

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN**Civil Suit (Comm. Div.) No.191 of 2016**

Amit P.Kinger

... Plaintiff

-VS-

1. R.Mahendran

2. M/s.Prem Prakash Builders,
Rep. by one of its Members,

Mrs.Mehakk Kinger ... Defendants

Prayer: Plaint filed under Order IV Rule 1, Order XXXVII Rule 1 of the O.S. Rules r/w Order VII Rule 1 and Order 34 rule 1 of the Code of Civil Procedure, 1908, seeking a) that the 1st Defendant be decreed to pay to the Plaintiff a sum of Rs.1,75,80,000/- (Rupees One Crore Seventy Five Lakhs Eighty Thousand only) together with subsequent interest on Rs.1,20,00,000/- at the rate of 18% per annum from the date of plaint till realisation and also the costs of this suit on some date to be named by the Court and in default that the property morefully described in the Item (I) of the schedule hereunder may be sold and the proceeds (after defraying thereout the expenses of the sale) applied in and towards the payment of the amount of the said principal, interest and cost; b) that, if such proceeds shall not be sufficient for the payment in full of such amount, the 1st defendant may be ordered to pay to the plaintiff the amount of the deficiency with interest thereon at the rate of six percent per annum until realisation; c) that the 1st Defendant be decreed to pay to the Plaintiff a sm of Rs.21,97,500/- (Rupees Twenty One Lakhs Ninety Seven Thousand Five Hundred only) together with subsequent interest on Rs.15,00,000/- at the rate of 18% per annum from the date of plaint till realisation and also the costs of this suit on some date to be named by the Court and in default that the property morefully described in the Item (II) of the schedule hereunder may be sold and the

proceeds (after defraying thereout the expenses of the sale) applied in and towards the payment of the amount of the said principal, interest and cost and d) that, if such proceeds shall not be sufficient for the payment in full of such amount, the 1st defendant may be ordered to pay to the Plaintiff the amount of the deficiency with interest thereon at the rate of six percent per annum until realisation.

For Plaintiff : Mr.T.Skandhakukmaar
 For D1 : Mr.G.S.Selvatharasu
 For D2 : Mr.Shivakumar

J U D G M E N T

This Civil Suit has been filed by the Plaintiff seeking for the following reliefs:

(a) that the 1st Defendant be decreed to pay to the Plaintiff a sum of Rs.1,75,80,000/- (Rupees One Crore Seventy Five Lakhs Eighty Thousand only) together with subsequent interest on Rs.1,20,00,000/- at the rate of 18% per annum from the date of plaint till realisation and also the costs of this suit on some date to be named by the Court and in default that the property morefully described in the Item (I) of the schedule hereunder may be sold and the proceeds (after defraying thereout the expenses of the sale) applied in and towards the payment of the amount of the said principal, interest and cost;

(b) that, if such proceeds shall not be sufficient for the payment in full of such amount, the 1st defendant may be ordered to pay to the plaintiff the amount of the deficiency with interest thereon at the rate of six percent per annum until realisation;

(c) that the 1st Defendant be decreed to pay to the Plaintiff a sm of Rs.21,97,500/- (Rupees Twenty One Lakhs Ninety Seven Thousand Five Hundred only) together with subsequent interest on Rs.15,00,000/- at the rate of 18% per annum from the date of plaint till realisation and also the costs of this suit on some date to be named by the Court and in default that the property morefully described in the Item (II) of the

schedule hereunder may be sold and the proceeds (after defraying thereout the expenses of the sale) applied in and towards the payment of the amount of the said principal, interest and cost;

(d) that, if such proceeds shall not be sufficient for the payment in full of such amount, the 1st defendant may be ordered to pay to the Plaintiff the amount of the deficiency with interest thereon at the rate of six percent per annum until realisation; and

(e) that such further or other order as the Court may deem fit and proper to be made”

2. Today, when the matter is taken up for hearing, learned counsel for the parties submitted that the parties have entered into a compromise and produced the Joint Compromise Memo dated 06.03.2019 entered into between the Plaintiff and the Defendants.

3. Learned counsel for the 2nd Defendant has produced a copy of the Power of Attorney and has stated that though the 2nd Defendant was represented by the Principal, namely Mrs.Mehakk Kinger in the suit, the Joint Compromise Memo has been signed by the Power of Attorney Holder, viz., Mr.Premchand Khiaram on her behalf. For better understanding, the Joint Memorandum of Compromise entered into between the parties is extracted hereunder:

**“Joint Compromise Memo entered into between the Plaintiff
and the Defendants 1 and 2**

“The Plaintiff and defendants have entered into a compromise and have settled their dispute on the following terms and conditions:

1) It is agreed between the Plaintiff and the defendants that suit be decreed as prayed for with costs.

The first defendant shall pay a sum of Rs.2,50,00,000/- (Two Crores and Fifty lakhs) to the Plaintiff in the following manner:

a) Rs.1,25,00,000/- (Rupees One Crore and Twenty Five Lakhs only) on or before 15.4.2019;

b) Rs.1,25,00,000/- (Rupees One Crore and Twenty Five Lakhs only) on or before 30.6.2019

On receipt of the aforesaid Rs.2,50,00,000/- the Plaintiff and the 2nd Defendant shall share the aforesaid sums and they agree they will not claim any further sum from the first defendant and the plaintiff shall enter up full satisfaction of the decree.

2) If 1st defendant commits default in payment of any one of the instalment, or fails to adhere to the time schedule, as detailed in clause 1 above, plaintiff is entitled to recover the entire principal sum together with interest till payment at the rate of 18% per annum till realisation.

3) 1st Defendant agrees that in case, he fails to pay any one of the instalment, or fails adhere to the time schedule, as detailed in clause 1 above, plaintiff is entitled to file execution petitions, for recovery of the money and for sale of the mortgaged properties simultaneously, without resorting to final decree.

4) Plaintiff agrees that on the defendant adhering to clause 1 above and paying the sums, due to Plaintiff and 2nd defendant, thereafter 1st defendant shall withdraw the Crl.O.P.No.20837 of 2017 on the file of High Court Madras and inform the same to the Plaintiff. Thereafter, the plaintiff and 2nd defendant shall withdraw C.C.Nos.5227 of 2016 in Fast Track Court Egmore, and C.C.No.3115 of 2014 before Saidpet Court.

5) Plaintiff agrees that on the 1st defendant adhering to the terms of payment as per clause 1 above, plaintiff shall discharge the suit mortgages at the expenses of the 1st defendant.

3. Recording the Memo of Compromise entered into between the parties

dated 06.03.2019, this Civil Suit is decreed in terms of the Memorandum of

Compromise. The Memorandum of Compromise shall form part of the Decree.

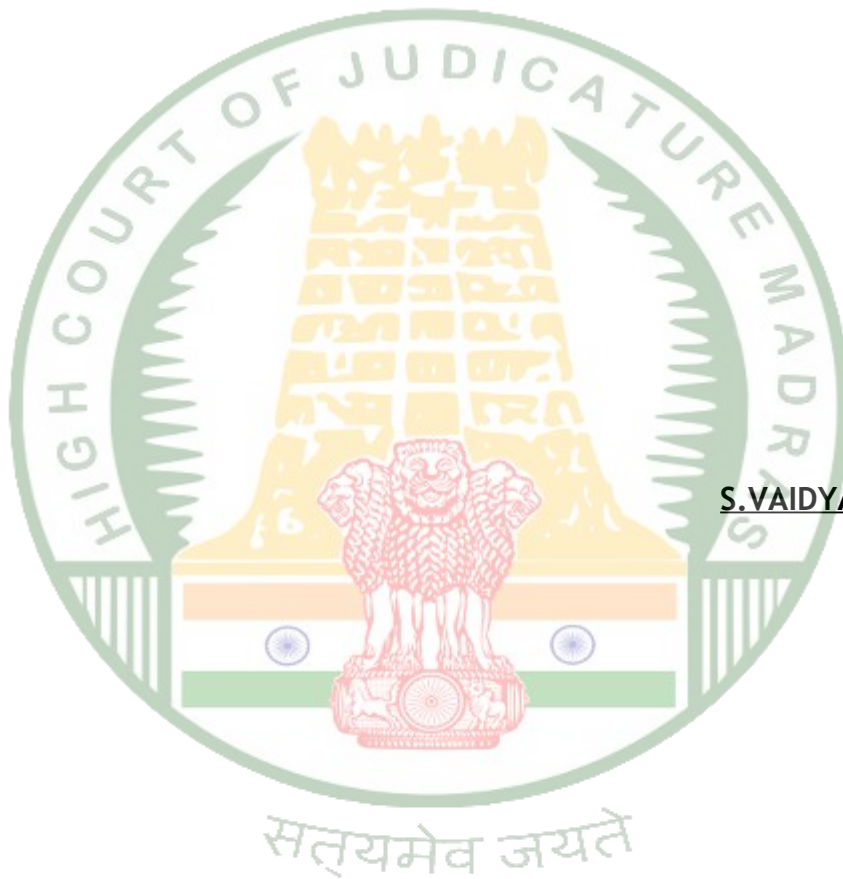
No costs.

06.03.2019

Index: Yes / No

Internet: Yes / No

Speaking Order: Yes/No
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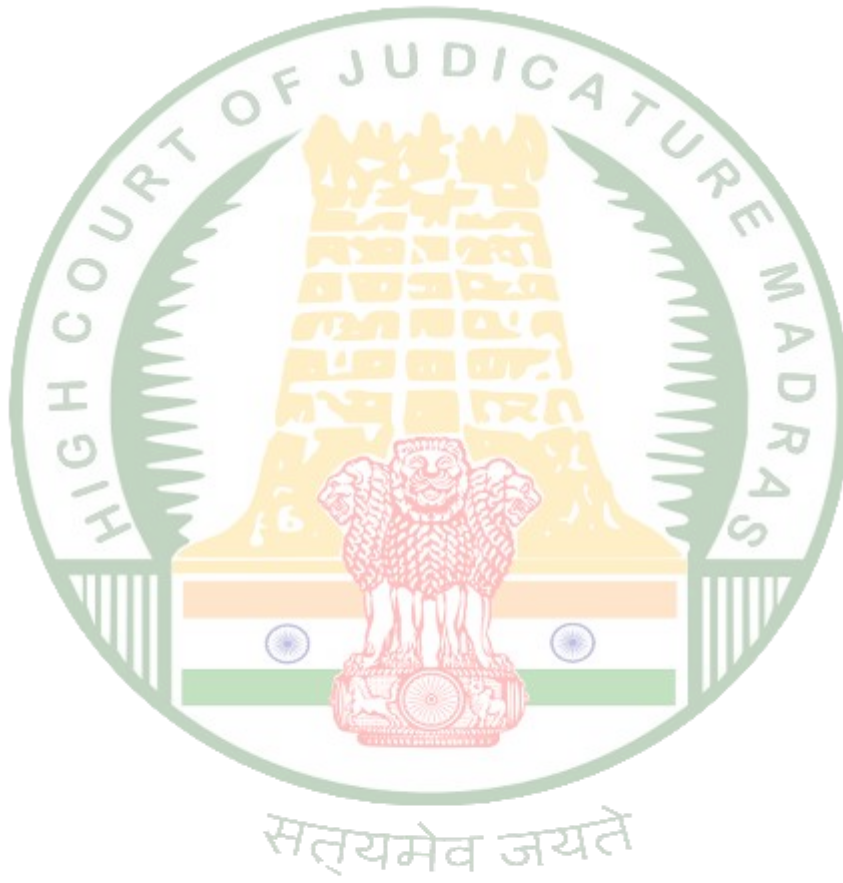
S. VAIDYANATHAN, J.
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