum of Understanding Ex.P-1 clearly shows that the construction does not commenced by 01.06.2007, and all the monies received by donation, shall be refunded to the parties concerned. When the defendant specifically having agreed to repay the amount defaulted in the construction within a specific period. The defendant cannot retain the amount received by them under the caption of "donation". They are liable to return the amount to the plaintiff.

5. Accordingly, this Court is of the view the plaintiff is entitled to get back the amount as prayed for with interest of 6% per annum from the date of plaintiff till on the date of realization. The suit is accordingly decreed. No costs.

11.01.2017

Index: Yes/No
Internet: Yes/No
KP

N.Sathish Kumar, J.,
KP

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11.01.2017

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