

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 11th DAY OF JULY 2018

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

A. No.3118 of 2018
in
C.S. No.813 of 2017

Sicagen India Ltd.,
rep. by its Authorised Signatory,
Mr.S.Mahadevan,
4th Floor, SPIC House,
No.88, Mount Road, Guindy,
Chennai-600 032.

... Plaintiff

-Versus-

1. M/s.VME Precast Private Limited,
rep. by its Chairman & Managing Director,
Mr.V.Manickam,
2. V.Manickam,
Chairman & Managing Director,
M/s.VME Precast Private Limited,
3. The Director,
M/s.VME Precast Private Limited,
The Defendants 1 to 3 having office at No.364,
Pillayar Koil Street, Moggapair West,
Chennai-600 037. ... Defendants

A.No.66 of 2018

and

A.No.3118 of 2018

1. M/s.VME Precast Private Limited,
rep. by its Chairman & Managing Director,
Mr.V.Manickam,
2. V.Manickam,
Chairman & Managing Director,
M/s.VME Precast Private Limited,
3. The Director,
M/s.VME Precast Private Limited,

The Defendants 1 to 3 having office at No.364,
Pillayar Koil Street, Moggapair West,

Chennai-600 037.

...Applicants/Defendants

vs

Sicagen India Ltd.,
rep. by its Authorised Signatory,
Mr.S.Mahadevan,
4th Floor, SPIC House,
No.88, Mount Road, Guindy,
Chennai-600 032.

... Respondent/Plaintiff

A.No.3118 of 2018

Application praying that this Hon'ble Court be pleased to pass an order set-aside the order of the Hon'ble Master dt.20.03.2018 in A.No.66/2018 in C.S.No.813/2017 for granting leave to defend in C.S.No.813/2017.

This application coming on this day before this court for hearing the court made the following order:

This application has been filed to set aside the order of the Master dated 20.03.2018 in A.No.66 of 2018 in C.S.No.813 of 2017, refusing to grant leave to defend the suit filed under Order 37 of C.P.C., namely, the summary suit filed for recovery of a sum of Rs.3,38,00,284/- which is in dispute.

2.The plaintiff in the suit supplied certain materials to the defendants from the year 2012 on various invoices. Thereafter, the defendants said to have committed default in the payment and Memorandum of understanding (MOU) has been executed between the plaintiff and the defendants on 12.06.2015 in the form of acknowledging the liability payable by the defendants.

3.It was specifically agreed in the MOU that the

defendants would construct seven residential flats having super built up area of 7035 sq. ft. towards the outstanding amount of Rs.2,97,00,000/- as on 18.12.2014 and the same would be sold to the plaintiff herein. It is also agreed between the parties that the project will be completed on or before March 2016.

4.Pursuant to the above MOU, the construction agreement has also been entered into between the parties wherein it was specifically agreed by both the parties that the builder shall not incur any liability due to the delay in delivering of possession of the flat due to any rule or notification of any Government Agency and / or any other Public or Competent Authority. Besides, there is also an arbitration clause in the Agreement of MOU between the parties. It is admitted by both sides that out of seven constructed flats, one of the flats was sold to the plaintiff herein and due to some technical reasons, the remaining six flats were not sold to the plaintiff.

5.When the matter stood thus, the plaintiff has filed the present suit based on the original cause of action which arose in the year 2012.

6.I am of the view that the amount due to the plaintiff in supplying building materials has been acknowledged in writing by the parties. For the adjustment of the above amount, the parties have also agreed to certain terms both in MOU as well as in the construction agreement. Whether the parties to the contract complied the terms or who is the defaulter and who is negligent are the matter for evidence.

7.Since the plaintiff has filed the suit based on the original supply which took place in the year 2012, the subsequent acknowledgment in writing made between the parties towards the adjustment of the earlier amount, is also subject to the construction of the building and handing over of the buildings and whether the defendants or plaintiff are the defaulter in the subsequent contract is a matter for evidence. Hence, I am of the view that there is a triable issues involved in this case.

8.Accordingly, an opportunity is to be given to the defendants to defend the suit which has been filed for recovery of money based on the original cause of action. The learned Master has not considered this aspect and dismissed the application.

9.In view of the above discussion, the order of the learned Master passed on 20.03.2018 in A.No.66 of 2018 is set aside and leave is granted to defend the suit.

10.Accordingly, this application is allowed.

Sd/.N.S.K.J
11.07.2018

//Certified to be a true copy//
Dated this the day of 2018.

KY/16.07.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.