IN THE HIGH COURT OF JUDICATURE AT MADRAS
Judgment reserved on : 30-10-2019
Judgment delivered on : 27-01-2020
CORAM:
THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS. JUSTICE T. KRISHNAVALLI

Appeal Suit Nos. 641 and 681 of 2018

A.S. No. 641 of 2018

V. Israel Jeyakumar .. Appellant/Plaintiff

Versus

P. Rasalraj .. Respondent/Defendant

A.S. No. 681 of 2018

P. Rasalraj .. Appellant/Defendant

Versus

V. Israel Jeyakumar .. Respondent/Plaintiff

A.S. No. 641 of 2018:- Appeal filed under Section 96 read with Order 41 Rule 1 of The Code of Civil Procedure to set aside the Judgment and Decree dated 11.04.2018 passed in O.S. No. 63 of 2014 on the file of the Principal District Judge, Kancheepuram District at Chengalpattu in so far as it relates to non awarding of interest from the date of institution of the suit to till the date of decree.

A.S. No. 681 of 2018:- Appeal filed under Section 96 read with Order 41 Rule 1 of The Code of Civil Procedure to set aside the Judgment and Decree dated 11.04.2018 passed in O.S. No. 63 of 2014 on the file of the Principal District Judge, Kancheepuram District at Chengalpattu .

A.S. No. 641 of 2018

For Appellant : Mrs. Chitra Sampath, Senior Advocate for Mr. M.A.R. Pragash

For Respondent : Mr. V. Balasubramanian

A.S. No. 681 of 2018

For Appellant : Mr. V. Balasubramanian

For Respondent : Mrs. Chitra Sampath, Senior Advocate for Mr. M.A.R. Pragash

COMMON JUDGMENT

R. SUBBIAH, J

Both these appeals arise out of the Judgment and Decree dated 11.04.2018 passed in O.S. No. 63 of 2014 on the file of the Principal District Judge, Kancheepuram District at Chengalpattu. By the said Judgment, the trial court refused to grant a decree for specific performance, however granted the alternative relief of directing the defendant to pay the sum of Rs.3,43,40,646/- to the plaintiff with interest at the rate of 9% per annum from the date of decree till realisation with proportionate costs with charge over the suit property.

2. Aggrieved by the Judgment and Decree passed by the trial court in so far as it relates to the direction to pay the interest from the date of the decree, instead of date of filing the plaint, the plaintiff has filed A.S. No. 641 of 2018.

3. As against the very same Judgment and Decree dated 11.04.2018, the defendant has filed A.S. No. 681 of 2018 questioning the correctness of the same Judgment and Decree passed by the trial court.

4. As both the appeals arise out of one and the same Judgment passed by the trial court, besides common arguments have been advanced by the counsel for the parties, these appeals are taken up for hearing together and disposed of by this common Judgment.

5. For the sake of convenience, the parties are referred to as 'plaintiff' and 'defendant' as has been arrayed before the trial court.

6. As per the plaint averments, the plaintiff, who is the appellant in A.S. No. 641 of 2018, is a builder by profession and engaged in construction of buildings in the name and style of AVN Construction. During the course of such business, the defendant approached the plaintiff in or about February 2010 by representing that he has got 4 grounds of land in third cross Street, Pallikaranai and he is intending to develop the land by

constructing an apartment. After deliberations, the plaintiff and the defendant have agreed to proceed with the construction of flats on a joint venture basis with a specific understanding that the profit derived therefrom can be shared in the ratio of 40 : 60. In other words, it was agreed that after construction of the apartments, 8 flats have to be given to the defendant and 12 flats shall be given to the plaintiff. The Plaintiff accepted the offer and agreed to construct the apartments by investing his own funds. It is stated in the plaint that the plaintiff and defendant are close friends and therefore, they did not reduce the terms and conditions of the Joint Venture agreement in writing. It is admitted in the plaint that the possession of the property in question was handed over to the plaintiff over which he proceeded to put up building construction after obtaining approval from the competent authority to put up such construction. It is also stated that the plaintiff orally agreed to complete the construction of the flats at the end of June 2012. The defendant also permitted the plaintiff to book the flats with the prospective purchasers and to receive money and even to execute the sale deed in their favour for the undivided share of lands. According to the plaintiff, the planning authorities have granted approval for construction of 16 flats as against 20 flats proposed. The Plaintiff also applied for electricity service connection in the name of the defendant and obtained it. The Plaintiff, at his own costs, levelled the lands and proceeded with the construction work by engaging about 40 to 50 workers. The Plaintiff also entered into construction agreement with seven prospective purchasers on 16.04.2011, 02.12.2011, 02.12.2011, 14.12.2011, 29.01.2012, 23.04.2012 and 01.05.2012 and received a sum of Rs.45.5 lakhs from them.

7. According to the plaintiff, during May 2012, one P. Robert, Son of M. Ponnaiyan wanted registration of his undivided share of land inasmuch as he was about to leave India to go abroad so that he can perform the house warming ceremony for his flat before he leaves India. The Plaintiff therefore informed the defendant about the intention of P. Robert to register the undivided share of land in his favour. Curiously, the defendant refused to register the undivided share of land in favour of the said Robert on the ground that the plaintiff must allot 50% share of flats to him, contrary to the agreement to take 8 flats out of 20 flats to be constructed and to share the profit in the ratio of 40 : 60. According to the plaintiff, he was surprised by such statement of the defendant especially when he had completed 90% of the work by incurring Rs.4 crores. According to the plaintiff, the above said Robert, who evinced keen interest to purchase a flat, is closely related to plaintiff and

the defendant and therefore, a mediation was convened in the presence of plaintiff, defendant and the said Robert and his father Ponnaiyan. During the course of meeting, the defendant was requested to register the undivided share of land in favour of Robert, but the defendant did not oblige. While so, on 01.06.2012, the defendant along with his henchmen, came to the suit property and threatened the workers and watchmen engaged by the plaintiff to immediately stop the construction work. The Plaintiff therefore preferred a complaint to the Commissioner of Police on 15.06.2012 to initiate appropriate criminal action against the defendant. The defendant also preferred a complaint against the plaintiff on 16.07.2012 before the Commissioner of Police, Chennai with false and untenable allegations as if the defendant paid a sum of Rs.80 lakhs as loan to the plaintiff and that the plaintiff failed to repay the amount with interest. On the basis of the aforesaid complaints, an enquiry was conducted and ultimately, the parties were directed to work out their remedy through appropriate Civil Forum. Thereafter, compromise talks were held between the plaintiff and the defendant in the presence of mediators so as to settle the dispute amicably, but no settlement could be reached, even though the plaintiff offered to reduce his share from 60% to 50%. On the one hand, the defendant refused to accept the offer made by the plaintiff and on the other hand, the agreement holders, with whom the plaintiff entered into an agreement, have exerted pressure on the plaintiff to execute the sale deed in their favour. At this stage, once again, on 06.11.2012, the defendant along with his henchmen came to the construction site and threatened the workers. Fearing for their life, around 40 workers refused to attend the work and left their employment. Notwithstanding the same, the defendant also approached the Electricity Authorities to disconnect the electricity service connection with an intention to stop the construction work.

8. In the above circumstances, the plaintiff has filed a suit in O.S. No. 917 of 2012 against the defendant for a permanent injunction to restrain the defendant from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit property and also to restrain the defendant from alienating or encumbering the suit property to third parties. In the suit, the trial court ordered notice and the defendant also received notice and engaged a counsel. However, the defendant did not file counter and the case was pending for some time. Ultimately on 14.03.2013, the defendant was called absent and set ex-parte. The suit in O.S. No. 917 of 2012 was thereafter posted for recording ex-parte evidence on 18.03.2013. However, the trial court, on an erroneous view, dismissed the suit on 12.04.2013, against which the plaintiff

filed A.S. No. 37 of 2013 before the Sub Court, Tambaram and it is pending. Pending appeal, the plaintiff filed I.A. Nos. 87 and 88 of 2013, in which temporary injunction was granted during the month of June 2013. On notice, the defendant filed a common counter affidavit with false and frivolous allegations. The plaintiff therefore was constrained to file a reply to the common counter affidavit. Considering the averments and counter averments made, the appellate Court made absolute the order of interim injunction in I.A. No. 87 and 88 of 2013 on 24.07.2013. In the meanwhile, the plaintiff sent a notice dated 14.06.2013 calling upon the defendant to come forward for registration of the undivided share of land to the purchasers who have entered into construction agreement with him, however, the defendant did not comply with such a demand made by the plaintiff. According to the plaintiff, initially, 7 persons booked the flats, but because of the indifferent attitude portrayed by the defendant, those 7 persons have insisted the plaintiff to get the undivided share of land registered in their name. One of the agreement holders, by name Richard, has also initiated criminal action against the plaintiff for not registering the undivided share of land in his favour. The other agreement holders stopped paying amount and all the agreements came to an end. This has caused enormous mental strain and financial loss to the plaintiff. It is the contention of the plaintiff that had the defendant extended his cooperation he would have completed the entire building even during June or July 2012, but because of the attitude of the defendant, the construction could not be completed. As per the Joint Venture Agreement, the plaintiff would have completed the entire construction and in that event, he would have got his 60% share of Rs.4,24,64,520/- which amount is the true market value of the contract to be performed by the plaintiff. This amount is payable by the defendant together with interest from September 2012 to 28.02.2014 for the sum of Rs.4,24,74,520/-. The Plaintiff therefore filed the suit for the following relief:-

> "(a) Directing the defendant to specifically perform his part of the obligations of the contract of Joint Venture orally entered into between the plaintiff and the defendant in the month of February 2010 in respect of the 60% undivided share i.e., 5760 square feet of First item of the suit schedule property by executing and registering the sale deed in favour of the plaintiff or his nominee or nominees on a date to be fixed by this Honourable Court and in default direct the Registrar of this Court to execute and register the deed or deeds of sale in respect of 5760 square feet of undivided share in respect of first item of suit

schedule property in favour of the plaintiff or his nominee or nominees.

(b) directing the defendant to pay a sum of Rs.1,14,65,420/- as compensation to the plaintiff for the loss sustained by the plaintiff for the failure of the defendant to register the undivided share in favour of the plaintiff's

(c) directing the defendant to pay interest at 18% per annum for Rs.1,14,65,420/- from the date of plaint till the date of realisation or in the alterrnative;

(d) directing the defendant to pay a sum of Rs.3,89,89,990/- being the actual expenses incurred for the construction of the building situated in the second item of the suit property

(e) directing the defendant to award damages of Rs.2,06,19,162/- by way of interest at the rate of 18% per annum for the total expenses of Rs.3,89,89,990/- incurred for the construction of the building in the second item of the suit property from the bill date to 28.02.2014

(f) directing the defendant to pay interest at 18% per annum for Rs.3,89,89,990/- from the date of plaint till the date of realisation

(g) to pay cost of the suit

9. Resisting the plaint averments, the defendant, who is the appellant in A.S. No. 681 of 2018, would contend that he is a builder by profession and has earned a name and fame in his business. The plaintiff, who is also a builder by profession, used to visit him. The defendant also, out of the proximity of relationship he had with the plaintiff, used to support the plaintiff financially. By reason of such relationship, the plaintiff approached the defendant in the year 2009 and sought his financial help for completing an on-going project in Velacherry. The Plaintiff also mooted an idea that if the defendant invests Rs.80 lakhs to successfully finish the project, then he will be in a position to pay back the sum of Rs.80 lakhs, besides agreeing to pay equal share in the profit that may be derived from the project. Even though the defendant pleaded that he did not possess such huge money, the plaintiff demanded the defendant to sell his house in Velacherry to raise money. Taking pity on the plaintiff, the defendant decided to sell his house in Velacherry and give the money to enable the plaintiff to complete the project. In fact, due to the pressure mounted by the plaintiff, the defendant sold the property at Velacherry at a throw away price. Ultimately, the defendant paid to the plaintiff Rs.80 lakhs on the assurance that the plaintiff would pay equal share in the profit that he may derive

from the project. Accordingly, the plaintiff could complete the project and upon completion of the project, the defendant demanded the plaintiff to repay the amount paid by him along with the profit calculated at Rs.1,80,00,000/-. However, the plaintiff evaded and avoided to repay the said amount. Upon persistent demands made by the defendant, the plaintiff paid only a sum of Rs.5 lakhs leaving an outstanding of Rs.1,75,00,000/- payable to the defendant. The defendant repeatedly demanded the plaintiff to repay the sum of Rs.1,75,00,000/-, however, the plaintiff replied that he does not possess money at the moment but undertook to construct an apartment complex in the property owned by the defendant. It is in those circumstances, in lieu of the sum of Rs.1,75,00,000/- payable by the plaintiff, the defendant offered his land for being developed by the plaintiff at his costs. The plaintiff also assured that the defendant need not pay any amount and that the entire construction will be put up with the funds of the plaintiff. As per the oral agreement, the plaintiff agreed to construct 16 flats in four blocks at a cost of Rs.1,60,00,000/-, apart from construction of septic tank, sump, overhead tank, compound wall, car parking and tiles, which works out to Rs.15,00,000/-. Thus, the plaintiff, in lieu of the amount payable by him to the defendant, has agreed to develop the property owned by the defendant. Accordingly, the defendant entrusted the possession of the lands to the plaintiff to enable him to develop the land. The building plan submitted for approval was accepted during April 2010 and the plaintiff commenced the construction. However, for the reasons best known, the work proceeded at a snail's pace and the plaintiff has not exhibited any interest in completing the construction. Even after three years, the plaintiff could complete only 70% of the work and therefore, the defendant confronted the plaintiff to swiftly complete the work. At this stage, the plaintiff made an unreasonable demand that only if 8 flats out of 16 flats are allotted to him, he will proceed with the further construction. Further, the plaintiff represented to the defendant that he had already entered into an agreement for construction with seven persons for sale of the flats. The plaintiff also threatened the defendant that when the construction is in the midway, nobody will come forward to finish the construction and even if any one comes forward to put up the construction, he will prevent them from doing so. The defendant therefore gave a complaint to the police authorities and an enquiry was conducted. The police authorities only instructed the plaintiff and defendant to resolve the dispute through a competent Civil Court. Thereafter, the plaintiff filed the suit in O.S. No. 917 of 2012 for a bare injunction and the defendant also entered appearance. Even though the defendant did not file a written statement, the suit was dismissed on merits. Aggrieved by the dismissal of O.S. No. 917 of 2012, the plaintiff filed A.S. No. 37 of 2013 before the Subordinate Judge, Tambaram and obtained interim injunction. After obtaining interim injunction, the plaintiff prolonged the hearing of the appeal by filing one application or the other. The Plaintiff also filed Transfer Original Petition No. 63 of 2014 before this Court to transfer A.S. No. 37 of 2013 to the file of this Court.

10. According to the defendant, he is not liable to pay any amount to the plaintiff and even assuming without admitting that any amount is payable, the claim of the plaintiff for recovery of the money from him is barred by the period prescribed under the Law of Limitation. Even according to the plaintiff, there was no joint venture agreement between him and the defendant, while so, the question of specific performance of an oral contract and the consequential relief for damages will not arise. The defendant also did not execute any General Power of Attorney in favour of the plaintiff, while so, the plaintiff is not authorised to execute any agreement for sale with the prospective purchasers. The plaintiff is not in possession of the suit property, as alleged and that the defendant is still in possession of the suit property. The plaintiff never spent Rs.4 crores for construction of the property in question, on the other hand, the construction was put up at the costs payable by the plaintiff to the defendant. When the agreement between the plaintiff and defendant is oral, the question of performance of the contract within a prescribed time limit will not arise. The plaintiff did not invest any money for putting up the construction and that the apartment complex was constructed out of the money the plaintiff owed to the defendant. In such a circumstance, the question of investment and the consequential financial loss said to have been suffered by the plaintiff does not arise. The defendant therefore prayed for dismissal of the suit with costs.

11. Before the trial court, the plaintiff examined himself as PW1 and on his behalf, one Senthilvelan and T.K. Sathiyaseelan were examined as PWs 2 and 3. PW2 was an Electrician who was engaged by the plaintiff in the construction site. PW3 is the Chairman of T.K.S. Educational Institution who deposed that both the plaintiff and the defendant are from his Village, both of them are his friends and he also mediated the dispute between the plaintiff and the defendant. The Plaintiff also marked Exs. A-1 to A-72 on his side. On behalf of the defendant, the defendant examined himself as DW1, but no document was marked. The report along with the photos filed by the Advocate Commissioner was marked as Ex.C1 before the trial

Court. The trial court has framed as many as 10 issues for determination in the suit.

12. During the course of trial, at the instance of the plaintiff, an Advocate Commissioner was appointed in I.A. No. 163 of 2014 to assess the total cost of the building including the sump, water tank and septic tank etc., Accordingly, the Advocate Commissioner inspected the suit property along with a qualified Engineer and filed his report. In the report dated 10.06.2015, it is stated that 16 flats have been constructed and the value of those constructed flats works out to Rs.3,82,17,362/- and after deducting a sum of Rs.38,76,616/- towards the value of the incomplete work, the net value of the constructed building has been assessed at Rs.3,43,40,646/-.

13. The trial court, on analysing the oral and documentary evidence, disbelieved the version of the defendant that he had paid a sum of Rs.80,00,000/- to the plaintiff by selling the property owned by him at Velacherry. The trial court rendered a specific finding that there was no documentary evidence to show as to when the property at Velacherry was sold and for what amount. The trial court also concluded that the agreement between the plaintiff and the defendant was oral which cannot be enforced, unless it is proved by the plaintiff with concrete evidence. Therefore, the trial court, while refusing to grant the discretionary relief of specific performance, granted the alternative relief of refund of the amount incurred by the plaintiff towards construction of the flat. Accordingly, the trial court directed the defendant to pay to the plaintiff the sum of Rs.3,43,40,646/- with interest at the rate of 9% per annum from the date of decree till realization with proportionate costs with charge over the property.

14. Mrs.Chitra Sampath, learned Senior counsel appearing for the appellant in A.S. No. 641 of 2018, who is the plaintiff in the suit, would contend that the defendant did not deny that it was the plaintiff who had put up the entire construction at his own costs. The defendant, in para Nos. 8 to 11 of the written statement categorically admitted that it was the plaintiff who had incurred the expenses for putting up the construction. However, the defendant would contend that the plaintiff owed him Rs.1,80,00,000/- and that the plaintiff had put up the construction in lieu of the amount payable to him by the plaintiff. To substantiate that the defendant has paid a sum of Rs.1,80,00,000/- to the plaintiff, there was no documentary evidence produced by the defendant. The trial court, on appreciation of the oral and documentary evidence, coupled with the report filed by the Advocate Commissioner,

rightly assessed the cost of the construction and directed the defendant to pay the amount with interest. However, while decreeing the suit for alternative relief, the trial court erred in awarding interest only from the date of decree, instead of directing the payment of interest from the date of plaint. Such a direction issued by the trial court to pay the interest from the amount from the date of decree is contrary to Section 34 of the Code of Civil Procedure. Section 34 of the Code of Civil Procedure clearly contemplates that whenever interest is awarded, it should be directed to be paid only from the date of the plaint and not from the date of the decree. The trial court committed an error in awarding interest from the date of decree and therefore, the learned Senior counsel for the plaintiff prayed this Court to set aside the Judgment and Decree of the trial court in so far as it relates to payment of interest from the date of decree and instead direct the defendant to pay interest from the date of plaint.

15. Per contra, the learned counsel for the defendant, who is the appellant in A.S. No. 681 of 2018, would contend that the plaintiff sought for four reliefs such as specific performance, compensation for loss, value of investment and damages by way of interest. The trial court, out of the four reliefs, granted only the value of the cost of construction by solely relying upon the report of the Advocate Commissioner and directed the defendant to pay Rs.3,43,40,646/- with interest at 9% per annum from the date of decree till realization with proportionate costs with charge over the property. As against such direction to pay the amount allegedly incurred by the plaintiff, the present appeal is filed by the defendant. According to the counsel for the defendant, the plaintiff had earlier filed O.S. No. 917 of 2012 before the District Munsif Court, Alandur reserving his right to file a comprehensive suit later. The suit was dismissed and the appeal filed thereagainst was allowed remanding the matter back to the trial court. At this stage, the present suit in O.S. No. 63 of 2014 has been filed by the plaintiff.

16. The learned counsel for the defendant would further contend that the suit was filed for specific performance based on an alleged contract, which was disputed by the defendant. In the present suit, the plaintiff has filed certain invoices in support of his claim which are ingenuine and they can be procured by any one. Further the documents in the form of invoices produced by the plaintiff were in respect of some other construction site in which the plaintiff is engaged. The Plaintiff is only a licensee to enter the suit property for construction purpose and is entitled to wages for his work which

was fixed at Rs.25 lakhs to which he is entitled to. While so, in a suit for specific performance, the trial court appointed an Advocate Commissioner along with an Engineer to assess the nature of construction put up in the suit property and on the basis of the report furnished, granted the alternative relief. Thus, the plaintiff has not independently proved that he had incurred amount for putting up the construction, while so, the trial court ought not to have directed the defendant to pay Rs.3,43,40,646/- with interest . Such a decree and judgment granted by the trial court is erroneous, inasmuch as the plaintiff has not abandoned or waived his claim for specific performance. The direction to pay the amount ought to have been granted by the trial court only if the plaintiff abandoned the claim for specific performance and sought for damages simplicitor. In the present case, the plaintiff neither proved his claim for specific performance independently nor abandoned his claim for specific performance and therefore, the direction issued by the trial court is legally not sustainable. In this context, the learned counsel for the respondent relied on the decision of the Privy Council in the case of Ardeshir M. Mama vs. Flora Sassoon reported in 1928 AIR (PC) 208, wherein it was held that if the Court comes to a conclusion that specific performance cannot be granted, however, as there is a contract between the parties which has been breached by the defendant, then the plaintiff is entitled for such breach. However, if the Court concludes that specific performance itself cannot be granted, then the Court is not justified in awarding compensation. Thus, the learned counsel for the defendant would contend that when the plaintiff did not independently substantiate his right to get a decree for specific performance, the alternative relief of compensation awarded by the trial court is improper.

17. The learned counsel for the defendant would proceed to contend that the trial court awarded the compensation payable by the defendant only on the basis of the report of the Advocate Commissioner. In a suit for specific performance, there is no necessity at all to appoint an Advocate Commissioner and the plaintiff ought to have substantiated his case for specific performance independently without the aid of the Commissioner. In this context, the learned counsel relied on the decision of the Division Bench of the Calcutta High Court in the case of The Owners and Parties interested in the Vessel M.V. Baltic Confidence vs. The State Trading Corporation of India Limited and another, reported in 2000 AIR (Calcutta) 91, wherein it was held that court cannot appoint a Commissioner or Receiver to collect evidence in respect of the alleged damaged goods which are in custody of plaintiff. The Plaintiff has to appoint his

own surveyor and get the damages assessed and produce the report to prove his case before the court. In the present case, the trial court erroneously appointed an advocate commissioner and based on his report granted the alternative prayer sought for in the suit. In such circumstances, the learned counsel for the defendant prayed for setting aside the judgment and decree passed by the trial court and to allow A.S. No. 641 of 2018 as prayed for.

18. We have heard the counsel for both sides and perused the materials placed on record. It is an admitted fact that the plaintiff and the defendant are close friends and out of such proximity of relationship, they have entered into an oral contract, by which the plaintiff was required to put up building construction. It is the contention of the plaintiff that based on such oral agreement, he proceeded with the construction after the defendant handed over the vacant possession of the property to him. According to the plaintiff, as per the oral contract, he is entitled for 60% of the constructed building and the defendant is entitled for 40% thereof. The plaintiff also obtained building planning permission from the competent authorities and proceeded with the construction. It is also an admitted fact that the plaintiff had completed 90% of the construction. The plaintiff also entered into agreement of sale with prospective purchasers and received amount in anticipation of execution of sale deed in their favour by the defendant. At this stage, there arose dispute between the plaintiff and the defendant. The prospective purchasers, with whom the plaintiff had entered into agreement of sale, have nagged the plaintiff to execute the sale deed in their favour, besides launching criminal prosecution against the plaintiff. The plaintiff could not honour his promise to execute the sale deed in favour of such prospective purchasers due to the indifferent attitude portrayed by the defendant. Further, the defendant is also alleged to have disturbed the peaceful possession and enjoyment of the construction site by the plaintiff, which led to the filing of O.S. No. 917 of 2012 for the relief of bare injunction. The suit was dismissed by the trial court on 12.04.2013, against which an appeal in A.S. No. 37 of 2013 was filed by the plaintiff. The appellate Court, by Judgment dated 27.07.2015, remanded the matter back to the trial court and the suit is pending. The plaintiff thereafter filed the present comprehensive suit for the relief of specific performance of the oral agreement with alternative prayer for damages.

19. The defendant defended the suit by contending that it is not as though the plaintiff had put up the construction from his own funds. At the request of the plaintiff, the defendant paid

Rs.80,00,000/- towards loan by selling the property he owned at Velacherry, Chennai. It is further contended that the plaintiff borrowed the amount to complete an on-going project and assured the defendant to equally share the profit that may be derived thereof. According to the defendant, as per his calculation, the profit derived from the project would be around Rs.1 crore and therefore the plaintiff has to pay him Rs.1,80,00,000/-, however, after repeated demands, the defendant repaid only Rs.5 lakhs leaving the balance of Rs.1,75,00,000/-. When the defendant exerted pressure on the plaintiff for repayment, the plaintiff has replied that he did not possess any money, however, he is ready to develop the defendant's land by putting up a construction out of his own funds and the defendant need not pay any money. Thus, in lieu of the amount payable by the plaintiff, he had put up the construction in the land owned by the defendant. In the written statement, the defendant agreed that the construction was almost over, however, it had proceeded snail-paced. When this was questioned by the defendant, the plaintiff allegedly demanded 50% share in the construction put up by him in lieu of the alleged amount payable to the defendant. This is the sum and substance of the defence raised by the defendant in the written statement filed before the trial court.

20. One of the main contentions urged on behalf of the defendant in this appeal is that the plaintiff did not independently prove his case for specific performance, while so, the trial court ought not to have directed the defendant to pay the sum of Rs.3,43,40,646/- with interest by way of damages. In this context, it is to be mentioned that the plaintiff has filed as many as 72 documents as Exs. A1 to A72. Prominent among these documents are Ex.A11 and A12, certified copy of receipts for payment of development charges and building fees and Exs. A26 to A31 - agreement of construction entered into by the plaintiff with prospective purchasers. The plaintiff also filed certified copies of the bills under Exs. A32 to A39. Ex.A61 is the certified copy of the statement of accounts filed by the plaintiff to show the amount he had incurred for putting up the building in question. These documents would show that it was the plaintiff who had incurred money for putting up the building in question. On the other hand, the defendant, who had come up with a theory of lending amount, did not file a single document before the trial court. Therefore, the trial Court rightly rendered a finding that the defendant, who has averred that he had paid the amount of Rs.80,00,000/- to the plaintiff by selling his house at Velacherry, did not file any documentary evidence to show as to when he had sold the property at Velacherry, to whom he had sold and for what amount. We are in

complete agreement with such a finding of the trial court. When it is the case of the defendant that he had paid a whooping sum of Rs.80 lakhs as loan to the plaintiff, the defendant ought to have filed some documentary evidence to substantiate the same. Thus, we are of the view that the defence raised by the defendant in this case is too big a pill to be swallowed and it cannot be accepted. This Court can only infer that pursuant to an oral agreement, the defendant had entrusted the work of putting up the building to the plaintiff, however, due to a misunderstanding between them, the defendant prevented the plaintiff from proceeding further with the construction. When the plaintiff had put up nearly 90% of the construction, the defendant, as a land owner, cannot bounce back from his oral promise to prejudice the plaintiff. In fact, the plaintiff has clearly stated in the plaint that had the defendant cooperated with him, he could have completed the entire building even during June or July 2012. Thus, but for the resistance of the defendant, the plaintiff was made to approach the Civil Court for remedy. Therefore, we hold that the plaintiff had independently proved by way of documentary evidence that it is he who had put up the construction of the building at his own costs and that the theory of the defendant relating to lending of amount to the plaintiff, is not proved. Had he really lent money to the plaintiff, as alleged, the defendant could have filed an independent suit against the plaintiff for relief of recovery of money or whatever relief available to him under law, but he had chosen to do so, but he only defended the suit filed by the plaintiff by filing a written statement. This also gives rise to an inference that the entire building had been put up by the plaintiff at his own cost and the defendant did not contribute any money thereof.

21. The trial court appointed an Advocate Commissioner on 17.03.2015 to note down and assess the nature and extent of construction put up by the plaintiff and to ascertain the total marketable value of such building. Such an appointment came to be made at the instance of the plaintiff in I.A. No. 163 of 2014. The Advocate Commissioner, along with a competent Chartered Engineer (Civil), inspected the suit property on 26.04.2015 after due notice to the defendant. At the time of such inspection, the plaintiff and defendant, along with their respective advocates, were present. Thus, the inspection was done in the presence of the parties to the lis, as also their advocates. For the report of the Advocate Commissioner, the defendant also filed his objection on 08.12.2015. The trial court, having regard to the fact that the contract is oral, refused to grant the discretionary relief of specific performance. However, from the report of the Advocate

Commissioner, the trial court came to a conclusion that the plaintiff had put up the building in question at his own funds. This is more so since the defendant has not come forward with any evidence to disprove that the plaintiff did not put up the construction. Even the theory of lending of amount raised by the defendant, has also fallen to ground in the absence of any documentary evidence. Further, the defendant in para Nos. 8 to 11 of the written statement, has also indirectly admitted that it was the plaintiff who had put up the construction in question. Therefore, for the purpose of considering the alternative relief of damages claimed by the plaintiff, the trial court, by placing reliance on the report of the Advocate Commissioner, assessed the cost of the building and rightly directed the defendant to pay such amount. In such circumstances, it cannot be stated that the Advocate Commissioner has been appointed to fish out the evidence. The trial court, in a circumstance of this nature, is wholly justified in taking the aid of the Commissioner to assess the value of the construction put up by the plaintiff to consider the alternative relief of compensation sought for by the plaintiff for the loss sustained by him due to the failure of the defendant to register the sale deed and towards the actual expenses incurred for the construction of the building. We therefore do not find any reason to hold that the trial court erred in appointing an Advocate Commissioner in a suit for specific performance. The Judgment and decree passed by the trial court, is therefore, sustained.

22. As regards the appeal filed by the plaintiff in A.S. No. 641 of 2018 questioning the correctness of the Judgment and Decree passed by the trial court in so far as it relates to awarding interest from the date of decree, instead of date of filing of the plaint, we are of the view that the decree and judgment passed by the trial court in this regard requires to be interfered with. The issue relating to payment of pendente lite interest is governed by Section 34 of the Code of Civil Procedure. As per Section 34 of the Code, interest shall be awarded at a reasonable rate in the discretion of the Court, but such discretion has to be exercised by the Court on sound legal principles and not arbitrarily. Section 34 (1) of the Code clearly contemplates that whenever a decree is passed, the Court has to direct payment of interest at such rate as the Court deems reasonable to be paid, from the date of the suit till the date of decree in addition to payment of further interest from the date of decree till the date of payment. This is a statutory requirement to meet the interest of justice and it cannot be restricted from the date of decree. When the Court had chosen to award interest on the principal sum, normally, it

should be awarded from the date of the plaint and restricting the award of payment of interest from the date of decree is not justified. The right of the plaintiff to get interest emanates and flows from the date when he presented the plaint before the trial court. The expectation of the plaintiff to get interest from the date of filing the plaint is also a legitimate expectation and it cannot be restricted in any manner. Therefore, the Judgment and Decree of the trial Court in so far as it relates to award of interest is modified by holding that the plaintiff is entitled for payment of interest from the date of presentation of the plaint.

23. In the result,

(i) A.S. No. 641 of 2018 is allowed by modifying the Judgment and Decree dated 11.04.2018 passed in O.S. No. 63 of 2014 on the file of the Principal District Judge, Kancheepuram District at Chengalpattu to the extent that the plaintiff is entitled to payment of interest at the rate of 9% per annum from the date of plaint till realisation, with costs.

(ii) A.S. No. 681 of 2018 is dismissed by confirming the Judgment and Decree dated 11.04.2018 passed in O.S. No. 63 of 2014 on the file of the Principal District Judge, Kancheepuram District at Chengalpattu. However, there shall be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rsh
To

The Principal District Judge
Kancheepuram District at Chengalpattu

copy to
THe Section Officer
VR Section
High Court Madras

+2 ccs to Mr.V.balasubramanian Advocate sr5498,5499
+2 ccs to Mr.M.A.R.Pragash Advocate sr5654,5653

AS Nos. 641 and 681 of 2018

aa13/08/2020