



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 04TH DAY OF AUGUST 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.A. No.381 of 2021

and

Arb.A.No.47 of 2021

In the matter of Arbitration and
Conciliation Act, 1996

and

In the matter of agreement of
sale dated 03.04.2015 between
K.S.Sreenivasan and M/s.Land
Mark Housing Projects (India)
Pvt. Ltd.,

K.S.Sreenivasan,
S/o.Mr.K.R.Sowrirajan,
No.47/1, Sadulla Street,
T.Nagar, Chennai-600 017.

... Applicant

-Versus-

1. M/s.LandMark Housing Projects (India) Pvt. Ltd.,
having its registered office at
No.27, Saravana Street,
T.Nagar, Chennai-600 017.

2. T.Udayakumar,
S/o.K.Thulasingham,
No.27, Saravana Street,
T.Nagar, Chennai-600 017.

... Respondents



pass order of Interim Injunction restraining the Respondents, their men, servants or agents including the Power of Attorney from selling, alienating, encumbering or dealing with the land and flats being built in Plot Nos.3, 4, 4A, 4B, 5A, 5B and 9 of Seevaram Village, Corporation Road, Perungudi, Sholinganallore Taluk, Kancheepuram District comprised in Old Survey No.51/1A, and 50, New Survey No.51/1A1D Part, 51/1B1, 51/1C1, 51/1B1D1, 51/1C1A2, 51/1C1C, 51/22, 50/1, 51/1A5, 51/1A6, 51/1A7, 51/1B1D2 and 51/20 measuring 4 acres, 23.999 cents and one hectare and 75.40 cents.

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... Applicants

-VS-

K.S.Sreenivasan,
S/o.Mr.K.R.Sowrirajan,
No.47/1, Sadulla Street,
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... Respondent



ad interim injunction dated 01.07.2021 in O.A.No.381 of 2021 dismiss the application.

These Applications coming on this day before this court for hearing in the presence of Mr.AR.L.Sundaresan, Senior Counsel appearing for M/s.AL.Ganthimathi, Advocates for the applicant in O.A.No.381 of 2021 and for the respondent in Arb.A.No.47 of 2021 and Mr.S.Ramesh, Advocate for the respondents in O.A.No.381 of 2021 and for the Applicants in Arb.A.No.47 of 2021 and upon reading the order herein dated 20.07.2021, and this court having observed that restraining the respondents from dealing with the property will lead to serious consequences and irreparable injury to them, it is also stated that the property has already been mortgaged, in such a view of the matter, this Court is not inclined to extend the interim order passed, this Court is restrained itself from making any observation with regard to the merits and demerits of the case, if any such observation is recorded in this application, in the event of parties to go for an arbitration in future date, same will have some impact in the proceeding. it is ordered as follows:-

That the order of interim injunction granted in pursuance of the order dated 01.07.2021 made in O.A.No. 381 of 2021 restraining the respondents therein from creating any encumbrance over the properties more fully set out in the schedule thereunder, be and is hereby vacated.



2. That the O.A.No.381 of 2021 be and is hereby dismissed.

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3. That any finding recorded in this application shall not have any bearing in other proceeding.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
04th DAY OF AUGUST 2021.

Sd./-

ASSISTANT REGISTRAR (Comm.Cases)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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SK-25.08.2021

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O.A. No.381 of 2021
and
Arb.A.No.47 of 2021

ORDER :-

DATED : 04.08.2021

THE HON'BLE MR.JUSTICE
N.SATHISH KUMAR

FOR APPROVAL:31.08.2021

APPROVED ON: 03.09.2021



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pass order of Interim Injunction restraining the Respondents, their men, servants or agents including the Power of Attorney from selling, alienating, encumbering or dealing with the land and flats being built in Plot Nos.3, 4, 4A, 4B, 5A, 5B and 9 of Seevaram Village, Corporation Road, Perungudi, Sholinganallore Taluk, Kancheepuram District comprised in Old Survey No.51/1A, and 50, New Survey No.51/1A1D Part, 51/1B1, 51/1C1, 51/1B1D1, 51/1C1A2, 51/1C1C, 51/22, 50/1, 51/1A5, 51/1A6, 51/1A7, 51/1B1D2 and 51/20 measuring 4 acres, 23.999 cents and one hectare and 75.40 cents.

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No.47/1, Sadulla Street,
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... Respondent

Application praying that this Hon'ble Court be pleased to vacate the



application.

WEB COPY These Applications coming on this day before this court for hearing the court made the following order:-

This Original Application has been filed to grant interim injunction restraining the respondents, their men, servants or agents, including the Power of Attorney from selling, alienating, encumbering or dealing with the land and flats being built in Plot Nos.3, 4, 4A, 4B, 5 A, 5 B and 9 of Seevaram Village, Corporation Road, Perungudi, Sholinganallore Taluk, Kancheepuram District, comprised in Old S.Nos.51/1A and 50 New Survey No.51/1A1D part, 51/1B1, 51/1C1, 51/1B1D1, 51/1C1A2, 51/1C1C, 51/22, 50/1, 51/1A5, 51/1A6, 51/1A7, 51/1B1D2 and 51/20 measuring 4 acres, 23,999 cents and one hectare and 75.40 cents.

2. Heard Mr.AR.L.Sundaresan, learned Senior Counsel for Ms.AL.Ganthimathi, learned counsel for the applicant and Mr.S.Ramesh, learned counsel for the respondents.

3. The first respondent is a Real Estate developer. The applicant and the first respondent entered into an agreement for sale, dated 3/4/2015 and the applicant had paid Rs.5,00,000/-, as an advance. As per the agreement, first respondent has agreed to sell 189299 sq.feet of saleable area in the

Schedule A property. The applicant agrees to pay the balance amount in



stages together with other charges to be levied by the first respondent, as per the progress of the respective projects.

4. Notwithstanding anything contained anywhere in the Agreement for Sale, the first respondent agrees to buy back the entire 189299 sq.feet of the saleable area in the Schedule A property which is morefully described in the Schedule B written at a buy back price of Rs.4535/- per sq.feet, at any time, as may be decided by the applicant. Hence as per the agreement, it is an obligation on the part of the first respondent to sell the property. But the first respondent did not honour his commitment and defaulted in settling the debt of Rs.29,05,73,965, towards compensation for surrender of Right of Purchase.

5. Though the application was moved before the National Company Law Tribunal, the same has been negatived, on the ground that outstanding debt was not a financial debt in terms of IBC and the same has not been proved against the respondent. Now the petitioner is taking steps for appointment of an Arbitrator, as per clause under the agreement and as per the Arbitration and Conciliation Act, 1996. In the meantime, the first respondent is attempting to alienate the flats along with the land thereon, being constructed, the proceeds of which was unequivocally committed to settle the debt outstanding to the petitioner in terms of the agreement,



proceedings are over and the liabilities towards the applicant together with interest are settled, if the properties are dealt with by the respondents, irreparable loss and injury will be caused to the applicant. Hence the applicant has come forward with the present Original Application praying for the relief as stated therein.

6. Counter affidavit was filed on behalf of the respondents, wherein it is stated that National Company Law Tribunal had dismissed the Company Petition holding that no amount is due and payable. As against the said order, applicant had filed an appeal before the National Company Law Appellate Tribunal at New Delhi and the same was dismissed. Aggrieved by the concurrent decision, the applicant had preferred an appeal before the Hon'ble Supreme Court in Civil Appeal No.767 of 2021 and the same was also dismissed on 10/3/2021.

7. The learned counsel appearing for the respondents submitted that the applicant is incorrect in pleading that order of National Company Law Tribunal would not stand in the way of seeking relief before the Arbitral Tribunal as the very debt was the subject matter of contest and negated upto Hon'ble Supreme Court. Since the applicant has not made out any prima facie case and balance of convenience, he is not entitled to any relief as sought for.

8. He would further submit that for more than two years, applicant



has not chosen to invoke the arbitration clause and was awaiting proceedings before the National Company Law Tribunal. After the first notice was issued on 13/2/2019, till this point of time, no notice has been issued invoking the arbitration clause. Therefore, applicant at no point of time had an intention to arbitrate. Hence, it is the contention that Doctrine of Election come into play. The applicant cannot seek such relief under Section 9 of the Act. As there is no prima facie case made out in favour of the applicant, the learned counsel appearing for the respondents prayed for dismissal of this Original Application.

9. The learned Senior Counsel appearing for the applicant has submitted that the contract provides for buy back arrangement between the parties. In pursuant to such contract, the first respondent himself has agreed to pay a sum of Rs.29,05,73,965/-. Besides, he has also issued a cheque towards the said amount and further, the findings of the National Company Law Tribunal was only with respect to the limited purpose of proving whether a financial debt in terms of IBC existed or not. The proceedings before the Company Law Tribunal upto the Hon'ble Supreme Court was only with respect to determination, whether the outstanding debt owed by the first respondent to the petitioner was a financial debt and default existed in terms of only the IBC Code, 2016 and the same was dismissed only on



and has not been proved against the respondents herein. Whereas before the National Company Law Tribunal stand was taken by the first respondent that all the disputed question of fact can be decided only in the arbitration. Hence, it is submitted that if the properties have been alienated or any third party rights have been created that will lead to serious consequences. Hence prayed for interim orders till the disposal of the arbitral proceedings as interim measures.

10. Learned counsel appearing for the respondents submitted that finding of fact has been given by the Tribunal in respect of the contract. Therefore, the same cannot be agitated. The alleged acknowledgement of the letter dated 7/2/2009 is highly improbable, when the notice of admission itself was issued on 13/2/2009. At any event, it is the contention that the agreement contained reciprocal obligation which has not been performed by other side. Therefore, applicant cannot take advantage of the agreement clauses to gain unjust enrichment of 29 crores for the amount of Rs. 5 lakhs paid as an advance.

11. I have perused the entire materials available on record. Admittedly, the dispute revolving around the agreement, dated 3/4/2015 entered between the parties. Clauses 3 to 6 of the agreement reads as under:-



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sell 189299 sq.ft., of saleable area in the Schedule A property which is morefully described in the Schedule B hereunder written @ a pre-launch price of Rs.3000/- per sq.feet.

4. The party of the first part agreed for the said proposal and paid a sum of Rs.5,00,000/- (Rupees Five lakhs only) by way of cheque bearing No.050480 dated 3/4/2015 drawn on Vijaya Bank, T.Nagar branch on this and freeze the saleable area in the Schedule B property.

5. The party of the first part agrees to pay the balance amount in stages together with other charges to be levied by the party of the second part as per the progress of the respective projects.

6. Notwithstanding anything contained anywhere in this Agreement for sale, the party of second part agrees to buy back the entire 189299 sq.ft of the saleable area in the Schedule A property which is morefully described in the Schedule B hereunder written at a buy back price of Rs.4535/- per sq.feet at any time as may be desired by the part



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of the first part which shall be binding on the party of the second part.

12. A conjoint reading of the referred clauses above, makes it prima facie clear that reciprocal obligations to be performed by both sides. Rs.5 lakhs has been originally paid and the remaining agreement amount has to be paid by the applicant in stages together with other charges to be levied by the first respondent. It appears that such a stage has not come. However, much emphasis was made only on the basis of letter, dated 7/2/2019, wherein the first respondent said to have acknowledged the debt to the tune of Rs.29,05,73,965/-, by issuing three cheques, dated 22/2/2016, 22/8/2016 and 22/2/2017, respectively. For the demand notice issued by the applicant, dated 13/2/2019, issuance of such notice, dated 7/2/2019, prima facie quite improbable.

13. Be that as it may. Learned counsel appearing for the respondents would submit that till August 2019 the petitioner's son was one of the Directors of the Company and all cheques have also been with them. Hence it is their contention that the letter, dated 7/2/2019 came into under such circumstances as the matter involves disputed facts, cannot be gone into in this stage. The Court cannot make roving enquiry in this aspect.

However, considering the fact that the same agreement has been the subject matter of dispute, in an application before the National Company Law



Tribunal, wherein the National Company Law Tribunal has found that the reciprocal obligation not performs and recorded factual findings.

14. While entering into an agreement, only Rs.5 lakhs has been paid as an advance. It appears that subsequent amount has not been paid. In such a view of the matter, this Court is of the view that restraining the respondents from dealing with the property will lead to serious consequences and irreparable injury to them. It is also stated that the property has already been mortgaged. In such a view of the matter, this Court is not inclined to extend the interim order passed. This Court is restrained itself from making any observation with regard to the merits and demerits of the case, if any such observation is recorded in this application, in the event of parties to go for an arbitration in future date, same will have some impact in the proceeding. However, on prima facie view, this Court is of the view that it is inequitable to extend the interim order granted. Accordingly **interim order granted by this Court, on 1/7/2021, in O.A.No.381 of 2021 is vacated and the same is dismissed. Consequently, Arbitration Application No.47 of 2021 is allowed.** Any finding recorded in this application will not have any bearing in other proceeding.

Sd./-(N.S.K.J.)
3/8/2021

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Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)
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