

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.S.No.265 of 2008

M/s.TVS Finance and Services Ltd.,
(Formerly known as M/s.Harita Finance Ltd)
Rep.by its Authorised Signatory,
Mr.Saikumar,
No.29, "Jayalakshmi Estate,"
Haddows Road,
Chennai – 600 006.

... Plaintiff

Vs.

1.M/s.Ravishankar Industries Pvt. Ltd.,
(Previously known as
M/s. Ravishankar Films Pvt. Ltd.,)
Rep.by its Director,
Mr.A.Manohar Prasad,
No.2, Sarangapani Street,
T.Nagar, Chennai – 17.

2.M/s.Anand Cine Service,
Rep.by its Partner
Mr.Ravishankar Prasad,
No.3, Sarangapani Street,
T.Nagar, Chennai – 17.

3.Mr.Ravishankar Prasad, (Deceased)
Partner,
M/s.Anand Cine Services,
No.3, Sarangapani Street,
T.Nagar, Chennai-17.

- 4.Mr.A.Manohar Prasad,
Partner,
M/s.Anand Cine Services,
No.3, Sarangapani Street,
T.Nagar, Chennai – 17.
- 5.M/s.Konark Civil Constructions,
(India) Private Limited,
Rep.by its Managing Director,
Mr.C.Amarnath,
No.45, 4th Avenue,
Ashok Nagar, Chennai – 83.
- 6.Mr.C.Amarnath,
Managing Director,
M/s.Konark Civil Constructions,
(India) Private Limited,
No.45, 4th Avenue,
Ashok Nagar, Chennai – 83.
- 7.M/s.Anandram Developers (P) Ltd.,
Rep.by its Director,
Mr.Mukund Vijayan,
No.3, Sarangapani Street,
T.Nagar, Chennai – 17.
- 8.Mr.Mukund Vijayan,
Director, M/s.Anandram Developers (P) Ltd.,
No.3, Sarangapani Street,
T.Nagar, Chennai – 17.
- 9.Mr.Tarun Kumar,
Authorised Signatory of
M/s.Anandram Developers (P) Ltd.,
No.3, Sarangapani Street,
T.Nagar, Chennai – 17.

10.Nanditha

11.Indu

12.A.R.Bhate
S/o.Mr.Raghunath Anand

13.A.R.Bhate
W/o.Mr.A.R.Bhate

14.Anil Dalmia

15.Sangeetha

16.Vasanth Kumar

17.Kalyani Vasanth

18.Chamundeeswari

19.A.Balakrishnan

20.Srikumari Subramanian

21.A.Subramanian

22.N.Punnamurthy

23.Raman

24.V.Natarajan

25.Kavitha Sharath

26.M.Lakshmanan

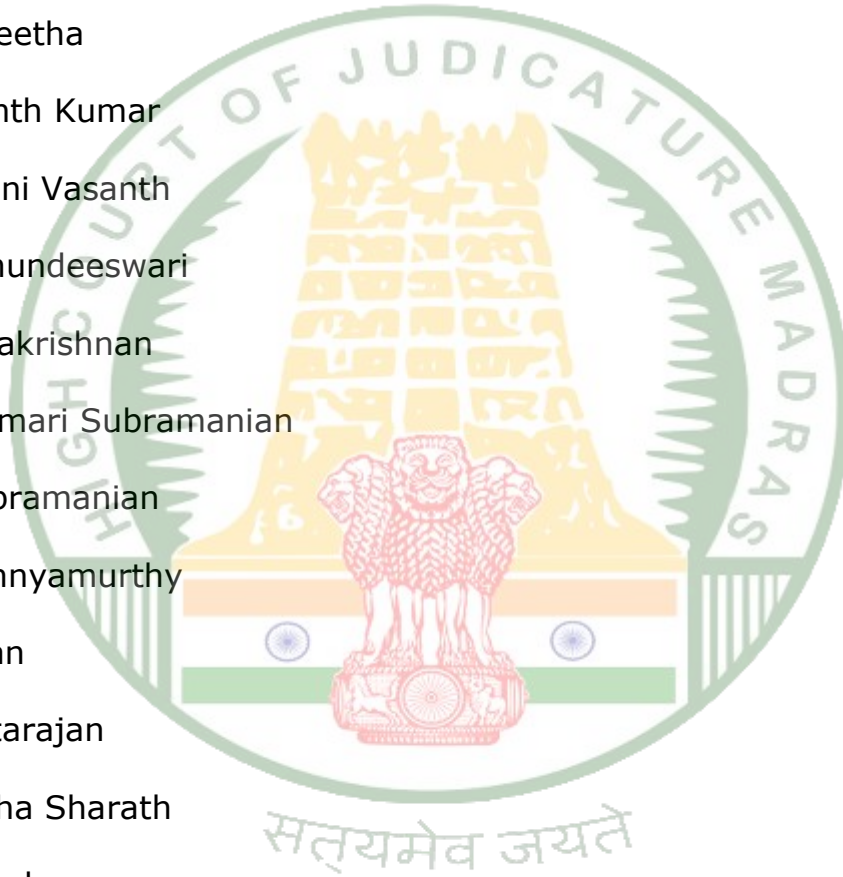
27.Bharathi

28.Prabhakar

29.Sudha Sai

30.Sai Prasad

31.A.Sriramulu



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32.C.S.Ganesan

33.C.Dorairaj

34.S.Giridhar

35.M.Murali

36.Vishal Jain

37.Sai Siva Jyothi

38.A.Lakshmi Anandhi

39.A.Anjali Krishnamani

40.A.Indira Anand

(Defendants 37 to 40 are brought on record as Lrs of the deceased

41.Official Liquidator,
High Court, Madras.

(41st defendant impleaded as per the order dated 02.03.2018 in A.No.1838 of 2018) ... Defendants

Plaint filed under Order VII Rule 1 C.P.C. read with Order IV Rule 1 of the High Court Original Side Rules praying for:

(a) directing the defendants 1 to 4 and 8 to 36 to pay a sum of Rs.6,22,00,315/- (Rupees Six Crores Twenty Two Lakhs Three Hundred Fifteen only) as on 21.01.2008 with interest at the rate of 18% per annum from the date of plaint till the day of payment in full to the plaintiff and pass such further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Or in the alternative by:

(b) directing the defendants to construct and hand over the flat measuring an extent of 5777 sq.ft. in 3rd floor in the proposed building situated in the schedule property with all amenities within a period of time to the plaintiff towards settlement of liability of a sum of Rs.1,30,00,000/- being the price of the flat (Rs.2250/- per sq.ft.) besides paying a sum of Rs.4,92,00,315/- (Rupees Four Crores Ninety Two Lakhs Three Hundred Fifteen only) being the difference between the cost of the flat and the claim amount with interest at the rate of 18% per annum from the date of plaint till the day of payment in full to the plaintiff and pass such further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

(c) directing the defendants 1 to 4 and 8 to 36 to pay a sum of Rs.1,00,00,000/- (Rupees One Crore only) towards damages sustained by the plaintiff on account of failure in construction and handing over the flat on time.

(d) the costs; and

(e) any order or orders that this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiff : Mr.Abdul Hameed
For Defendants : D1-Wound up
D2, D4 to D40 – Set ex-parte
D3 - Died

J U D G M E N T

The plaintiff has instituted the present suit for the relief, as stated in prayer portion of this judgment.

2. The averments in the plaint are as follows:-

(i) During 1995, the first defendant (a Private Limited Company) and the second defendant (a Partnership Firm) had availed hire purchase finance facilities from M/s.TVS Finance and services Ltd., Formerly known as M/s.Harita Finance Limited, in short "TVS" to the tune of Rs.4,10,00,000/- by entering into various agreements.

(ii) The first and second defendants failed to pay the amounts due to "TVS" under the agreements. As on 29.02.2000, a sum of Rs.2,56,84,000/- become due and payable by the first and second defendants to "TVS". When the amounts were sought by "TVS", the third and fourth defendants (Partners of the 2nd defendant) had informed "TVS" that the defendants 8 to 36 are their friends and relatives and they are willing to step in/stand as Guarantors for the liability of the first and second defendants and have agreed to

pay/settle the liability of the 1st and 2nd defendants to "TVS". The same was also confirmed by them to "TVS".

(iii) In these circumstances, a Memorandum of Understanding dated 29.02.2000 (Ex.P3) was entered between "TVS" and the 1st and 2nd defendants, whereby the 1st and 2nd defendants had acknowledged that a sum of Rs.2,56,84,000/- in due and payable by them to "TVS" and that "TVS" had agreed to waive the penal interest and receive a sum of Rs.1,30,00,000/- in full quit and that the sum would be paid in the form of conveyance of a flat measuring an extent of 5777 sq.ft together with un-divided interest in the land measuring an extent of 3.81 acres in Door No.110, Saligramam Village, Saidapet, Chennai, hereinafter referred to as "Schedule Property" belonging to the defendants 8 to 36.

(iv) On perusal of Memorandum of Understanding dated 29.02.2000 (Ex.P3), more particularly Clause Nos.5, 6 and 7 shows that the defendants 9 to 36 are the owners of the "Schedule Property" and they have given Power of Attorney to the 4th defendant's nominee i.e., Mukund Vijayan, the 8th defendant's herein for constructing and handing over 5777 sq.ft flat to be

developed in the "Schedule Property" to and in favour of "TVS" towards full and final settlement of the liabilities due to "TVS".

(v) In furtherance of the "MOU", the defendants 9 to 36 had executed an Agreement of Sale dated 31.03.2000 (Ex.P6) through their Power Agent i.e., 8th defendant, in favour of "TVS" whereby, the 8th defendant had agreed to convey the proportionate undivided interest in the "Schedule Property" together with the flat measuring an extent of 5777 sq.ft in the 5th floor in the "Schedule Property" in favour of "TVS" for a total consideration of Rs.1.30 lakhs.

(vi) On 19.07.2001, Sale Deed (Ex.P8) was entered between "TVS" and the defendants 9 to 36, through the 8th defendant conveying 2310 sq.ft of undivided interest in the "Schedule Property". The recitals of the Sale Deed dated 19.07.2001 (Ex.P8) shows that the defendants 9 to 36 had appointed the 8th defendant as their Power Agent vide Doc.No.729/2001 dated 03.05.2001 and Doc.No.664/2001 dated 16.01.2001 to deal with the "Schedule Property".

(vii) However, the flat as agreed under the MOU was not constructed and handed over to "TVS" neither was there any allotment letter. After several follow ups by "TVS", the 5th defendant developer of the "Schedule Property" by its letter dated 24.02.2003 (Ex.P10) informed "TVS" that "TVS" has been allotted 5777 sq.ft in the 3rd floor of the "Schedule Property" and that no further amount was due and payable by "TVS" for handing over the built-up area.

(viii) However, the defendants had not completed the construction and failed to discharge their obligations as undertaken by them and was taking time for completion and handing over the flat to "TVS" on one pretext or another. Therefore, "TVS" had issued legal notice dated 20.01.2005 (Ex.P.22) calling upon the defendants to ensure that the flat measuring an extent of 5777 sq.ft in the 3rd floor in the 3rd floor of the "Schedule Property" is constructed and handed over within 21 days, failing which proceedings for recovery of Rs.7,74,99,462/- would be initiated.

(ix) In reply thereto, the 1st and 2nd defendants by notice dated 07.03.2005 (Ex.P.22) has stated that the flat is to be

constructed by the 5th defendant and so no claim can be made against the 1st and 2nd defendants. The Rejoinder dated 04.07.2005 (Ex.P.23) was also issued by "TVS" to the said notice. Since nothing further transpired, the present suit has been filed for recovery of money against defendants 1 to 4 and 8 to 36 or in the alternative for specific performance against defendants 1 to 4 and 8 to 36.

3. After the admission of the suit, the suit summons were served on the defendants 2, 4 to 40. In spite of the service of the suit summons, the defendants failed to appear before this Court. Therefore, the defendants 2, 4 to 40 was set ex-parte vide order dated 13.03.2019 and the suit was directed to be placed before the learned Additional Master for recording ex-parte evidence. Before the learned Additional Master, on behalf of the plaintiff one Mr.L.Dinakaran, was examined as P.W.1 and Exs.P1 to P23 were marked.

4. It has already been set out supra that as many as 23 exhibits, namely Exs.P1 to P23 have been marked and the details of the 23 exhibits are as follows:

S.No.	Exhibits	Description of Documents
1	P1	The certified copy of the Board Resolution dated 19.04.2004.
2	P2	The original Letter of Authorization.
3	P3	The original Memorandum of Understanding dated 29.02.2000.
4	P4	The original Letter from 1 st defendant to plaintiff dated 29.02.2000.
5	P5	The original Letter of Handing over Allotment-cum-Possession certificate dated 31.03.2000.
6	P6	The original Agreement of Sale dated 31.03.2000.
7	P7	The xerox copy of the Development Agreement dated 18.04.2001.
8	P8	The original Deed of Conveyance dated 19.07.2001.
9	P9	The original Development Agreement dated 11.10.2001.
10	P10	The original Letter from 5 th defendant to plaintiff dated 24.02.2003.
11	P11	The original Letter from 5 th defendant to plaintiff dated 25.03.2003.
12	P12	The xerox copy of the Letter from 1 st defendant to 7 th defendant dated 06.05.2003.
13	P13	The xerox copy of the Letter from 7 th defendant to 5 th defendant dated 06.05.2003.
14	P14	The xerox copy of the Letter from plaintiff to 5 th defendant dated 07.05.2003.
15	P15	The xerox copy of the Construction Agreement in 2004.
16	P16	The original Letter from 5 th defendant to plaintiff dated 23.06.2004.
17	P17	The xerox copy of the Work Progress Report from 7 th defendant dated 20.06.2004.
18	P18	The original Letter from plaintiff to 1 st , 2 nd , 4 th , 5 th and 7 th defendants along with acknowledgment card dated 06.07.2004.

S.No.	Exhibits	Description of Documents
19	P19	The xerox copy of the Letter from plaintiff to 1 st , 2 nd , 4 th 5 th and 7 th defendants along with acknowledgment card dated 24.08.2004.
20	P20	The original Letter from 7 th defendant to plaintiff dated 02.09.2004.
21	P21	The original Legal notice from plaintiff's counsel to 1 st and 2 nd defendants along with RPAD receipt and acknowledgment cards dated 20.01.2005.
22	P22	The original reply notice from 1 st and 2 nd defendants counsel to the plaintiff's counsel dated 07.03.2005.
23	P23	The xerox copy of the Rejoinder from plaintiff's counsel to the counsel of 1 st and 2 nd defendants dated 04.07.2005.

5. On perusal of Exs.P1 to P.23, it appears that the claim of the plaintiff is genuine and the defendants failed to complete the construction and discharge the obligations undertaken by them and he was taking time for completion and handing over the flat to TVS and one pretext or another. Therefore, this Court is of the view that the plaintiff is entitled for the alternative Prayer (B).

6. As far as prayer (C) is concerned, wherein it is prayed defendants 1 to 4 and 8 to 36 are directed to pay a sum of Rs.1,00,00,000/- towards damages sustained by the plaintiff on account of failure in construction and handing over the flat on time.

7. This Court gone through the pleadings and heard the counsel appearing for plaintiff and also the deposition of the P.W.1 and also on perusal of the documents, it is clear that no documents either the pleadings nor the documents established any case for granting the damages for a sum of Rs.1 crore. Therefore, this Court is not inclined to grant prayer C.

8. Considering the facts and circumstances of the case, there will be a decree in respect of prayer (B) alone. The plaintiff is not entitled to the prayer (c) for damages. Since this Court granted the alternative prayer (B) there is no need for granting the prayer (A). Accordingly, the prayer (A) is rejected, while allowing the alternative prayer (B).

9. In view of the decree passed to and in favour of the plaintiff as per prayer B, this Court further direct the defendants to complete the construction within a period of one year from the date of receipt of a copy of this order.

10. The suit is partly decreed to the extent stated above.
No costs.

11.07.2019

C.S.No.265 of 2008

KRISHNAN RAMASAMY,J.

AT



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