

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

O.S.A.No.294 of 2019

Mr.K.Nalliappan
Son of R.Kailasam,
Proprietor of M/s.Vijaya Constructions,
W-99, Second Avenue,
Anna Nagar, Chennai-600 040. .. Appellant

Vs.

1. M/s.Kiron Fashions Pvt. Ltd.,
Rep. by Director Mr.Manoj K.Lulla
2. M/s.Kiron Creations Pvt. Ltd.,
Rep. by Director Mr.Manoj K.Lulla
3. M/s.Misty Apparels Pvt. Ltd.,
Rep. by Director Mr.Manoj K.Lulla
4. Mrs.Rani Lulla,
Wife of (late) Kiron M.Lulla
5. Mr.Manoj K.Lulla
Son of (late) Kiron M.Lulla. .. Respondents

Original Side Appeal (OSA) filed under Order XXXVI Rule 1 of the Original Side Rules of this Court read with Clause 15 of the Letters Patent against the order and decretal order dated 17.09.2019 made in Arbitration O.P.No.484 of 2019 on the file of this Court.

For appellant : Mr.B.K.Sreenivasan

For respondents : Mr.P.R.Raman, Senior Counsel for
Mr.C.Seethapathy

JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah, J)

The case is heard through video-conferencing today.

2. This Original Side Appeal (OSA) is filed against the order and decretal order dated 17.09.2019 made in Arbitration O.P.No.484 of 2019 on the file of this Court.

3. This appeal was disposed of on 10.02.2020 recording the joint memorandum of compromise. The said judgment dated 10.02.2020 reads as follows:

"When the matter is taken up for hearing today, a joint memorandum of compromise has been filed on behalf

of the appellant and the respondent duly signed and attested by the counsel for both sides. The joint memorandum of compromise is extracted hereunder:-

"The Appellant and the Respondents submit as follows:-

Claiming refund of advance monies paid to the Appellant with regard to purchase of the property of the Appellant, the Respondents had invoked arbitration. The Appellant had, in response, pleaded set off of the amount so claimed and also raised a counter claim. By Award dated 24.12.2018, the Learned Arbitrator ordered refund of Rs.2.5 crores by the Appellant herein to the Respondents, together with interest. The appeal in O.P.No.484 of 2019 under Section 34 of the Arbitration and Conciliation Act filed by the Appellant against the said Award having been dismissed, the Appellant has filed the above appeal. Pending appeal, the parties have arrived at an amicable settlement and seek a decree and judgment in this appeal, in terms of such terms agreed to between them as set out hereunder.

1. The parties have agreed that upon payment of a sum of Rs.7.5 Crores, in the manner set out hereunder, by the Appellant to the Respondents, the Respondents shall enter full satisfaction and the Appellant shall stand fully discharged of all his obligations towards the Respondents and under the Award dated 24.12.2018.

2. The Appellant has this day paid the Respondents a sum of Rs.1,00,00,000/- (Rupees One Crore Only) vide demand draft (Manager's Cheque) dated 07.02.2020, bearing No.072289, issued by HDFC Bank, favouring Respondent No.6 (Manoj K.Lulla) towards part payment of the agreed sum.

3. The Appellant has already deposited a sum of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs Only) into this Hon'ble Court, to the credit of O.P.No.484/2019. The Parties agree that Respondent No.6 (Manoj Lulla) shall be entitled to duly withdraw and appropriate the same. The Appellant shall cooperate in the process of such withdrawal by Respondent No.6 (Manoj Lulla).

4. The balance sum of Rs.5,00,00,000/- (Rupees Five Crores Only) shall be paid by the Appellant to the Respondents in the following manner: The cheques mentioned below - all drawn on HDFC Bank, have been handed over by the Appellant to Respondents 5 and 6.

<i>Cheque No.</i>	<i>Date</i>	<i>Amount</i>	<i>in favour of</i>
001326	15.03.2020	Rs.40,00,000/-	Rani Lulla
001327	15.04.2020	Rs.40,00,000/-	Rani Lulla
001328	15.05.2020	Rs.40,00,000/-	Rani Lulla
001329	15.06.2020	Rs.40,00,000/-	Rani Lulla
001330	15.07.2020	Rs.40,00,000/-	Rani Lulla
001332	15.08.2020	Rs.40,00,000/-	Rani Lulla
001333	15.09.2020	Rs.40,00,000/-	Manoj K.Lulla
001334	15.10.2020	Rs.40,00,000/-	Manoj K.Lulla
001335	15.11.2020	Rs.40,00,000/-	Manoj K.Lulla
001336	15.12.2020	Rs.40,00,000/-	Manoj K.Lulla
001337	15.01.2021	Rs.40,00,000/-	Manoj K.Lulla
001338	15.02.2021	Rs.50,00,000/-	Manoj K.Lulla

In the unfortunate event of either R-5 or R-6 not being alive on the date of scheduled payment, the payment will be made in favour of the surviving respondent amongst them.

5. The attachment of property effected through E.P.No.60 of 2019 (on the file of this Hon'ble Court) shall remain in force till the payment of the final instalment as set out above. The charge created on the property of the Appellant shall be discharged by the respondents upon timely payment of the agreed sum of Rs.7.5 crores. On payment of the agreed sum of Rs.7.5 crores, the Appellant shall be entitled to get the attachment made in the said E.P.No.60 of 2019 in respect of his property, raised and thereby get the said charge created on his property discharged, and the Respondents shall co-operate in the said process.

6. In the event the Appellant fails in payment of any instalment within the time schedule as set out above, then the Respondents shall be entitled to execute the Award dated 24.12.2018, as passed and the settlement hereby arrived at shall stand abrogated. Any part payment made pursuant to this memorandum of compromise, shall however be duly accounted for, first towards interest payable and thereafter

towards principal adjudged to be due.

7. The parties shall bear all the costs incurred by them respectively in conducting the proceedings, including advocate's fees.

8. The parties agree that the aforesaid settlement is a lawful settlement between the parties and is the full, final and complete settlement of all the inter-se claims between them and that the parties will not have any further claims against each other.

9. The Parties declare that the compromise has been arrived at and is being presented in Court out of their free Will and without any coercion or undue influence.

10. The joint memo of compromise shall for part and parcel of the decree."

2. As per the said joint memorandum of compromise dated 09.02.2020, the learned Senior Counsel appearing for both the parties submitted that some agreed terms are to the effect that the amount deposited for a sum of Rs.1.50 crores which is pending on the file of O.P.No.484 of 2019 may be permitted to be withdrawn by the respondents. The respondents shall withdraw the same.

3. Today, the appellant has handed over Rs.1 crore to the respondents in the presence of the learned Senior Counsel. The same has been received in our presence. Accordingly, the receipt is also acknowledged.

4. The remaining terms will have to be complied with by the appellant. Thus, there shall be a decree in terms of the joint memorandum of compromise dated 09.02.2020. The joint memorandum of compromise dated 09.02.2020 shall form part of the decree.

5. The Original Side Appeal stands disposed of accordingly. No Costs. Consequently, connected C.M.P.No.24360 of 2019 is closed."

4. Subsequently, C.M.P.No.7262 of 2020 in O.S.A.No.294 of 2019 was filed by the appellant, seeking to modify the judgment dated 10.02.2020 passed in O.S.A.No.294 of 2019 by extending the time for making payment of the balance sum of Rs.3,80,00,000/- by six months and by re-scheduling monthly instalments from 15.12.2020 to 15.08.2021, in the place of monthly instalments from 15.06.2020 to 15.02.2021. This Court, by order dated 16.06.2020, extended the time holding as follows:

"This petition has been filed by the petitioner seeking extension insofar as the payment sought to be made as agreed upon between the parties by way of compromise.

2. Learned counsel appearing for the petitioner submitted that the payment due could not be made in view of the pandemic situation. The petitioner's income is mainly from the rentals that are being collected. Now, the tenants are not paying the rent. Therefore, the petitioner is unable to make the payment. Accordingly, the terms agreed upon for payment will have to be extended. The petitioner has complied with the terms by way of paying four instalments through cheques which have been encashed. Therefore, appropriate orders will have to be passed.

3. However, learned senior counsel appearing for the respondents fairly submitted that without prejudice to the contentions on merit, if the petitioner shows his bonafide by making sure that the cheque is encashed, which is to be presented by the end of the month of July 2020, then this Court can consider passing further orders on the next date of hearing.

4. Considering the submissions made, we are inclined to extend the time granted for the encashment of cheque to be done on 15.07.2020, till 31.07.2020.

Post the matter 'for reporting compliance and further orders' on 04.08.2020."

5. Thereafter, the present O.S.A. is listed "for reporting compliance" today, after much deliberations between the parties for atleast two hearings, the appellant has now come forward with the proposal for extension of time for presenting the remaining seven cheques, which are as follows:

<i>Cheque number and date (as per judgment)</i>	<i>Date of presentation of cheques suggested by respondents' side</i>	<i>extension of time</i>	<i>Date of presentation of cheques suggested by appellant's side</i>	<i>Extension of time</i>
001332 / 15.08.2020	14.09.2020	4 weeks	24.10.2020	10 weeks
001333 / 15.09.2020	21.10.2020	5 weeks	17.11.2020	9 weeks
001334 / 15.10.2020	28.11.2020	6 weeks	10.12.2020	8 weeks
001335 / 15.11.2020	04.01.2021	7 weeks	04.01.2021	7 weeks
001336 / 15.12.2020	12.02.2021	8 weeks	26.01.2021	6 weeks
001337 / 15.01.2021	19.03.2021	9 weeks	19.02.2021	5 weeks

<i>Cheque number and date (as per judgment)</i>	<i>Date of presentation of cheques suggested by respondents' side</i>	<i>extension of time</i>	<i>Date of presentation of cheques suggested by appellant's side</i>	<i>Extension of time</i>
001338 / 15.02.2021	26.04.2021	10 weeks	15.03.2021	4 weeks

6. The learned Senior Counsel appearing for the respondents has no objection for the above tabulated proposal of the appellants in presenting the cheques.

7. Accordingly, the time is extended for presenting the cheques as indicated in the above tabular column. It is made clear that no further extension of time will be granted for presentation of the cheques.

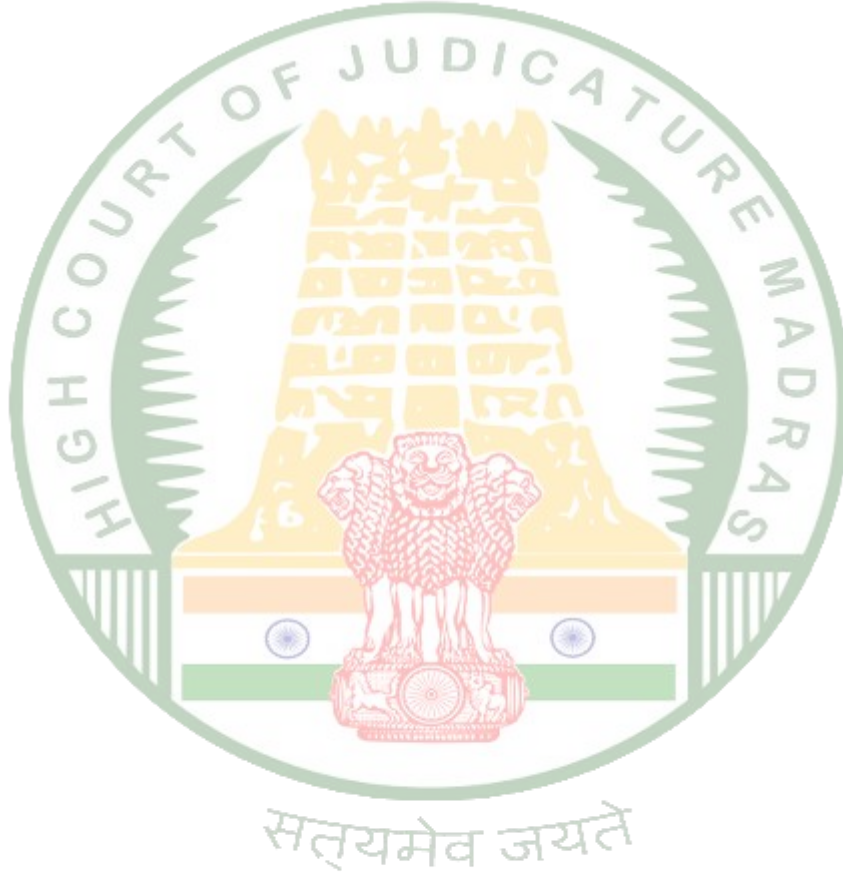
8. The compliance is hereby recorded in the above terms.

(R.P.S.J) (C.S.N.J)
12.08.2020

Speaking Order: Yes
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To

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



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O.S.A.No.294 of 2019

R.SUBBIAH, J

and

C.SARAVANAN, J

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