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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

O.S.A.No.270 of 2019
and
C.M.P.No.22276 of 2019

Karvy Financial Services Limited,
Rep. By its Managing Director,
No.705 and 706, 7th Floor,
Hallmark Business Plaza,
Sant Dnyaneshwar Marg,
Off Bandra Kurla Complex,
Mumbai - 400 051.

Having their office also at:
Swathi Court, No.22,
Vijayaraghava Road,
Opp:Andhra Club,
T-Nagar, Chennai - 600 017.

.. Appellant

Vs

1.M/s.Regaliaa Realty Ltd.,
Rep. By its Director,
Mrs.KavithaRenganathan,
Having its Registered office at:
No.10,Tarapore Avenue,
Harrington Road, Chennai - 600 031.

2.D.Sudhakara Reddy

3.Deepthha Reddy

.. Respondents

***Rep by her Power Agent**
Mr.D.Sudhakara Reddy

Appeal preferred under Order XXXVI Rule 9 of O.S. Rules
r/w Clause 15 of Letters Patent against the impugned order and
decree dated 24.09.2019 made in Appln.No.5655 of 2019 in
C.S.No.472 of 2019.



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For Appellant .. Mr.N.L.Raja, Senior Counsel
for Mr.Arun Anbumani

For Respondents.. Mr.R.Rajesh
JUDGMENT

(Delivered by M.M.SUNDRESH, J.)

This appeal has been filed by the defendant aggrieved over the order passed by the learned single Judge in Appln.No.5655 of 2019 in C.S.No.472 of 2019.

2.This case has got a chequered history. The appellant obtained an award against the respondents. The appellant was a lender and the respondents were the borrowers. On the non-payment of mandatory dues, the appellant invoked the arbitration proceedings. The arbitration proceedings ended in favour of the appellant. Thereafter, the respondents filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 in O.A.No.1537 of 2015 before the High Court of Mumbai. Pending the aforesaid proceedings, a settlement was arrived at through the memorandum of understanding dated 08.02.2016 and it reads as under:-

Now this Memorandum of Understanding witnesseth as under:

1.The Second Party shall hand over to the First Party the Villas in its Project "Ferns" at Thiruvidadanthai Village, Kancheepuram District described in Scheduled-A hereinafter referred to as Scheduled-A Villas in as is where is condition and further agrees and undertakes to ensure that the land owner Mr.Balraj Vasudevan will convey the land (divided and undivided) in respect of the Schedule-A Villas to the First Party or its nominees at the cost and expenses of the First Party and the Second Party shall hand over the Villas to the First Party or its nominees in as is where is condition and the First Party or its nominee shall be liable to pay the property tax and electricity charges consumption charges after the conveyance and handing over.

2.That consequent to the settlement arrived at between the First Party and Second Party, the Second Party will enter into an MOU with the land owner (M.Balraj Vasudevan) to ensure the commitment of the Second Party to the First Party stated in Clause-1 is fully complied with.

3.The Parties herein agree that after conveying of the Schedule-A Villas in favour of the First Party or its nominees thereby handing over peaceful possession



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thereof, the Parties hereto will jointly file this MOU before the Hon'ble High Court Bombay in the Appeal Proceedings with Mr.Balraj Vasudevan (Land Owner) as a Confirming Party to the MOU.

4.The Parties herein agree that after conveyance, the First Party or its nominee shall become a member of the Ferns Villa Owners Association and will be liable to pay Corpus Fund and maintenance charges.

5. The First Party agrees that simultaneously with conveying the Schedule-A Villas stated in Clause No.1

a. the Second Party, Mr.D.Sudhakara Reddy, Mrs.D.Usha Reddy and Ms.Deeptha Reddy will stand discharged/released from any claim or liability or demand by the First Party in respect of the "Said Loan" and interest or any other amounts consequent thereof to the First Party.

b. Further on the conveying & handing over the peaceful possession of the Schedule-A Villas in terms of the MOU in favour of the First Party or its nominee, all disputes between the First Party and the Second Party, Mr.D.Sudhakar Reddy, Mrs.D.Usha Reddy and Ms.Deeptha Reddy will stand abated and settled and the First Party or any person claiming through or under the First Party including their counsels, will not have any further claim or demand on the Second Party Mr.D.Sudhakar Reddy, Mrs.D.Usha Reddy and Ms.Deeptha Reddy.

c. All original documents relating to the Project 'Ferns' including original title documents referred to in the registered deed of Memorandum relating to the Deposit of Title Deeds executed by the Second Party in favour of the First Party listed out in Schedule-B hereto will be simultaneously returned by the First Party to the Second Party at the time of receiving possession of Schedule A Villas as stated in Clause 1 and the said Memorandum of Deposit of Title Deeds shall be cancelled with suitable registered cancellation deed/discharge receipt, stating of the discharge of the said Loan with interest and other amounts consequent thereof by the Second Party. In this respect the First Party agrees to comply with all the requirements for the Registration of the Cancellation/Discharge of the said mortgage by Deposit of Title Deeds, as and when called by the Second Party and at the cost of Second Party.



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d. All shares held by Mr.D.Sudhakar Reddy, Mrs.Usha Reddy and Ms.Deeptha Reddy in the Second Party Company as pledged with First Party will be free and requisite NOC for revoking the pledge or any other documents to be executed by the First Party shall be issued/Executed in the name of/in favor of Mr.D.Sudhakar Reddy, Mrs.D.Usha Reddy and Ms.Deeptha Reddy simultaneously at the time of receiving possession of the Schedule A Villas.

e. All pending cases between the First Party and the Second Party and Mr.D.Sudhakara Reddy, Mrs.D.Usha Reddy and Ms.Deeptha Reddy will be withdrawn unconditionally by the First Party with suitable endorsement. Similarly any proceedings initiated by the Second Party, Mr.D.Suhakara Reddy, Mrs.D.Usha Reddy and Ms.Deeptha Reddy shall also be withdrawn unconditionally with suitable endorsement.

f. This MOU will be valid for a period of 180 days within which period if the Schedule-A Villas in terms of the Clause-1 is not conveyed in favour of the First Party in terms of Clause-1 with all compliance and simultaneously the First Party does not comply with its obligations under this MOU, the Parties herein will be reinstated to the original position and can prosecute their respective rights in accordance with law as if no settlement has been reached."

3.It is also as per the aforesaid memorandum, the respondents were supposed to handover the four villas in favour of the appellant and as against the same, the appellant is supposed to re-transfer the shares which were pledged and said to be transferred in the name of the appellant without the consent of the respondents.

4.While it is the case of the appellant that the respondents did not withdraw the pending proceedings especially before the SEBI, that is the reason why the appellant is not performing his part of the agreed terms. However, it is the case of the respondents that SEBI being a statutory body, there is no question of withdrawing the complaint. Even any such attempt will not have any bearing on SEBI. The suit itself has been filed for damages for non-compliance of the agreed payment by the appellant which involves the decrees and the value of shares.



5. Before the learned single Judge, the appellant was served both through privately and through Court at his Mumbai office. Now, the present appeal has been filed on the premise that the appellant has been served belatedly at Mumbai office and no such notice has been served at the Chennai office. An affidavit of undertaking has also been filed stating that the appellant is ready and willing to give an undertaking not to alienate four villas subject to the mediation proceedings. Para 3 of the affidavit reads as under:

"3. I state that nevertheless, for the early adjudication of the matter and disposal of the Suit, the Appellant undertakes not to alienate the 4 villas bearing Villa A-7, Villa A-8, Villa B-20 and Villa J-29, in the Villa Complex known as Ferns Villa Complex at Thiruvadanthai Village, Chengalpattu Taluk, Kacheepuram - 603 112, for a period of 2(two) years, within which time the Respondents shall, as suggested by them, co-operate in the mediation proceedings to ensure smooth re-transfer of the shares by the Appellant to the respective Respondents in accordance with the Orders and directions of SEBI and following the procedures under the Takeover Regulations or for disposal of the suit."

6. Learned senior counsel appearing for the appellant submitted that it need not be understood that mediation will have to go through but para 3 of the undertaking can be taken as to the effect that undertaking has been given expecting appropriate settlement through mediation or through adjudication in the suit which has to be heard at an earlier point of time.

7. Learned counsel appearing for the respondents submitted that while the respondents are in agreement to accept the undertaking given, the remaining part of para 3 as stated will have to be clarified. Learned counsel also submitted that there is no objection for speedy disposal of the suit in the event of mediation not taking place. It is his further case that it is not a simple question of re-transferring the shares but the resultant financial implication attached to it for the failure of the appellant in performing its part in accordance with the memorandum of understanding.

8. We are not inclined to go into the merits of the case. Suffice it to state that the notice has been served on the appellant at the Mumbai office both privately and through Court. Private notice has been served a month before and thereafter Court notice a week before. Inasmuch as the appellant has filed the undertaking affidavit, nothing more requires to be done except by stating that as per the said undertaking, the appellant shall not alienate and encumber four villas mentioned



in para 3 therein. Thus, the appellant shall not alienate or encumber the aforesaid properties mentioned in para 3 of the affidavit of undertaking pending disposal of the suit.

9. Considering the issue involved, we request the learned single Judge dealing with the matter to dispose of the suit within a period of one year. We are also inclined to refer the suit to the Mediation and Conciliation Centre. A special request is made to Mr. Javad to act as a Mediator and the mediation be completed within a period of eight weeks from the date of receipt of a copy of this judgment. The parties are directed to appear before the Mediator on 06.01.2020. We make it clear that in the event of the suit not being disposed of, liberty is given to the parties to seek variance of the order passed.

***10. With the above observation, the Original Side Appeal stands disposed of. Consequently, Appln.No.5655 of 2019 in C.S.No.472 of 2019 also stands disposed of. No costs. Consequently connected miscellaneous petition is closed.**

Sd/-

Assistant Registrar (CS-III)

Dated : 19.12.2019

***Corrected as per order of this Court dated 02.01.2020**

Sd/-

Assistant Registrar (CS-IV)

Dated : 07.01.2020

//True copy//

Sub Assistant Registrar

mmi

To

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

**To be substituted to the orders
already despatched on 20/12/2019**

+1cc to Mr. R. Rajesh, Advocate, S.R.No. 104395

+1cc to Mr. Arun Anbumani, Advocate, S.R.No. 104975

O.S.A.No. 270 of 2019

AD (CO)

GN (19/12/2019)

GMV (07/01/2020)