

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 03RD DAY OF JULY 2018

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

A.Nos.3763 & 3765 of 2018

in

C.S.No.754 of 1998

**C.S.No.754 of 1998:**

M/s.Ind Bank Housing Limited  
9, Dr.Nanjunda Rao Colony,  
Mylapore, Chennai- 600 004,  
Rep.by its General Manager

..Plaintiff

/versus/

1.M/s.New Era Urban Amenities Limited  
Rep.by its Director Shri  
Thiagaraj S.Chettiar

2.Mr.Thiagaraj S.Chettiar,  
No.88, 4<sup>th</sup> Street,  
Abhiramapuram, Chennai- 600 018

3.M/s.Futnani Dairy Farm  
47, Sembudoss Street, Chennai- 600 001  
Rep.by its Managing Partner,  
Mr.Madhusudhan Futnani

4.Mr.Madhusudhan Futnani  
Managing Partner,  
Futnani Dairy Farm,  
47, Sembudoss Street, Chennai- 600 001

5.LIC Housing Finance Limited,  
38, Anna Salai,  
Chennai- 600 002  
Rep.by its Director

..Respondents/Defendants

**A.Nos.3381 & 3382 of 2008:**

**A.Nos.3763 & 3765 of 2018:**

1.M/s.Futnani Dairy Farm  
1/115 Old Mahabalipuram Road,  
Semmenchery rep.by its  
Managing Director,  
Mr.Madhusudhan Futnani

2.Mr.Madhusudhan Futnani

Managing Partner,  
M/s.Futnani Dairy Farm  
1/115 Old Mahabalipuram Road,  
Semmenchery

.Applicants/Defendants No.3 and 4

VS

1. M/s.Ind Bank Housing Limited  
9, Dr.Nanjunda Rao Colony,  
Mylapore, Chennai- 600 004,  
Rep.by its General Manager

..1<sup>st</sup> Respondent/Plaintiff

2. M/s.New Era Urban Amenities Limited  
Rep.by its Director Shri  
Thiagaraj S.Chettiar

3.Mr.Thiagaraj S.Chettiar,  
No.88, 4<sup>th</sup> Street,  
Abhiramapuram, Chennai- 600 018

4. LIC Housing Finance Limited,  
38, Anna Salai,  
Chennai- 600 002  
Rep.by its Director

..Respondents/Defendants

**A.No.3763 of 2018:**

Application praying that this Hon'ble Court be pleased to condone the delay of 2712 days in filing the application for restoration in Appl.No.3763 of 2018 in Appl.No.3382 of 2008 pending disposal of the above suit in C.S.No.754 of 1998.

**A.No.3765 of 2018:**

Application praying that this Hon'ble Court be pleased to condone the delay of 2712 days in filing the application for restoration in Appl.No.3765 of 2018 in Appl.No.3381 of 2008 pending disposal of the above suit in C.S.No.754 of 1998.

These applications coming on this day before this court for hearing the court made the following order:

A.No.3763 of 2018 has been filed to condone the delay of 2712 days in filing the application to restore A.No.3382 of 2008. A.No.3765 of 2018 has been filed to condone the delay of 2712 days in filing the application to restore

A.No.3381 of 2008.

2. These applications have been filed by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants in the suit. They had earlier filed A.No.3382 to reject Ex.P19, P23 to P40, which were marked as exhibits on 11.6.2007 during the trial in CS.No.754 of 1998. They had also filed A.No.3381 of 2008 to direct the Registry to send Ex.P17 dated 23.12.1996 for forensic examination with a particular reference to the overwriting/interpolation with the date 23.12.1996, which was marked as an exhibit during the trial in CS.No.754 of 1998.

3. These applications, from a perusal of the records, had come before this Court for consideration on 28.7.2008, on which date, it was posted on 5.8.2008. Thereafter, it was again posted to 14.8.2008. It was, then, listed on 24.9.2010. On that date, it was noted as "No representation. Post for dismissal on 30.9.2010". On 30.9.2010, it was noted that again there was no representation and consequently, the applications were dismissed for non Prosecution.

4. The Applicants did not take any steps whatsoever for the next more than seven years. The present applications have been filed on 03.04.2018. At this juncture, it must also be mentioned that the suit in CS.No.754 of 1998 had been filed by M/s.Ind Bank Housing Limited, represented by its General Manager, Chennai, against, (1) M/s.New Era Urban Amenities Limited, represented by its Director Thiagaraj S.Chettiar, (2) Thiagaraj S.Chettiar, (3) M/s.Futnani Dairy Farm, represented by its Managing Partner, Madhusudhan Futnani, (4) Madhusudhan Futnani, Managing Partner, Futnani Dairy Farm and (5) LIC Housing Finance Limited, represented by its Director, Chennai, for a judgement and decree, against the 1<sup>st</sup> to 4th Defendants jointly and severally to pay a sum of Rs.11,87,85,628.50/- to the Plaintiff and for subsequent interest at the rate of 24% p.a. with quarterly rests and

also for costs of the suit and to pass a personal decree, directing sale of the properties mortgaged if the amount is not paid and for appropriation of the sale proceeds towards the suit claim.

5. This Court had an occasion to examine whether the suit would fall within the jurisdiction of this Court and by order dated 5.1.2018, this Court had held that this Commercial Division Court will have jurisdiction to entertain the suit under Section 7 of the Act 4 of 2016.

6. It must also be mentioned that there was an order, granting injunction as against the 4<sup>th</sup> Defendant in the suit from dealing with the properties, but it had come to light that the 4<sup>th</sup> Defendant had settled the property in favour of his son. Consequently, applications were filed seeking action to be taken for violation of the orders of this Court. Proceedings also went to the extent where warrant had to be issued for arrest and production of the 4<sup>th</sup> Defendant. It was then represented that cancellation documents of the settlement deed had been filed before the Sub Registrar's Office concerned. It is to be noted that the cancellation deeds have not yet been produced before this Court.

7. Be that as it may, a written statement of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants had been filed and issues were also framed. Thereafter, the Plaintiff was invited to let in oral evidence. Evidence was also let in.

8. The Applicants herein are aggrieved over the Ex.P19, P24 to P40 and Ex.P17, which had been marked as exhibits on 11.6.2007. It is under these circumstances that the Applicants herein had filed A.Nos.3381 and 3382 of 2008. As stated above, both the applications had been dismissed for non Prosecution on 30.9.2010. After a period of more than 7 years, the present applications have been filed, seeking to condone the delay in filing the said applications.

9. In the affidavit filed in support of the said

applications, the 4<sup>th</sup> Defendant stated that he and his earlier counsel were oblivious of the fact that the applications had been dismissed and that they did not know about the dismissal of the above applications. It has been further stated that non appearance of the counsel on 30.9.2010 was neither deliberate nor wanton. Thereafter, averments have been made over the veracity of the documents complained about. The reason for the delay of 2712 days had not been given and the only reason given was the lack of knowledge of the order of dismissal. However, no explanation was given for the enormous delay of more than 7 years in filing the applications to set aside the orders passed.

10. A counter affidavit had been filed on behalf of the Plaintiff. In the counter, it has been stated that lack of knowledge cannot be a ground to condone the delay. It has been further stated that the documents in questions had been marked as exhibits in the suit and the admissibility of the same will have to be decided by this Court.

11. This Court heard the arguments advanced by Mr.Venkatesh Mohanraj, the learned counsel for the Applicants/ Defendants 3 and 4 and Mr.Krishna Srinivasan, the learned counsel for the Respondent/ Plaintiff. For the sake of conveniences, the parties shall be herein after referred to as the Plaintiffs and the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.

12. The Plaintiff had instituted the suit in the year 1998. A written statement on behalf of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants had been filed on 29.4.2003. Issues were also framed on 19.2.2007. The witness for the Plaintiff had been examined as PW.1 on 11.06.2007 and exhibits Ex.P1 to P40 had been marked on 11.06.2007. The recording had been done by Justice S.R.Singharavelu. The witness has not yet been cross examined. Thereafter, further proceedings in the suit stopped. On 30.9.2010, this Court had also passed orders in A.No.7850 of 2007, wherein it was noted that the

4<sup>th</sup> Defendant, in violation of the orders of injunction of this Court, had settled the property under dispute, in favour of his son. There was an order that the 4<sup>th</sup> Defendant and his son should appear before this Court. The suit was not listed thereafter. The 4<sup>th</sup> Defendant and his son simply disappeared. The suit was again listed in January 2018 when this Court had examined the papers and called upon the 4<sup>th</sup> Defendant to execute cancellation deeds of the settlement deeds by which he had transferred the property to his son. This Court was also constrained to issue warrant arrest and production of the 4<sup>th</sup> Defendant. It is now represented that cancellation deeds have been submitted before the Sub Registrar and are kept pending. At any rate, they are facts which have to be dealt with independently of these applications.

13. In these applications, the only reason advanced for the reason is that the Applicants/ 3<sup>rd</sup> and 4<sup>th</sup> Defendants did not know about the order dismissing the applications in A.No.3381 and 3382 of 2008. It has been strenuously pleaded that the documents complained off are false and forged and that a fraud is being attempted to be played on the Court.

14. Order 6 Rule 4 of CPC is as follows:-

**"4. Particulars to be given where necessary:-** In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading."

15. When a Defendant pleads fraud, he must give details. In the written statement filed, there is no allegation of fraud or forgery of the documents. The

averments made in the affidavit have not been pleaded in the written statement. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants, who filed the pleadings at the earliest point of time in 2003, have contested the case of the Plaintiff on merits and not on the basis that the documents produced were false, forged and that a fraud is being attempted to be committed on the Court. Thereafter, at very regular intervals, counsel for the Defendants keep on changing and whenever there was a change of counsel, the case of the Defendants expanded, but very significantly, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants did not commit themselves by filing any additional pleadings in the form of any additional written statement. This is significant because the written statement has to be verified by the party that the facts stated therein are true and correct to the best of their knowledge, information and belief. It has not been stated till this date even after nearly 20 years have passed since the institution of the suit. Affidavits alone have been filed. The statements made in the affidavit are subject matter of cross examination of the deponent of the affidavit under Order 19 of CPC. They are not pleadings. If at all the 3<sup>rd</sup> and 4<sup>th</sup> Defendants had any grievances about the documents which had been mentioned in A.Nos.3381 and 3382 of 2008 and more particularly, since those documents were part of the documents filed along with the plaint, they should have raised issues about them at the time of filing of the written statement. They cannot be permitted to improve the pleadings with the change of every counsel. If it is so stated subsequently, it would only mean that the Defendants are pleading to a false case.

16. In **AIR 1977 SC 2421 (T.Arivanandam Vs. T.V.Satyapal)**, the Honourable Supreme Court had observed as follows:-

"We more than regret the circumstance that the party concerned has been able to prevail upon one lawyer or the other to present to the court a case which was disingenuous or worse. It may

be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions."

17. Even when the documents were produced as exhibits and marked, objections were not raised. A perusal of the recoding of evidence shows that PW.1, S.Selvaras, who was the Company Secretary of the Plaintiff, was examined in Chief on 11.6.2007 and Ex.P1 to Ex.P40 were marked. His evidence was recorded orally. It was recorded by Justice S.R.Singharavelu. At that point of time, the post of Additional Masters had not been created and evidence was recorded in the Original Side only by the Judge of the High Court. The Defendants did not raise any objections to the marking of any of the documents. The evidence had been recorded in the open Court and the documents had been produced and marked in accordance with rules and procedure. The Defendants at that point of time having not raised any objections have now alleged interpolation. This Court had called for the original documents and perused the same. The documents speak for themselves. They are original documents. They are subject matter of appreciation based on the evidence recorded. At any rate, the witness for the Plaintiff can always be cross examined on the documents and thereafter, during the course of the arguments, this Court can be insisted not to rely on the documents and on the basis of the evidence to give a finding whether they are false, forged and whether fraud has been committed. Instead of facing trial, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants have successfully protracted the proceedings for the past 20 years. It has been brought to the notice of this Court that this plea had been raised before the Debt Recovery Tribunal and also before in a Civil Revision

Petition in this Court and also before the Honourable Supreme Court and at all points of time, it has been consistently rejected.

18. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants must face trial by cross examining the witness for the Plaintiff and thereafter, let in evidence and subject themselves for cross examination. Instead of resorting to such methods, trying to divert attention and resorting to methods to defeat the ends of justice cannot be appreciated. Even other wise, on merits, the only reason given is that the counsel and the deponent of the affidavit were not aware of the order dated 30.9.2010. There have been subsequent continuous hearings of the case before this Court, before the Debt Recovery Tribunal, before the revisional Court and also before the Honourable Supreme Court. Claiming innocence and ignorance and seeking indulgence of this Court cannot be permitted. It is prevented. I find no bona fide on the part of the Applicants. As a matter of fact, their own conduct is under very serious cloud for violating the orders of this Court. The 4<sup>th</sup> Defendant has not produced the cancellation documents of the settlement deeds, which he had executed in favour of his son. The applications have no merits. The trial must go on and the applications are therefore to be dismissed.

19. In the result, these applications are dismissed. No costs.

Sd/.C.V.K.J  
03.07.2018

//Certified to be a true copy//

Dated this the            day of            2018.

KY/03.07.2018

COURT OFFICER

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