

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.01.2019

PRONOUNCED ON : 31.12.2019

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

C.S.No.867 of 2010

M/s.S & S Foundations Pvt Ltd.,
Rep. by its Managing Director,
Mr.Sathyanarayanan
No.45, Old No.19, Giriappa Road,
T.Nagar, Chennai - 600 017.

... Plaintiff

-Vs-

1.Arjan Mahtani

2.Monica Arjan Mahtani

3.State Bank of India
rep. by its Chief Manager,
Stressed Assets Management Branch
Red Cross Buildings,
No.32, Montieth Road, Egmore
Chennai - 600 008.

4.Authorised Officer
State Bank of India
Red Cross Buildings,
No.32, Montieth Road, Egmore,
Chennai - 600 008.

... Defendants

[D3 and D4 given up on 16.8.18
as relief sought against them became infructuous]

Prayer: Civil Suit filed under Order VII Rule 1 of Civil Procedure Code read with Order IV Rule 1 of O.S. Rules, praying

(i) to direct the defendants 1 and 2 to execute the sale deed in respect of the 'A' schedule property in favour of the plaintiff as per the agreement dated 29.08.2008 by receiving the balance of sale consideration of Rs.3,68,50,000/- after adjusting the amount already paid to the defendants 1 and 2 and the amount deposited with the defendants 3 and 4 and in the event of default by the defendants 1 and 2, to direct the registry of this honble court to execute the sale deed in favour of the plaintiff or in the alternative direct the defendants 1 and 2 to refund the amount of Rs.1,12,50,000/- (Rupees One crore twelve lakhs and fifty thousand only) paid by the plaintiff towards sale advance with interest at the rate of 18% per annum and also direct the defendants 3 and 4 to refund the sum of Rs.2,75,00,000/- (Rupees Two Crores Seventy Five Lakhs Only) deposited by the plaintiff in compliance of the conditional order passed by the Debt Recovery Tribunal, Chennai on 06.08.2010 in S.A.No.188 of 2010 with interest at the rate of 18% per annum

(ii) Mandatory injunction directing the defendants to hand over the possession, the title deeds and other documents of the schedule 'A' schedule property on execution of the sale deed.

(iii) Mandatory injunction directing the defendants 3 and 4 to handover the items mentioned in 'C' schedule property to the plaintiff or in the alternative direct the defendants 3 and 4 to compensate the plaintiff equivalent to that of the value of the 'C' Schedule Property being Rs.9,63,000/- with interest at the rate of 18% per annum

(iv) To award the cost of the suit.

For Plaintiff : Mr.P.G.Padmanabhan

For Defendants 1 & 2 : Set exparte

For Defendants 3 & 4 : Given up

JUDGMENT

The plaintiff has laid this suit for the judgment and decree for the following relief:

"(i) to direct the defendants 1 and 2 to execute the sale deed in respect of the 'A' schedule property in favour of the plaintiff as per the agreement dated 29.08.2008 by receiving the balance of sale consideration of Rs.3,68,50,000/- after adjusting the amount already paid to the defendants 1 and 2 and the amount deposited with the defendants 3 and 4 and in the event of default by the defendants 1 and 2, to direct the registry of this honble court to execute the sale deed in favour of the plaintiff or in the alternative direct the defendants 1 and 2 to refund the amount of Rs.1,12,50,000/- (Rupees One crore twelve lakhs and fifty thousand only) paid by the plaintiff towards sale advance with interest at the rate of 18% per annum and also direct the defendants 3 and 4 to refund the sum of Rs.2,75,00,000/- (Rupees Two Crores Seventy Five Lakhs Only) deposited by the plaintiff in compliance of the conditional order passed by the Debt Recovery Tribunal, Chennai on 06.08.2010 in S.A.No.188 of 2010 with interest at the rate of 18% per annum

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(iii) Mandatory injunction directing the defendants 3 and 4

to handover the items mentioned in 'C' schedule property to the plaintiff or in the alternative direct the defendants 3 and 4 to compensate the plaintiff equivalent to that of the value of the 'C' Schedule Property being Rs.9,63,000/- with interest at the rate of 18% per annum

(iv) To award the cost of the suit."

2.The said prayers were originally sought for by the plaintiff on the strength of the plaint documents filed under Order VII Rule 14(1) of C.P.C. It was the case of the plaintiff that, the plaintiff entered into a sale agreement with defendants 1 and 2 with the Sale Agreement dated 29.08.2008 whereby the defendants 1 and 2 agreed to sell the 'A' schedule property for a total sale consideration of Rs.7,56,00,000/- (Rupees Seven Crore Fifty Six lakhs only). It was the further case of the plaintiff that, on 29.08.2008 itself, a sum of Rs.50,00,000/- (Rupees Fifty lakhs only) was paid as sale advance by the plaintiff to the defendants 1 and 2 by way of cash and the plaintiff also paid a sum of Rs.50,00,000/- (Rupees Fifty lakhs only) by way of cheque dated 29.08.2008 to the defendants 1 and 2 altogether a sum of Rs.1,00,00,000/- (Rupees One crore only) was paid as sale advance and accordingly, the sale agreement was entered into between the

parties.

3.Subsequently, it is the case of the plaintiff that, since the defendants 3 and 4/Bank already entered into a mortgage deed with defendants 1 and 2 in respect of 'A' schedule property, the Bank under the SARFAESI Act issued notice to bring the 'A' schedule property for public auction to recover money from defendants 1 and 2 and in this regard, the plaintiff's further case was that, it approached the Debts Recovery Tribunal - I at Chennai and obtained an interim conditional injunction order dated 06.08.2010, pursuant to which, a sum of Rs.2,75,00,000/- (Rupees Two Crore Seventy Five lakhs only) deposited by the plaintiff to the defendants 3 and 4/Bank and at that stage, the further amount could not immediately been paid by the plaintiff and in the meanwhile, the property i.e., 'A' schedule property had been brought for public auction for sale by the Bank . Only in that circumstances, the present suit has been laid by the plaintiff for the aforesaid relief.

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4.However, during the pendency of the suit, the plaintiff had

come forward to give up the defendants 3 and 4, thereby the prayer sought for against them also had been given up. Insofar as the defendants 1 and 2 are concerned, according to the plaintiff, apart from Rs.1,00,00,000/- (Rupees One Crore only) as sale advance paid, a further sum of Rs.7,50,000/- (Rupees Seven Lakhs Fifty thousand only) and Rs.5,00,000/- (Rupees Five lakhs only) were also paid as additional sale advance by the plaintiff to the defendants 1 and 2 by way of cheques on 07.11.2008 and 12.11.2008 respectively. Therefore, altogether a sum of Rs.1,12,50,000/- (Rupees one crore twelve lakhs fifty thousand only) had been paid as sale advance by the plaintiff to the defendants 1 and 2. In that circumstances, though suit summons had been served on defendants 1 and 2, they did not appear before this Court, therefore, this Court, by order dated 31.08.2018 set the defendants 1 and 2 exparte and issue had been framed by this Court as per the draft issue filed by the plaintiff only in respect of the recovery of a sum of Rs.1,12,50,000/- (Rupees One Crore Twelve lakhs Fifty thousand only) from defendants 1 and 2 with interest, as the plaintiff had given up all other prayer sought for in the plaint.

5.Pursuant to the framing of the issue only in respect of the

recovery of the said sum of Rs.1,12,50,000/- (Rupees One Crore Twelve lakhs Fifty thousand only) from defendants 1 and 2, this Court directed the learned I Additional Master to record the evidence of the plaintiff's side as exparte evidence and further post the matter for final disposal by this Court.

6.Accordingly, the learned Master on 19.09.2018 examined the P.W.1 and Ex.P1 to Ex.P7 were marked. As there had been no further evidence on the side of the plaintiff, the suit has been posted before this Court for final disposal.

7.Since all other relief sought for in the plaint has been given up by the plaintiff, the P.W.1 one K.Sundararaj, in his examination in chief, has made the following prayer on 19.09.2018:

"Therefore, I pray this Hon'ble Court that this suit may be decreed as against D1 and D2, and to direct the said D1 and D2 to refund the advance amount of Rs.1,12,50,000/- (Rupees One Crore Twelve Lakhs fifty thousand only) together with interest at 18% p.a. from the date of payment i.e., 28.09.2008 till the date of realization, with cost of this suit."

8.Therefore, this Court has to decide only as to whether the

plaintiff has proved its case to get the relief confined only to the recovery of money from defendants 1 and 2 to the extent of Rs.1,12,50,000/- (Rupees One Crore Twelve lakhs Fifty thousand only) with interest at the rate of 18% per annum.

9.On behalf of the plaintiff, P.W.1 was examined, through him Ex.P1 to Ex.P7 were marked. Ex.P1 is the original sale agreement between plaintiff and defendants 1 and 2 dated 29.08.2008 with endorsement. Ex.P2 is the original endorsement dated 07.11.2008 on the sale agreement. Ex.P3 is the original endorsement dated 07.11.2008 on the sale agreement. Ex.P4 is the original letter issued by the 3rd defendant/Bank to the plaintiff to vacate the 'A' schedule property. Ex.P5 is the original reply given by the plaintiff to the 3rd defendant/Bank. Ex.P6 is the original notice under Section 13(2) of the SARFAESI Act issued against the 2nd defendant. Ex.P7 is the copy of the order passed by the DRT-I, Chennai dated 06.08.2010 whereby a conditional order was passed granting injunction not to sell the 'A' schedule property on condition that the plaintiff shall deposit a sum of Rs.2,75,00,000/- (Rupees Two Crores Seventy Five lakhs only) on or before 09.08.2010 and another Rs.2,75,00,000/- (Rupees Two Crores

Seventy Five lakhs only) on or before 09.09.2010.

10.In order to ascertain the evidence as to whether the present claim, as confined by the plaintiff, made in the plaint for recovery of a sum of Rs.1,12,50,000/- (Rupees One Crore Twelve lakhs Fifty thousand only) from defendants 1 and 2, has been proved with the said documents marked on behalf of the plaintiff alone, has to be looked into.

11.In this context, since Ex.P4, Ex.P5, Ex.P6 and Ex.P7 are pertaining to the correspondences with the defendants 3 and 4/Bank, those documents are not related to the present issue, since the defendants 3 and 4 had already been given up, as there has been no issues now pending between the plaintiff and the defendants 3 and 4.

12.In respect of the only issue to be decided between the plaintiff and the defendants 1 and 2 for recovery of a sum of Rs.1,12,50,000/- (Rupees One Crore Twelve lakhs Fifty thousand only) is concerned, Ex.P1 is an original sale agreement between plaintiff and defendants 1 and 2 dated 29.08.2008 and the same has been marked

as such, by which, the amount of Rs.50,00,000/- (Rupees Fifty lakhs only) paid by way of cash and another Rs.50,00,000/- (Rupees Fifty lakhs only) paid by way of cheque by the plaintiff to the defendants 1 and 2 had been established and also further sum of Rs.7,50,000/- (Rupees Seven lakhs Fifty thousand only) by way of cheque dated 07.11.2008 and further payment of Rs.5,00,000/- (Rupees five lakhs only) by way of cheque dated 12.11.2008 had also been endorsed under Ex.P2 dated 07.11.2008, since the same had been accepted and acknowledged by defendants 1 and 2 in the said endorsement, which has been marked as Ex.P2, those factors had been established.

13.Ex.P3 was an endorsement made on 07.11.2008 in Ex.P1 wherein the defendants 1 and 2 agreed to handover the vacant possession of the 'A' schedule property, hence that was also established.

14.Therefore, with regard to the prayer sought for now for recovery of sum of Rs.1,12,50,000/- (Rupees One Crore Twelve lakhs Fifty thousand), the Ex.P1 - Agreement dated 29.08.2008 and Ex.P2 - Endorsements dated 07.11.2008 and 12.11.2008 respectively are the

documents, under which, those factors have been proved.

15. Since the money had been paid to the extent of Rs.1,12,50,000/- (Rupees One Crore Twelve lakhs Fifty thousand only) by the plaintiff to the defendants 1 and 2 and out of which, Rs.1,00,00,000/- (Rupees One Crore only) was paid on 29.08.2008 and Rs.7,50,000/- (Rupees Seven lakhs Fifty thousand only) was paid on 07.11.2008 and Rs.5,00,000/- (Rupees Five lakhs only) was paid on 12.11.2008 from that date, whether the plaintiff is entitled to get the interest of 18% is concerned, since the draft issue filed by the plaintiff, they confined with the interest of 18% from the date of plaint till the date of recovery and that issue also is the only issue to be decided in the suit, this Court, having satisfied with the said documents i.e., Ex.P1 to Ex.P3, the said factors which are the issue to be decided in this suit since has been proved, is inclined to pass the following judgment:

(i) That the plaintiff is entitled to recover a sum of Rs.1,12,50,000/- (Rupees One Crore Twelve lakhs Fifty thousand only) from defendants 1 and 2, who are jointly and severally liable to pay the said amount with interest at

the rate of 18% per annum from the date of plaint till the date of realization.

(ii) In respect of all other prayer sought for in the suit, since those prayers had already been given up by the plaintiff, the suit is dismissed in respect of all other prayers.

(iii) The plaintiff is also entitled to the cost of the suit and cost memo to that effect shall be filed by the plaintiff.

With the aforesaid directions, the Civil Suit is decreed in favour of the plaintiff to the extent indicated above.

Index: Yes / No

Speaking Order : Yes/No

Sgl

31.12.2019

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To

1.The Chief Manager,
State Bank of India
Stressed Assets Management Branch
Red Cross Buildings,
No.32, Montieth Road, Egmore
Chennai - 600 008.

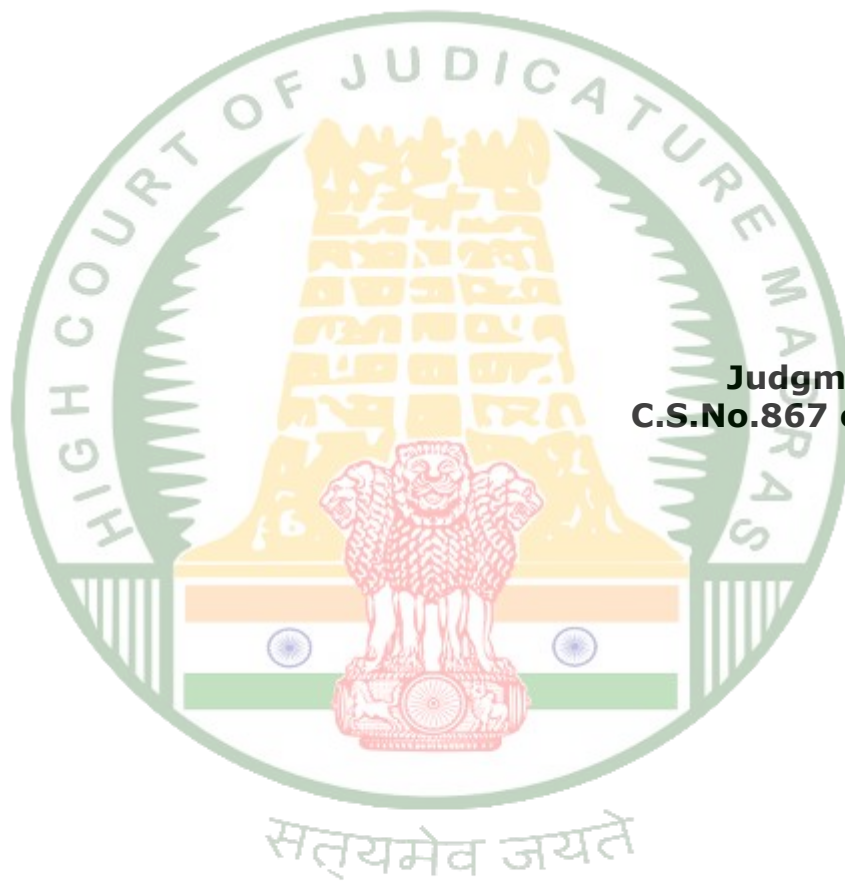
2.Authorised Officer
State Bank of India
Red Cross Buildings,
No.32, Montieth Road, Egmore,
Chennai - 600 008.



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R.SURESH KUMAR, J.

Sgl



**Judgment in
C.S.No.867 of 2010**

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