

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2018

CORAM

THE HONOURABLE MR.JUSTICE **K.KALYANASUNDARAM**

**C.S.No.975 of 2015**

M/s.SBM Constructions and Properties  
having its Office at No.235,  
Angappa Naicken Street,  
Parrys,  
Chennai - 600 001  
A Partnership Firm,  
represented by its Partner B.Jawahar

... Plaintiff

Vs

Mrs.Hema Malini

... Defendant

Plaint filed under Order VII Rule I of Civil Procedure Code,1908 read with Order IV Rule 1 of O.S. Rules, 1956 to direct the defendant to pay a sum of Rs.1,04,50,000/- to the plaintiff, with the interest at 24% per annum from 19.09.2014 on Rs.67,00,000/- to till the date of realization by the plaintiff and to award the cost of the suit.

For Plaintiff

: Mr.K.Sukumaran

For Defendant

: Exparte

**JUDGMENT**

This civil suit has been instituted for recovery of sum of Rs.1,04,50,000/- from the defendant together with interest at 24% per annum from 19.09.2014 on Rs.67,00,000/- to till the date of realisation.

2. The case of the plaintiff is that the plaintiff is a partnership firm carrying on business of construction in and around Chennai. In relation to the said business, the defendant has approached the plaintiff for the purpose of development of her property situated at Mannur Village, Sriperumbudur Taluk measuring an extent of 14.75 acres in various survey numbers. After several rounds discussions, a decision was taken in the month of March, 2014. Pursuant to the decision, the plaintiff has paid a sum of Rs.50,00,000/- to the defendant through cheques and RTGS on 07.05.2014, 07.07.2014, 07.08.2014, 03.09.2014 and 18.09.2014. Subsequently, a receipt was issued for the payment of the amount in and by which, the defendant agreed to utilise Rs.25,00,000/- to cancel earlier agreement of sale entered into with one Jai Ganesh on 10.12.2012.

3. The plaintiff would further state that after payment of Rs.6,00,000/- on 07.05.2014, the defendant handed over the vacant possession of the entire property for the purpose of developing the lands for forming a layout. Thereafter, the plaintiff has approached the Revenue Officials for the purpose of obtaining Encumbrance Certificate and No Objection Certificate in respect of the property and in addition to the payment of Rs.50,00,000/-, the plaintiff has spent another Rs.17,00,000/- towards development of the property. It is alleged that the defendant had not cancelled the agreement of sale entered into with Jai Ganesh in order to enter into a Joint Development Agreement with the plaintiff as per the receipt dated 19.09.2014 and thereby, the plaintiff had suffered a loss of Rs.1,04,50,000/-.

4. The defendant after receiving suit summon, had entered their appearance through her counsel Mr.S.Paneer Selvam and filed a written statement. The sum and substance of the written statement is that though the defendant has received Rs.50,00,000/- from the plaintiff and executed a receipt on 19.09.2014, the entire amount was taken away by one Mr.Senthil, the representative of the plaintiff.

5. After considering the pleadings, this Court has framed the following issues:

*"(i) Whether the plaintiff is entitled to Rs.50,00,000/- on the basis of the receipt dated 19.09.2014 with interest @ 24% per annum?*

*(ii). Whether the defendant is not guilty of non performance of her contract in the matter of settlement of one Jai Ganesh by payment of Rs.25,00,000/-?*

*(iii). Whether the plaintiff is entitled for damages as prayed for?*

*(iv) Whether the plaintiff is entitled for suit amount with interest @ 24% in a commercial transaction?*

*(v) To what relief?"*

6. In order to prove the case of the plaintiff one Mr.Jai Ganesh, a partner of plaintiff firm was examined as PW1. In the evidence, PW1 has reiterated the plaint averments and marked the following documents:

1. Ex.P1 is the photo copy of the Registration certificate of the plaintiff firm dated 26.07.2011.

2. Ex.P2 is the Re-Constitution Deed of Partnership Firm dated 09.11.2011.
3. Ex.P3 is the certified copy of the Village-A Register of Mannur Village dated 20.12.2012.
4. Ex.P4 is the original Patta No.2984 in the name of the defendant and another dated 22.02.2013.
5. Ex.P5 is the original Patta No.2985 in the name of the defendant and another dated 08.03.2013.
6. Ex.P6 is the original Patta No.3389 in the name of the defendant dated 13.06.2014.
7. Ex.P7 is the original said Receipt dated 19.09.2014.
8. Ex.P8 is the photo copy of the Agreement dated 10.12.2012 between defendant and one Jai Ganesh. (Objected. Marked subject to admissibility)
9. Ex.P9 is the No objection certificate issued by the Thasildhar, Sriperumbuthur for preparation of layout dated 25.06.2014.
10. Ex.P10 is the Encumbrance Certificate dated 01.09.2014 for Survey Nos.570/8.
11. Ex.P11 is the Encumbrance certificate dated 01.09.2014 for Survey Nos.570/9.
12. Ex.P12 is the Encumbrance certificate dated 01.09.2014 for survey Nos.571/3
13. Ex.P13 is the Encumbrance certificate dated 01.09.2014 for survey Nos.577/2A.
14. Ex.P14 is the Encumbrance certificate dated 01.09.2014 for survey No.577.

15. Ex.P15 is the Encumbrance certificate dated 01.09.2014 for survey Nos.558/4A.
16. Ex.P16 is the Encumbrance certificate dated 01.09.2014 for survey Nos.577/2B1.
17. Ex.P17 is the Encumbrance certificate dated 01.09.2014 for survey Nos.577/1A.
18. Ex.P18 is the Encumbrance Certificate dated 01.09.2014 for Survey Nos.577/5.
19. Ex.P19 is the Encumbrance certificate dated 01.09.2014 for Survey Nos.570/7.
20. Ex.P20 is the Encumbrance certificate dated 01.09.2014 for survey Nos.572/3A.
21. Ex.P21 is the Encumbrance certificate dated 01.09.2014 for survey Nos.570/5.
22. Ex.P22 is the Encumbrance certificate dated 29.09.2014 for survey No.577/3C.
23. Ex.P23 is the certified copy FMB Sketch for Survey Nos.553 dated 14.10.2014.
24. Ex.P24 is the certified copy FMB Sketch for Survey Nos.557 dated 14.10.2014.
25. Ex.P25 is the certified copy FMB Sketch for Survey Nos.570 dated 14.10.2014.
26. Ex.P26 is the certified copy FMB Sketch for Survey Nos.571 dated 14.10.2014.
27. Ex.P27 is the certified copy FMB Sketch for Survey Nos.572 dated 14.10.2014.
28. Ex.P28 is the certified copy FMB Sketch for Survey Nos.573 dated 14.10.2014.

29. Ex.P29 is the certified copy FMB Sketch for Survey Nos.574 dated 14.10.2014.
30. Ex.P30 is the certified copy FMB Sketch for Survey Nos.575 dated 14.10.2014.
31. Ex.P31 is the certified copy FMB Sketch for Survey Nos.576 dated 14.10.2014.
32. Ex.P32 is the certified copy FMB Sketch for Survey Nos.577 dated 14.10.2014.
33. Ex.P33 is the Chitta for Patta Nos.2984 dated 14.10.2014.
34. Ex.P34 is the Chitta for Patta Nos.3389 dated 14.10.2014.
35. Exs.P35 & 36 is the Adangal Extract and Village Settlement Register for Mannur Village dated 14.10.2014.
36. Ex.P37 is the Manual Encumbrance Certificate for Survey Nos.557 dated 27.10.2014.
37. Ex.P38 is the Manual Encumbrance Certificate for Survey Nos.573/3C2 dated 27.0.2014.
38. Ex.P39 is the Manual Encumbrance Certificate for Survey Nos.558/4A dated 27.0.2014.
39. Ex.P40 is the Manual Encumbrance Certificate for Survey Nos.577/1A dated 27.0.2014.
40. Ex.P41 is the Manual Encumbrance Certificate for Survey Nos.572/3A dated 27.0.2014.
41. Ex.P42 is the Manual Encumbrance Certificate for Survey Nos.577/1C dated 27.0.2014.
42. Ex.P43 is the Manual Encumbrance Certificate

for Survey Nos.570/5 dated 27.10.2014.

43. Ex.P44 is the Manual Encumbrance Certificate for Survey Nos.577/2B1 dated 27.10.2014.
44. Ex.P45 is the Manual Encumbrance Certificate for Survey Nos.570/7 dated 27.10.2014.
45. Ex.P46 is the Manual Encumbrance Certificate for Survey Nos.570/8 dated 27.10.2014.
46. Ex.P47 is the Manual Encumbrance Certificate for Survey Nos.571/3 dated 27.10.2014.
47. Ex.P48 is the Manual Encumbrance Certificate for Survey Nos.570/9 dated 27.10.2014.
48. Ex.P49 is the Manual Encumbrance Certificate for Survey Nos.571/5 dated 27.10.2014.
49. Ex.P50 is the Manual Encumbrance Certificate for Survey Nos.571/4 dated 27.10.2014.
50. Ex.P51 is the Encumbrance Certificate for Survey Nos.577/1C dated 29.10.2014.
51. Ex.P52 is the Encumbrance Certificate for Survey Nos.571/4 dated 29.10.2014.
52. Exs.P53 to 55 is the Log sheet bill dated 31.10.2014 and 29.11.2014 and 30.12.2014 issued by N.M.S.Nithyasri to the plaintiff.
53. Ex.P56 is the bill raised by the T.D.K.Kadalpura Suppliers from the plaintiff.
54. Ex.P57 is the Rough layout sketch prepared by the plaintiff.
55. Ex.P58 is the location map of layout.
56. Ex.P59 is the Broacher SBM Samyuktha.

57. Ex.60 is the Photo copy of the complainant dated 05.05.2015.(Objected. Marked subject to admissibility)
58. Ex.P61 is the Photo copy of the affidavit, petition and order made in I.A.No.1059 of 2015. (Objected. Marked subject to admissibility)
59. Ex.P62 is the Photo copy of the Driving License of the defendant dated 08.08.2000 given by the defendant to the plaintiff in Xerox copy. (Objected. Marked subject to admissibility)
60. Ex.P63 is the Photo copy of the Passport copy of the defendant.(Objected. Marked subject to admissibility).

7. It is seen that the defendant had partly cross examined PW1 on 05.07.2018. But subsequently, the counsel for the defendant did not appear despite giving ample opportunity. Hence, the suit was directed to be listed before this Court on 20.11.2018 and the defendant was set exparte.

8. Mr.Sukumaran, learned counsel for the plaintiff would argue that the plaintiff is a property developer and the defendant who is the owner of the property at Mannur Village at Sriperumbudur Taluk had approached the plaintiff for the purpose of development of his property and had discussions in the month of March 2014 and the plaintiff paid

Rs.50,00,000/-. According to the learned counsel, the entire payments have been made through bank, which is also admitted by the defendant in the written statement.

9. It is the submission of the learned counsel that the plaintiff has proved his case and hence, he is entitled for the decree sought for in the suit claim. It is further contented that it is a Commercial transaction and hence, the plaintiff is entitled for interest at 24% on the suit claim.

10. On a perusal of the evidence of PW1 and the documents, this Court is of the opinion that the plaintiff has proved his case and hence entitled for the relief sought. Accordingly, this suit is decreed as prayed for with cost.

सत्यमेव जयते

**04.12.2018**

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Index:Yes/No

Internet:Yes/No

Speaking order: Non-speaking order

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**K.KALYANASUNDARAM, J.**

msv



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