

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :16.10.2019

Coram

The Honourable Mr.Justice N.SATHISH KUMAR

C.S. No. 609 of 2010
and A.Nos.4626 of 2010 & 6773 of 2019

Emgee Infrastructure Holdings (INDIA) Pvt Ltd.,
Formerly known as
Deepti Integrated Logistics Private Ltd.,
Rep by its
General Manager Mr. B.Srinivasa Rao
No. 134/62 Level III,
RA Puram, Chennai – 600 028 ...Plaintiff
(Amended as per order dated 06.07.2018
In application No. 1472 of 2017)

Versus

1.M/s. D.D.R.Property Developers and Builders
Private Limited (after name change)
M/s. Devadoss Reddy Property Developers &
Builders Private Ltd., (Prior to name change)
Having their Registered Office
at Old No.185, New No.435, T.H.Road,
Kaladipet, Chennai – 600 019.

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2.R.Devadoss Reddy
Managing Director
M/s. Devadoss Reddy Property Developers &
Builders Private Ltd., (Prior to name change)
Having their Registered Office
at Old No.185, New No.435, T.H.Road,
Kaladipet, Chennai – 600 019.

3.M/s.D.R.Logistic Private Limited
(after name change)
M/s.DEvadoss Reddy Logistic Private Ltd.,
(Prior to name change)
Having their Registered Office
at old No.185, New No.435,
Thiruvottiyur High Road,
Kaladipet, Chennai – 600 019. ...Defendants

This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules r/w Order VII Rule 1 of C.P.C prayed (a) directing the defendants to jointly and severally pay the plaintiff a sum of Rs.5,01,00,000/- (Rupees five crores and one lakh) together with interest at the rate of 24% per annum on the sum of Rs.5,01,00,000/- from the date of plaint till the date of realisation.

(b) directing the defendants to pay the cost of the suit.

For Plaintiff : Mr. Anirudh Krishnan

For Defendants : Mr. S.Sivakumar

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J U D G M E N T

The suit has been filed for following reliefs:

a) directing the defendants to jointly and severally pay the plaintiff a sum of Rs.5,01,00,000/- (Rupees five crores and one lakh) together with interest at the rate of 24% per annum on the sum of Rs.5,01,00,000/- from the date of plaint till the date of realisation.

(b) directing the defendants to pay the cost of the suit.

2. The suit has been originally filed for recovery of a sum of Rs.5,01,00,000/-. The plaint proceeded, inter alia contending that the plaintiff, represented by its Director Mr.C.Srinivas, and the first defendant, represented by the second defendant as Managing Director of the first defendant, entered into a Memorandum of Understanding dated 30.11.2006, to procure and provide contiguous lands of an extent of 750 acres in Vallur and Edyanchavadi in favour of the plaintiff and in pursuance of the above agreement the plaintiff paid a sum of Rs.5,50,00,000/- to

the defendants. However, the agreed transaction could not take place due to defective title and the defendants agreed to return the amount received from the plaintiff. Thereby, the first defendant, represented by the second defendant, entered into a deed of settlement dated 05.07.2007 agreeing to repay a sum of Rs.5,50,00,000/- availed from the plaintiff pursuant to the above statement. The first defendant issued three cheques, that is (i) Cheque bearing No.000131 dated 15.07.2007 for a sum of Rs.1,50,00,000/-, (ii) Cheque bearing No.000129, dated 15.09.2007 for a sum of Rs.3,00,00,000/-, and (iii) Cheque bearing No. 000132 dated 15.10.2007 for a sum of Rs. 1,00,00,000/- and all the cheques were drawn on Bank of India.

3. The plaintiff submits that the cheque bearing No.000131 dated 15.07.2007 for a sum of Rs.1,50,00,000/- was honoured and the payment of Rs.1,50,00,000/- was received by the plaintiff, whereas, the cheque bearing No.000129 dated 15.09.2007 for a sum of Rs.3,00,00,000/- and the cheque bearing No.000132 dated 15.10.2007 for a sum of Rs.1,00,00,000/- were dishonored with a

memo from Bank of India, stating "payment stopped by the drawer". Thereafter, the second defendant towards the value of dishonored cheque No.00132, dated 15.10.2007 issued a cheque bearing No.082956 dated 03.09.2009 for a sum of Rs.1,00,00,000/- in favour of the plaintiff and the same was honoured and the amount was received by the plaintiff. The defendants are liable to pay the plaintiff a sum of Rs.3,00,00,000/- and a sum of Rs.2,01,00,000/- being the interest on the said sum at the rate of 24% per annum.

4. Pending suit, the plaintiff has filed Application No.6773 of 2019 seeking summary judgment under Commercial Courts Act. The main contention of the plaintiff is that the defendants admitted in the written statement in para 22 about the dishonor of the cheques and in the common counter affidavit 10.03.2017 about balance outstanding amount and in view of the admission made by the defendants, the suit has been filed for a recovery of sum of Rs.5,01,00,000/- together with interest at the rate of 24% per annum.

5. The counsel appearing for the defendants submitted that though the defendants admitted receipt of the dishonoured cheques he, they were also put to a lot of difficulties due to failure of agreement and they have faced criminal case and suffered a lot in that aspect. Therefore, his contention is that the interest may be calculated only at the rate of 6%.

6. Whereas, the counsel appearing for the plaintiff contended that the entire transaction is based on agreement entered into between the parties and cheques were issued way back in the year 2007 and the amount was advanced in the year 2006. Such being the position, as per Negotiable Instruments Act, 18% interest has to be paid. However, he has fairly submitted that rate of interest left to the discretion of the Court.

7. Admittedly, the Memorandum of Understanding was entered into between the parties for purpose of procuring 750 acres of contiguous land. Originally, the defendants have received

a sum of Rs.5,50,00,000/- which has been admitted in the defendant's written statement and common counter affidavit. Thereafter, as the transaction did not take place, the defendant agreed to return the amount. However, the cheques issued by defendants were not fully honoured. Only cheque for a sum of Rs.2,50,00,000/- were honoured and a cheque for sum of Rs.3,00,00,000/- was dishonoured. The defendants have clearly admitted in the pleadings, not only in the written statement but also in the counter affidavit the fact that the cheque was dishonoured. Such being the position, when the defendants admitted the liability in the pleadings, this Court is of the view that as per Order XII Rule 6 of C.P.C., a judgment can be passed on the basis of the admission either in the pleadings or otherwise on perusal of the written statement and the common counter affidavit. Hence, this Court has no hesitation to hold that there is no dispute with regard to the liability of the defendants to pay the principal amount of Rs.3,00,00,000/-.

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8. Such being the position, the suit is decreed by passing the judgment based on the admission under Order XII Rule 6 of C.P.C. Accordingly, the plaintiff is entitled to recovery of a sum of Rs.3,00,00,000/-, being the principal amount with interest at 10% from the date of payment till the date of filing the suit. Thereafter, taking into consideration the nature of dispute, the plaintiff is entitled to 7% interest from the date of suit till the date of realisation.

9. With the above observation the suit is decreed with costs. Consequently, connected applications are closed.

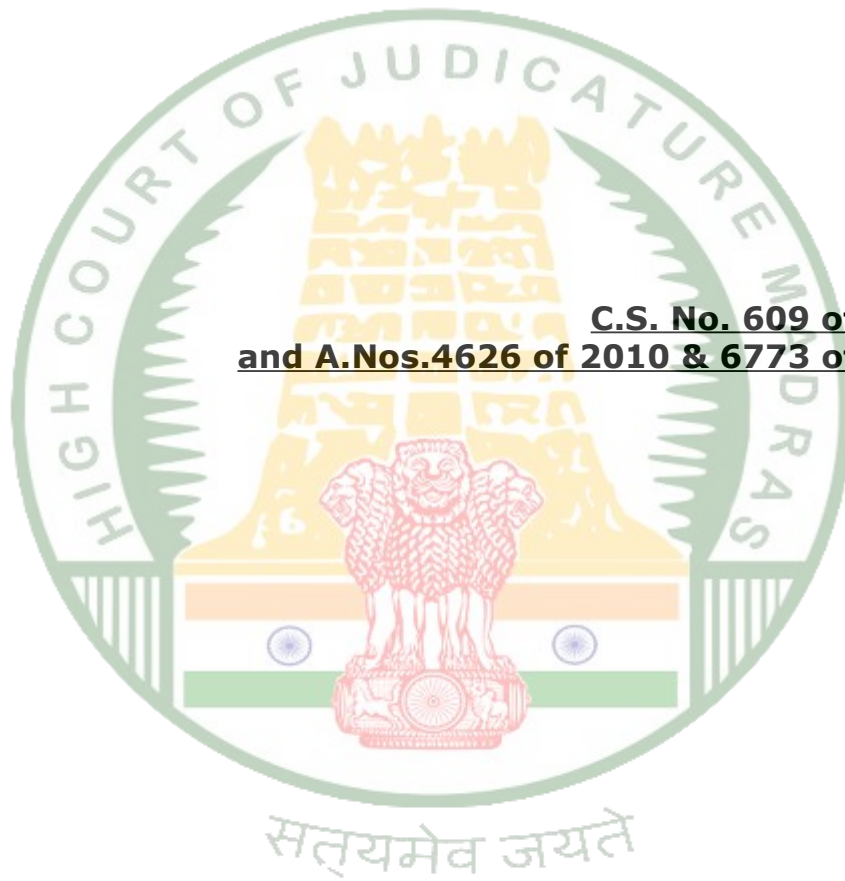
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