

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 16.11.2016

PRONOUNCED ON: 06.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.875 of 2009

1. Heeralal Constructions Pvt Limited
by its Managing Director, Gopichand Idandas
Chennai-6

2. Gopichand Idandas

Plaintiffs

Vs

1. Gee Gee Holdings (Chennai) Pvt Limited
Chennai-4

2. Blue Pearl Developments Pvt Limited
Chennai-4

3. G.Haresh Chand

Defendants

Prayer:- This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules and Order VII Rule 1 of CPC.

For Plaintiff : Mr.Murari, SC for Ms.Kavitha Kannan

For Defendant : Mr.P.R.Raman

JUDGEMENT

This civil suit is filed by the Plaintiffs to pass a judgement and decree, against the Defendants:-

(a) directing the 1st Defendant to pay the Plaintiffs a sum of Rs.11,34,37,500/- with interest on the principal amount of Rs.8,25,00,000/- at 15% per annum from the date of the suit till the date of realisation.

(b) directing the Defendants to pay the costs of the suit.

2. The case of the plaintiffs, as set out in the plaint, is as follows:-

a. The 1st Plaintiff is a Company incorporated under the Companies Act, 1956 and the 2nd Plaintiff is the Managing Director of the 1st Plaintiff Company. The Defendants 1 and 2 are also Companies, registered under the Companies Act, 1956. The 3rd Defendant, as has been brought out in the evidence, is the brother's son of the 2nd Plaintiff. The 1st Plaintiff Company was incorporated on 20.09.1978 with the object of undertaking real estate business activities. The 2nd Plaintiff had subscribed to 10 equity shares, out of the initial paid up capital of 50 shares of Rs.10/- each. The other subscribers are his family members.

b. It had been further stated that the Tamil Nadu Congress Committee Charitable Trust (herein after referred to as the Trust) is the absolute owner of the buildings and premises, situated at No.573, 574 and 574A, Annasalai, Chennai, popularly known as Congress Grounds, Teynampet. This land was in the occupation of several tenants and major portion of the land was vacant. The Trustees of the Trust were desirous of developing the property by constructing a commercial complex. The 1st Plaintiff Company and another Company by name Sky High Builders, who is not a party to the suit, had entered into negotiations for such developments on a joint venture basis. An agreement was entered into on 28.5.1996 between the Trustees of the Trust, Sky High Builders and the 1st Plaintiff Company, in which the said Sky High Builders and the 1st Plaintiff Company had jointly agreed to develop the property

by putting up constructions. The Plaintiffs, in view of the magnitude of the project, had felt that a special purpose vehicle should be created for undertaking such development and consequently, the partners of the Sky High Builders and the Promoters of the 1st Plaintiff Company had formed the 2nd Defendant Company on 2.1.1998 for the special purpose of implementing the aforesaid project. The 2nd Plaintiff, the 3rd Defendant and two partners of Sky High Builders were the subscribers to the Memorandum of Association and each of them subscribed to 100 shares in the 2nd Defendant Company. The main object of the 2nd Defendant Company was to implement and perform the agreement of development of the property called the Congress Grounds at Teynampet, Chennai.

c. Subsequently, on 1.7.1998, the 1st Plaintiff, the 2nd Defendant and one of the partners of Sky High Builders B.K.Ranka, caused incorporation of the 1st Defendant Company as an investment vehicle to facilitate the real estate development. Three persons had subscribed to 100 shares each in the 2nd Defendant Company. A further 100 shares were allotted to one Jhaver. The 2nd Defendant Company had made further issues and 27,50,000 shares were allotted to the 1st Plaintiff Company and to Sky High Builders. The 1st Defendant had purchased the said 27,50,000 shares held by Sky High Builders and also 100 shares held by B.K.Ranga and the 100 shares held by Jhaver. Therefore, the Plaintiffs together had held 27,50,100 shares in the 2nd Defendant Company, while the Defendants 1 and 3 had held 27,50,300 shares. Since the 2nd Defendant had been incorporated specifically for the purpose of implementing the project at the Congress Grounds, an Assignment Agreement

dated 18.1.1999 was entered into, whereby the 1st Plaintiff and Sky High Builders had assigned all the rights and obligations under the agreement dated 28.5.1996 to the 2nd Defendant Company. The Trustees of the Trust were the Confirming Parties in the said Assignment agreement.

d. Thereafter, the 1st Defendant was desirous of carrying out the development activities and the 3rd Defendant through the 2nd Defendant had approached the Plaintiffs, offering to purchase the shareholdings of the Plaintiffs in the 2nd Defendant Company. The said Defendants also had represented that they would be commencing and proceeding with the construction activities expeditiously and therefore, the consideration of the shares would be paid partly by cash and partly by built up space, within a period of 6 months. A share purchase agreement was entered into on 16.8.2006 between the Plaintiffs and the Defendants 1 and 2 and the 1st Defendant Company had agreed to purchase 27,50,000 shares held by the 1st Plaintiff Company and 100 shares held by the 2nd Plaintiff in the 2nd Defendant Company for a total consideration of Rs.5 crores. It was further provided that the said amount of Rs.5 crores would be paid by a cheque for a sum Rs.1.50 crores and the balance consideration would be discharged by allotment of built up space in the proposed construction within a period of 6 months from the date of the agreement. In other words, such a built up space was to be allotted on or before 15.2.2006. A further agreement was entered into in August 2006 between the same parties, agreeing to increase/modify the consideration mentioned in the earlier agreement. In the 2nd agreement, clause (1), it had been stated as follows:-

“The aggregate additional consideration for the sale of the shares payable by the Buyers, to the sellers collectively shall be increased by an amount of equivalent to Rs.5,00,00,000/- (Rupees five hundred lakhs only).”

Clause 2, it had been stated that as follows:-

“The Buyers will pay an additional consideration of a sum of Rs.5,00,00,000/- (Rupees five hundred lakhs only) which will be given/allotted only in the form of built up space, in the proposed construction at Congress Grounds whenever the project commences. The built up space will include proportionate shares in common areas.”

e. It had been further stated that the total consideration payable by the 1st Defendant to the Plaintiffs for the sale of the shares was Rs.10 crores. The 1st Defendant had reserved its right to make payment of Rs.5 crores in lieu of area to be allotted at any time. It had been further stated that Rs.1.50 crores had been paid as part sale consideration. In pursuance of the 2nd agreement, a sum of Rs.25 lakhs was paid as part consideration. Consequently, out of the total consideration of Rs.10 crores, a sum of Rs.1.75 crores had been paid and the balance consideration payable was Rs.8.25 crores. It had been further stated that pursuant to the 1st agreement, the Plaintiffs had executed share transfer deeds in respect of 27,50,100 shares held by them in the 2nd Defendant Company and delivered the same to the 1st Defendant Company. The 2nd Plaintiff had also received his compensation from the Board of the 2nd Defendant Company.

f. It had been specifically stated that according to the 1st agreement, the balance consideration was to be paid in the form of built up space to be

provided to the Plaintiffs within a period of 6 months from 16.8.2006. It had been further stated that though time had not been specified in the 2nd agreement, since it follows the earlier agreement, the time schedule was 6 months from the date of the first agreement. Even if the specific time is not fixed, a reasonable time has to be fixed. It had been further stated that the Defendants had not been able to vacate the existing tenants and had not been able to obtain necessary plan approval for the proposed construction. Chances of such action being taken in the near future were extremely remote. Consequently, the Plaintiffs had stated that the consideration by built up space was only a mode of discharge of the consideration. Since the possibility of construction being put up and the built up space being allotted were being very remote, this suit has been filed seeking payment of the balance sale consideration in cash.

g. It had been further stated by the Plaintiffs that they had filed a petition under Sections 111, 397, 398 and 402 of the Companies Act before the Company Law Board, Additional Principal Bench, Chennai, seeking rectification of the Register of Members of the 2nd Defendant Company since the shares belonging to them had been fraudulently transferred without the 1st Defendant discharging the full consideration. It had been further stated that the Plaintiff had only delivered the share transfer deeds and not the share certificates and consequently, the shares could not have been transferred and such transfer would be in violation of Section 108 of the Companies Act. In the said proceedings, the Defendants had sought to justify the transfer of shares and also produced a letter dated 15.1.2007, stating that they were allotting 3000

sq.ft of built up area in the 4th floor of the proposed construction to the 1st Plaintiff Company. It had been further stated that the Company Law Board had passed an order on 7.5.2009, wherein it had been held that the 2nd agreement constituted additional consideration for the sale of shares. It had been further stated that since the Plaintiffs had sought the balance consideration, they should file a civil suit alone. It had been finally stated that the consideration receivable by the Plaintiffs was Rs.10 crores and allotment by built up space was only a mode of consideration. Consequently, they had now claimed the balance sale consideration with interest from 15.2.2007 till the date of payment. Hence, this civil suit had been filed for the reliefs as stated above.

3. In the written statement filed by the Defendants and verified by the 3rd Defendant for himself and on behalf of the Defendants 1 and 2, it had been stated as follows:-

a. Originally Sky High Builders and the 1st Plaintiff Company, had entered into an agreement, dated 28.5.1996 with the Tamil Nadu Congress Charitable Trust for the joint development of the property situated at No.573, 574 and 574A, Anna Salai, Chennai, commonly known as the Congress Grounds. Subsequently, on 2.1.1998, the Managing Partner of the Sky High Builders, Basant Kumar Ranka and the 3rd Defendant herein had promoted the 2nd Defendant Company. On 18.1.1999, Sky High Builders and the 1st Plaintiff herein had assigned all the rights under the agreement entered into with the said Trust to the 2nd Defendant. Consequently, the 2nd Defendant had obtained an exclusive right to develop the Congress Grounds. The 2nd Plaintiff, the 3rd Defendant and one Sohan Parmer and B.K.Ranka held 100 shares

each. The 1st Plaintiff and the Sky High Builders held 27,50,000 shares each. Subsequently, by an agreement dated 1.6.2006, the 1st Defendant had purchased the entire shares belonging to the Sky High Group including the shares of Sohan Parmer and B.K.Ranka. The Plaintiffs collectively owned 27,50,100 shares in the 2nd Defendant Company. Thereafter, the 2nd Plaintiff, out of his own volition, had approached the 1st Defendant offering to sell the entire 27,50,100 shares held by the Plaintiff. It had been made clear that the share transfer will be paid directly to the 1st Plaintiff, in which the 2nd Plaintiff and his family members held controlling interest, but not absolute interest and the consideration will be used in the interest of the Company and not for the personal benefit of the 2nd Plaintiff. This was accepted and an agreement was signed on 16.8.2006, by which both the Plaintiffs sold their entire shareholdings in the 2nd Defendant Company to the 1st Defendant Company. Consequently, the Defendants 1 and 3 became the sole shareholders of the 2nd Defendant Company. For transfer of such shares, the consideration was Rs.5 crores, payable by a cheque drawn on Corporation Bank, bearing No.311704 dated 16.8.2006 for Rs.1.50 crores and the balance of Rs.3.50 crores in the form of built up space in the proposed construction in the Congress Grounds within a period of 6 months from the date of the agreement. However, allotment of built of space would not mean delivery of constructed area.

b. It had been further stated that construction could not even begin within a period of 6 months nor was area earmarked for allotment to an extent of 3500 sq.ft for the Plaintiffs. It had been further stated that the 2nd Plaintiff had affixed his signature on the reverse of the original share certificates and the

share transfer forms and he had also signed on the reverse of the original share certificates for the 2nd Defendant, which was allotted to him. It had been further stated that subsequently, the 2nd Plaintiff had approached the 3rd Defendant and complained that the consideration was inadequate and that he expected a more generous settlement. The 3rd Defendant, in response to the request for bestowing the share of the benefits not only on the 2nd Plaintiff, but also on the other members of the family, including the 3rd Defendant and his father, an offer was made to allot built up space in the project worth Rs.5 crores to the 2nd Plaintiff and the 3rd Defendant and his father in equal proportions. The 2nd Defendant would be committed to allot Rs.2.5 crores of worth building space to the 3rd Defendant and his father and another Rs.2.5 crores to the 2nd Plaintiff and his family. This could be done only after the project commences. The above proposal was made in good faith and signed in August 2006. There was no connection between the 1st agreement dated 16.8.2006, under which the shares were transferred and the 2nd agreement in August 2006, in which there was a commitment to allot built up space at an uncertain time in the future. This was not related to the completed transfer of shares. Transfer of shares had already taken place and consideration for the transfer was already mentioned in the transfer forms, which were duly stamped. The 2nd agreement had never placed any importance to the date of agreement and left the date blank in the first page.

c. It had been further stated that the 2nd Plaintiff again had approached the 3rd Defendant, stating that they were unsatisfied with the amount of Rs.2.5 crores worth of built up space and some time in October

2006, the 2nd Plaintiff had approached the 3rd Defendant and asked for a hand loan of Rs.1 crore, but only Rs.25 lakhs could be given by the 3rd Defendant. However, the 2nd Plaintiff had claimed that the said amount of Rs.25 lakhs was paid in consideration of the 2nd agreement entered into in August 2006, which claim the Defendants denied and claimed as patently false. The Defendants had actively engaged in starting the project at Congress Grounds. The 3rd Defendant had been continuously visiting New Delhi to meet various Congress Party Leaders. At any rate, there was no time frame and consequently, there was not even a clause providing for default. However, the Plaintiff had filed CP.No.29 of 2007 before the Company Law Board, challenging the very transfer of shares of the 2nd Defendant Company to the Defendants 1 and 3, alleging fraud and forgery. This was dismissed by order dated 7.5.2009. The Defendants, therefore, had stated that the Plaintiffs have not come to the court with clean hands.

d. In the written statement, after setting out the back ground facts, the Defendants further denied each and every averment mentioned in the plaint. It had been further stated that towards the agreement, dated 16.8.2006, the consideration for transfer of 27,50,100 shares was Rs.5 crores and the said amount was payable by a cheque for Rs.1.5 crores and by allotment of built up area worth Rs.3.5 crores. With respect to the 2nd agreement, it had been further stated that no consideration was promised and it had no time limit and it could be determined only when the project commences. The Defendants had also stated that the Company Law Board had clearly affirmed the validity of transfer of shares, by its order dated 7.5.2009. It had been further stated that the

Plaintiffs are not entitled for any relief more particularly the relief sought under the 2nd agreement. It had been further reiterated that the amount of Rs.25 lakhs claimed in the plaint as consideration towards the 2nd agreement was only a hand loan and not related towards the 2nd agreement. It had been specifically stated that the two agreements were not related to each other. In such circumstances, the Defendants had claimed that the suit should be dismissed with costs.

4. On perusal of the pleadings of the parties and other materials on record, by order dated 6.1.2012, the following issues were framed for determination:-

1. Whether the suit is barred by the law of limitation?
2. Whether the suit suffers from non-joinder of necessary parties?
3. Has not the 1st Defendant agreed to pay the Plaintiffs a sum of Rs.5,00,00,000/- (Rupees five crores only) as consideration for selling their shares in Defendant 2 to Defendant 1 in terms of the share purchase agreement dated August 16, 2006?
4. Was not such consideration agreed to be discharged by the payment of monies to the tune of Rs.1,50,00,000/- (Rupees one crore fifty lakhs only) and the balance by allotment of built up space to the tune of Rs.3,50,00,000/- (Rupees three crores fifty lakhs only) in the proposed construction at 573, 574 and 574A, Anna Salai, Chennai to be constructed and allotted within a period of 6 months from the date of the execution of the share purchase agreement, dated August 16, 2006?
5. Was not the consideration provided for in the share purchase agreement dated August 16, 2006 increased in the 2nd agreement entered into in August 2006 between the Plaintiffs and the 1st Defendant represented by the 3rd Defendant by a further sum of Rs.5,00,00,000/- (Rupees five crores only)?

6. Whether the 2nd agreement entered into in August 2006 between the Plaintiffs and the 1st Defendant was to increase the sale consideration stipulated in the first agreement and not for any other reason?
7. Are the agreements dated 16.8.2006 and August 2006 inter linked and supplementary to one another?
8. Whether the payment of a sum of Rs.25,00,000/- by the third Defendant to the 2nd Plaintiff in October 2006 was towards part payment under the agreement?
9. Whether the agreement dated August 2006 is supported by cash consideration?
10. Is there not a liability on the 1st Defendant represented by the 3rd Defendant to pay monetary consideration under share purchase agreement dated 16.8.2006 and the second agreement entered into in August 2006, since the built up space was not allotted as per the agreements?

5. On the side of the Plaintiffs, to substantiate the issues, the Plaintiff had examined two witnesses. The 2nd Plaintiff was examined as PW.1 and the son of the 2nd Plaintiff, who claimed to be the Director of the 1st Plaintiff Company, was examined as PW.2. The Plaintiffs had marked Ex.P1 to P8. On the side of the Defendants, 3rd Defendant was examined on behalf of the Defendants, as DW.1 and Ex.D1 to D3 were marked.

6. This court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.

7. The important documents to be taken into consideration, while discussing the issues, are Ex.P3, which is the share purchase agreement, dated 16.8.2006, Ex.P4, which is another agreement without any date, but in the month of August 2006, Ex.P5, which is the certified copy of the order of the Company Law Board, dated 7.5.2009, Ex.P7, which is the copy of the cheque

dated 25.10.2006 and Ex.D1, which is the letter of the 2nd Defendant to the 1st Plaintiff dated 15.1.2007.

8. **Issue (1):** This issue relates to the aspect of limitation. Even, at the outset, it must be mentioned that the suit as framed barely escapes from being barred by law of limitation and does so only by the grace of the Defendants. The facts of the case will be discussed in detail while discussing the issue (3) onwards.

9. Issue (1), which relates to limitation, revolves around the agreement between the parties, dated 16.08.2006. This agreement had been marked as Ex.P3. This agreement had been entered into between the 1st Plaintiff Company, represented by the 2nd Plaintiff and the Defendants 1 and 2 represented by the 3rd Defendant. As stated above, the date of the agreement is 16.08.2006. According to the terms of the agreement and in pursuance thereof, the Defendants had an obligation to pay a sum of Rs.5 crores. Again, it is repeated that the facts relating to the case are not discussed while discussing this issue (1). On the date of the agreement, towards part consideration, a sum of Rs.1.50 crores was paid by a cheque. According to the terms of the agreement, the balance consideration of Rs.3.50 crores was to be discharged by way of built up space area proposed to be built up in the area called Congress Grounds and to be allotted within a period of 6 months. Ex.D1 is the letter dated 5.1.2007 from the 2nd Defendant to the 1st Plaintiff with respect to such allotment. This letter had been denied by the Plaintiffs. Had the Defendants had also struck with such denial by the Plaintiffs and withdrawn the letter, the suit would have been barred by limitation. However, the Defendants

stood by the said allotment and consequently, the performance or non performance of the earliest agreement dated 16.8.2006 had been extended till 15.01.2007. The Plaint, having been presented on 17.09.2009, is within the period of limitation. I consequently hold that the suit is not barred by limitation. Issue (1) is answered in favour of the Plaintiffs.

10. Issue(2):- This issue had been framed on the aspect of non-joinder of necessary parties. During the trial, neither of the parties, viz. the Plaintiffs or the Defendants, took this issue as one to be agitated in depth. In fact, even during the arguments, this issue was not pressed on either side. The necessary parties, who had knowledge about the agreement, were actually shown as the parties to the suit and consequently, I hold that the suit is not bad for non-joinder of necessary parties. Accordingly, issue (2) is answered.

11. Issues (3) (4), (5), (6), (7) and (9):- Issues (3) to (10) are interlinked with each other. Issue (3) is with respect to the agreement, dated 16.8.2006 and whether the 1st Defendant had agreed to pay a sum of Rs.5 crores as consideration for selling the shares in the 2nd Defendant Company to the 1st Defendant by the Plaintiffs. Issue (4) is with respect to the same consideration and whether it was agreed to be discharged by payment of Rs.1.50 crores by cash and the balance by allotment of built up space in the proposed construction at the Congress Grounds. Issue (5) again relates to the same agreement dated 16.8.2006 and whether the consideration provided therein had been increased in the 2nd agreement in August 2006 by a further sum of Rs.5 crores. Issue (6) is whether the 2nd agreement was to increase the sale consideration and not for any other reasons. Issue (7) is naturally whether

the two agreements dated 16.8.2006 and August 2006 are interlinked and supplementary to one another. Issue (8), which has to be decided separately but which can form part of the main discussion by deciding the issues, is with respect to the payment of Rs.25 lakhs by the 3rd Defendant to the 2nd Plaintiff in October 2006 and whether the said payment was towards part consideration of the 2nd agreement. Issue (9) is whether the 2nd agreement is supported by cash consideration. Issue (10) is whether the consideration in the form of built up space which could not be performed and not allotted, should be substituted by monetary consideration.

12. The 1st Plaintiff is M/s.Heeralal Constructions Pvt. Limited. This Company was incorporated on 20.9.1978 with the object of undertaking real estate development activities. The 2nd Plaintiff is the Promoter of the 1st Plaintiff Company and had subscribed to 10 shares of the 1st Plaintiff Company. In fact, even the 3rd Defendant is a Promoter of the said 1st Plaintiff Company and is also a shareholder in the 1st Plaintiff Company. Naturally, this is a suit where the 3rd Defendant, as a shareholder, is involved in a litigation, in which, the Company in which he is a shareholder has filed the suit against himself. This was an aspect, which turned the thoughts of this court to probabilise whether the parties involved were only shadow boxing within the court halls, but however, that cannot be gone into in detail, since both the learned counsel, who argued the case, argued projecting only on legal points and on merits.

13. To continue with the facts, one another interesting aspect is that the 2nd Plaintiff is the paternal uncle of the 3rd Defendant or rather the father of the 3rd Defendant is the own blood brother of the 2nd Plaintiff. The family

Company called M/s.Gee Gee Group of Companies has been doing business since 1979. On 28.05.1996, the family had entered into a very ambitious project to develop the property belonging to the Tamil Nadu Congress Committee Charitable Trust called the Congress Grounds at Door Nos.573, 574 and 574A, Anna Salai, Chennai. The entire extent of the said Congress Grounds is a vast portion of the property in the prime area at Chennai. An agreement to this effect was entered into and the manner of sharing the built up space was set out in the agreement. The identification of the area was to be decided and agreed upon subsequently. Ex.P1 is the said agreement entered into with respect to the development of the lands at the Congress Grounds. This agreement, as stated above, is dated 28.05.1996. It had been signed by the Trustees of the Tamil Nadu Congress Committee Charitable Trust. Even before proceeding further, it must be stated that all the Trustees had, unfortunately, as on date, passed away. On behalf of the Developers, it was signed by a Company called Sky High Builders, represented by its Managing Partner, Basant Kumar Ranka and the 1st Plaintiff Company, represented by the 2nd Plaintiff herein. In the agreement, the Trustees and the Joint Developers had agreed that apart from 2.5 acres of property, the entire property shall be put up for construction.

14. Various terms regarding agreement of allotment of space were entered into in the said agreement. However, since the agreement had not yet started taking shape, moreover as construction has not yet started taking place or rather no further agreement, after the death of the Trustees or the signatories to the agreement, had not been entered into, at this stage, where the litigation

is between the parties to the suit herein, the agreement is not gone into in detail. Proceeding with the facts further, this agreement, which, as stated above, was dated 28.5.1996 and to develop and take the agreement forward, the 2nd Defendant Company was incorporated on 2.1.1998, which was called as the Special Investment Vehicle with the sole purpose of undertaking the development of the property at the Congress Grounds. The 2nd Plaintiff and the 3rd Defendant had subscribed to 100 shares of the 2nd Defendant Company. Thereafter, there had been reconstitution of the Directors of the 2nd Defendant Company in a phased manner. In the first place, on 1.7.1998, the 1st Defendant, 3rd Defendant and the B.K.Ranka, who was one of the partners of the Sky High Builders and also a signatory to Ex.P1 agreement, had incorporated the 1st Defendant Company, M/s.Gee Gee Holdings and this was primarily at investment vehicle for investing in the immovable properties with a view to facilitate the real estate development.

15. In the year 1998, the 2nd Defendant had issued shares and allotted 27,50,000 shares to the 1st Plaintiff Company. Originally the 2nd Plaintiff had 100 shares and with this allotment, the Plaintiffs together came to hold 27,50,100 shares of the 2nd Defendant Company. Thereafter, on 18.01.1999, by Ex.P2, Sky High Builders and the 1st Plaintiff had assigned all the rights under the agreement dated 28.05.1996 in favour of the 2nd Defendant Company. With this assignment, the 2nd Defendant was entrusted with the work of development of the Congress Grounds. This was the situation which prevailed from 1999 till 2006. In the interregnum period, the project did not move forward and there was no construction activity. One by one the Trustees

passed away and the tenants could not be vacated and owing to other causes, the actual construction work did not commence. Ex.P3, which is the crux of the suit, was entered into on 16.08.2006. By this agreement, the 1st Defendant Company had purchased the entire of 27,50,100 shares in the 2nd Defendant Company, belonging to the Sky High Group, including 100 shares each held by Sohan Parmer and B.K.Ranka. Consequently, the 1st Defendant had held 27,50,300 shares in the 2nd Defendant Company. Ex.P3 was entered into on 16.8.2006. The 3rd Defendant through the 2nd Defendant Company had purchased the shareholdings of the Plaintiffs in the 2nd Defendant Company.

16. Ex.P3 is the share purchase agreement, dated 16.8.2006. This had been entered into between the 2nd Plaintiff, in his individual name and by the 1st Plaintiff Company, represented by the 2nd Plaintiff in his capacity as Managing Director and both the Plaintiffs had been termed as sellers in the said agreement and the 1st Defendant represented by the 3rd Defendant were referred to as the buyers in the agreement and also by the 2nd Defendant again represented by the 3rd Defendant and referred to as the target Company. The sellers, namely, the Plaintiffs and the target Company were called as the parties in the agreement. In the said agreement, it had been stated that the sellers, namely, the Plaintiffs had 27,50,100 shares of Rs.10 each of the target Company, namely, the 2nd Defendant Company. The break up details had also been given and it was stated that the 2nd Plaintiff had 100 shares and the 1st Plaintiff Company had 27,50,000 shares. It had been further stated that the Plaintiffs, namely, the sellers were desirous of selling the entire shareholdings in the target Company, namely, the 2nd Defendant Company. The 1st

Defendant represented by the 3rd Defendant had agreed to purchase the said shares. On the date of signing the agreement, the parties also had agreed that the Plaintiffs, namely, the sellers shall transfer the shares also. It had been, therefore, stated that consequently, the parties had entered into the said agreement. The consideration is sale of shares and for sale of shares, consideration had been offered by the 1st Defendant represented by the 3rd Defendant. In the main clause called 'sale and purchase of shares', it had been stated that the shares are purchased by the nominees of the buyers. It must be kept in mind that the 1st Defendant is represented by the 3rd Defendant. On the date of the agreement, namely, 16.8.2006, the obligation of the sellers, namely the Plaintiffs herein, was to transfer the entire shareholdings of 27,50,100 shares and the consideration was fixed at Rs.5 crores. It was not just transfer, but the Plaintiffs had an obligation to cause the Register of Members of the 2nd Defendant Company to be updated accordingly on that day itself. With respect to the consideration, it had been stated that the said consideration of Rs.5 crores shall be paid in the following manner:-

(a) Out of the said Rs.5 crores, Rs.1.50 crores was paid on that very day and which sum the sellers namely the Plaintiffs herein admitted and acknowledged receipt by way of a cheque no.311704 drawn on Corporation Bank dated the very same day of the agreement i.e. 16.8.2006.

(b) With respect to the balance consideration of Rs.3.50 crores, it was stated that it will be allotted in the form of built up space in the proposed construction at the Congress Grounds within 6 months from this date.

17. It had been further stated that the shares shall be sold with full

title guarantee free from all encumbrances and together with all rights attached to that. There is a further covenant with respect to the actions taken on the signature date. On that date, namely, 16.8.2006, the sellers, namely, the Plaintiffs herein shall cooperate to amend the Articles of Association of the 2nd Defendant Company to provide for (1) that the 1st Defendant and the 3rd Defendant, who are the buyers shall have the right to appoint a non retiring director and (2) that all decisions of the 1st Defendant shall be delegated by the Board and shall be taken at the Board level only and all the decisions shall be unanimous and further no coram shall be constituted and the buyers nominee namely the 1st Defendant's nominee shall be appointed on the Board to carry out day today operations.

18. There is also further covenant that a resolution shall be passed for effecting the transfer of shares and in that Register of Members. It had been further stated that the sellers, namely, the Plaintiffs herein shall cause delivery of written resignations of all nominee Directors of the Plaintiffs on the Board as Directors and also a true and certified copy of the resolution of the Directors approving the transfer of sale accepting the resignation and appointing of persons as Directors. This agreement is very crucial and the entire case turns around the interpretation of this agreement. Even before this court has an opportunity to examine this agreement, the attitude of the Plaintiffs will have to be pointed out, since by Ex.P5 namely the order of the Company Law Board dated 07.05.2009, it is revealed that this transfer of shares had been challenged by the 1st Plaintiff Company herein represented by the 2nd Plaintiff as having been obtained through forgery. The Respondent therein is the 2nd

Defendant and two others. The 1st Plaintiff had actually challenged the transfer of shares. Even though they covenant that on the day of agreement on 16.8.2006 itself, they had , entirely without any encumbrances and with full right attached to the transfer, consented for transfer of the entire shareholdings of their 27,50,100 shares, still they thought it right to challenge the same before the Company Law Board by filing CP.No.29 of 2007, stating acts of oppression and mismanagement and also rectification, since the shares were fraudulently transferred without payment of the full consideration to the Petitioners therein.

19. With respect to the consideration, even before going into the findings of the Company Law Board, it is seen that the total consideration was fixed at Rs.5 crores and on the day of the agreement for sale itself, part consideration, as agreed by the parties to a sum of Rs.1.50 crores, had been paid by a cheque. The balance consideration of Rs.3.50 crores was agreed to be paid in the form of allotment of built up area in the proposed construction within a period of 6 months. On the date of the agreement, namely, 16.08.2006, not even a brick had been purchased, not even a single stone has been purchased and not even a single grain of sand had been purchased towards the proposed construction. There had not been even a single dot ink put up on paper showing the nature of construction. The Plaintiffs were aware of that. They knew that the construction was in the future, but they had actually convinced the Defendants, the buyers and the target Company to commit themselves to part with consideration. The Defendants had paid part consideration of a huge sum of Rs.1.50 crores on the very same day by a cheque. With respect to the balance consideration, the Defendants had

committed themselves to allot built up space and evidently allotment is totally different from delivery. Delivery can be effected only when there is a tangible construction in place, namely, when there is a wall, when there are buildings, when there are doors, when there are windows, when a door has to be opened to allow a person into a room and he can sit in the arm chair and look out of the windows. In that case, in case of such a building, delivery of possession has to be effected. Herein, the parties had never agreed to deliver possession. All that they agreed was that built up space would be allotted when a building comes up. In the said building, proportionate built up area shall be allotted to the value of Rs.3.50 crores. The area of the built up area, which equals the value of Rs.3.50 crores, would be dependent on the value of the construction, which will be put up. To honour that, Ex.D1 had been produced by the Defendants. Even before going through both ExD1 and Ex.P5, which is the Company Law Board's decision, it must be pointed out that it was only because the Defendants had the grace of producing Ex.D1 that the suit has come within the period of limitation. Ex.D1 incidentally is dated 25.01.2007. This is within the 6 months period mentioned in Ex.P3, which was entered into on 16.8.2006. In the said Ex.D1, the 2nd Defendant Company had confirmed that as per the terms of the agreement dated 16.8.2006, the 2nd Defendant Company, which is the target Company, solely responsible for the construction of the building at Congress Grounds, had allotted 3500 sq.ft of built up area and earmarked such area in the 4th floor of the proposed construction on the Western wing facing the lift, inclusive of proportionate share in the common area.

20. The learned senior counsel for the Plaintiffs had stated that this

allotment is very absurd. It is indeed very absurd. The Plaintiffs had walked into such absurdity with eyes open. They not only wanted cash for transfer of the shares, but they also wanted the property. When the property did not even exist, when the building had not even taken shape and when as stated earlier not even a grain of sand was put in place, still the Plaintiffs intended to have a share of the property. Naturally, as builders and as experienced persons in the business of building and construction, the Plaintiffs knew that Rs.3.50 crores worth of building with appreciation in value was more valuable than Rs.3.50 cores of cash particularly, when the shares which they had transferred were wholly a family Company limited shares, which had no marketable value in the outside world. If 27,50,100 shares to the face value of Rs.10 each had been sold in the open market, it is very doubtful whether half that value to a share could have been obtained by the Plaintiffs herein.

21. On the other hand, they had not just obtained the face value, but much more than that. They had obtained and extracted a promise from the Defendants to pay them Rs.5 crores. After extracting payment of Rs.5 crores, they had filed CP.No.29 of 2007 and in the said petition, they had stated that the share certificates had not been issued by the 1st Respondent Company therein. They had stated that share transfers had been carried on, but share certificates had not been issued to them at the time of allotment and they further had stated that there had been forgery in the transfer forms and they had further stated that the transfer was invalid, illegal, non est and void ab-initio and it had been stated that therefore, the Petitioners therein namely the Plaintiffs, were deemed to be the holders of the shares and further stated that

consequently they continued to hold the shares, as per law. This stand of the Petitioners therein that the agreement dated 16.8.2006 is tainted without performance even on their part is very shocking, because in this court they challenged the Defendants to perform their part of their agreement on the ground that the Plaintiffs herein had voluntarily and actually transferred their shares.

22. Before the Company Law Board, the Plaintiffs had stated that they had not actually transferred the shares and that the shares should revert back to them. Before this court, they say that they had transferred the shares and the Defendants should pay back the money. Between two forums, they had claimed both re-transfer of shares and at the same time, they also claimed the consideration for transfer. I hold that the Plaintiffs had not approached the court with clean hands. This in fact reinforced the earlier supposition in the mind of the court that the entire litigation was only a shadow litigation among the family members of the Plaintiffs and the Defendants. In fact, before the Company Law Board, it had been further stated that the 2nd Plaintiff had never subscribed his signature on the reverse of the original share certificates. They alleged forgery and fraud. Moreover, during the pendency of the proceedings before the Company Law Board, original share certificates were sent to the Forensic Department. Again, I am unable to apprehend this aspect. It is the 2nd Plaintiff's signature which is found in the share certificates. If it is a third party's signature, which is clouded with doubt, then the court can be requested to send them for examination to the Forensic Department. It is the very same 2nd Plaintiff's signature and when he had stated before the Company Law Board

that his signature has been forged and comes back to this court and says that on the basis of the said signatures, direct the Defendants to pay their part of the consideration, I have to hold that the Plaintiffs are on a very sticky wicket. Consequently, the agreement Ex.P3 though reflects that the Defendants had paid a sum of Rs.1.50 crores and by Ex.D1 had allotted 4500 sq.ft of area in a non existing building, in a non existing floor, in a non existing direction, in a non existing lift, and in a non existing area, still that was what the 2nd Plaintiff wanted. They wanted a prior commitment that whenever, without any time limit, a building comes up in that prime space at Central Chennai in Anna Salai, they needed a hand on that. The knew the value of a building in that area and they were not prepared to wait. The suit is totally immature.

23. However, the Plaintiffs have not just sued on the said agreement Ex.P3. They also come before this court seeking a further sum by Ex.P4. Ex.P4 has no date. Of course, it had a month and it is August 2006. It has to be remembered that Ex.P3 is a self contained agreement. There was an offer to sell the shares and there was a commitment that shares shall be transferred and share certificate forms shall be signed and for such transfer, consideration of Rs.1.50 crores by a cheque was paid and a further sum of Rs.3.50 crores was allotted in the manner of a building which was proposed to be put up.

24. Independent of that agreement, towards the value of 27,50,100 shares and independent of the fact that they had already been transferred, once again the parties had entered into an agreement and they agreed to increase/modify the consideration and it had been modified or increased in the

following manner:-

“2. The buyers will pay an additional consideration of a sum of Rs.5,00,00,000/- (Rupees five hundred lakhs only) which will be given/allotted only in the form of built up space in the proposed construction at Congress Grounds whenever the project commences. The built up space will include proportionate shares in common areas.

3. The built up space allotted will be shared in the following proportions:

- a. Gopichand Idandas and family 50% (fifty percent)
- b. Gordhandas Idandas and G.Haresh Chand 50% (fifty percent)

4. The rate per sq.ft and the location of the allotted area will be decided only by Gee Gee Holdings (Chennai) Pvt Limited which will be final and binding on all parties.

5. The built up space will include proportionate shares in common areas.

6. The Gee Gee Holdings (Chennai) Pvt Limited reserves the right to make payment of Rs.5,00,00,000/- (Rupees five hundred lakhs only) in lieu of the area allotted any time.”

I am unable to see any rationale behind this agreement. There are no shares to be transferred. There is no building to be allotted. In fact, all they had was a paper and pen and they could have written anything that they wanted. But, is this agreement enforceable in a court of law? For an agreement to be enforceable in a court of law, there should be two parties, one offering to do something and the other offering consideration. There is no offer, there is no commitment, there is no building, there are no shares and I hold that the entire agreement has to be rejected.

25. As stated above, the Plaintiffs and the Defendants had entered into two separate agreements, namely, one is on 16th August 2006 and the

other is in August 2006 presumably after the date of the 1st agreement. The Plaintiffs seek to enforce the said agreement and the Defendants have put forward their defence for negating the claim of the Plaintiffs. While deciding these issues, again this court must try to get into the skin of the parties to find out how, when there is a written agreement between two professional builders and contractors, who are in the same trade, disputes had arisen. It must be seen whether it is a business transaction or whether there are underlying circumstances leading to disputes between the two parties. It must be kept in mind that the dispute is between closely related family members. The 2nd Defendant is the paternal uncle of the 3rd Defendant. The 1st Plaintiff, 1st Defendant and the 2nd Defendant are Companies wholly owned by the family members of the 1st Plaintiff and the 2nd Defendant. In fact, the 3rd Defendant is also a shareholder in the 1st Plaintiff Company.

26. Originally on 28.5.1996, the 1st Plaintiff represented by the 2nd Plaintiff in his capacity as Managing Director and another Company called Sky High Builders represented by its Managing Director B.K.Ranka had entered into an agreement to develop very huge area of land called Congress Grounds at Kamaraj Bhavan at Door Nos.573, 574, 574A, Mount Road, Chennai. This project for joint development of such a vast area of land was a very ambitious project. It must be kept in mind that the land value at that area is very high. There was huge prospect of prices escalating and sky rocketing if the project had fructified.

27. Agreement was also entered into with very senior persons with of whom the general public of the Tamil Nadu and in fact in the Country have held

with awe at admiration and they were Trustees of what is called Tamil Nadu Congress Committee Charitable Trust. This Trust, which is called the TNCC Charitable Trust, was the owner of the said land called the Congress Grounds. As a measure to know the entire area, Schedule-A consisting of item (1) consisted of 101 grounds and item (2) consisted of one kani 11 grounds 686 sq.ft in the center of Chennai.

28. The agreement, as stated above, was entered into on behalf of TNCC Charitable Trust by C.Subramaniam, P.Ramachandran, G.Karupiah Moopanar and N.Ramasamy Udayar. These gentlemen had been the elected representatives of not only legislative assemblies, but also members of Parliament and also Union Ministers. Living in democratic India, if ever a political map and history has to be written about the Congress Party, it cannot be complete without mentioning the contribution of these gentlemen. The 2nd Plaintiff was the signatory to the agreement on behalf of the 1st Plaintiff. Naturally, when we look and pierce the veil surrounding the agreement, we can understand the efforts taken by the 2nd Plaintiff to approach, convince and bring to the negotiating table these gentlemen of such high calibre and standing. The 2nd Plaintiff did that and he did that with confidence that the 1st Plaintiff Company will be able to develop the vast area of land at the Congress Grounds. In this, of course, he was assisted by another partnership firm Sky High Builders, which was represented as stated above by B.K.Ranka.

29. Now what is to be seen is the subsequent developments surrounding the 1st Plaintiff Company and the attitude and the interest shown by the 2nd Plaintiff to consolidate construction and joint development activity in the

said Congress Grounds exclusively by his family members. This reflected his vision and also the trust and hope which he had laid on his family. This agreement with the Trust had been marked as Ex.P1. As seen above, this agreement is dated 28.5.1996. Subsequently, the 2nd Defendant Company was created, in which the 2nd Plaintiff and now for the first time, the 3rd Defendant was introduced into the scheme of affairs on 2.1.1998. Pausing here for a moment, if we look at the plaint, it is seen that on the date of the plaint, in 2009, the 2nd Plaintiff was aged 75 years and the 3rd Defendant who is his brother's son, was aged 50 years. This being so, 10 years prior to this, the 2nd Plaintiff had vast experience with age of about 65 years and the 3rd Defendant even though at 40 years could be said to have experience in construction activities, had the guidance, care and protection of the 2nd Plaintiff to venture further into this huge project. This also shows the interest of the 2nd Plaintiff in nurturing a huge project like this for his family benefit. The consolidation of the family was evident in the future steps taken by the 2nd Plaintiff. As stated above, in the first instance, on 02.01.1998 when the 2nd Defendant a special investment vehicle was created, the 3rd Defendant came into picture. Thereafter on 1.7.1998 the 1st Plaintiff, the 3rd Defendant and B.K.Ranka, the Partner of Sky High Builders, the original agreement holder incorporated the 1st Defendant Company as an investment vehicle to facilitate the real estate development. In 1998, further shares were issued by the 2nd Defendant and then in 18.01.1999 the Sky High Builders and the 1st Plaintiff assigned all the agreements to the 2nd Defendant. It must be kept in mind that the 2nd Defendant was promoted by the 2nd Plaintiff and the 3rd Defendant. So, slowly

the consolidation of the family under the guidance of the 2nd Plaintiff took place. Thereafter, on 1.6.2006, the 1st Defendant had purchased the entire shares of the 2nd Defendant belonging to the Sky High Group including the shares of Sohan Parmer and B.K.Ranka. This naturally meant that the family of the 2nd Plaintiff and the 3rd Defendant consolidated the entire agreement as their agreement through the Companies created by them.

30. Now, when after consolidating the further activities to be continued only among the family members, it was seen that there was no progress in the construction. Naturally, the agreement holder on the other side TNCC Charitable Trust was a very complicated unit to negotiate. It was the business acumen and the business strategy and the experience of the 2nd Plaintiff which alone had brought them to the negotiating table. By 2006 practically, all the Trust members, who had signed the agreement had passed away and thereafter, new members came in and consequently, fresh agreements, new negotiations, further developments will have to be done. At that stage, taking into consideration his age and fact that he had initiated the entire proceedings, the 2nd Plaintiff had decided to come out of the agreement leaving the entire management to the control of the 3rd Defendant. It was in these circumstances that the agreement dated 16.8.2006, which is Ex.P3, was entered into. Once again if we look into the psychology of the parties, the 2nd Plaintiff had entered into this agreement and had transferred all his shares and the entire interest in the development of the Congress Grounds, which he had initially started and conceded to the 3rd Defendant. The 3rd Defendant formed a 2nd branch of the family. He comes from the branch of the brother of the 2nd

Plaintiff. The 2nd Plaintiff also had sons. In fact, PW.2 is a son of the 2nd Plaintiff. Now, from his family, the entire interest in the development of the congress ground project shifted to his brothers family. The consideration for that was fixed at Rs.5 crores, Rs.1.50 crores paid by cheque and balance Rs.3.50 crores in the hope that when the construction comes up built of area will be allotted.

31. Now, we have to pause here for a second and again think as to what went into the minds of the 2nd Plaintiff after he entered into this agreement. He signed the share transfer forms, he received the cheque, he agreed for allotment of built up area. He is a constructor and he is a builder of buildings. Rs.3.50 crores worth of built up space in 2006 would have got him an area which would have been substantially large, but as a businessman and as an initiator of the project, when he went back and thought about it, he probably realised that he was left with a bad bargain. It was for that purpose that re-negotiation was entered into and further consideration was sought not in terms of money, but in terms of built up space. It is common knowledge that land value appreciates and built up land value appreciates further. But, very unfortunately, there was no quid pro quo for the additional consideration provided. In so far as the transfer of shares was concerned, it was done and finished on 16.8.2006. For the transfer of 27,50,100 shares, a consideration was fixed at Rs.5 crores. While entering into the 2nd agreement, had the parties thought it fit to increase the value of the shares not at Rs.10, but at a market value of some thing more than Rs.10, then they could have correspondingly increased the consideration towards the sale of the shares

amounting to 27,50,100, but they did not. They were interested only in increasing the consideration paid. On that ground the 2nd agreement fails. When we look at it from that angle, the issues as framed will have to be answered to the effect that with respect to the issues (3), (4) and (5), the 1st Defendant did agree to pay a consideration of Rs.5 crores for the shares purchase on 16.8.2006 and the consideration was by a cheque of Rs.1.50 crores and allotment of built up space of Rs.3.50 crores. This consideration was increased by the 2nd agreement, but for such increase, there was no corresponding offer by the Plaintiffs and therefore, consideration without any offer has to fail and cannot be enforced in a court of law. It could have been stated as an gentlemen agreement, but, when we come to court and when we turn into the pages of the Contract Act and look at the promise, the offer, the acceptance and the object, the consideration, there must be adequate consideration for the offer and there must be acceptance. In the 2nd agreement, for the additional consideration of Rs.5 crores by way of allotment of built up space, there was no corresponding consideration or offer given by the Plaintiffs. The 2nd agreement has to be looked at separately and cannot be inter linked with the 1st agreement.

32. The 1st agreement is with respect to transfer of shares and corresponding receipt of cheque for Rs.1.50 crores and by Ex.D1 of allotment of built up space. Therefore, with respect to issue (6), I hold that the 2nd agreement has to fail and it was not an increase in sale consideration, but it was a purely a gratuitous offer by the Defendants to the Plaintiffs and consequently, with respect to issue (7), I hold that they are not interlinked and

not supplementary to one another and with respect to issue (9) I hold that it is not supported by cash consideration.

33. **Issue (8):-** A positive finding with respect to Issue (8) had been stressed by the learned senior counsel for the Plaintiffs. This relates to Ex.D2 and it is a cheque for Rs.25 lakhs in October 2006 paid by the 3rd Defendant to the 2nd Plaintiff. Very unfortunately, this is after Ex.P4, agreement in August 2006 and if it is so to be reflected to Ex.P4, there is no endorsement in Ex.P4, agreement that the said amount of Rs.25 lakhs was towards part consideration. There being complete absence of such endorsement, I hold that Ex.D2 cheque for Rs.25 lakhs cannot be linked with Ex.P4, 2nd agreement. Consequently, issue (8) is answered against the Plaintiffs.

34. **Issue (10):-** This issue is very interesting. This is converting agreement to allot built up space to monetary consideration. I hold that the Plaintiffs should be given benefit of this issue in so far as the monetary consideration of the 1st agreement Ex.P3 alone is concerned. Ex.P3 contemplated a total consideration of Rs.5 crores. In so far as the 2nd Plaintiff is concerned, he had transferred the entire shares. He did not transfer the shares worth Rs.1.50 crores, for which alone he had received cheque payment and he had not withheld the transfer of balance shares. Of course, he moved the Company Court stating that the entire transfers should be negated and the shares should flow back to the Plaintiff Company. That was a step taken in desperation. We cannot hold him for agitating before a proper forum with respect to transfer of shares, but he should be condemned for the stand taken that the transfer was based on forgery and was fraudulent. He failed in his

efforts and he has now come to this court seeking relief in equity and being a person having conceived this entire project, sowed the seed, poured the water and has kept the seed alive in germination and without seeing even a sampling grow, I hold that it is only in the fitness of things that when he had handed over to the family of the 3rd Defendant the prospect of execution of such huge project at Congress Grounds, the Defendants should pay the monetary consideration with respect to Ex.P3 1st agreement to the Plaintiffs alone and there is no liability attached to the Defendants with respect to Ex.P4, 2nd agreement. Issue (10) is answered accordingly.

35. Consequently, I hold that the suit has to be decreed for a sum of Rs.3.50 crores, with interest, not at 24% p.a. as claimed, but only at 6% p.a. from 16.8.2006 till the date of realisation.

36. In the result, this civil suit is partly decreed to the extent indicated above. Accordingly, the Plaintiffs are entitled for a judgement and decree for a sum of Rs.3,50,00,000/- (Rupees three crores and fifty lakhs only) with interest at 6% p.a. from 16.8.2006 till the date of realisation, with costs. Time for payment is three months.

.01.2017

Index:Yes/No
Web:Yes/No
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To:

The Record Keeper, VR Section, High Court, Madras

C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
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