

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 14.03.2018

PRONOUNCED ON: 10.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.659 of 2017

J.P.P.Jain Ayambilshala (Unit of Jay Parshva Padmodaya
Ahimsa Research Foundation, Bangalore)
represented by its Secretary Mahaveerchand Sankhla
Chennai-7

Plaintiff

Vs

Pramod Chordia, C/o.Jineshwar Infraventures
Private Limited, Chennai-86

Defendant

Prayer:- This Civil Suit is filed under Order VII Rule 1 of CPC read with Order
IV Rule 1 of the Original Side Rules for the reliefs as stated therein.

For Plaintiff : Mr.M.Sunil Kumar

For Defendant : Set Exparte

WEB COPY
JUDGEMENT

This civil suit has been filed, to pass a judgement and decree,
against the Defendant:-

- (a) for a direction to the Defendant to pay a sum of
Rs.47,00,000/- (Rupees forty seven lakhs only) towards the
refund of the advance sale consideration.

(b) for a direction to the Defendant to pay a sum of Rs.10,00,000/- (Rupees ten lakhs only) towards compensation.

(c) for a direction to the Defendant to pay costs of the suit to the Plaintiff.

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

a. The Plaintiff is a registered Trust by virtue of the trust deed, dated 10.7.2008 and the trust had been granted Income Tax exemption under Section 80(G). As per the objects of the Trust, the Plaintiff is engaged in social, religious, spiritual and charity activities. The Defendant approached the Plaintiff and informed that since he was having some third party debts, he was willing to sell the property at Sriperumbudur for a sale consideration of Rs.1,00,00,000/-. The Plaintiff, believing the representations of the Defendant and without verifying the details of the property, had advanced to the Defendant, a sum of Rs.72,00,000/- by way of four cheques, dated 9.7.2013, 16.7.2013, 28.8.2013 and 12.10.2013 for Rs.10,00,000/-, Rs.30,00,000/-, Rs.11,00,000/- and Rs.21,00,000/-, respectively. However, even after several months, the Defendant did not give any details of the property. Even after repeated requests, the Defendant did not come forward to execute the sale deed and also did not give the details of the property. Hence, the Plaintiff issued a legal notice dated 4.07.2016, calling upon the Defendant to register the property and receive the balance sale consideration.

b. The Defendant had also sent a reply and come forward to return the advance sale consideration and accordingly, repaid a sum of Rs.25,00,000/- by way of two demand drafts, dated 20.10.2016 and

30.08.2016, for Rs.10,00,000/- and Rs.25,00,000/-, respectively. The Defendant had requested for a detailed covering letter for the demand draft dated 20.10.2016 in order to give effect in the account of the Plaintiff, but the Defendant did not give any such covering letter. Thus, the Defendant is liable to pay the balance sale consideration of Rs.47,00,000/-. In the event of any Income Tax proceedings, taxes or any other charges, penalties levied, the same shall be borne by the Defendant and the Defendant shall alone be liable for all the consequences, since the amount of Rs.72 lakhs was not utilized in the same financial year. The Plaintiff is also to be compensated for a sum of Rs.10,00,000/- towards the mental agony caused to them. Unless the Defendant is directed to pay the amount of Rs.47,00,000/- being the balance sale consideration and Rs.10,00,000/- towards mental agony caused by the Defendant, the Plaintiff will be put to great loss and injury, which could not be compensated by the Defendant. In such circumstances, this civil suit has been, seeking the reliefs as stated above.

3. The Defendant was served on 13.9.2017. However, no written statement had been filed by the Defendant within time and hence, the matter was ordered to be listed under the caption of "Undefended Board". For non filing of the Written Statement in spite of sufficient opportunity given, the Defendant was set exparte and Exparte Evidence was ordered to be recorded by the order of this court, dated 23.01.2018.

4. The Secretary of the Plaintiff Company, Mahaveerchand Sankhla, had filed his proof affidavit for his chief examination and receipt of 9 documents as documentary evidence to prove the suit claim. In the Exparte Evidence, he

had examined himself as PW.1 and marked Exs.P1 to P9 as documentary evidence in order to prove the suit claim.

5. In so far as the relief (b) relating to damages of Rs.10,00,000/- claimed by the Plaintiff towards mental agony is concerned, though for non filing of the written statement, the Defendant had been set exparte, which resulted in recording of the exparte evidence, in order to sustain such a claim there should be valid evidence on the side of the Plaintiff, but, on a perusal of the oral and documentary adduced by the Plaintiff, this court finds no valid evidence both oral and documentary to show that the Plaintiff was put to mental agony. Accordingly, this court holds that the relief (b) towards damages cannot be granted.

6. Considering the oral and documentary evidence, viz. Ex.P1 to Ex.P9 adduced by PW.1 and in the absence of rebuttal evidence on the side of the Defendant, this Court is of the view that the plaintiff has proved the suit claim in respect of the relief (a) alone and consequently, the suit is decreed in respect of the relief (a) alone, with costs. The suit is dismissed, in respect of the relief (b). Time for payment is three months.

WEB COPY

10.04.2018

Index:Yes/No
Web:Yes/No
Srcm

1. List of Witnesses Examined on the side of the Plaintiff:-

1. P.W.1 - Mahaveerchand Sankhla

2. List of Exhibits Marked on the side of the Plaintiff:-

1. Ex.P1 is the original bank statement showing payment of Rs.72,00,000/- made by the Plaintiff to the Defendant for the period 1.7.2013 to 31.10.2013.
2. Ex.P2 is the original covering letter dated 20.10.2016 issued by the Defendant to the Plaintiff along with demand draft.
3. Ex.P3 is the office copy of the legal notice dated 4.7.2016 issued by the Plaintiff to the Defendant.
4. Ex.P4 is the copy of the reply notice dated 21.07.2016 issued by the Defendant to the Plaintiff.
5. Ex.P5 is the copy of the legal notice dated 11.2.2017 issued by the Plaintiff to the Defendant.
6. Ex.P6 is the original acknowledgement card and returned cover for the legal notice issued period from 13.2.2017, 13.2.2017, 14.2.2017.
7. Ex.P7 is the certified copy of the trust deed of the Plaintiff, dated 10.7.2008.
8. Ex.P8 is the certified copy of the amendment to trust deed dated 29.9.2014.
9. Ex.P9 is the original trust board resolution authorising the Plaintiff dated 1.6.2017.

3. List of Witnesses Examined on the side of the defendant:-

Nil

4. List of Exhibits Marked on the side of the defendants:-

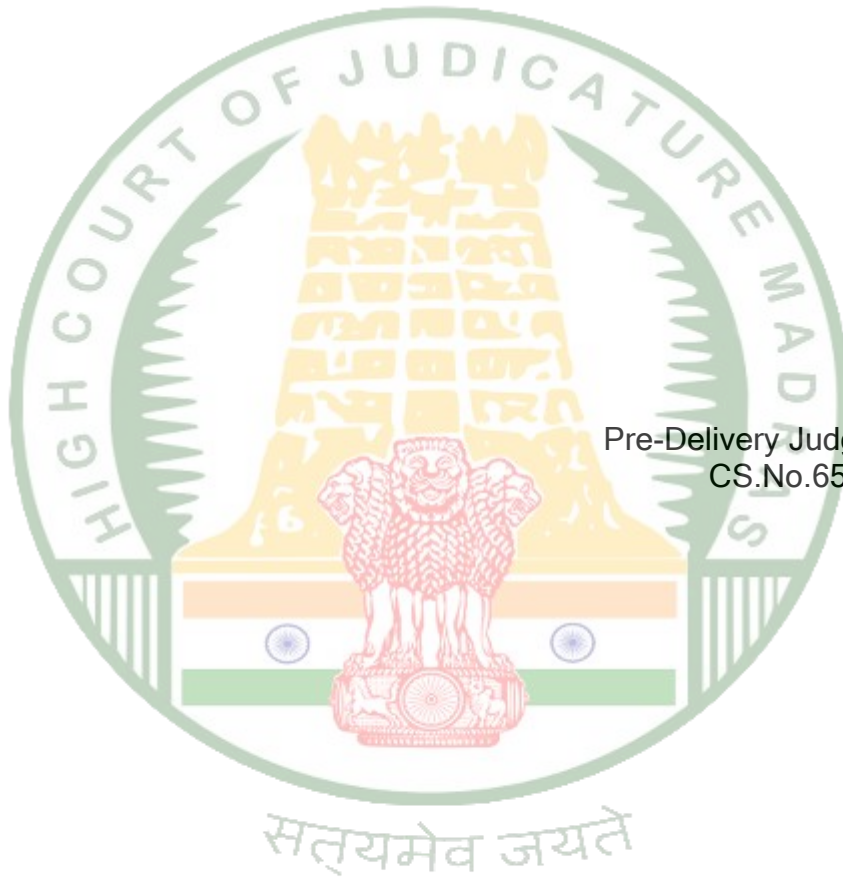
Nil

10.04.2018

Srcm

C.V.KARTHIKEYAN, J.

Srcm



Pre-Delivery Judgement in
CS.No.659 of 2017

WEB COPY

10.04.2018