



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 11TH DAY OF JANUARY 2022

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

C.S. No.190 of 2021

Mr.Balavignesh S,
S/o.Mr.Subramani P
No.5, 3rd Cross Street, Ramesh Nagar
Tambaram West,
Chennai-600 045.

.. Plaintiff

-Vs-

1. Mr.Seshasayee. R,
S/o. Mr.Raghavachari
Quantas Trinity Apartments
#18, 2E, 2nd Floor, West Road
West CIT Nagar, Chennai-600 035.

2. Mr.Boopathy N.R,
S/o.Mr.Ramachandran
123/66, Kavya Towers
Velachery Road, Little Mount
West Saidapet, Chennai-600 015.

3. Mr.Gopi Krishna S,
S/o.Mr.Balaram
A3, Damayathi Apartments
No.17, South Mada Street
Nungambakkam, Chennai-600 034.

4. Mrs. Chithra Seshasayee,
W/o.Mr.Seshasayee R
Quantas Trinity Apartments
#18, 2E, 2nd Floor, West Road
West CIT Nagar, Chennai-600 035.

..Defendants



Civil Suit praying that this Hon'ble Court be pleased to grant a

Judgment and decree as follows

(a) A decree of Dissolution of Partnership business of the Firm, MODOMINES with its Office at 123 & 66, Kavya Towers, Velachery Road, Little Mount, West Saidapet, Chennai-600 015, dissolving the said firm, be passed in favour of plaintiff and against the defendants with effect from the date of filing of the suit;

(b) A decree of rendition of accounts to be passed in favour of the plaintiff and against the defendants, ordering defendants 1 to 4 to render the true, complete and correct accounts of the firm, MODOMINES, 123/66, Kavya Towers, Velachery Road, Little Mount, West Saidapet, Chennai 600 015 from 19.01.2018 till date of the suit and decree and the share of the plaintiff towards capital, profits, assets, goods, properties etc., of the said partnership, be ascertained and decree for the same be passed.

(c) A final decree for dissolution and rendition of accounts and distribution of profits be passed after ascertaining the accounts, thereby ascertaining the share of the plaintiff up to the tune of 25% and directing the payment thereof to the plaintiffs;

(d) A decree for appointment of a receiver to take charge of the management and affairs of the firm, MODOMINES and to audit the accounts of firm, MODOMINES from 19.01.2018 till date of suit and decree and to direct the assets of the firm, MODOMINES to be valued and realised, etc; and to wind up the affairs of the firm, MODOMINES in accordance with law;

(e) A decree of permanent injunction restraining the defendants, their men, agents, servants and persons claiming through them from dealing with



all the properties of the partnership firm, MODOMINES in any manner, by selling, mortgaging or transferring the assets of the firm, MODOMINES and collecting the dues of the firm, MODOMINES from its debtors etc., till the receiver is appointed by this Court and he assumes control of the assets of the firm, MODOMINES;

(f) the costs.

This Suit coming on this day before this Court for hearing in the presence of Mrs.Revathi Manivannan, Advocate for the plaintiff herein and Mr.V.P.Sengottuvel, Senior counsel for Mr.P.S.Prabu, Advocate for the defendants herein and upon reading the plaint filed herein and the joint memo of compromise signed by the plaintiff and the defendants with their respective advocate and the said advocate for the parties hereto, praying this Court to pass a decree in terms of joint memo of compromise morefully set out in the schedule hereunder, it is interms thereof ordered and decreed as follows:-

1) That the plaintiff herein has agreed to retire from the Firm "MODOMINES" with effect from the date of execution of a Deed of Retirement and the plaintiff in lieu of his retirement and towards full and final settlement of all claims, including but not limited to mismanagement and misappropriation, or any other new or additional claims of whatsoever in nature and quantum that the plaintiff may presently have or shall rise in



Rs.28,00,000/- (Rupees Twenty Eight Lakhs Only) towards full and final settlement sum.

2) That the Firm has on this day paid the above said full and final settlement sum of Rs.28,00,000/- (Rupees Twenty Eight Lakhs Only) to the plaintiff herein vide a Demand Draft dated 10.01.2022 bearing No.505259 drawn on ICICI Bank, CIT Nagar Branch, Chennai, in the name of the plaintiff herein and the above said sum has been paid by the Firm from and out of the funds brought in by the 1st defendant into the accounts of the Firm, the plaintiff acknowledges the receipt of the said full and final settlement amount and hereby discharges the Firm and the Defendants of any further payments and claims of whatsoever in nature thereof for the past, present or in future and the plaintiff in lieu of receipt of the above said full and final settlement sum towards all his claims against the Defendants and the Firm has on this day executed a Deed of Retirement and Reconstitution of the Partnership thereby confirming his retirement from the Firm.

3) That the plaintiff herein covenants to withdraw all actions, including but not limited to Police complaint dated 04.05.2021, all other complaints or suits of whatsoever in nature, pertaining to initiating or continuing civil or criminal actions/proceedings against the Firm or the

Defendants and the plaintiff and the Defendants mutually agree for disposal



of this suit by recording the terms of compromise.

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4) That the plaintiff herein shall irrevocably release, waive and discharge any and all actions, proceedings, claims of whatsoever in nature, counter claims, rights, demands and set-offs, in any and all jurisdictions, whether or not presently known in fact or under the law of any jurisdiction, whether arising in law or in equity, and whether arising in contract, tort or otherwise, that he ever had, may have or hereafter can, shall or may have against the Firm or the defendants.

5) That the plaintiff herein shall have no share, right, title or interest or claim of any nature whatsoever to or in the said partnership firm or business or assets or its name or goodwill or its ERP software or its properties, whether tangible or intangible, including the receivables and outstanding etc., whatsoever and wheresoever, with effect from the date of constitution of the Firm and the plaintiff specifically confirms that as agreed in the Addendum dated 07.03.2018, the ERP software - MODOMINES is the asset of the Firm and he shall hereinafter have no right, title, interest or claim of whatsoever in nature over the said software or its rights and further confirms that he shall neither put or offer it to use nor reproduce the said software and its materials in any manner either directly or indirectly.

6) That the plaintiff herein covenants that he shall have no claim or interest, either existing or may be arising in future, in the business



of the Firm or in the benefits, rights, enjoyment and advantages of name, software, ERP - MODOMINES, domain, licenses, registrations, business, clients and all tangible, intangible assets, advantages, rights and incidental claim held by the Firm and it will continue to belong to the Firm and thus to the Defendants.

7) That the plaintiff herein doth hereby release the defendants and each of them from all actions, accounts, claims and demands in relation to the said partnership and from all the covenants, agreements, matters and things connected thereto.

8) That the plaintiff herein shall not establish after the execution hereof at any future point of time any business or trade under a name that is identical or similar to 'MODOMINES' or which in any way suggests any connection with 'MODOMINES'.

9) That the plaintiff herein covenants to the defendants that he shall not either on his own account or in association with others engage or participate directly or indirectly, whether as shareholder, director, partner, proprietor, member, agent, distributor, employee or advisor or consultant or otherwise, within India or outside India in whatever capacity for a period of four years from the date of execution of this Deed for whatever reasons:

a) in any business which, involves, relates to or

competes with the Firm's present Business and Software;

b) establish, develop, carry on or assist in carrying on



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or be engaged, concerned, interested or employed in any business enterprise or venture competing with the Firm's Business;

c) solicit, canvass or entice away (or Endeavour to solicit, canvass or entice away) from the Firm's Business, any person, firm or company who was at any time a client or customer of the Firm's Business, for the purpose of offering to such client or customer, goods or services similar to or competing with those of the Firm's Business;

d) solicit, canvass or entice away (or endeavour to solicit, canvass or entice away) any of the employees including the senior employees and/or technical or sales and marketing staff from the Firm, whether or not such person would commit a breach of contract by reason of leaving service with the Firm;

e) solicit, canvass or entice away (or endeavor to solicit canvass or entice away) any supplier of the Firm or of any of its affiliates or use its knowledge of or influence over any such supplier to or for its benefit or for the benefit of any other person carrying on business competing with the Firm's business;

f) act as an advisor, consultant, trustee or agent for any third person who is engaged or proposes to start any business which directly or indirectly relates to the Firm's business and software or promote, start, engage in or do any business that directly or indirectly relates to the Firm's Business and



10) That the defendants herein shall be absolutely entitled to continue the business of the firm and the plaintiff covenants to not cause any hindrances to the same.

11) That a certificate under Section 69 of Tamil Nadu Court Fees and Suits Valuation Act, 1955, do issue herein, out of and under the seal of this Court in favour of Mr.Balavignesh. S, the plaintiff herein, authorising him, to receive from the pay and Accounts Office, High Court, Madras a sum of Rs.1,10,500/- (Rupees one lakhs ten thousand and five hundred only) being the entire court fee paid on the plaint by the plaintiff herein.

12) That the connected applications are closed, if any.

13) That there shall be no order as to costs of this suit.

Schedule - JMC



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28.01.2022

C.S. No.190 of 2021

ORDER

DATED: 11.01.2022

THE HON'BLE MR. JUSTICE
N.ANAND VENKATESH

FOR APPROVAL: 31.01.2022

APPROVED ON: 31.01.2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated :11.01.2022

Coram:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.S.No.190 of 2021

Balavignesh S,
S/o.Mr.Subramani P
No.5, 3rd Cross Street, Ramesh Nagar
Tambaram West,
Chennai-600 045.

.. Plaintiff

/versus/

1. Seshasayee. R,
S/o. Mr.Raghavachari
Quantas Trinity Apartments
#18, 2E, 2nd Floor, West Road
West CIT Nagar, Chennai-600 035.
2. Boopathy N.R,
S/o.Mr.Ramachandran
123/66, Kavya Towers
Velachery Road, Little Mount
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3. Gopi Krishna S,
S/o.Mr.Balaram
A3, Damayathi Apartments
No.17, South Mada Street
Nungambakkam, Chennai-600 034.
4. Chithra Seshasayee, W/o.Mr.Seshasayee R
Quantas Trinity Apartments
#18, 2E, 2nd Floor, West Road
West CIT Nagar, Chennai-600 035.

..Defendants



Prayer:

Civil Suit has been filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of C.P.C. 1908 and under Section 7 of the Commercial Courts Act, 2015, praying to pass a judgment and decree for:-

(a) A decree of Dissolution of Partnership business of the Firm, MODOMINES with its Office at 123 & 66, Kavya Towers, Velachery Road, Little Mount, West Saidapet, Chennai-600 015, dissolving the said firm, be passed in favour of plaintiff and against the defendants with effect from the date of filing of the suit;

(b) A decree of rendition of accounts to be passed in favour of the plaintiff and against the defendants, ordering defendants 1 to 4 to render the true, complete and correct accounts of the firm, MODOMINES, 123/66, Kavya Towers, Velachery Road, Little Mount, West Saidapet, Chennai 600 015 from 19.01.2018 till date of the suit and decree and the share of the plaintiff towards capital, profits, assets, goods, properties etc., of the said partnership, be ascertained and decree for the same be passed.

(c) A final decree for dissolution and rendition of accounts and distribution of profits be passed after ascertaining the accounts, thereby ascertaining the share of the plaintiff up to the tune of 25% and directing the payment thereof to the plaintiff's;

(d) A decree for appointment of a receiver to take charge of the management and affairs of the firm, MODOMINES and to audit the accounts of firm, MODOMINES from 19.01.2018 till date of suit and decree and to direct the assets of the firm, MODOMINES to be valued and realised, etc; and to wind up the affairs of the firm, MODOMINES in accordance with law;

(e) A decree of permanent injunction restraining the defendants, their men, agents, servants and persons claiming through them from dealing with



all the properties of the partnership firm, MODOMINES in any manner, by selling, mortgaging or transferring the assets of the firm, MODOMINES and collecting the dues of the firm, MODOMINES from its debtors etc., till the receiver is appointed by this Court and he assumes control of the assets of the firm, MODOMINES;

(f) the costs.

For Plaintiff : Mrs.Revathi Manivannan
For Defendants : Mr.V.P.Sengottuvel, Senior counsel
for Mr.P.S.Prabu

J U D G M E N T

(The case has been heard through Video Conferencing)

This suit was filed by the plaintiff seeking for a decree for dissolution of partnership firm, rendition of accounts and other consequential reliefs.

2. During the pendency of the suit, the parties were able to arrive at a settlement and the terms of settlement was reduced to writing and a joint memo of compromise has been filed along with the deed of retirement and reconstitution of partnership. The memo of compromise has been signed by all the parties and their respective counsel.

3. The terms of joint memo of compromise are extracted hereunder:

'2. Subject to the terms and conditions agreed hereunder, the plaintiff has agreed to retire from the Firm "MODOMINES" with effect from the date of execution of a Deed of Retirement. The plaintiff in lieu of his retirement and towards full and final settlement of all claims,



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including but not limited to mismanagement and misappropriation, or any other new or additional claims of whatsoever in nature and quantum that the plaintiff may presently have or may rise in future against the Firm or the defendants, shall be entitled to a sum of Rs.28,00,000/- (Rupees Twenty Eight Lakhs Only) towards full and final settlement sum.

3. The Firm has on this day paid the above said full and final settlement sum of Rs.28,00,000/- (Rupees Twenty Eight Lakhs Only) to the plaintiff herein vide a Demand Draft dated 10.01.2022 bearing No.505259 drawn on ICICI Bank, CIT Nagar Branch, Chennai, in the name of the plaintiff herein. The above said sum has been paid by the Firm from and out of the funds brought in by the 1st defendant into the accounts of the Firm. The plaintiff acknowledges the receipt of the said full and final settlement amount and hereby discharges the Firm and the Defendants of any further payments and claims of whatsoever in nature thereof for the past, present or in future. The plaintiff in lieu of receipt of the above said full and final settlement sum towards all his claims against the Defendants and the Firm has on this day executed a Deed of Retirement and Reconstitution of the Partnership thereby confirming his retirement from the Firm.

4. The plaintiff covenants to withdraw all actions, including but not limited to Police complaint dated 04.05.2021, all other complaints or suits of whatsoever in nature, pertaining to initiating or continuing civil or



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criminal actions/proceedings against the Firm or the Defendants. The plaintiff and the Defendants mutually agree for disposal of this suit by recording the terms of compromise.

5. The plaintiff shall irrevocably release, waive and discharge any and all actions, proceedings, claims of whatsoever in nature, counter claims, rights, demands and set-offs, in any and all jurisdictions, whether or not presently known in fact or under the law of any jurisdiction, whether arising in law or in equity, and whether arising in contract, tort or otherwise, that he ever had, may have or hereafter can, shall or may have against the Firm or the defendants.

6. The plaintiff, shall have no share, right, title or interest or claim of any nature whatsoever to or in the said partnership firm or business or assets or its name or goodwill or its ERP software or its properties, whether tangible or intangible, including the receivables and outstanding etc., whatsoever and wheresoever, with effect from the date of constitution of the Firm. The plaintiff specifically confirms that as agreed in the Addendum dated 07.03.2018, the ERP software - MODOMINES is the asset of the Firm and he shall hereinafter have no right, title, interest or claim of whatsoever in nature over the said software or its rights and further confirms that he shall neither put or offer it to use nor reproduce the said software and its materials in any manner either directly or indirectly.



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7. *The plaintiff covenants that he shall have no claim or interest, either existing or may be arising in future, in the business of the Firm or in the benefits, rights, enjoyment and advantages of name, software, ERP - MODOMINES, domain, licenses, registrations, business, clients and all tangible, intangible assets, advantages, rights and incidental claim held by the Firm and it will continue to belong to the Firm and thus to the Defendants.*

8. *The plaintiff doth hereby release the defendants and each of them from all actions, accounts, claims and demands in relation to the said partnership and from all the covenants, agreements, matters and things connected thereto.*

9. *The plaintiff shall not establish after the execution hereof at any future point of time any business or trade under a name that is identical or similar to 'MODOMINES' or which in any way suggests any connection with 'MODOMINES'.*

10. *The plaintiff covenants to the defendants that he shall not either on his own account or in association with others engage or participate directly or indirectly, whether as shareholder, director, partner, proprietor, member, agent, distributor, employee or advisor or consultant or otherwise, within India or outside India in whatever capacity for a period of four years from the date of execution of this Deed for whatever reasons:*

a) in any business which, involves, relates to or competes with the Firm's present Business and Software;



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b) establish, develop, carry on or assist in carrying on or be engaged, concerned, interested or employed in any business enterprise or venture competing with the Firm's Business;

c) solicit, canvass or entice away (or Endeavour to solicit, canvass or entice away) from the Firm's Business, any person, firm or company who was at any time a client or customer of the Firm's Business, for the purpose of offering to such client or customer, goods or services similar to or competing with those of the Firm's Business;

d) solicit, canvass or entice away (or endeavour to solicit, canvass or entice away) any of the employees including the senior employees and/or technical or sales and marketing staff from the Firm, whether or not such person would commit a breach of contract by reason of leaving service with the Firm;

e) solicit, canvass or entice away (or endeavor to solicit canvass or entice away) any supplier of the Firm or of any of its affiliates or use its knowledge of or influence over any such supplier to or for its benefit or for the benefit of any other person carrying on business competing with the Firm's business;

f) act as an advisor, consultant, trustee or agent for any third person who is engaged or proposes to start any business which directly or indirectly relates to the Firm's business and software or promote, start, engage in or do any business that directly or indirectly relates to the Firm's Business and software.



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11. That the defendants shall be absolutely entitled to continue the business of the firm and the plaintiff covenants to not cause any hindrances to the same.

12. That the plaintiff shall be entitled for refund of Rs.1,00,000/- (Rupees One Lakh Only) paid as Court Fee in C.S.No.190 of 2021 in terms of Section 69 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 and the Defendants shall not have any objection against the same.'

4. In view of the above development, this Civil Suit is disposed of in terms of joint memo of compromise and the deed of retirement and reconstitution of partnership entered into between the parties. The joint memo of compromise shall form part of the decree. Since the parties have arrived at a settlement and the suit was at the pre-trial stage, this Court is inclined to permit the plaintiff for refund of the entire Court fee that was paid at the time of filing the suit. The learned counsel for the plaintiff shall move an appropriate application/memo seeking for refund of Court fee and the Court fee shall be refunded. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected applications are closed, if any.

Sd./- N.A.V.J.
11.01.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)