

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.02.2017

PRONOUNCED ON : 16.10.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

**CS.Nos.741 of 2004 &
972 of 2004**

1.C.Dakshinamurthy
2.Mrs.D.Sumathi

.. Plaintiffs in C.S.No.741 of 2004 &
Defendants in C.S.No.972 of 2004

V.

M/s.CONYBIO HEALTH CARE (INDIA)
Pvt. Ltd.,

Having its Registered Office at
Old No.54-C, New No.69,
Jawaharlal Nehru Salai, 100 Feet Road,
Ekkaduthangal,
Chennai - 600 097.

.. Defendant in C.S.No.741 of 2004 &
Plaintiff in C.S.No.972 of 2004

PRAYER in C.S.No.741 of 2004 : Civil suit is filed under Order IV
Rule 1 of OS Rules r/w. Order VII, Rule 1 of CPC 1908 :-

(a) For recovery of a sum of Rs.46,89,500/- from the defendant being damages together with future interest at 18% per annum from the date of plaint till the date of actual realization of the damages;

(b) For declaration that the blank, undated, unfilled cheques, as described in Schedule II to the plaint hereunder, handed over to the defendant by the plaintiffs at the time of entering into the Loan Agreement dated 14.04.2001, are illegal, unenforceable void ab-initio and consequently, the same are not binding upon the plaintiffs.

(c) For a permanent injunction restraining the defendant or its men, agents, servants or any other person or persons authorized by it or claiming through it from initiating any proceeding or enforcing its claim as against the plaintiffs on the basis of blank undated, unfilled cheques issued by the plaintiffs to the defendant at the time of entering into the Loan Agreement dated 14.04.2001, except in accordance with law.

(d) For a permanent injunction restraining the defendant or its men, agents, servants or any other person or persons authorized by it or claiming through it from interfering with the plaintiff's peaceful possession and enjoyment of the suit property, including the right to collect the rents from the existing tenants and complete construction of the building in the suit property situate at Old No.55/1 and 55/2, New No.75, Jawaharlal Nehru Salai, 100 Feet Road, Vadapalani, Chennai - 600 026, morefully described in the schedule hereunder, except in accordance with law;

(e) For granting any further or reliefs, and

(f) costs of the suit;

PRAYER in C.S.No.972 of 2004 : Civil suit is filed under Order IV Rule 1 of OS Rules r/w. Order VII, Rule 1 of CPC 1908 :-

(a) Pay a sum of Rs.20,97,816/- together with interest at 12% per annum compounded quarterly, from the date of plaint until realization;

(b) Pay cost of the suit to the plaintiff; and

(c) For any other relief;

For Plaintiffs in C.S.No.741 of 2004 &
Defendants in C.S.No.972 of 2004 : Mr.R.Thiagaraj

For Defendant in C.S.No.741 of 2004 &
Plaintiff in C.S.No.972 of 2004 : Mr.M.L.Joseph
For M/s.Chennai Law Associates

COMMON JUDGMENT

The plaintiffs in C.S.No.741 of 2004, viz., C.Dakshinamurthy and Mrs.D.Sumathi have instituted the suit for damages, permanent injunction and other reliefs. C.S.No.972 of 2004 has been filed by the plaintiff-M/s.CONYBIO HEALTH CARE (INDIA) Pvt. Ltd., for recovery of money.

2. Since parties are same and common issues are involved in both the suits, they are tried together and disposed of by this Common Judgment. For the sake of convenience, C.Dakshinamurthy and Mrs.D.Sumathi, who have filed the suit in C.S.No.741 of 2004 are hereby referred as "Plaintiffs", and M/s.CONYBIO HEALTH CARE (INDIA) Pvt. Ltd., who has filed a suit in C.S.No.972 of 2004, is hereby referred as "Defendant".

3. The brief facts of the plaintiffs are as follows:-

3.1. The plaintiffs are the absolute owners of the suit schedule mentioned property, measuring an extent of 5,750 sq.ft, and purchased the same under two sale deeds dated 22.02.1990 and registered as Document

Nos.873 and 874 of 1990 in the Office of the Sub Registrar, Kodambakkam from one Mr.Lakshmipathy for valuable consideration. The plaintiffs borrowed a sum of Rs.35,00,000/- on 27.07.2000f from REPCO Bank, T.Nagar, for constructing the building in the schedule mentioned property.

3.2. It is the case of the plaintiffs that they have been on the look out for prospective tenants for letting out the remaining vacant portions of the aforesaid property and the defendant had approached the plaintiffs to take the premises on lease and requested the plaintiffs to demolish the existing structures after evicting the tenants and put up new construction, viz., an Office complex consisting of basement, ground and two floors with an open terrace measuring an extent of 13,000 sq.ft or thereabout, as per the design provided by the defendant to suit their business requirements and convenience. Subsequently, the plaintiffs had entered into a Loan Agreement with the defendant at Chennai on 14.04.2001 and in and by which, the defendant had advanced a sum of Rs.15,00,000/- to the plaintiffs as interest free loan and agreed to treat the sum of Rs.10,00,000/- as Refundable Security Deposit with interest and to take the entire premises excluding northern part of Ground Floor measuring an extent of 1,300 sq.ft. on lease for a period of 5 years with an option to renew the same for a further period of 5 years, subject to certain terms and conditions.

3.3. It is the further case of the plaintiffs that the rental was fixed for the entire premises excluding the northern part of the Ground Floor measuring an extent of 1,300 sq.ft or thereabout, shall be around Rs.1,05,000/- per month, excluding power consumption charges for a period of first five years and on completion of the tenancy period, a part of the advance amount of Rs.10,00,000/- advanced by the defendant under the said Loan Agreement dated 14.04.2001 shall be treated as Security Deposit for the lease contemplated and the same shall be refunded to the defendant, while vacating the premises and the balance amount of Rs.5,00,000/- shall be adjusted at the rate of Rs.50,000/- in the first 10 months from and out of the rents payable by the defendant. The actual amount payable by way of rent by the defendant for the first 10 months for its occupation had been determined at the rate of Rs.55,000/- per month, excluding power consumption charges and the rent shall be payable as and when the complex is completed and occupied by the defendant.

3.4. It is further stated that the defendant had entered into a contract with the plaintiffs on 14.04.2001 at Chennai duly incorporating the various terms and conditions which shall govern the rights and obligations of both the parties. Pursuant to the contract, the plaintiffs with very great difficulties, had vacated the tenants, viz., S.R.Agency, (ii) A.K.Auto Parts, (iii) Venkateswara Medicals, (iv) Beauty Saloon, (v) STD Booth and (vi)

Beetle-nut shop, except M/s.Murugan Stores, who has been agreed to be shifted to the northern wing of the Ground Floor of the new premises to be constructed and in the process of vacating the tenants, the plaintiffs had incurred a substantial expenditure, amounting to Rs.5,35,000/-.

3.5 Pursuant to the agreement, the plaintiffs had applied to the Corporation of Chennai for demolition plan and also for Planning Permission and permit for re-construction of the proposed complex as per the design provided by the defendant, and accordingly obtained Planning Permission and permission from the Corporation of Chennai and Chennai Metropolitan Development Authority for putting up the complex and completed basement ground floor and first floor in the suit property. The property is assessed to Property Tax and the plaintiffs have also remitted the necessary fees and charges. After evicting the above tenants and shifting M/s.Murugan Stores to the northern wing of the ground floor premises, the plaintiffs have duly demolished the existing building as per the demolition plan obtained by them from the Corporation of Chennai. Since the plaintiffs have committed for construction of new complex in accordance with the terms and conditions of the Loan Agreement / contract dated 14.04.2001 for the occupation of the defendant within the stipulated time, they engaged the services of the competent Architect-cum-Civil Engineer for commencement of the construction activities and to meet all the above expenses, the plaintiffs have incurred a sum of Rs.3,00,000/- and on this account alone.

3.6. It is further stated that in anticipation of the expenses to be incurred for the completion of the building project, the plaintiffs have availed loans to the tune of Rs.35,00,000/- from M/s.REPCO Bnk, Usman Road Branch, T.Nagar, Chennai and Rs.10,00,000/- from M/s.TNSC Bank, Triplicane Branch, Chennai, besides borrowing monies from other private agencies for completion of the building, for which the plaintiffs have been paying the interest periodically. Pursuant to the contract dated 14.04.2001, the plaintiffs secured the demolition plan and a valid planning permission and permission from the statutory authorities for reconstruction of the building and to facilitate the commencement of the proposed complex, demolished the existing structures in the aforesaid premises measuring an extent of 2,500 sq.ft, which is roughly valued at Rs.10,00,000/- even though the actual value may be much more than that. In addition to that, certain structural alterations for housing the lift on the rear side of the premises, the plaintiffs have incurred a sum of Rs.4,00,000/- for making provision for fixing the lift in the said building complex. The second plaintiff had sold her property situate at No.266/1, Triplicane High Road, Triplicane, Chennai - 600 005 and invested the sale proceeds of Rs.5,00,000/- realized by them in the proposed building to be erected in the suit schedule property and as such, the plaintiffs have incurred and expenditure of Rs.55,00,000/- for putting up new construction in the above premises to the suit the business

convenience of the defendant as per the contract dated 14.04.2001 reached between them.

3.7. It is further averred that the defendant had agreed to take the entire premises, excluding a portion occupied by M/s.Murugan Stores on the northern wing of the premises, on a monthly rent of Rs.1,05,000/- excluding power consumption charges on lease, for a period of 10 years, for reasons best known to them, the defendant have deliberately and willfully flouted the terms of the contract dated 14.04.2001 entered into with the plaintiffs at Chennai and expressed their inability to take the premises orally for their use and occupation as originally agreed upon and there was no written communication regarding termination of the contract from the defendant till date in this regard.

3.8. In order to complete the project on time to enable the defendant to occupy the same, the plaintiffs have availed loans from the financial institutions and invested the same into the above project thereby incurring interest charges alone so far to the tune of Rs.17,85,000/- on the borrowed amount and the plaintiffs have been deprived of the rental income of Rs.12,500/- per month, (excluding power consumption charges) from the existing tenants for several months from April 2001 onwards, which is tentatively valued at Rs.5,19,500/-.

3.9 It is the further case of the plaintiffs that out of the total advance of Rs.15,00,000/- paid by the defendant, the plaintiffs have repaid a sum of Rs.1,50,000/- without prejudice to their rights and contentions. While so, ignoring the terms of contract, the defendant has committed breach of essential terms of the contract, which has resulted in pecuniary damages to the plaintiffs. When such being the case, the defendant has chosen to send a legal notice dated 12.04.2004, by demanding refund of Rs.15,00,000/- which has been paid by them as Security Deposit to the plaintiffs and which have been allegedly covered by dishonour of three cheques by the plaintiffs and threatened that consequential proceedings will be taken as against the plaintiffs if they fail to comply with the unjustified and unreasonable demands of the defendant for repayment of the amount. The plaintiff also sent a legal notice dated 05.06.2004 claiming the damages, both visible and invisible losses occasioned and caused to them on account of the fraudulent conduct of the defendant in abandoning the terms of contract dated 14.04.2001 midway and therefore, the defendant is liable to pay a sum of Rs.46,89,500/- by way of damages and also return all the instruments such as joint promissory note, alleged dishonoured cheques bearing No.825491, 825492 and 825493, all dated 18.03.2004 for a sum of Rs.5,00,000/- each, which have been handed over to the defendant at the time of entering into contract with them on 14.04.2001 without filling up the details such as the date and amount as the

said cheques had ever been issued by the plaintiffs for any legally enforceable debt and as such, the defendant had chosen to fill up the details such as date and amount and presented the same fraudulently and surreptitiously without reference to the contract they had entered into with the plaintiffs.

3.10. It is further stated that the defendant has caused a legal notice to the plaintiffs as if they have failed to honour the cheques and have committed an offence under Section 138 of the Negotiable Instruments Act and initiated proceedings before the learned VIII Metropolitan Magistrate, George Town, Chennai - 600 079 in C.C.No.5400 of 2004. The said cheques have not been issued for any legally enforceable debt and as such, the plaintiffs are not liable to pay the value of the aforesaid cheques to the defendant. Since the above referred cheques have lost its enforceability in view of the breach of essential terms of loan agreement dated 14.04.2001 committed by the defendant, the plaintiffs are entitled to have a declaration that the aforesaid cheques issued by them are unenforceable and invalid and consequently, restrain the defendant from enforcing or encashing the same or initiating any proceedings on the basis of those documents inasmuch as those documents are not supported by any consideration in view of the breach committed by the defendant. Hence, the plaintiff filed the present suit for the relief as prayed for.

4. The case of the defendant are as follows:-

4.1. The plaintiffs are owners of the suit schedule property measuring an extent of 5750 sq.ft and they approached the defendant for a loan of Rs.15,00,000/- for the purpose of construction of Office Complex in the suit schedule property on the condition that the office premises should be constructed as per plan, requirements and specifications of the defendant and the defendant had also agreed to lend the amount to the plaintiffs on certain terms.

4.2. The plaintiffs agreed to demolish the existing building in the said location after vacating its occupants. The plaintiffs further promised that an office premises consisting of a basement, ground floor, first floor, second floor with an open terrace all admeasuring 13000 sq.ft would be constructed as per the plan, design and specification of the defendant. It is also clear as per the terms of the agreement that the demolition of the existing structure and evacuating the existing tenants were clearly the obligations on the part of the first and second plaintiffs and the defendant had nothing to do with it. The plaintiffs also promised to complete the entire construction of the office premises within 10 months as required by the defendant from the date of entering into an agreement. On acceptance of the above conditions, a written agreement was entered into between the

plaintiffs and the defendant on 14.04.2001. The agreement contained the building specifications outlined by the defendant, which was also agreed by the plaintiffs. On the same day, a joint promissory note was executed and added as annexure to the agreement. As per the agreement, the defendant had advanced the amount as interest free loan for the only propose of the building the office premises as per the design, plan and specifications of the defendant within the stipulated time to be handed over only to the defendant.

4.3. According to the defendant, the plaintiffs committed breach of the conditions of the Agreement and put up a totally different constructions contrary to the agreed specifications and in violation of sanctioned plan. The plaintiffs committed breach of Clauses 'b', 'c', 'g', 'h' and 'j'. Even though time was the essence of the entire agreement, which stipulated the completion of construction within 10 months and provided for a further period of 5 months with penalty at the rate of Rs.15,000/- per month. The plaintiffs agreed for mirror glass panelling of the front road side elevation upon anodized aluminum / steel frame with double glass panel with an air gap of 50 mm in addition to providing elevator of OTIS /KONE make with 8 persons capacity and automatic door closing and two speed drive mechanism from basement to second floor. For these two specifications alone the work at the site should have been done right from the beginning,

from the very state of laying foundation itself. The newly constructed area was built to the specifications of the plaintiffs to suit the purpose of letting them on rent to other third parties. The plaintiffs later on let the premises out to new tenants and are earning substantial rent, which is in total violation of the agreement entered into between the plaintiffs and the defendant.

4.4. The further case of the defendant is that on finding the work not to the specification of the defendants as stipulated in the agreement, and the handing over the premises not in sight, they were compelled to move to alternate premises. The defendant's decision to move to alternate premises for a much higher rent was taken only because the plaintiffs failed to honour their promise of handing over the completed premises within the stipulated time in the agreement.

4.5. The averment of the plaintiffs that they availed loans from the REPCO Bank to the tune of Rs.35,00,000/- and borrowed moneys from the private agencies for completion of the building and that they have been paying interest periodically also has nothing to do with the defendant even if the plaintiffs had duly discharged all the obligations under the agreement and handed over the fully constructed premises as mentioned in the building specifications attached to the loan agreement dated 14.04.2001

and repayment of the said amount along with interest are independent matters of the plaintiffs and such a liability and payment of interest can by no stretch of imagination be shifted to the defendant at any point of time. Further, the deprivation of rent of five parties, who were earlier existing in the building and who were evicted in April 2001 amount of Rs.12,500/- per month is again an attempt to project a good image of the plaintiffs and an attempt to get sympathy from this Court.

4.6. It is further stated that the defendant had sent a letter dated 03.04.2003 to the first plaintiff that he has not adhered to the agreement entered into between the defendant and the plaintiffs, by not handing over the completed office premises for occupation and that the defendant is invoking Clause 8 of the agreement, pertaining to payment of penalty and the plaintiffs are to pay a sum of Rs.75,000/- within 10 days being penalty for delay in handing over the completed premises by 5 months beyond the stipulated period and the plaintiffs were also informed that failure to pay, penalty would result in the presenting of cheque issued by them for the repayment of the loan amount. The plaintiffs on receipt of the above letter, sent a Demand Draft No.680013, dated 23.04.2003 for Rs.25,000/- towards penalty and a receipt No.007638, dated 23.04.2003 was issued by the defendant. The plaintiffs then promised to give a repayment schedule for the penalty amounts, which they failed. The plaintiffs have paid a

further sum of Rs.25,000/- on 28.07.2003 and Rs.1,00,000/- on 08.12.2003 by Demand Draft. A sum of Rs.50,000/- was adjusted towards the penalty as per Clause 8 and remaining was adjusted towards interest. The plaintiffs have failed to honour the agreement in handing over completed premises as stipulated in the agreement and thus, they committed breach of contract and are not eligible for the interest free loan given for the sole purpose of constructing the office premises as per the specification of the defendant. Thus, the total amount of Rs.1,50,000/- received from the plaintiffs have been partly adjusted towards penalty (Rs.75,000/-) and in rest (Rs.75,000/-) towards part of interest on the amount loan of Rs.15,00,000/- given by the defendant to the plaintiffs.

4.7. It is further stated that as per Clause 8 of the Agreement, the defendant was entitled to present the 3 cheques of Rs.5,00,000/ each dated 18.03.2004 totalling Rs.15,00,000/-, if the plaintiffs failed to deliver vacant possession of the premises as agreed in the agreement and enumerated in Clause 5 of the agreement. However, when the cheques were deposited for encashment, they were returned with the remarks "insufficient funds". Since the amount loaned were not utilized the purpose it was given, but used to the benefit of the plaintiffs and for commercial purpose, it will attract commercial rate of interest at 24% per annum compounded quarterly. However, the plaintiff confines it to claim interest at 12% per

annum from 15.02.2002 in view of the promissory note. The total amount payable by the plaintiffs would be around Rs.22.70 Lakhs inclusive of principal amount upto the date of filing of the suit.

4.8. It is further stated that the cheques issued by the plaintiffs for the value of Rs.5,00,000/- each, had returned with the note "insufficient funds" and therefore, the defendant sent a letter dated 02.04.2004, calling upon them to immediately pay Rs.15,00,000/- within a period of 15 days, failing which, the defendant would take legal recourse, criminal and civil to recover the amount lent. The defendant also filed a criminal case against the plaintiffs under Section 138 in VIII Metropolitan Magistrate Court on 12.04.2004. The plaintiffs, instead of paying the amount sent a counter through their counsel containing vague denials and unreasonable monetary claims on 05.06.2004, which was received by the defendant on 08.06.2004. The defendant had also sent a rejoinder, replying to all their queries and gave further time of 15 days to pay Rs.15,00,000/- with interest, failing which, legal action would be taken against the plaintiffs. In the meanwhile, the plaintiffs have filed a Civil Suit in C.S.No.741 of 2004 on 20.09.2004, claiming unreasonable damages, for which they are not entitled to, simply to frustrate the efforts of the defendant to recover the amount of Rs.15,00,000/- given to them as loan for construction of the office premises. Therefore, the quantification of damages to the tune of

Rs.46,89,500/- under six heads are nothing to do with the defendant and an imaginary projection given by the plaintiffs to prejudice to the minds of this Court and in any case, which are totally outside scope of the loan agreement.

4.9. It is further stated that only due to the breach committed by the plaintiffs, the defendant was forced to take on lease, an other premises to an extent of about 13,000 sq.ft and the lease was taken on a higher rate at the rate of Rs.14.73 per sq.feet per month, therefore, the defendant, for the new premises paid a monthly rent of Rs.1,91,490/- and if the plaintiff fulfilled its obligations, the defendant would have been able to occupy the premises of 13,000 sq.ft for a monthly rent of Rs.1,05,000/-. Thus, the defendant had suffered an expense / damage in the monthly rent to an extent of Rs.86,490/- per month for the past 29 months as on date and therefore, prayed for dismissal of the suit in C.S.No.741 of 2004 and for direction to the plaintiffs to pay a sum of Rs.30,08,210/- together with future interest at 18% per annum from the date of the counterclaim till the date of realization.

5. Based on the above pleadings and documents filed by both parties and submission made by both the Counsel, the following issues have been framed by this Court on 19.12.2007:-

C.S.No.741 of 2004

"1. Whether the plaintiffs failed to construct the building to the agreed specifications as per the Loan Agreement dated 14.04.2001 entered into with the defendant?

2. Whether the termination of the Agreement by the defendant is valid in the eye of law?

3. Whether the plaintiffs have committed breach of contract and liable to pay the damages demanded by the defendant in the counterclaim?

4. Whether the plaintiffs are entitled for a declaration that the instruments, mentioned in Schedule II appended to the plaint, handed over to the defendant by the plaintiffs are illegal, unenforceable and not binding upon the plaintiffs?

5. Whether the plaintiffs are entitled for recovery of a sum of Rs.46,89,500/- from the defendant with interest at 18% per annum?

6. Whether the plaintiffs are entitled for an injunction restraining the defendant from enforcing or claiming any right on the basis of the instruments mentioned in schedule II?

7. *Whether the plaintiffs are entitled for an injunction restraining the defendant from interfering with their peaceful possession and enjoyment of the suit property?*

8. *To what reliefs the parties are entitled to?*

C.S.No.972 of 2004

"1. *Whether the plaintiffs/defendants constructed the premises as per the specifications of the defendant/plaintiff?*

2. *Whether the termination of the Agreement dated 14.04.2001 by the defendant is valid or not?*

3. *Whether the defendant/plaintiff is entitled for the suit claim with further interest at 12% per annum?*

4. *To what other further reliefs the parties are entitled to?"*

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6. After framing of issues, in both the suits in C.S.No.741 of 2004 and C.S.No.972 of 2004, common evidences were recorded. On the side of the plaintiffs, three witnesses were examined as P.W.1 to P.W.3 and 32 documents were marked as Exs.P1 to P32. On the side of the defendant,

one Subashree Ramesh was examined as D.W.1 and 11 documents were marked as Exs.D1 to D11.

7. According to the learned counsel for the plaintiffs, the defendant had filed the counterclaim in C.S.No.741 of 2004 itself, and as such separate proceedings at a later date as instituted by the defendant in C.S.No.972 of 2004, dated 15.12.2004 is a clear bar as contemplated by the provisions of Order II Rule 2 of CPC. It is to be noted that the plaintiffs have instituted the suit in C.S.No.741 of 2004, under which the defendant has filed the counterclaim. Immediately after filing the suit in C.S.No.741 of 2004 by the plaintiff, the defendant had filed a suit in C.S.No.972 of 2004 for recovery of loan amount advanced to the plaintiffs, even before filing of counterclaim in C.S.No.741 of 2004 and therefore, the suit in C.S.No.972 of 2004 filed by the defendant is not hit by Order II Rule 2 of CPC.

8. Heard the learned counsels on either side and perused the materials available on record.

9. Issue Nos.1 and 2 in C.S.No.741 & C.S.No.972 of 2004:-

9.1. According to the learned counsel for the plaintiffs, the plaintiffs have taken much efforts to vacate the existing tenants and demolished the existing building and constructed the building as per the plan, design and

specification of the defendant and as per the conditions stipulated in the loan agreement / contract, dated 14.04.2001. However, the defendant has deliberately flouted the terms of the contract dated 14.04.2001 and expressed their inability to take the premises and there was no written communication regarding termination of the contract.

9.2. According to the learned counsel for the defendant, the defendant has not committed any breach of contract. It is the submission of the learned counsel for the defendant that the plaintiffs have put up a totally different constructions contrary to the agreed specifications and in violation of sanctioned plan. Since the building was not constructed on the specification of the defendant as stipulated in the agreement, the defendant was compelled to move to alternate premises and the said decision to move the alternate premises for a much higher rent was taken only because the plaintiffs failed to honour their promise of handing over the completed premises within the stipulated time in the agreement.

9.3. It is an admitted fact that the plaintiffs are the owners of the suit schedule property and they have been on the look out for the perspective tenants for letting out the vacant portions. For constructing the complex, the plaintiffs have borrowed Rs.35,00,000/- from REPCO Bank on 27.07.2000, even prior to agreement entered into with the defendant on 14.04.2001.

9.4. According to the plaintiffs, the defendant had approached the plaintiffs to take the premises on lease and requested the plaintiffs to demolish the existing structures after evicting the tenants and put up a new construction, as per the design provided by the defendant to suit their business requirements and convenience. Accordingly, an agreement was entered into between the parties on 14.04.2001 and in and by which, the defendant had advanced a sum of Rs.15,00,000/- to the plaintiffs as interest free loan and agreed to treat the sum of Rs.10,00,000/- as Refundable Security Deposit with interest and to take the entire premises excluding northern part of Ground Floor measuring an extent of 1,300 sq.ft on lease for a period of 5 years with an option to renew the same for further period of 5 years, subject to certain terms and conditions. The said sum of Rs.10,00,000/- shall be refunded to the defendant, while vacating the premises and the balance amount of Rs.5,00,000/- shall be adjusted at the rate of Rs.50,000/- in the first 10 months from and out of the rents payable by the defendant.

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9.5. It is to be seen in the plaint that without prejudice to the rights and contentions of the parties involved, the plaintiffs made a payment of Rs.1,50,000/- (Rs.25,000/- on 23.04.2003, Rs.25,000 on 28.07.2003 and another sum of Rs.1,00,000/- on 18.12.2003 to the defendant from and out of the Security Deposit. However, the defendant ignoring the various

payments made by the plaintiffs and also without reference to the terms of the contract, presented the cheques issued by the plaintiffs for security purpose. It is also to be further seen that the first plaintiff gave evidence stating that the construction of the building was completed on 15.06.2002. According to the defendant, the amount of Rs.1,50,000/- received from the plaintiffs have been partly adjusted towards penalty (Rs.75,000/-) and in rest (Rs.75,000/-) towards part of interest on the loan amount of Rs.15,00,000/- given by the defendant to the plaintiffs. To disprove the said defence taken by the defendant that the amount of Rs.75,000/- made by the defendant with regard to delay in completion of the construction, the plaintiffs neither adduced oral nor produced documentary evidence to substantiate their claim. If at all the plaintiffs completed the construction within the period of 10 months from the date of the agreement as per the design provided by the defendant and handed over the building, the plaintiff need not have made a payment of Rs.1,50,000/- on various dates, viz., on 23.04.2003 Rs.25,000/-; on 28.07.2003 Rs.25,000/- and on 18.12.2003 Rs.1,00,000/- to the defendant from out of security deposit. From the above, it is clear that the construction was not completed till 2003 and therefore, the contention of the plaintiffs that they completed the construction on 15.06.2002 is unacceptable.

9.6. It is also to be noted that P.W.1. during cross examination has stated that the building was constructed as per Ex.P9 plan, but he has admitted that there may be 'certain deviations'. Ex.P9 plan was drawn as per the specification of the defendant. Further, deposed that the defendant gave the instructions regarding the requirements orally. Therefore, from the evidence of the plaintiffs, it could be seen that the first plaintiff himself has admitted that there may be certain deviations. Further, the plaintiffs have not submitted any documents stating that the construction was completed on 15.06.2002. Therefore, in the absence of the proof that the construction of building was completed within 10 months or within the extended period and handed over to the defendant, the contention of the plaintiffs that the defendant has not taken the premises as per the agreement, is hereby rejected. Under the circumstances, this Court is of the opinion that the plaintiffs have failed to prove that they constructed the building as per the essential terms of the Loan Agreement dated 14.04.2001 entered into with the defendant and as such, the termination of the Agreement by the defendant is valid. Accordingly, Issue Nos.1 and 2 in C.S.No.741 & C.S.No.972 of 2004 are answered in favour of the defendant and against the plaintiffs.

10. Issue No.3 in C.S.No.741 of 2004

10.1. According to the defendant, due to breach committed by the plaintiffs, the defendant was forced to take on lease and thereby they had suffered an expense / damage in the monthly rent to an extent of Rs.86,490/- per month for the past 29 months and therefore, prayed for dismissal of the suit in C.S.No.741 of 2004 and for a direction to the plaintiffs to pay a sum of Rs.30,08,210/- together with future interest at 18% per annum from the date of counterclaim till the date of realization.

10.2. It is to be noted that though the plaintiffs have not proved that the building was constructed within the stipulated time and as per the specification of the defendant, the defendant had unilaterally cancelled the agreement even without issuing any notice to the plaintiffs. Further, the defendant has also filed a separate suit in C.S.No.972 of 2004 for recovery of a sum of Rs.20,97,816/- together with interest at 12% per annum compounded quarterly, from the date of plaint until realization. Further, there is no such condition incorporated in the agreement that, in case, the building is not completed within time and handed over to the plaintiffs, and if the defendant goes for another building, the difference in rent, has to be compensated by the plaintiffs. Therefore, under the said circumstances, the defendant is not entitled to any claim of damages from the plaintiffs as per the counterclaim. Accordingly, the issue is answered.

11. Issue No.4 in C.S.No.741 of 2004

It is not in dispute that the plaintiffs and defendant had entered into an agreement dated 14.04.2001 and the plaintiffs have also borrowed a sum of Rs.15,00,000/- from the defendant as interest free loan. At the time of execution, the plaintiffs have also executed promissory notes and blank cheques. After cancellation of agreement, the defendant had presented the cheques for encashment and the same were returned and hence, he filed a complaint in C.C.No.5400 of 2004 under Section 138 of the Negotiable Instruments Act before the learned VIII Metropolitan Magistrate, George Town, Chennai. In the said complaint, the plaintiffs had admitted that they executed all the documents for security purpose and so far, they have repaid a sum of Rs.1,50,000/-. The learned Judge, after enquiry, found that the defendant had not proved his case that the cheques were issued by the plaintiffs towards the discharge of portion of his debt or liability to attract the offence under Section 138 of Negotiable Instruments Act, and dismissed the petition. It is also not in dispute that the defendant had cancelled the agreement and so far the defendant received a sum of Rs.1,50,000/- as against the loan of Rs.15,00,000/- provided by the defendant and as such, the plaintiffs have to pay a sum of Rs.13,50,000/- (Rs.15,00,000/- - Rs.1,50,000/-). Therefore, under the circumstances, unless the plaintiffs repay the said amount, this Court cannot declare the documents will not bind on the plaintiffs. The issue is answered against the plaintiffs.

12. Issue No.5 in C.S.No.741 of 2004

12.1 According to the plaintiffs, the defendant had committed breach of essential terms of the contract, dated 14.04.2001 and the existing building in the suit property had been pulled down to facilitate its re-construction as per the requirements of the defendant for their use and occupation, but, however, the defendant did not fulfill their contractual obligations.

12.2. It is the case of the plaintiffs that they have suffered damages on the heads of (i) compensation given for evicting the existing tenants to the tune of Rs.6,85,000/-; (ii) Loss of rental income @ Rs.12,500/- per month from 14.04.2001 to till date to the tune of Rs.5,19,500/-; (iii) Loss on account of demolition of recently built building to suit the business convenience of defendant to the tune of Rs.10,00,000/-; (iv) Cost of structural alterations made for housing the lift to the tune of Rs.4,00,000/-; (v) interest paid on borrowals for construction of new building as per design provided by the defendant to the tune of Rs.17,85,000/-; and (vi) Architect-cum-Civil Engineer fees to the tune of Rs.3,00,000/- and thereby the plaintiffs have suffered losses to the tune of Rs.46,89,500/-.

12.3 It is to be noted that P.W.1 himself during cross-examination admitted that the building was constructed as per Ex.P9 plan, but there may be certain deviations and further, there is no materials to prove that the building was constructed within the stipulated time and as per the design provided by the defendant. The plaintiffs have not proved by oral and documentary evidence that the building was constructed as per the specification of the defendant. However, it could be seen that the plaintiffs have constructed the building as per their wish and now let the building to four tenants and even, during cross-examination, P.W.1 admitted that now the building was rented to four tenants. Therefore, under the circumstances the plaintiffs have not proved that they have full-filled their contract and without valid reason, the defendant has terminated the contract and as such, the plaintiffs are not entitled for recovery of any amount from the defendant. Accordingly, the issue is decided against the plaintiffs.

13. Issue No.6 in C.S.No.741 of 2004

There is no dispute with regard to agreement entered between the plaintiffs and defendant on 14.04.2001. It is also not in dispute that the defendant had paid Rs.15,00,000/- interest free loan to the plaintiffs. Subsequently, due to misunderstanding between the parties, the defendant had terminated the contract and deposited the cheques, which were given by the plaintiffs for security purpose. Thereafter, the defendant had also

initiated proceedings before the learned VII Metropolitan Magistrate, George Town, Chennai in C.C.No.5400 of 2004 and the learned Magistrate also, after enquiry, dismissed the said complaint on the ground that the cheques were issued only as security purpose and not for discharging debt or liability. Since the defendant terminated the agreement as the building was not constructed as per the specification of the defendant and not completed on time, the defendant is entitled to receive the interest for the loan amount from the plaintiffs and the defendant has also initiated proceedings in C.S.No.972 of 2004 for recovery of money. Except the claim made in C.S.No.972 of 2004, the defendant is not entitled to make any other claim on the basis of the instruments mentioned in schedule-II in C.S.No.741 of 2004.

14. Issue No.7 in C.S.No.741 of 2004

It is admitted by the defendant till now a sum of Rs.1,50,000/- has been received from the plaintiffs as against the interest free loan of Rs.15,00,000/- and according to the defendant, the said amount of Rs.1,50,000/- has been given by the plaintiffs for the penalty as well as interest for the principal amount. However, the said stand is not acceptable, as admittedly, there was no written communication regarding termination of the contract by the defendant. As such, a sum of Rs.1,50,000/- has already given by the plaintiffs can be adjusted for the principal and the defendant is entitled for the balance sum of

Rs.13,50,000/- from the plaintiffs. Admittedly, the defendant had not occupied the building and he also filed the suit in C.S.No.972 of 2004 for recovery of money. Therefore, the defendant is restrained from interfering with the peaceful possession and enjoyment of the suit property of the plaintiffs. The issue is answered accordingly.

15. Issue No.8 in C.S.No.741 of 2004 and Issue Nos.3 and 4 in C.S.No.972 of 2004:-

It is not in dispute that an agreement was entered into between the plaintiffs and defendant on 14.04.2001. It is also not in dispute that the defendant had paid a sum of Rs.15,00,000/- as interest free loan. Since the plaintiffs have not completed the construction as per the specification of the defendant and within the stipulated time, the defendant had terminated the contract. Further, since the plaintiffs could not complete the construction, without prejudice to the rights contentions a sum of Rs.1,50,000/- was paid to the defendant. The defendant has admitted that he has received Rs.1,50,000/- on various dates as stated in the written statement. However, the defendant has not occupied the building and the plaintiffs also have let out the building to third party and already this Court held that the plaintiffs are not entitled for any damages from the defendant. Admittedly, in the case on hand, the defendant expressed their inability to take the premises orally for their use and occupation as

originally agreed upon and there was no written communication regarding termination of the contract. Therefore, the plaintiffs are liable to pay the loan amount of Rs.13,50,000/- [Rs.15,00,000/- (-) Rs.1,50,000/-]. It is to be noted that the defendant had paid only interest free loan as per the agreement dated 14.04.2001, however, the defendant had terminated the agreement and not occupied the building. After cancellation of the agreement, the defendant had deposited the cheque for encashment and it was returned as insufficient funds. Subsequently, the defendant had approached before the learned VII Metropolitan Magistrate, George Town, Chennai in C.C.No.5400 of 2004 and the learned Magistrate also dismissed the case on the ground that the cheques were issued only as security purpose and not discharging debt or liability. Though the defendant had paid interest free loan, the defendant had not occupied the building, because, the plaintiffs did not construct the building within the stipulated time and the first plaintiff himself admitted during cross-examination that there was a deviation, and further, the building now leased out to other tenants and therefore, the defendant is entitled for interest. However, as soon as cancellation of the agreement, the defendant did not approach this Court for recovery of money, however, he made an attempt before the learned VII Metropolitan Magistrate, George Town, Chennai in C.C.No.5400 of 2004 and after dismissal of this Court, the defendant had approached this Court. Therefore, the defendant is not entitled to get interest from the date of

execution of the agreement, i.e., dated 14.04.2001 to till the date of filing of the suit. It is also to be seen that the plaintiffs also admitted that they borrowed a sum of Rs.15,00,000/- as interest free loan and now the building premises is leased out to third parties. Therefore, the defendant is entitled to 12% interest from the date of filing of the suit till the date of Judgment and 6% interest from the date of judgment till the date of realization. The defendant is directed to return all the documents obtained from the plaintiffs within 10 days on the date of receipt of payment of the decree amount.

16. In the result, C.S.No.741 of 2004 filed by C.Dakshinamurthy and D.Sumathi is dismissed on the above terms. In the facts and circumstances, the parties to bear their own costs.

17. C.S.No.972 of 2004 filed by M/s.CONYBIO Health Care (India) Pvt. Ltd., is partly decreed with proportionate costs. C.Dakshinamurthy and D.Sumathi / defendants in C.S.No.972 of 2004 are liable to pay a sum of Rs.13,50,000/- to M/s.CONYBIO Health Care (India) Pvt. Ltd./ plaintiff in C.S.No.972 of 2004 with 12% interest from the date of filing of the suit in C.S.No.972 of 2004 and till the date of Judgment and from the date of Judgment, till the date of realization, 6% interest. The defendant is directed to return all the documents to the plaintiffs which were obtained

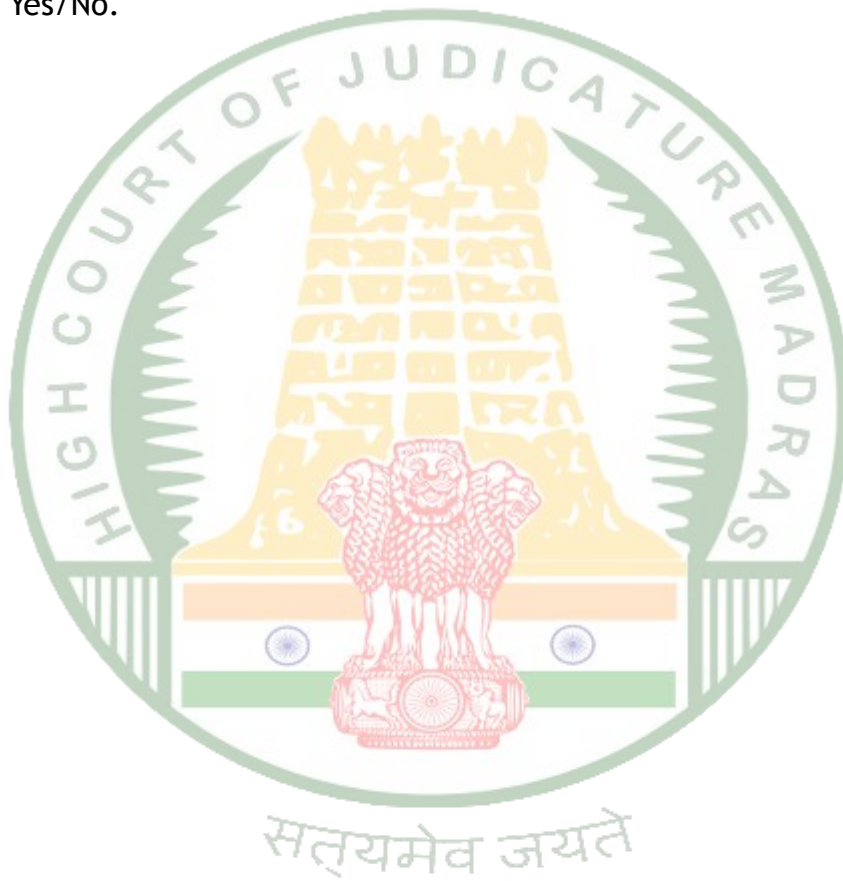
at the time of execution of loan agreement dated 14.04.2001, within 10 days from the date of realization of the decree amount.

16.10.2020

Index : Yes/No.

Internet : Yes/No.

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List of Witness examined on the side of the plaintiff

C.Dhakshinamurthy - PW1
M.Ajees Moideen - PW2
K.Ramani - PW3

List of documents marked on the side of the plaintiff

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	P1	Sale Deed executed in favour of the 1st plaintiff	22.02.1990
2.	P2	Sale Deed executed in favour of the 2nd plaintiff	22.02.1990
3.	P3	Sale Deed executed in favour of the 2nd plaintiff	28.02.2000
4.	P4	Loan sanctioned letter to 1st plaintiff	27.07.2000
5.	P5	Loan sanctioned letter to 2nd plaintiff	27.07.2000
6.	P6	Loan Agreement	14.04.2001
7.	P7	Mortgage Deed	01.06.2001
8.	P8	Demolition Plan	17.10.2001
9.	P9	Building plan	17.10.2001
10.	P10	Valuation Report	06.11.2001
11.	P11	Demand Draft-Karnataka Bank Ltd.,	23.04.2003
12.	P12	Demand Draft Karnataka Bank Ltd.,	28.07.2003
13.	P13	Demand Draft - Vijaya Bank	08.12.2003
14.	P14	Legal Notice	12.04.2004
15.	P15	Legal Notice	05.06.2004
16.	P16	Reply Notice	29.07.2004
17.	P17	Court Summons by 1st plaintiff	26.07.2004
18.	P18	Court Summons by 2nd plaintiff	26.07.2004

19.	P19	Rental Agreement	21.06.2002
20.	P20	Receipt issued by the Defendant to the plaintiff	24.04.2003
21.	P21	Receipt issued by the defendant to the plaintiff	29.07.2003
22.	P22	Section 13(2) of SARFAESI Notice	05.06.2004
23.	P23	section 13(2) of SARFAESI Notice	05.02.2004
24.	P24	Order in M.P.No.7733 of 2004 in W.P.No.6519 of 2004	17.03.2004
25.	P25	Order in W.P.No.6519 of 2004	20.04.2004
26.	P26	Cheque issued by the first plaintiff	18.03.2004
27.	P27	Cheque issued by the first plaintiff	18.03.2004
28.	P28	Cheque issued by the first plaintiff	18.03.2004
29.	P29	Deposition of the defendant in C.C.No.5400 of 2004	17.03.2008
30.	P30	Defendant of U.C.O. Bank	10.11.2008
31.	P31	Judgment in C.C.No.5400 of 2004	15.04.2009
32.	P32	Engineers Valuation Report	05.06.2002

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List of Witness examined on the side of the defendants

Subashree Ramesh - DW1

List of documents marked on the side of the defendants

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	D1	Authorization Letter	04.06.2011
2.	D2	Amenities Rental Agreement	21.02.2002
3.	D3	Rental Agreement	21.02.2002
4.	D4	Amenities Rental Agreement	21.02.2002
5.	D5	Rental Agreement	21.02.2002
6.	D6	Amenities Rental Agreement	21.02.2002
7.	D7	Rental Agreement	21.02.2002
8.	D8	Amenities Rental Agreement	21.02.2002
9.	D9	Rental Agreement	21.02.2002
10.	D10	Amenities Rental Agreement	21.02.2002
11.	D11	Rental Agreement	21.02.2002

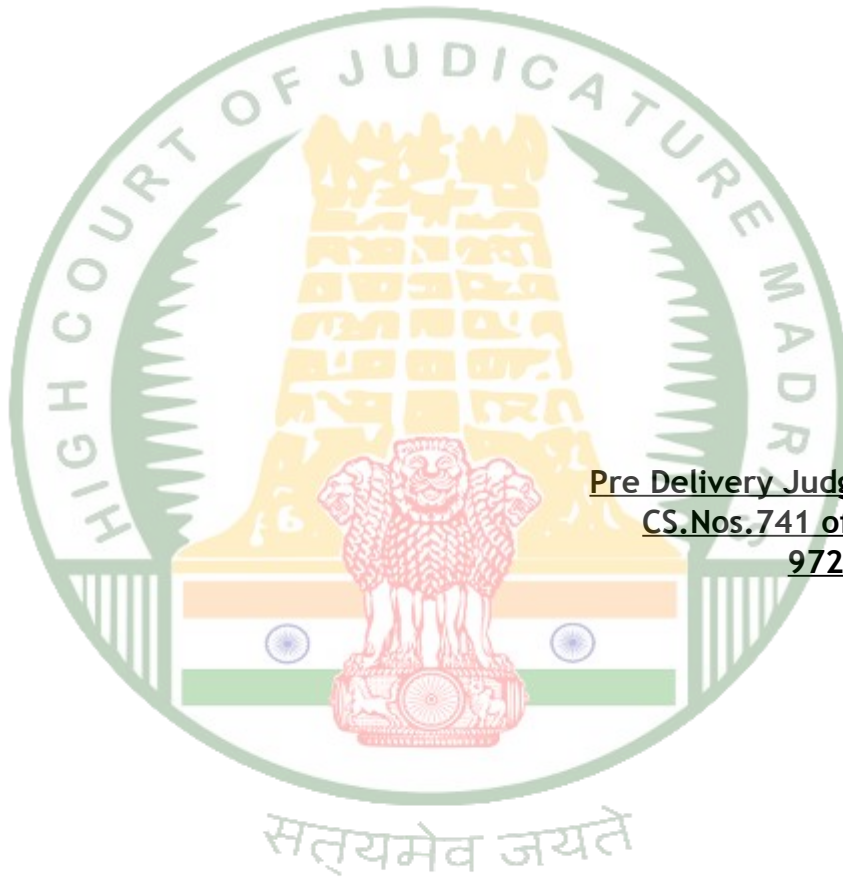
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P. VELMURUGAN, J.

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Pre Delivery Judgment in
CS.Nos.741 of 2004 &
972 of 2004

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16.10.2020