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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 06TH DAY OF JULY 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

C.S.No. 990 of 2016

and

A. No.8566 of 2017

Mr. R. K. Mani
Proprietor – M/s Project Management Service, Chennai
16/6, Ramanathan Street,
Mahalingapuram, Nungambakkam,
Chennai – 600 034.

... Plaintiff/Applicant

-Versus-

Mr. Rama Mohan, Proprietor,
M/s. Priyanka Constructions,
No.122, Balasubramanian 3rd Street,
Near Makkal Poonga NSR Road,
Saibaba Colony,
Coimbatore

... Defendant/ Respondent

C.S.No. 990 of 2016

Civil Suit praying that this Hon'ble Court be pleased to pass a
Judgement and Decree directing the defendant to:-

a) Pay to the plaintiff a sum of Rs. 2,19,61,267/- (Rupees Two Crores

Nineteen Lakhs Sixty One Thousand Two Hundred and Sixty Seven

Only) being the aggregate of the Principal unpaid sum of Rs.

1,51,11,851/- and interest thereon being Rs. 68,49,416/-



b) Pay Damages of a sum of Rs. 57 Lakhs.

c) Pay Interest at 12% p.a Compounded monthly on the Principal sum of Rs. 1,51,11,851/- from the date of filling of the suit until the date of actual realization.

d) Pay the cost and expenses of the suit to the Plaintiff.

A. No.8566 of 2017

Application praying that this Hon'ble Court be pleased to pass an Order Committing the Respondent/Defendant to civil prison until the decision of the suit for failure to furnish security.

This suit along with the application coming on this day before this court for hearing in the presence of Ms. Shubharanjani Ananth, Advocate for the plaintiff in C.S.No. 990 of 2016 and for the applicant in A.No. 8566 of 2017 and the defendant herein, not appearing in person or by advocate and the said defendant herein, having been set exparte and upon reading the plaint filed in C.S. No. 990 of 2016 and the judges's summons and the affidavit of R.K.Mani filed in A.No. 8566 of 2017 and the other exhibits therein referred to and upon perusing the evidence adduced therein and this court having observed that since the facts and documents pleaded by the plaintiff stands uncontroverted, the suit is decreed in respect of the suit claim of Rs. 2,19,61,267/- being the principal and interest, there is no

evidence to substantiate the claim of Rs.57 lakhs for damages. hence, the



said claim is rejected for want of proof and the suit is partly allowed and, **It**

is ordered and decreed as follows:

That the defendant herein, do pay to the plaintiff herein, a sum of Rs. 3,51,88,568/- (Rupees Three Crores Fifty One Lakhs Eighty Eight Thousand Five Hundred and Six Eight only) with further interest at the rate of 12% per annum on the sum of Rs. 2,19,61,267/- (Rupees Two Crores Nineteen Lakhs Sixty One Thousand Two Hundred and Sixty Seven Only) from this date till the date of realisation.

2. That the defendant herein, do pay to the plaintiff herein, the cost of this suit as and when taxed by the taxing officer of this court, and noted in the margin thereof.

3. That the A.No. 8566 of 2017 do stand closed.

WITNESS, THE HON'BLE MR.JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT OF MADRAS AFORESAID, THIS
DATED THE 06TH DAY OF JULY 2021.

Sd./-

ASSISTANT REGISTRAR (OSI)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



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23.07.2021

C.S.No. 990 of 2016

and

A.No.8566 of 2017

DECREE
DATED :06/07/2021

THE HON'BLE DR.JUSTICE
G.JAYACHANDRAN

FOR APPROVAL: 29/07/2021

APPROVED ON: 30/07/2021



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 06.07.2021

Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.S.No.990 of 2016
& A.No.8566 of 2017

Mr.R.K.Mani,
Proprietor M/s.Project Management Services, Chennai,
No.16/6, Ramanathan Street,
Mahalingapuram, Nungambakkam,
Chennai – 600 034. ... Plaintiff

/versus/

Mr. Rama Mohan, Proprietor,
M/s.Priyanka Constructions,
No.122, Balasubramanian 3rd Street,
Near Makkal Poonga NSR Road,
Saibaba Colony,
Coimbatore. ... Defendant

Prayer: Complaint is filed under Order VII Rule (1) of Civil Procedure Code read with order IV Rule 1 of Original Side Rules.

a). Pay to the plaintiff a sum of Rs.2,19,61,267/- (Rupees Two Crores Nineteen Lakhs Sixty one Thousand Two Hundred and Sixty Seven only) being the aggregate of the Principal unpaid sum of Rs.1,51,11,851/- and interest thereon being Rs.68,49,416/-.

b). Pay Damages of a sum of Rs.57 Lakhs.

c). Pay Interest at 12% p.a compounded monthly on the Principal sum



of Rs.1,51,11,851/- from the date of filing of the suit until the date of actual realization.

d). Pay the cost and expenses of the suit to the plaintiff.

For Plaintiff : Ms.Shubharanjani Ananth

For Defendant : *set exparte*

J U D G M E N T

The suit is filed for recovery of money, though the defendant initially represented by the Learned Counsel subsequently there is no representation for the defendant. This Court, on considering the nature of the suit on 15.03.2018 determine the suit claim falls within the definition of Commercial dispute and proceeded, following procedure as contemplated under Commercial Courts Act.

2. On 24.02.2018, the sole defendant set *ex-parte* since written statement was not filed and no interest shown by the defendant to contest the matter.

3. The plaintiff/Mr.R.K.Mani, Proprietor of the firm M/s.Project Management Services, Chennai, was examined as P.W.1. 45 Exhibits were marked as Ex.P.1 to Ex.P.45.

4. The case of plaintiff is that the plaintiff is a Proprietary

Concern, engaged in the business of executing works contract, including



civil, mechanical and electrical project works. The Defendant is also a Proprietary concern, carrying on the business of building construction. The plaintiff and the Defendant had commercial relationships. The plaintiff was awarded a civil construction work by M/s.DF Power Systems Private Limited of a 27MW power plant belonging to M/s.Dalmia Cements, at Yadwad Village, Belgaum District, Karnataka. Time limit was fixed for carrying on this project. The Defendant approached the plaintiff and offered services as a special contractor. The plaintiff awarded a work order dated 12.04.2013 to the Defendant. The Defendant was to supply labour for civil structural works. They were also to purchase equipments and tools. Time was the essence for such supply. Terms of payment were also given in the work order dated 12.04.2013. However, even after the receipt of advance of one month payment, the Defendant failed and neglected to commence the work and supply labour. The plaintiff made their own arrangements to avoid delay to make up for the loss of time.

5. It was the further case of the plaintiff that the plaintiff was called upon by their Principal, by email dated 15.05.2013 to immediately mobilise batching plant since foundation casting of the boiler had already been delayed. In turn, the plaintiff sent a series of emails to the Defendant.

However, the Defendant failed in his promise to organise the materials and machinery and also failed to maintain the manpower required for the



project. Since the Defendant was very slow in executing the work, the plaintiff insisted on performance guarantee. The Defendant completed only 13.29% of the work as against the contract of 60% between April 2013 and September 2013.

6. The plaintiff was constrained to terminate the work order dated 12.04.2013 by email dated 03.10.2013, since the Defendant had caused repeated breach of obligations, plaintiff called upon the Defendant to return the advance amount and excess payment amounts due to him by emails dated 03.10.2013, 11.10.2013, 18.11.2013, 12.12.2013 and 27.12.2013. In the meanwhile, since the Principal of the Plaintiff demanded that the Plaintiff should settle the payments, the Plaintiff had to make a further payment of Rs.38,94,690/- to the vendors and suppliers on behalf of the Defendant. Consequently, it has been stated that the Defendant was due and liable to pay a sum of Rs.1,02,00,000/- towards the advance amount, a sum of Rs.10,17,232/- towards excess payment and a sum of Rs.38,94,619/- towards payment made to vendors and suppliers, totalling Rs.1,51,11,851/-. The cheques issued by the Defendant towards performance guarantee had been returned by the ICICI Bank on the ground of 'insufficient funds'. The plaintiff had to file C.C.Nos.2146, 2224 and 8229 of 2014 on the file of the FTC-II, Egmore, Chennai. Seeking recovery of the amounts payable and due by the Defendant.



7. The work order given to the defendant are marked as Ex.P.1 & Ex.P.2. As per the terms of the work order, the plaintiff has tendered an advance of Rs.72 lakhs being 5% + 5% of the total contract value of Rs.7,20,00,000/-. From the communications through e-mail which are marked as Ex.P.3 to Ex.P.11, the default of the defendant to mobilise the Batching Plant and other requirement is established by the plaintiff. The defendant for the work done had raised four invoices which are marked as Ex.P.12 to Ex.P.15.

<i>Sl.Nos.</i>	<i>RA Bill No</i>	<i>Date of Bill</i>	<i>Bill Amount</i>	<i>Exhibit No</i>
1.	1	10.07.2013	Rs.40,59,011.29	P.12
2.	2	16.08.2013	Rs.33,78,602.61	P.13
3.	3	10.09.2013	Rs.17,43,859.08	P.14
4.	4	21.10.2013	Rs.16,33,677.03	P.15

8. In response, the plaintiff has tendered further advance of Rs.30.00 lakhs to the defendant and had insisted the defendant to issue Performance Guarantee Cheque. The defendant has obliged and had given three cheques each for a sum of Rs.36 lakhs. These three cheques were dishonoured for want of fund and the notarized copies of the dishonoured cheques are marked as Ex.P.36 to Ex.P.38.

9. Ex.P.17 to Ex.P.27 are the Debit Notes which indicates that the defendant owes the following sum under each of the Debit Notes.

<i>Sl.Nos</i>	<i>Debit Note Number</i>			<i>Date</i>	<i>Amount</i>	<i>Exhibits</i>
1.	Debit	Note	No.DFPS/13-	31.08.2013	78,609	P17



<i>Sl.Nos</i>	<i>Debit Note Number</i>	<i>Date</i>	<i>Amount</i>	<i>Exhibits</i>
	14/DCPVL/026 raised by M/s.D F Power Systems Pvt. Ltd on the plaintiff.			
2.	Debit Note No.DFPS/13-14/DCPVL/028 raised by M/s.D F Power Systems Pvt. Ltd on the plaintiff.	31.08.2013	32,163	P18
3.	Debit Note No.DFPS/13-14/DCPVL/031 raised by M/s.D F Power Systems Pvt. Ltd on the plaintiff.	13.09.2013	46,367	P19
4.	Debit Note No.DFPS/13-14/DCPVL/034 raised by M/s.D F Power Systems Pvt. Ltd on the plaintiff.	24.09.2013	8,77,870	P20
5.	Debit Note No.DFPS/13-14/DCPVL/035 raised by M/s.D F Power Systems Pvt. Ltd on the plaintiff.	26.09.2013	3,67,814	P21
6.	Debit Note No.DFPS/13-14/DCPVL/036 raised by M/s.D F Power Systems Pvt. Ltd on the plaintiff.	26.09.2013	47,762	P22
7.	Debit Note No.DFPS/13-14/DCPVL/038 raised by M/s.D F Power Systems Pvt. Ltd on the plaintiff.	30.09.2013	7,07,071	P23
8.	Debit Note No.DFPS/13-14/DCPVL/039 raised by M/s.D F Power Systems Pvt. Ltd on the plaintiff.	30.09.2013	86,312	P24
9.	Debit Note No.DFPS/13-14/DCPVL/046 raised by M/s.D F Power Systems Pvt. Ltd on the plaintiff.	19.12.2013	82,248	P25
10.	Debit Note No.DFPS/13-14/DCPVL/047 raised by M/s.D F Power Systems Pvt. Ltd on the plaintiff.	19.12.2013	1,55,242	P26
11.	Debit Note No.DFPS/13-14/DCPVL/062 raised by M/s.D F Power Systems Pvt. Ltd on the plaintiff.	25.03.2014	15,93,923	P27

10. After few communication and exchange of notice, the present suit has been filed. The plaintiff has also resorted to criminal prosecution against the defendant for dishonouring the cheques.

<https://hcservices.ecourts.gov.in/hcservices> **11.** On perusing the Ex.P.1 to Ex.P.45, it is clear that the



defendant, who has admitted the liability and failed to honour the cheques issued for a sum of Rs.1,08,00,000 lakhs. Further the debit note substantially proves the suit claim of Principal amount of Rs.1,51,11,851/- for which interest at the rate of 12% p.a being claimed along with the damages of Rs.57 lakhs.

12. Since the facts and documents pleaded by the plaintiff stands uncontroverted, the suit is decreed in respect of the suit claim of Rs.2,19,61,267/- being the principal and interest. There is no evidence to substantiate the claim of Rs.57 lakhs for damages. Hence, the said claim is rejected for want of proof. In the result, the suit is ***partly Allowed***. The money claim of Rs.2,19,61,267/- along with the simple interest at the rate of 12% p.a, from the date of filing the suit till the date of realization is decreed. The defendant shall bear the costs. Consequently, connected Application is closed.

Sd/- G.J.J.,
06.07.2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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