

**A.No.8277 of 2019
in
C.S.No.633 of 2019**

SENTHILKUMAR RAMAMOORTHY, J.

This application is filed to direct the respondent/defendant to furnish security for a sum of Rs.1,36,64,469/-.

2. I heard the learned counsel for the applicants/plaintiffs.

3. In view of the fact that notice could not be served, substituted service was ordered in A.No.9776 of 2019 by order dated 20.12.2019. Pursuant to the said order, an affidavit of service dated 09.01.2020 has been filed. The name of the respondent is also printed in the cause list, but there is no appearance for the respondent.

4. The learned counsel for the applicants submitted that a contract agreement dated 01.02.2017 was entered into with the respondent for construction of a building at an estimated cost of Rs.96,09,905/-. He further submitted that the admitted position is that the applicant paid a sum of Rs.1,12,02,495/- towards the said work. In support of his submission, he referred to the notice dated

09.09.2019 from the lawyer for the respondent to the lawyer for the applicants wherein the receipt of the sum of Rs.1,12,02,495/- is admitted in paragraph-14. Mean while, he submits that the applicants engaged a Government Approved Valuer / Chartered Engineer to submit a report with regard to the value of the constructed work. As per the report dated 10.08.2019 of the Government Approved Valuer, he submits that the value of work done is at Rs.76,40,366/- plus Rs.4,76,665/- towards Compound Wall which aggregates to a sum of Rs.81,17,031/-. Therefore, he submits that the amount paid exceeds the sum by about Rs.30,85,460/-. In addition, he submits that the agreement provides for payment of liquidated damages for delay at the rate of Rs.10,000/- per day. Therefore, he submits that the sum of Rs.72,80,000/- is also payable by way of liquidated damages.

5. I considered the submissions of the learned counsel and examined the records.

6. The contract dated 01.02.2017 discloses that it is a contract for construction of a building for Rs.96,09,905/-. As correctly pointed out by the learned counsel for the applicants, it is admitted by the respondent that a sum of Rs.1,12,02,495/- was paid by the applicants

to the respondent. When the value of work done as per the report of the Government Approved Valuer is compared with the total amount paid by the applicants, it is clear that an excess sum of about Rs.31 lakhs has been paid. This amount would qualify prima facie as a debt. As regards the sum of Rs.72,80,000/-, this amount is claimed by way of liquidated damages. Consequently, until this claim is adjudicated, it would not constitute a debt. Moreover, the fact that the notice was returned unclaimed and the respondent has chosen not to appear establishes that the applicant has reasonable grounds to apprehend that the respondent may remove his assets from the jurisdiction of this Court and thereby deprive the applicant of the benefits of a decree. Therefore, the applicants have made out a case to direct the respondent to furnish security for a sum of Rs.31 lakhs.

7. Therefore, this application is allowed by directing the respondent to furnish security for a sum of Rs.31 lakhs on or before 04.02.2020.

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