

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 04.04.2018

PRONOUNCED ON: 06.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.725 of 2013

M/s.FIH India Developer Private Limited,
represented by its authorised representative and
Power of Attorney Holder, Uma Sankar (Legal Officer)
Kancheepuram 602105.

Plaintiff

Vs

1. Chennai Promoters, Chennai
 2. Hajji Mustafa, Partner, Chennai Promoters, Chennai.
 3. R.Jyothi, Partner, Chennai Promoters, Chennai
 4. K.Parvaze Ahmed, Partner, Chennai Promoters, Chennai
 5. K.Shahul Hameed, Partner, Chennai Promoters, Chennai
 6. M.Basheer Ahmed, Partner, Chennai Promoters, Chennai
- Defendants

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

For Plaintiff : Mr.G.R.Lakshmanan

For Defendants : Set Exparte

JUDGEMENT

This Civil Suit has been filed, seeking a Judgement and Decree,
against the Defendants, for the following reliefs:-

- a) directing the Defendants, jointly and severally, to pay a sum

of Rs.8,07,94,474/- together with interest on the principal amount of Rs.5,00,00,000/- at the rate of 12% p.a. with monthly rests from the date of plaint till the date of realisation.

b) for costs of the suit.

2. The case of the Plaintiffs is as follows:-

a. The Plaintiff is a Private Limited Company, registered under the Indian Companies Act, 1956 and it is a subsidiary of a Company, whose global turn over is nearly USD40 billion per annum. The Plaintiff has its manufacturing unit at Sriperumbudur and intended to set up a composite compact industrial part, for which it required huge extents of land. The Plaintiff came to know that punja lands were available in Pappankuli and Chittoor Villages. Sanction and approval were also granted by the Government to have a special economic zone of its own. At that time, the 1st Defendant Company and its partners were introduced to the Plaintiff by one Sawri Rajan, who informed about the availability of lands in large extents in the said Villages and that they were capable of acquiring 400 acres of lands for the industrial purposes. The Defendants also made available to the Plaintiff title deeds and other documents relating to various properties measuring to an extent of 31 acres in Pappankuli Village and Chittoor Village and was ready and willing to offer the said properties as securities to the Plaintiff. The Defendants required an advance of Rs.5 crores, which would be adjusted later.

b. The Plaintiff had entered into an agreement, dated 22.09.2006 with the Defendants for acquiring lands by the Plaintiff through the Defendants in the above said Villages to a total extent of about 400 acres. The Defendants represented that the total value of 400 acres of land will not exceed Rs.120 crores at any point of time at the rate of Rs.30 lakhs per acre. Out of Rs.30

lakhs, Rs.7.5 lakhs was to be paid to the Defendants for their services. The lands were agreed to be acquired on or before 23.12.2006. Various salient features of the agreement have been extracted in the plaint. The Plaintiff had paid a sum of Rs.5 lakhs as advance to the Defendants by way of a demand draft, dated 22.9.2006, drawn on SCB, Rajaji Salai, Chennai. On 23.09.2006, the Defendant's had executed a confirmation letter, confirming that they were offering the properties detailed along with the letter, as security for the receipt of Rs.5 crores advance amount from the Plaintiff. The Defendants represented that they had absolute right and authority to deal with such properties or have the right to change the properties and offer it as security for the advance amount of Rs.5 crores. However, after obtaining the encumbrance certificate, the Plaintiff came to know about the illegal transactions and the fraud played by the Defendants on the Plaintiff to a tune of Rs.5 crores.

c. As on 23.12.2006, the Defendants had registered an extent of about only 87.5 acres. The Defendants did not register the lands for Rs.30 lakhs as originally agreed to by them, but had made the Plaintiff to part with more than Rs.30 lakhs per acre in connivance with the owners of the land. Except the said 87.5 acres, the Defendants had not done any act, deed or thing pursuant to the agreement. In order to cheat and defraud the Plaintiff, the Defendants adopted delaying tactics, by setting up some brokers and other persons and issued notices demanding huge amounts of money and the said persons claimed that they were not paid their commission. The Plaintiff had nothing to do with any payment of brokerage or arrangement of purchase of properties through brokers and it was only the Defendants who had agreed to procure the lands for the Plaintiff.

d. The notices to the alleged brokers were all replied. The

Defendants had issued a legal notice on 13.9.2007, with false allegations and averments that the Plaintiff had committed breach of the agreement and hence, they were to be compensated to a tune of about Rs.19.34 crores. However, the Defendants sent a letter dated 13.9.2007, expressing their regret for issuance of the said notice and had unconditionally withdrawn all the contents of the said notice issued on 13.9.2007 and that they will not claim anything whatsoever and the Plaintiff had also accepted the withdrawal of the said letter. The Defendants had endorsed three cheques issued by one Ramesh Chand for a sum of Rs.35 lakhs, in all totalling to a sum of Rs.1,05,00,000/- in favour of the Plaintiff for part liquidation of the liability. The first cheque was dishonoured for the reason 'insufficient funds'. The Plaintiff had issued a legal notice to the said Ramesh Chand, who on receipt of such notice, undertook to make the payment to the Plaintiff.

e. The Plaintiff is entitled for recovery of the advance amount due and payable by the Defendants and also recovery of the amounts from out of the securities offered. The Defendants had unconditionally withdrawn the notice and their counsel in his letter dated 4.9.2007 had also confirmed that he was withdrawing the notice issued pursuant to which the Defendants had endorsed the three cheques in favour of the Plaintiff in part satisfaction of the refund of advance. It is clear from the notice issued by the Defendant's counsel dated 4.9.2007 that the Defendants had played a confidence trick on the Plaintiff. The Plaintiff had waited sufficiently and there was no response from the Defendants and hence, the Plaintiff had lodged a complaint in April 2009 and the Defendants 1 and 2 had filed Cr.OP.No.13292 of 2009, seeking anticipatory bail. In the mean time, the concerned police after investigation had registered First Information Report, as against which, the 2nd Defendant had filed a

application for quashing in Cr.OP.No.2706 of 2010. In the said quash petition, receipt of Rs.5 crores was categorically admitted and the said quash petition is pending. The liability of the Defendants is an admitted fact and the Plaintiff had already filed a suit for injunction, restraining the Defendants from alienating the properties offered as security and the said suit had been decreed exparte. This suit has been filed only for recovery of the advance amount with interest as stated above.

3. It was observed by this Court by order dated 5.1.2018 that in spite substituted service and in spite of the name of the Defendants being printed in the cause list, no written statement has been filed and there was no representation for the Defendants and hence, recording of exparte evidence was ordered.

4. Accordingly, one K.Jinesh Kumar, Senior Legal Executive and the Power of Attorney holder of the Plaintiff Company has filed the proof affidavit for his chief examination and receipt of 20 documents as documentary evidence to prove the suit claim. In the Exparte Evidence, he examined himself as PW.1 and marked Exs.P1 to P20 as documentary evidence in order to prove the suit claim.

5. Ex.P2 is the original agreement between the Plaintiff and the 1st Defendant. Ex.P2 is the original promissory note executed by the 1st Defendant. Ex.P5 is the copy of the demand draft in favour of the 1st Defendant, given by the Plaintiff. These documents establish the business transactions. PW.1 in his proof affidavit has reiterated the averments in the plaint. It is clear that the Defendants have benefited monetarily and consequently are under obligation to repay the advance amount of Rs.5 crores received, along with interest.

6. Considering the oral and documentary evidence, viz. Ex.P1 to Ex.P20 adduced by PW.1, this Court is of the view that the plaintiffs have proved the suit claim and hence, the Plaintiffs are entitled for the reliefs, as asked for. Accordingly, this civil suit is decreed as prayed for, with costs. Time for payment is three months.

06.06.2018

Index:Yes/No
Web:Yes/No
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1. List of Witnesses Examined on the side of the Plaintiff:-
 1. P.W.1 - K.Jinesh Kumar
2. List of Exhibits Marked on the side of the Plaintiff:-
 1. Ex.P1 is the copy of the partnership deed dated 17.6.2006.
 2. Ex.P2 is the original agreement between the Plaintiff to the 1st Defendant dated 22.9.2006.
 3. Ex.P3 is the original promissory note executed by the 1st Defendant dated 22.9.2006.
 4. Ex.P4 is the original receipt dated 22.9.2006.
 5. Ex.P5 is the copy of the demand draft in favour of the 1st Defendant given by the Plaintiff dated 22.9.2006.
 6. Ex.P6 is the or confirmation letter issued by the 1st Defendant in favour of the Plaintiff.
 7. Ex.P7 is the copy of the sale deed in favour of the Plaintiff executed by the 1st Defendant dated 6.10.2006.
 8. Ex.P8 is the copy of the sale deed in favour of the Plaintiff executed by the 1st Defendant dated 28.11.2006.
 9. Ex.P9 is the original receipt for brokerage amount and demand draft given by the Plaintiff as per direction of the 1st Defendant dated 5.12.2006.
 - 10.Ex.P10 is the copy of the letter from the 1st Defendant to the Plaintiff for delay of getting registered documents from

Sub Registrar Office dated 22.11.2006.

- 11.Ex.P11 is the copy of the letter from the 1st Defendant to the Plaintiff for excess payment of frontage road dated 21.12.2006.
- 12.Ex.P12 is the original letter from the 1st Defendant to the Plaintiff for replacement of cheque dated 31.05.2007.
- 13.Ex.P13 is the original legal notice issued by the Brokers to the Plaintiff claims brokerage amount dated 24.7.2007.
- 14.Ex.P14 is the copy of the reply notice issued by the Plaintiff counsel to the brokers lawyer dated 8.8.2007.
- 15.Ex.P15 is the original legal notice by the 1st Defendant to the Plaintiff dated 13.08.2007.
- 16.Ex.P16 is the copy of the legal notice issued by the Plaintiff to the Defendant dated 6.9.2007.
17. Ex.P17 is the copy of the anticipatory bail petition dated July, 2009.
18. Ex.P18 is the quash petition in CrI.OP.No.2706 of 2010 dated 02.02.2010.
19. Ex.P19 is the original notice from the Defendant's counsel to the Plaintiff dated 11.02.2010.
20. Ex.P20 is the original authorisation and Power of Attorney issued by Rajalingam.

3. List of Witnesses Examined on the side of the defendants:-
Nil
4. List of Exhibits Marked on the side of the defendants:-
Nil

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06.06.2018

C.V.KARTHIKEYAN, J.

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