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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 25th DAY OF AUGUST 2021

THE HON'BLE MR.JUSTICE N.SESHASAYEE

A.No.2856 of 2021
and
A.No.1245 of 2021
in
C.S. No.478 of 2007

M/s. Raj Paris Civil Constructions Ltd.,
represented by its Director,
Mr.R.Satchidanandam,
having office
at Old No.162-B, New No.30,
Greams Lane, Thousand Lights,
Chennai 600 006

...Applicant/Applicant/Plaintiff

-VS-

1.Mohamed Ibrahim,
S/o.M.S.Alliyar Bai,
No.1/59, Perumal Koil Street
Poonamallee High Road,
Siva Boodam Village,
Vanagaram, Chennai 600 095

2.A.Mohamed Yunus,
S/o. M.S.Alliyar Bai,
No.1/59, Perumal Koil Street
Poonamallee High Road,
Siva Boodam Village,
Vanagaram, Chennai 600 095

3. M.S.Alliyar Bai,
S/o. Shaik. Dawood Saheb,
No.1/59, Perumal Koil Street
Poonamallee High Road,



Siva Boodam Village,
Vanagaram, Chennai 600 095

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4. Mohuzeen,
S/o.K.S.M.Abdul Khadar,
No.6, 6th Avenue Ashok Nagar,
Chennai 600 083

5. Khadar Meeran,
S/o. K.S.Meera Naina
No.3, Barado Street,
West Mambalam,
Chennai 600 033

..Respondents/Respondents/Defendants

A.No.1245 of 2021

Application praying that this Hon'ble Court be pleased to order payment out of a sum of Rs.12,39,45,026.50/- from and out of the deposit amount namely Rs.24,49,11,983/- now available to the credit of the Civil Suit in C.S.No.478 of 2007 and direct the Registry / Office of this Hon'ble Court to issue cheque for a sum of Rs.12,39,45,026.50/- (Rupees Twelve Crores Thirty Nine Lakhs Forty Five Thousand Twenty Six and Fifty Paise) in favour of the Applicant/Plaintiff/Decree Holder, namely M/s.Rajparis Civil Constructions Ltd.,

A.No.2856 of 2021

Application praying that this Hon'ble Court be pleased to set aside the order dated 3.8.2021, issued on 5.8.2021 of the Hon'ble Master High Court of Madras in Application No.1245/2021 in C.S.No.478/2007.



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These applications coming on this day before this Court for hearing in the presence of Mr.S.Parthasarathy, Senior Counsel for Mr.K.Kuppusamy, advocates for the applicant in both applications, and the respondents herein not appearing in person or by advocate and upon reading the Judges Summons and the affidavit of R.Satchidanandam filed in A.No.2856 of 2021 and A.no.1245 of 2021 and the certificate of funds filed in A.No.1245 of 2021 and the order dated 03.08.2021 made in A.No.1245 of 2021 and,

It is ordered as follows:-

That the order dated 03.08.2021 made in A.No.1245 of 2021 be and is hereby set aside.

2. That the Registrar General of this Court, do from and out of a sum of Rs.24,49,11,938/- (Rupees Twenty Four Crores Forty Nine Lakhs Eleven Thousand Nine Hundred and Thirty Eight only) now in Court deposit standing to the credit of this C.S.No.478 of 2007 and pay a sum of Rs.12,39,45,026.50 (Rupees Twelve Crores Thirty Nine Lakhs Forty Five Thousand Twenty Six and Fifty Paise only) to M/s.Rajparis Civil Constructions Ltd., rep.by its Director, Mr.R.Satchindanandam, the applicant herein and issue a cheque therefor in their favour.



3. That the Registry is further required to intimate the defendants about the balance amount available with it and is directed to pay the same to the defendants after satisfying itself about their identity.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
25th DAY OF AUGUST 2021.

Sd/-
ASSISTANT REGISTRAR (O.S-II)
//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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A.No.2856 of 2021
and
A.No.1245 of 2021
in
C.S. No.478 of 2007

ORDER

DATED:25.08.2021

THE HON'BLE MR.JUSTICE
N.SESHASAYEE

FOR APPROVAL: 09.09.2021

APPROVED ON : 09.09.2021

Copy to:

1.The Registrar General
High Court, Madras

2.Accounts Section



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2021

CORAM : JUSTICE N.SESHASAYEE

A.No.2856 of 2021
in C.S.No.478 of 2007

M/s.Rajparis Civil Constructions Ltd.,
Old No.16-B, New No.30
Greens Lane,
Thousand Lights
Chennai – 600 006.

... Applicant / Plaintiff

Vs.

1.Mohamed Ibrahim
2.A.Mohamed Yunus
3.M.S.Alliyar Bai
4.Mohuzeen
5.Khadar Meeran

... Respondents / Defendants

Prayer : Application filed to set aside the order dated 03.08.2020 issued on 05.08.2020 on the learned Master in Application No.1245/2021 in C.S.No.478 of 2007.

For Applicant : Mr.S.Parthasarathy
Senior Counsel

For Respondents : No Appearance

ORDER

<https://hcservices.ecourts.gov.in/hcservices/> The plaintiff has instituted the suit for recovery of sum of

Rs.4,36,67,982/- with interest at 18% p.a. on the principal sum of



Rs.3,27,62,500/- and on 25-08-2014 the said suit came to be decreed exparte.

2. Be that as it may, during the pendency of the suit, the plaintiff has initiated garnishee proceedings with a direction to the National Highways Authority which was in possession of the compensation amount payable to the defendants consequent to an acquisition of their properties. A sum of Rs.24,49,11,983/- came to be deposited by the NHAI to credit of this case (which is puzzling since it represents manyfolds than the suit-claim).

3. Now, the plaintiff has taken out an application before the Master for to enable him realise the decretal sum of Rs.12,39,45,026.50 out of the amounts in Court-deposit. This was dismissed by the Master on the ground that the plaintiff/decreed-holder ought to file only an application for executing a decree.

4. Heard Thiru S. Parthasarathy, Senior Counsel, for the applicant. He submitted that not only did the defendants choose not to contest the suit and opt to stay exparte, even in the pay-out application they remained exparte even though they were served with the notices. He further

submitted that the decree passed in 2014 has now become final. Since the



defendants have not chosen to contest the said pay-out application there may not be any procedural embargo in collecting the dues to which the plaintiff is entitled to, argued the counsel.

5. This Court finds considerable merit in the submissions of the learned counsel. Court's role does not stop with the decree it passes, but continues till the fruits of the decree are physically realised for the decree-holder. The point is, should in every case the decree-holder should prefer an execution petition?

6. If the cue that Sec.47 CPC provides is taken as a clue to understand what needs to follow once a decree is passed, it is possible to derive from it that a decree can either be satisfied, or discharged, or executed. Satisfaction of a decree is what the defendant/Judgement-debtor may do on own volition in submission to a decree. Therefore, Execution of a decree becomes necessary only when a decree is neither satisfied, nor discharged. If the plaintiff were to realise the decretal amount then the decree must be satisfied voluntarily by the defendants and where they default, it has to be realised out of their assets.

7. Here is a situation, where the Court is in possession of the funds of



the defendants, the latter's asset, which is adequate to satisfy the decretal claim. Should the decree-holder be compelled to execute the decree? This

Court considers that it need not always be so. There are two reasons:

- Firstly, under Order XXI Rule 1 CPC., one of the modes provided for payment of the money under a decree is to deposit the decretal sum in the Court, and issue notice thereof to the decree-holder. And where it is paid without involving the Court, the mode of payment must be in writing, which obviously is intended to secure the interest of the judgement-debtor. It must be read with Order XXI Rule 2 CPC. And these provisions deal with pre-execution stage of a money decree. Therefore, it needs to be underscored that the Code does encourage payment of decree-debt other than by execution of a decree.
- Secondly, if the Court comes to be in possession of funds of the defendants pursuant to a garnishee proceedings, the funds are in *custodia legis*, and the Court holds it more as a trustee and is required to manage the funds for the benefit of parties. The Court is therefore may have to discharge such obligation that it has created on the property in *custodia legis* (read as funds of the defendants). In otherwords, the decree once passed creates a crystalized obligation on the funds of the defendants which the Court has in its custody and control. Now, is it not reasonable and less cumbersome a procedure



if the Court pays out the decree-holder from and out of the funds of the defendants which is in its custody in the very case in which it has passed the decree?

The only difference between the two statements made hereinabove is that, while Order XXI Rule 1 situation contemplates a voluntary submission to the decree, amount deposited by a garnishee may not be considered so. It may therefore be necessary to issue notice to the defendants, if payments were to be made out of the funds deposited by the garnishee, since fairness of Court's procedure demands that the defendants/judgement-debtors are informed how the amounts of the defendants, but in the deposit of the Court are handled by the Court. Once this rule of fairness is complied, it makes little difference whether the defendants pay the decree-debt on his/her own volition, or the Court pays. The ultimate object is to ensure that the decree-holder is not denied the benefits of the decree.

8. An adage, born of the decree-holder's anguish, and the one which is longing for being recognised as a legal maxim is: "The agony of a decree holder commences the moment he obtains a decree". A litigant must be presumed to be in misery. Hence his cause of action is not suspected when



Court never permits itself to be guided by a process that makes the life of a litigant more miserable. Viewed thus, a Execution is but a procedural option, and it must be and can be dispensed with in appropriate cases.

9. In fine, **this Court allows this application** and directs the Registry to issue a cheque for a sum of Rs.12,39,45,026.50 to the plaintiff. Registry is further required to intimate the defendants about the balance amount available with it and is directed to pay the same to the defendants after satisfying itself about their identity.

Sd./-N.S.S.J
25.08.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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