

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

CORAM : JUSTICE **N.SESHASAYEE**

C.S.No.301 of 2017
and O.A.No.477 of 2021
and A.Nos.2751 & 2752 of 2021

V.Gopalan

... Plaintiff

Vs.

1.Chemitherm Plants & Systems Private Limited
Represented by its Director Mr.V.Shanath Babu
No.31, First Main Road
Raja Annamalaipuram
Chennai – 600 028.

2.V.Shanath Babu

3.State Bank of India
Rep. By its Branch Manager
Adyar Branch
No.5, First Cross Street
Kasthuribai Nagar
Adyar, Chennai – 600 020.

... Defendants

[3rd defendant deleted as per Order dated
29.11.2018 in A.No.9072 of 2018]

PRAYER : Civil Suit filed under Order IV Rule (1) of O.S.Rule R/W. Order VII Rule 1 C.P.C., praying for a Judgment and Decree:

- (a) directing the first and second defendants to substitute the collateral security of any other property or repaying the SBI as agreed to by the 2nd defendant (or)
- (b) directing the defendants to pay the entire amounts of loss and damages arising out of the recovery measures taken by the SBI under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, to the plaintiff.
- (c) to award an amount of Rs.5,00,000/- towards damages to be paid by the second defendant to the plaintiff for the breach of contract committed by the second defendant
- (d) Cost of the suit
- (e) And to pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

[Prayer amended as per order dated 29.11.2018 in A.No.9072/2018]

For Plaintiff : Dr.P.Vasudevan

For Defendants : Mr.T.N.Murali Mohan [D1 & D2]

JUDGMENT

The learned counsel for the plaintiff submits that he stood guarantee for the loan advanced by the State Bank of India to the defendants 1 and 2. He further added that the matter has been amicably compromised between the surety and the creditor for a value well below the actual money, which the defendants 1 & 2 owed the Bank.

2. The learned counsel for the plaintiff further added that the plaintiff has settled the claim of the State Bank of India. He further seeks the leave of the Court to withdraw the suit and to permit him to proceed against the defendants for the claim so settled.

3. The learned counsel for the defendants submitted that the defendants have raised a counter claim with regard to a certain property against the plaintiff.

4. To this, the learned counsel for the plaintiff would submit that this

property which is the subject matter of the counter claim, is outside the territorial jurisdiction of this Court.

5. The defendants have filed A.No.2751 of 2021 seeking transfer of suit to the District Court at Thiruvallur, which has got territorial jurisdiction over the property. The learned counsel for the plaintiff agrees to this. This application is closed, and accordingly the counter claim is directed to be transferred to the District Court at Thiruvallur. The defendants have also filed applications in A.No.2752 of 2021 and O.A.No.477 of 2021 in C.S.No.301 of 2017, and these applications are also directed to be made over to the District Court.

6. So far as the present suit is concerned, the plaintiff is the architect of his suit and he has every liberty to withdraw the suit. Once the claim of the creditor is made by the surety, the surety steps into the shoes of the creditor and will acquire all the rights which the creditor has. So far as the counter claim is concerned, that will be kept alive.

7. The suit is now dismissed as withdrawn with leave to the plaintiff to

proceed against the defendants as per law. The Registry is directed to refund the Court fee as per law. No costs.

10.08.2021

tsg/ds

Index : Yes / No

Internet: Yes/ No

Speaking Order / Non-speaking order

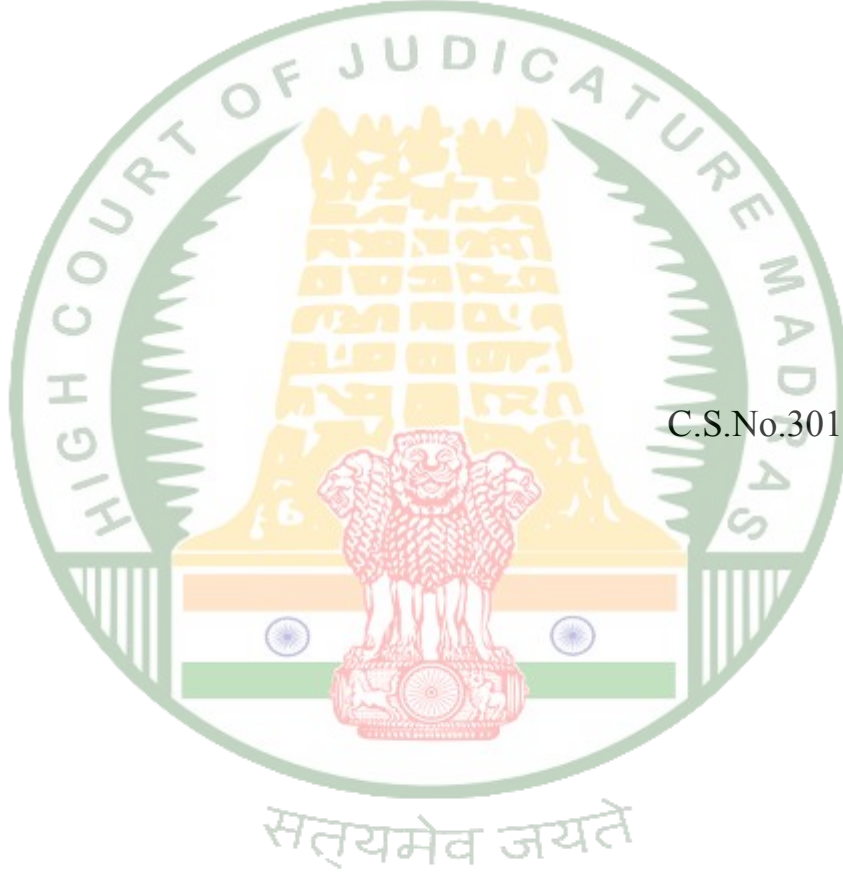


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C.S.No.301 of 2017

N.SESHASAYEE, J.,

ds



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