

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	07/11/2019
Delivered on	/11/2019

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.S.No.234 of 2018

Dr.Mrs.Jolly Joy John,
W/o.Dr.John Sampath Kumar,
No.24, Totnes Avenue, Bramhall,
Stockport, Cheshire, United Kingdom,
Represented by her Power of Attorney,
Mr.Yeshwant Joseph Joy ... Plaintiff

Vs

M/s.Green Peace Constructions P. Ltd.,
No.10, Natesan Salai,
Ashok Nagar, Chennai - 600 083.
Rep. by its Managing Director. ... Defendant

Plaint filed under order VII Rule 1 of C.P.C. read with Order IV Rule 1 of O.S. Rules, praying for judgment and decree as follows:

a) Directing the defendant to pay a sum of Rs.1,78,06,734/- with further interest on Rs.1,18,50,001/- @ 18 % per annum from the date of plaint till realization and;

b) for a sum of Rs.10,00,000/- towards damages and;

c) for costs of the suit;

d) to pass such or other orders.

For Plaintiff : Mr.B.Chandrasekaran

For Defendants : Set ex-parte on 19.07.2019

J U D G M E N T

The suit has been instituted against the defendant for recovery of a sum of Rs.1,78,06,734/- with further interest on Rs.1,18,50,001/- @ 18 % per annum from the date of plaint till realization and for a direction to the defendant to pay a sum of Rs.10,00,000/- towards damages and for costs.

2. The facts in nutshell are as follows:-

The plaintiff would state that she was owner of a flat No.135/2 measuring an extent of 915 sq.ft. by virtue of sale deed, dated 25.08.1995. The residential complex known as "Ajanta Flats" was constructed on the land measuring an extent of 72394 sq.ft., situated at Jawaharlal Nehru Salai, Anna Nagar West, Chennai. The plaintiff would further state that the residential block Nos.133 to 137 became very old and was in a dilapidated condition. Hence, the plaintiff along with 53 co-owners of the above said blocks entered into a Joint Venture Agreement with the defendant in the year 2010 for developing the property in the form of flats. In terms of the compromise, the defendant constructed 80 flats and allotted 54 flats to the flat owners and sold

the remaining 26 flats to new buyers. As such, in the month of May 2013, the plaintiff was allotted flat No.135/2 in the newly developed apartment known as "Green Peace Ajanta".

3. It is further stated that since the plaintiff permanently settled in U.K and was in need of funds, she requested the Director of the defendant to sell the property and executed a Power of Attorney, dated 27.03.2015 in favour of the defendant. The Power of Attorney was adjudicated on 16.04.2015. One Athimulam and his wife jointly purchased the flat on 29.06.2015 for a sale consideration of Rs.1,50,00,001/-. After deducting Rs.30,00,000/- towards TDS, the sale consideration was received by the defendant, however, not even a penny was paid to the plaintiff. Therefore, a police complaint was given against the Director of the company on 03.08.2017 for misappropriation and criminal breach of trust. But, due to influence of the defendant, no action was taken. Thereafter, the suit has been instituted for recovery of money.

4. Though the defendant received the suit summons and entered appearance in the year 2018, no written statement was filed and hence, he was set ex-parte by this Court on 19.07.2019.

5. The Power of Attorney of the plaintiff, viz., Mr.Yeshwant Joseph Joy was examined as P.W.1 and marked the following documents as Exs.P1 to P25 as documentary evidence:-

Exs	Documents	Dated
P1	Copy of the Adjudicated POA as Doct. No.16/2018 given by the plaintiff to the Deponent	-
P2	Certified copy of the Sale Deed Doct. No.2403 of 1995	25.08.1995
P3	Copy of the Certificate name change certificate of the plaintiff	25.05.1999
P4	Computer generated copy of e-mail correspondence addressed allotting the developed flat to the plaintiff by the defendant	26.05.2013
P5	Computer generated copy of e-mail correspondence letter reply	22.05.2013
P6	Computer generated copy of trail e-mail between the plaintiff and defendant agreeing for sale of the flat	-
P7	Copy of Notarized Adjudicate Power Attorney given by the plaintiff to the defendant for sale of the plaintiff flat	27.03.2015
P8	Computer generated copy of trial E-mails	-
P9	Copy of the sale deed executed by the defendant as power agent of the plaintiff in favour of Mr.Athimulam and Mrs.A.Kalaiyrasi for a sum of Rs.1,50,00,001/-	-
P10	Computer generated copy of TDS certificate form 26QB	-
P11	Computer generated copy of TDS certificate form 26QB	-
P12	Computer generated copy of TDS certificate form 26AS 2016-2017	-
P13	Computer generated copy of e-mail correspondence, confirming the sale of the plaintiff flat and undertaking to remit the sale consideration	15.06.2015 & 13.07.2015
P14	Computer generated copy of email by the plaintiff	-

Exs	Documents	Dated
P15	Computer generated copy of e-mail by the plaintiff	-
P16	Computer generated copy of e-mail by the plaintiff providing bank details for remittance of the sale consideration	-
P17	Computer generated copy of e-mail by the plaintiff demanding remittance of the sale consideration	-
P18	Computer generated copy of e-mail by the defendant	-
P19	Computer generated copy of trail e-mails between the plaintiff and defendant confirming that the defendant would be remit the sale document	-
P20	Computer generated copy of e-mail demand sent by the plaintiff counsel to the defendant counsel	-
P21	Copy of reply letter admitting liability and promising to pay the amount	20.01.2016
P22	Computer generated copy of e-mail between plaintiff and her counsel	-
P23	Original letter of addressed by the defendant admitting liability in respect of sale consideration and arrears of the rental and making part payment of Rs.5,00,000/- agreeing to pay the balance amount of Rs.1,34,32,800/- with interest	-
P24	Copy of the police complaint given by the plaintiff against the defendant	-
P25	Computer extract of the encumbrance certificate reflecting sale entry of the plaintiff flat	-

6. The learned counsel for the plaintiff submitted that the plaintiff has proved her case by producing the oral and documentary evidence and she is entitled for decree sought for in the suit.

7. The defendant was set ex-parte on 19.07.2019. The said position continued as of now. Taking into consideration, the pleadings, the evidence of P.W.1 and Exs.P1 to P25, this Court is of the view that the plaintiff has proved her case and entitled to decree sought for in the suit. Accordingly, the Suit stands decreed as prayed for. There is no order as to costs.

/ 11 / 2019

Speaking Order / Non Speaking Order

Index : Yes/ No.

Internet : Yes /No.

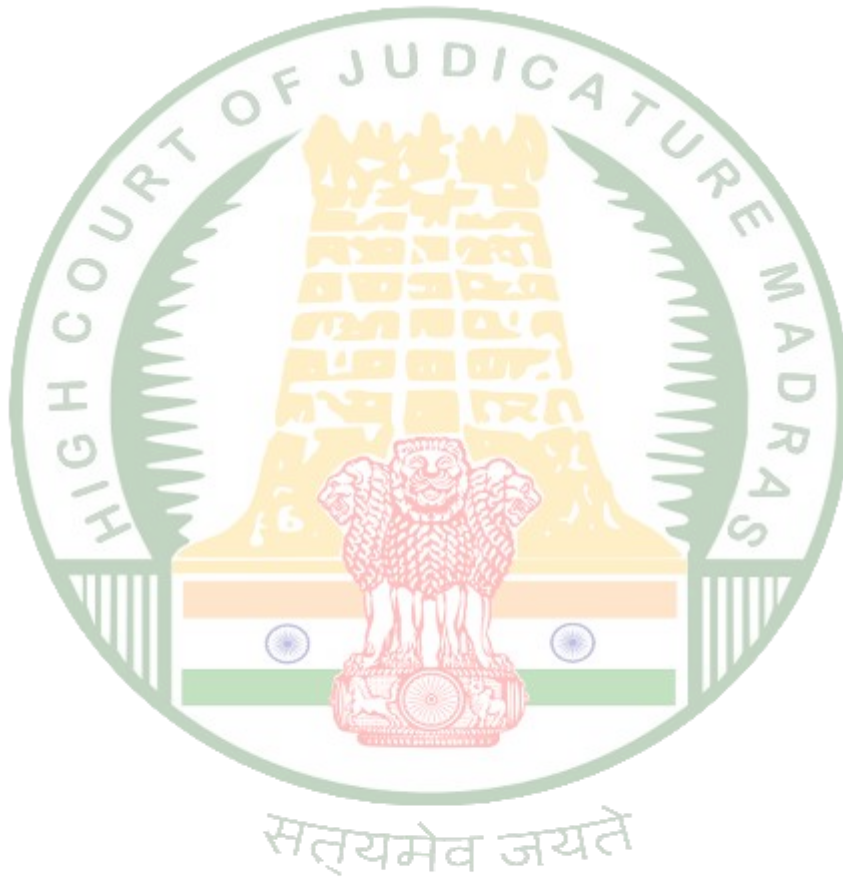
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To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.



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K.KALYANASUNDARAM, J.,

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