

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 29TH DAY OF APRIL 2022

THE HON'BLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

C.S.No. 61 of 2014

and

A.No. 883 of 2021

C.S.No. 61 of 2014 :-

S.K. Shamsudeen,
S/o. Late. Abdul Kadhar,
No.248, SKS Illam Main Road,
Pothakudi Post,
Needamangalam Taluk,
Thiruvarur District,
and also at
Door No. 17/1, Unnis Sali Sahib Street,
Triplicane, Chennai – 600 005.

... Plaintiff

-Vs-

1. M/s. Arithma Technologies India Pvt Ltd.,
Represented by its Directors,
K.S. Jafarullah Khan,
Mrs. Sajida Parween,
Having Registered Office at
No.149, Anna Salai, Little Mount,
Saidapet, Chennai – 600 015.
2. K.S. Jafarullah Khan,
Managing Director,
S/o. Late. Kadhar Batcha,
M/s. Arithma Technologies India Pvt. Ltd.,
3. Mrs. Sajitha Barveen, Director,
W/o. Jafarullah Khan,
M/s. Arithma Technologies India Pvt. Ltd.,

Both presently residing at
No.112, First Cross Street,
VGP Layout, Palavakkam,
Chennai – 600 041.

And also at No.20, Samsu Street,
Ilayangudi – 623 702.

... Defendants

Civil Suit praying that praying that this Hon'ble Court be pleased to
pass a Decree and Judgement against the defendants :-

a) directing the defendants to pay the plaintiff jointly and severally
the sum of Rs.3,24,88,000.00 (Rupees Three Crores Twenty Four Lakhs and
Eighty Eight Thousand only) together with future interest at the rate of 12%
p.a. on Rs.2,62,00,000/- from the date of plaint till date of realization within
the time limit prescribed by this Honourable Court, in case the defendants
failed to pay ;

b) to appoint an Advocate Commissioner with a direction to sell the
suit Schedule property by public auction and pay to the plaintiff a sum of
Rs.3,24,88,000.00 (Rupees Three Crores Twenty Four Lakhs and Eighty
Eight Thousand only) together with future interest at the rate of 12% p.a. on
Rs.2,62,00,000/- from the date of plaint till date of payment together with
cost, from and out of the sale Proceeds;

c) pass a personal decree against the defendants 2 and 3 in case the
sale proceeds are found insufficient to discharge the decretal debt;

d) Costs of the suit.

A.No. 883 of 2021 :-

S.K. Shamsudeen,
 S/o. Late. Abdul Kadhar,
 No.248, SKS Illam Main Road,
 Represented by its Power Agent,
 Mr. M. Mujeebur Rahman, (M/45),
 S/o. Mr. M. Muhammed Ibrahim,
 No. 47/8-4, Bavali Road,
 Burma Coloy,
 Virudhu Nagar – 626 001.

... Applicant / Plaintiff

-Vs-

1. M/s. Arithma Technologies India Pvt Ltd.,
 Represented by its Directors,
 K.S. Jafarullah Khan and Mrs. Sajida Parween,
 Having Registered Office at
 No.145, Anna Salai, Little Mount,
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 Managing Director,
 M/s. Arithma Technologies India Pvt. Ltd.,
3. Mrs. Sajitha Barveen,
 W/o. Jafarullah Khan, Director
 M/s. Arithma Technologies India Pvt. Ltd.,
 Both presently residing at
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 Chennai – 600 041.
 And also at No.20, Samu Street,
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... Respondents/Defendants

Application praying that praying that this Hon'ble Court be pleased to
 pass a final decree permitting the plaintiff to realize the decretal amount as
 decreed in preliminary decree dated 03.09.2019.

This Civil Suit along with this application coming on this day before this Court for hearing in the presence of Mr. A. Raja Mohamed, Advocate for the plaintiff in C.S.No. 61 of 2014 and for the Applicant in A.No. 883 of 2021, and Mr. V. Anand, Advocate for the defendants in C.S.No. 61 of 2014 and for the respondents in A.No. 883 of 2021, and upon reading the Plaint filed in C.S.No. 61 of 2014 and the Judges Summons and the Affidavit of M.Mujeebur Rahman filed in A.No. 883 of 2021, and the Joint Compromise Memo signed by the advocates for the parties hereto and the said advocates for the parties hereto praying this Court to pass a decree in terms of Joint Memo of Compromise morefully setout in the Schedule hereunder, and the e-mails received from the parties having been enclosed to the Joint Memo of Compromise, **It is interms thereof ordered and decreed as follows :-**

1) That the defendants herein, shall transfer / assign the Suit Schedule Property morefully setout in the Schedule hereunder in favour of Plaintiff for the upset value of Rs.3,00,00,000/- (Rupees Three Crores Only), which includes dues pending to Electricity Board, Property Tax Department and Metro Water Department and the Plaintiff herein, shall unconditionally waive off the sum amount in excess to be paid by the Defendant herein and that he shall have no future claim with regard to the pending amount.

2) That the amount decreed in terms of this Joint Compromise Memorandum be and is hereby declared as the full and final settlement of the Suit claims, and no further amounts are due from the Defendants herein.

3) That there shall be no claims whatsoever against either of the parties arising from the Suit Transaction.

4) That the said property be and is hereby declared as free from all encumbrances and no other person or body shall have any kind of charge or interest over the said scheduled property, and that if there is any charge or encumbrance over the said property, the defendants herein shall arrange to get it removed.

5) That the Plaintiff herein, shall not be held liable for any other dues/debts arising in the said Suit Schedule Property except aforementioned dues.

6) That a certificate under section 69 of Tamil Nadu Court Fees and Suits Valuation Act XIV of 1955 (Amended Act) do issue herein, out of under the seal of this Court in favour of Mr.A.Raja Mohamed, Counsel for the plaintiff herein, authorising him to receive from the Pay and Accounts

Office, High Court, Chennai a sum of Rs.3,28,960/- (Rupees Three Lakhs Twenty Eight Thousand Nine Hundred and Sixty only) being the entire Court fee paid on the plaint by the plaintiff herein.

SCHEDULE OF PROPERTY

All that piece and parcel of land, building and super structure and premises bearing Door No.149, Anna Salai, Little Mount, Saidapet, Chennai – 600 015, comprised in T.S.No. 2/9, Block No.8, Venkatapuram Village, Mambalam, Guindy Taluk, Little Mount, Chennai – 600 015, admeasuring North to South on the Eastern side 43'0 1/2" ; North to South on the Western side 42' 5 1/2" ; East to West on the Northern side 51.4" and East to West on the Northern side 62.5" totalling in all 2,400 Sq.ft, bounded on the North by Kasim Seth Thottam ; South by Common Passage of 10 feet ; East by G.K. Kannabiram's House ; and West by Kasim Seth Thottam and situated within the Sub-Registration District of Adyar and Registration District of Chennai South.

SCHEDULE

JOINT MEMO OF COMPROMISE

ED
08.06.2022

C.S.No. 61 of 2014
and
A.No. 883 of 2021

DECREE

DATED : 29.04.2022

THE HON'BLE MRS. JUSTICE
V. BHAVANI SUBBAROYAN

FOR APPROVAL : 09.06.2022

APPROVED ON : 09.06.2022

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3. Mrs. Sajitha Barveen, Director,
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... Defendants

Civil Suit praying that praying that this Hon'ble Court be pleased to
pass a Decree and Judgement against the defendants :-

a) directing the defendants to pay the plaintiff jointly and severally
the sum of Rs.3,24,88,000.00 (Rupees Three Crores Twenty Four Lakhs and
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p.a. on Rs.2,62,00,000/- from the date of plaint till date of realization within
the time limit prescribed by this Honourable Court, in case the defendants
failed to pay ;

b) to appoint an Advocate Commissioner with a direction to sell the
suit Schedule property by public auction and pay to the plaintiff a sum of
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... Respondents/Defendants

Application praying that this Hon'ble Court be pleased to
 pass a final decree permitting the plaintiff to realize the decretal amount as
 decreed in preliminary decree dated 03.09.2019.

This Civil Suit along with this application coming on this day before this Court for hearing, **the Court made the following order:-**

The present application is filed by the applicant / plaintiff to pass a final decree permitting the plaintiff to realize the decretal amount, as decreed in preliminary decree dated 03.09.2019.

2. The learned counsel for the applicant / plaintiff submits that in view of the preliminary decree dated 03.09.2019, the respondents / defendants should have paid the decree amount of Rs.4,28,63,498.75 on or before 02.03.2020, but the respondents / defendants had not obeyed the order of this Court. All the efforts taken by the applicant / plaintiff went in vain and the respondents / defendants wantonly failed to pay the decree amount. Therefore, invoking the default clause, viz., *“That in default of paying the decree amount, the plaintiff shall be at liberty to apply for the passing of the final decree to bring the suit property morefully set out in the schedule hereunder, for sale.”* of the preliminary decree dated 03.09.2019, the plaintiff seeks permission of this Court to sell the suit schedule property by public auction and pay to the plaintiff.

3. The learned counsel for the applicant / plaintiff also submits that the applicant is a senior citizen and presently residing at Kuwait and the

applicant is suffering with severe cancer and his health condition is not upto the mark. Due to the bad health condition, the applicant / plaintiff is not in a position to come to India, thereby the applicant seeks to bring the suit property for sale by appointing an Advocate Commissioner to sell the suit schedule property by public auction and pay to the plaintiff as per the order of this Court in C.S.No.61 of 2014 dated 03.09.2019.

4. Heard the learned counsel for the respondents / defendants on the submissions of the learned counsel for the applicant / plaintiff and perused the document placed on record.

5. Admittedly, the suit is for recovery of mortgage money and as per the preliminary decree dated 03.09.2019 passed in the present suit, an Application No.882 of 2021 has been filed to appoint a Commissioner to sell the mortgaged property. Accordingly, Mr.R.Parthasarathy was appointed as Advocate Commissioner and the said application was allowed on 22.07.2021 and as per the report of the Advocate Commissioner, the market value of the property is assessed at Rs.3,11,67,000/-. Since there was an objection on the part of the Judgment debtor, this Court fixed the upset price of the property to be auctioned at Rs.3.5 Crores.

5. On perusing the documents available on record, it is seen that since the Commissioner has filed his report dated 29.10.2021 indicating that he has not received any offers for Rs.3.5 Crores, the upset price of the property was reduced to Rs.2.5 crores by this Court on 02.11.2021, by taking into consideration of the calculus of market fluctuation in the real value of the property. Aggrieved over the said order, the defendants have preferred O.S.A.No.335 of 2021 and the Hon'ble Division Bench has modified the order dated 02.11.2021 by fixing the upset price at Rs.3.25 Crores. Subsequently, by order dated 08.03.2022, the commissioner was directed to proceed with the public auction.

6. That apart, the learned Advocate Commissioner filed his report stating that at both the auctions he did not receive any bids from the prospective buyers and this Court instructed the parties to look out the avenues for compromise. In pursuant to the same, the applicant/ plaintiff as well as the respondents / defendants have entered into a Joint Memo of Compromise, [duly signed by the learned counsel for the applicant / plaintiff as well as learned counsel for the respondents / defendants and Emails from the plaintiff as well as from the 2nd defendant, giving consent to the Joint Memo of Compromise] which runs as under:-

“That further to the instructions of this Hon'ble Court the defendants has agreed to transfer / assign the suit schedule property morefully described hereunder in favour of plaintiff through a Decree passed by this Hon'ble Court, for the upset value of Rs.3,00,00,000/- [Rupees Three Crores only], which includes dues pending to Electricity Board, Property Tax Department and Metro Water department. The sum amount in excess to be paid by the defendant is unconditionally waived off by the plaintiff and he has no future claim with regard to the pending amount.

That the plaintiff declares that the amount decreed in terms of this Joint Compromise Memorandum is the full and final settlement of the suit claims. No further amounts are due from the defendants. The parties to this Joint Compromise Memorandum mutually declare that there is no claims whatsoever against either of them arising from the suit transaction.

That the defendants declare that the said property is free from all encumbrances and no other person or body has any kind of charge or interest over the said scheduled property. Further agrees and promises that if there any charge or encumbrance over the said property, they shall arrange to get it removed. Moreover, the plaintiff shall not be held liable for any other dues / debts arising in the suit schedule property except aforementioned dues.”

In view of the above, this application is allowed and final decree is passed in terms of Joint Memo of Compromise dated 29.04.2022 and the

said Joint Memo of Compromise shall form part of the decree. Registry is directed to refund the court fee to the learned counsel for the plaintiff, as per Rules.

Sd./- V.B.S.J.
29.04.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.