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*C.S(Comm. Div.)No.70 of 2021*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: **28.10.2022**

CORAM

**THE HON'BLE MR.JUSTICE M.SUNDAR**

**C.S(Comm. Div.)No.70 of 2021**

**and**

**A.No.3015 of 2022**

**in**

**C.S(Comm. Div.)No.70 of 2021**

**C.S.(Comm. Div.)No.70 of 2021**

Mr.Sahil Kansaria  
Proprietor of  
M/s.S.S.Enterprises  
No.130/4, Manali Express Road,  
Ernavoor, Manali  
Chennai-600 057.

.. Plaintiff

Vs.

1. M/s.Ponneri Steel Industries  
Represented by its Partner  
Mr.Anand Garg  
No.2, Vaidhyanathan Street,  
Tondiarpet, Chennai-600 081.
2. Mrs.Lalitha Devi  
W/o. Late Mr.Manmohan Agarwal
3. Mr.Hemanth Agarwal  
S/o. Late Mr.Manmohan Agarwal
4. Mr.Anand Garg



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No.14/12, 2nd Floor  
Agasthiyar Nagar, Kilpauk  
Chennai-600 010.

.. Defendants

**A.No.3015 of 2022 :**

Mrs.Shoba Agarwal  
W/o.Mr.Pankaj Agarwal  
No.14/12, 3rd Floor  
Agasthiyar Nagar, Kilpauk,  
Chennai-600 010.

... Applicant / 3rd party

.Vs.

1. Mr.Sahil Kansaria  
Proprietor of  
M/s.S.S.Enterprises  
No.130/4, Manali Express Road,  
Ernavoor, Manali  
Chennai-600 057.
2. M/s.Ponneri Steel Industries  
Represented by its Partner  
Mr.Anand Garg  
No.2, Vaidhyathan Street,  
Tondiarpet, Chennai-600 081.
3. Mrs.Lalitha Devi  
W/o. Late Mr.Manmohan Agarwal
4. Mr.Hemanth Agarwal  
S/o. Late Mr.Manmohan Agarwal
5. Mr.Anand Garg  
No.14/12, 2nd Floor  
Agasthiyar Nagar, Kilpauk  
Chennai-600 010.

... Respondents 2 to 5 / defendants



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This Civil Suit is preferred, under Order IV of Original Side Rules read with Order VII Rule 1 of the Civil Procedure Code, praying

(a) Directing the defendants, jointly and severally, to pay a sum of Rs.1,39,45,720.98 (Rupees One Crore Thirty Nine Lakhs Forty Five Thousand Seven Hundred and Twenty and Paise Ninety Eight Only) together with interest on Rs.1,38,45,720.98 (Rupees One Crore Thirty Nine Lakhs Forty Five Thousand Seven Hundred and Twenty and Paise Ninety Eight Only) @ 18% p.a from this date till the date of realization, the cause being commercial;

(b) Directing the defendants jointly and severally to pay the costs of the suit;

A.No.3015 of 2022 has been filed under Order XIV Rule 8 of O.S.Rules read with Order XXXVIII Rule 10 of CPC praying to raise the order of attachment dated 26.10.2021 in Application No.3570 of 2021 and reflected as Document No.25/2021 dated 20.11.2021 in the office of the Sub Registrar, Periamet.

**C.S.(Comm. Div.)No.70 of 2021:**

For Plaintiff : Mr.A.R.Karunakaran  
For Defendants : Ms.M.Meenatchi  
representing Mr.R.John Sathyan

**A.No.3015 of 2022 :**

For Applicant : Mr.A.Praveen Kumar  
For Respondents : Mr.A.R.Karunakaran for R1  
Ms.M.Meenatchi  
representing Mr.R.John Sathyan  
for R2 to R5

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## **J U D G M E N T**

Captioned suit and captioned application have been listed under the cause list caption 'FOR RECORDING MEMO OF COMPROMISE'.

2. This judgment / decree and order will dispose of the captioned suit and application.

3. In this judgment, parties shall be referred to by their respective ranks in the main suit for the sake of convenience and clarity.

4. Mr.A.R.Karunakaran, learned counsel on record for sole plaintiff, Ms.Meenatchi, learned counsel from Chamber of Mr.R.John Sathyan counsel on record for defendants 1 and 4 and Mr.A.Praveen Kumar, learned counsel for Ms.Shoba Agarwal {(wife of Mr.Pankaj Agarwal) who is a third party to the main suit and who has filed captioned application namely, A.No.3015 of 2022} are before this Commercial Division.



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5. Defendants 2 and 3 have entered appearance through Mr.Swami Subramanian and Ms.Meenatchi, learned counsel submits that she is representing the counsel on record for defendants 2 and 3 also.

6. This judgment / decree has to be read in conjunction with and in continuation of earlier proceedings made by Hon'ble predecessor Judge in the previous listing on 27.07.2022 and the same reads as follows:

*'A third party has filed an application to raise the attachment. Learned counsel for the plaintiff seeks time to file a counter thereto. Meanwhile, the two contesting parties submit that there is a reasonable prospect of an amicable resolution of the dispute. Therefore, they request that the matter be placed before the Mediation Centre annexed to this Court.*

*2. Acceding to the request, the matter is placed before the Mediation Centre annexed to this Court. Both parties agree to be present before the Mediation Centre on 01.08.2022. Since the date of hearing has been fixed with the consent of parties, a separate notice from the Mediation Centre in this regard is not necessary.*

*3. Let the matter appear before this Court upon receipt of the report of Mediation Centre.'*

7. The above proceedings speak for itself. On being referred to 'Tamil Nadu Mediation and Conciliation Centre under the aegis of this Court' [hereinafter 'TNMCC' for the sake of brevity], TNMCC has conducted mediation and sent a mediation report dated 17.10.2022 under cover of letter dated 20.10.2022 and a scanned reproduction of the same



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is as follows:

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Mediation File No. 459/22  
From  
R. Jeyanthi, B.A., B.A.L.,  
Assistant Registrar,  
Tamil Nadu Mediation and Conciliation Centre,  
High Court, Madras.  
To  
The Assistant Registrar (A.S.R.) (Commercial)  
High Court, Madras.  
Sd/- Madam,  
23/10/22  
Re: Tamil Nadu Mediation and Conciliation Centre, High Court,  
Madras - Case in P. No. 2017/2021 in C.S. (Comm. Div.)  
Referred by Hon'ble Court for Mediation - Not Settled -  
Mediator's Report - Forwarding of - Reg.  
Ref. Copy of the Referred Order, dated 24/10/22, received on 30/10/22.  
I am enclosing herewith the Mediation Report in the above referred case.  
The receipt of this letter along with payment may be acknowledged.  
Yours faithfully,  
B. Srinivasan  
ASSISTANT REGISTRAR (T.N.M.C.C.)  
Encl:  
1. Mediation Report  
2. Forwarding of Communication



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TAMIL NADU MEDIATION AND CONCILIATION CENTRE (TNMCC)  
HIGH COURT, MADRAS

**MEDIATION REPORT**

Mediation File No. 459/2022

Court Case No. CS 70/2022 And 3015/22

Referred By Hon'ble Mr. Justice S.R.M.J.

Date of Referral 24.8.22 J. Suresh Kumar Ramani

Name of the Mediator S.R. Sumathy 8.25/27

Dates of Mediation Sessions 9.10.22 10.10.22  
11.10.22 17.10.22  
23.9.22 3.30 to 4.30 pm 3.30 to 4.30 pm 3.30 to 4.30 pm

Name of the Petitioner(s) Sahil Kankaria

Name of the Respondent(s) M/s Pooreri Steel Industries and others

Counsel for Petitioner(s) Mr. A.R. Karumakuru

Counsel for Respondent(s) Mr. John Satyao

1. Mediation completed. Agreement enclosed. ☒

or

2. Mediation completed. No agreement was reached.

or

3. Parties were not willing to participate in the mediation.

Dated: 17.10.22

Signature of the Mediator S.R. Sumathy



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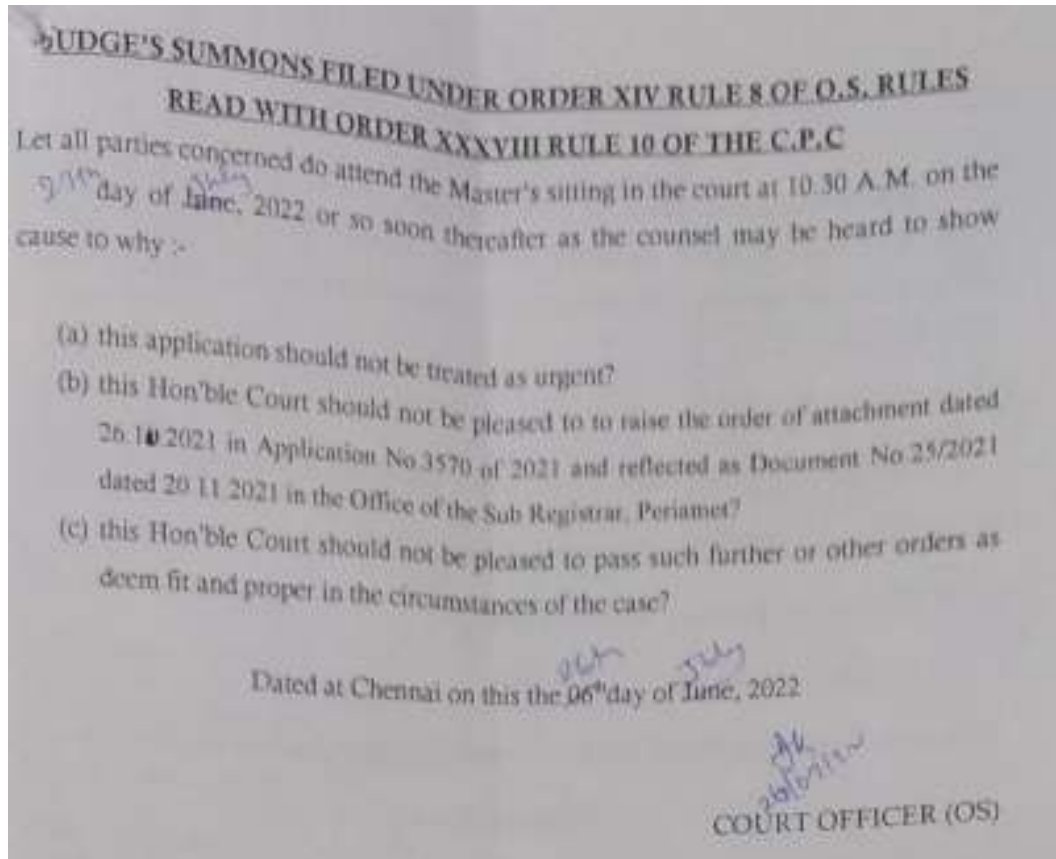
8. All the aforementioned three counsel request for a decree in terms of 'memo of compromise dated 17.10.2022' [hereinafter 'said MOC' for the sake of convenience, clarity and brevity] annexed to the aforementioned mediation report.

9. Before this Commercial Division accedes to aforementioned request for the purpose of clarity, specificity and elimination of possible anomalies, it is made clear that there is an error in the Judge's summons qua captioned application namely, A.No.3015 of 2022. This Commercial Division has verified the vakalatnama and all the three aforementioned counsel before this Commercial Division confirm that the captioned application has been taken out by Mr.APraveen Kumar on behalf of Ms.Shoba Agarwal (wife of Mr.Pankaj Agarwal) whereas the Judge's summons says that it has been taken out by Mr.T.Sivaraman and two others and that affidavit of one Dharmender B. Singh is used in support of the same. In the Judge's summons in prayer limb (b) there is an overwriting. A scanned reproduction of this Judge's summon is as follows:



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10. Therefore, it is made clear that the date of attachment (that is now being lifted vide clause 5 of said MOC) is 26.10.2021.

11. A scanned reproduction of said MOC (together with docket) dated 17.10.2022 alluded to supra is as follows:



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IN THE HIGH COURT OF JUDICATURE AT MADRAS  
(Ordinary Original Civil Jurisdiction)  
C.S.(COMM DIV) No. 70 of 2021

Mr Sahil Kansara  
Proprietor of  
Mrs S.S Enterprises,  
No.1304, Manali Express Road,  
Ernavoor, Manali Chennai - 600057

Plaintiff

Versus

1) M/s. Pooneri Steel Industries  
represented by its Partner  
Mr Anand Garg  
No.2, Vaidhyarayan Street,  
Tondiarpet, Chennai - 600 081

2) Mrs Lalitha Davi  
W/o of Late Mr.Mahendran Agarwal

3) Mr.Hemant Agarwal  
S/o of Late Mr.Mahendran Agarwal  
Defendants 2 & 3 both residing at No.1412,  
1st Floor, Agasthiyar Nagar,  
Kilpauk, Chennai- 600 010.

4) Mr Anand Garg  
No.1412, 2nd Floor,  
Agasthiyar Nagar,  
Kilpauk, Chennai- 600 013

Defendants

19 Dec 2022

**MEMO OF COMPROMISE FILED BY THE PLAINTIFF AND DEFENDANTS**

1. That the Plaintiff and the defendants have resolved to settle their dispute out of court, through the efforts of the mediator appointed by this Honble court. The terms of the compromise are as contained herein.

2. That the Defendants shall pay a sum of Rs.105,00,000/- (Rupees One Crore and Five Lakhs Only) to the Plaintiff in full and final settlement of all the Plaintiff's claims against the defendants in the manner following:

17/10/22

17/10/22



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a) On or before 25-10-2022 - Rs.30,00,000/- (Rupees Thirty lakhs only)  
b) On or before 25-11-2022 - Rs.25,00,000/- (Rupees Twenty Five lakhs only)  
c) On or before 25-12-2022 - Rs.25,00,000/- (Rupees Twenty Five lakhs only)  
d) On or before 25-01-2023 - Rs.25,00,000/- (Rupees Twenty Five lakhs only).

Of the above said sum, Rs.30,00,000/- (Rupees Thirty Lakhs only) has been paid by the 4<sup>th</sup> Defendant to the Plaintiff on this day i.e. 17.10.2022 by way of Demand Draft bearing No. 581862\* dated 17.10.2022 drawn on South Indian Bank, Chennai Service Branch and the Plaintiff does hereby acknowledge and admit receipt of the same.

For the remaining sum of Rs.75,00,000/- (Rupees Seventy Five Lakhs only), the 4<sup>th</sup> Defendant herein has issued the following three cheques in their favour to the Plaintiff:-

a. Cheque bearing No. "071654" dated 15.11.2022 drawn on South Indian Bank, G.T. Chennai for a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only)  
b. Cheque bearing No. "071655" dated 15.12.2022 drawn on South Indian Bank, G.T. Chennai for a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only)  
c. Cheque bearing No. "071656" dated 15.01.2023 drawn on South Indian Bank, G.T. Chennai for a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only)

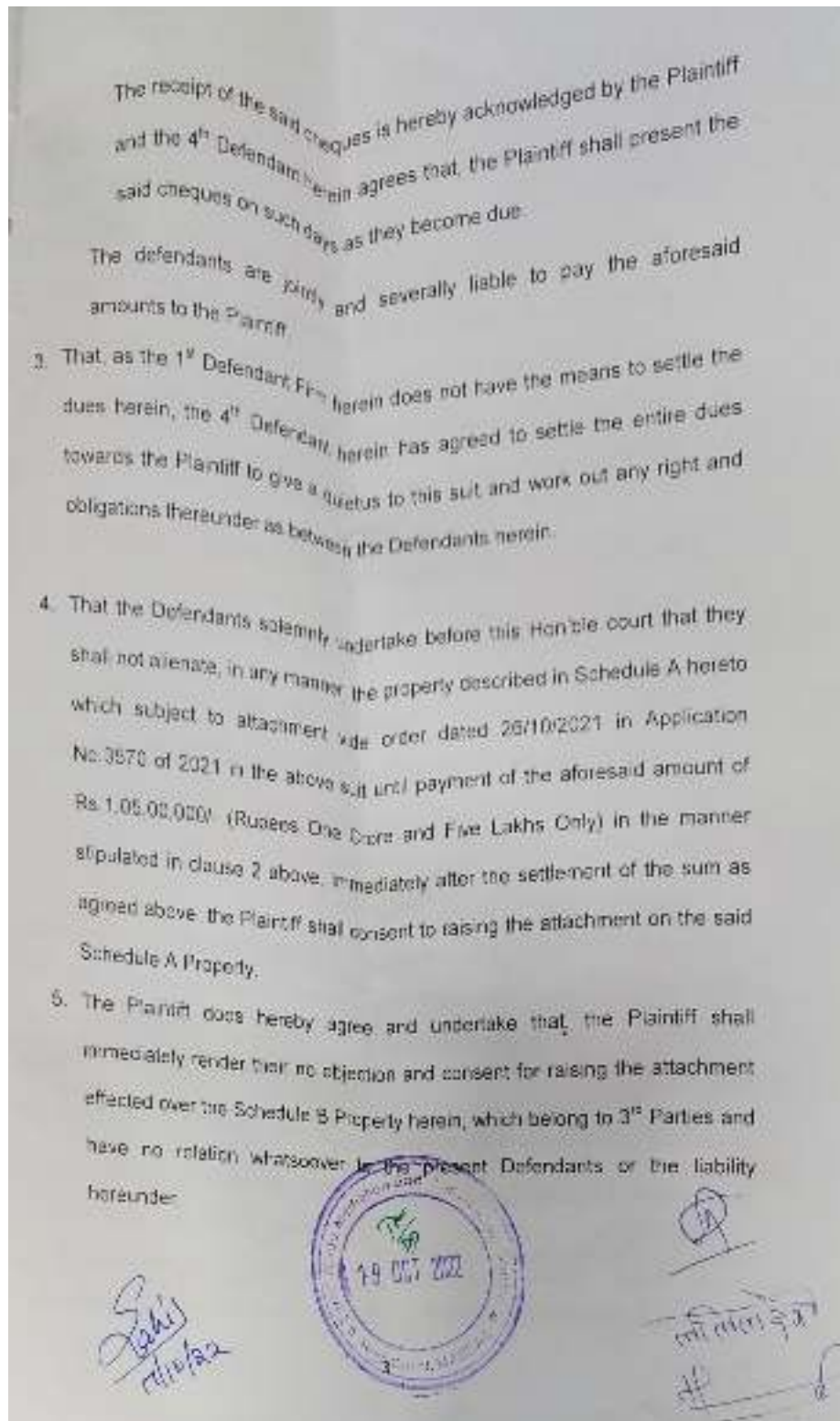
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6. In the event of any breach or delay in the payment of the aforesaid amount of Rs.1,05,00,000/- (Rupees One Crore and Five Lakhs Only) in the manner and within the time stipulated in clause 2 above then, the above suit shall stand decreed as prayed for in the plaint against all the defendants, jointly and severally, and the Plaintiff shall be entitled to the sum of Rs.1,39,45,720/- (Rupees One Crore Thirty Nine Lakhs Forty Five Thousand Seven Hundred and Twenty & Paise Ninety Eight Only) together with interest thereon @ 12% p.a. from date of plaint till date of realization, in full.

7. That this Hon'ble court may be pleased to pass an order of refund of the court fee paid by the Plaintiff.

It is prayed that this Hon'ble court may be pleased to pass a decree in terms of this Memorandum of Compromise and thereby render justice.

#### SCHEDULE OF PROPERTY

##### SCHEDULE A

The house in the 2<sup>nd</sup> Floor in the Ground and Premises bearing Old Door No 12, New No.14- Merry Square, Agasthewar Nagar, Kilpauk, Chennai - 600 010 and 113<sup>rd</sup> undivided share of land from the larger extent of 405.5 sq metres or 5333 sq feet measuring from,

East to West : 24.4 metres on the northern side,

East to West : 24.2 metres on the southern side,

North to South: 20.4 metres on the eastern side,

North to South: 20.4 metres on the western side.

*[Signature]*  
12/12/21

*[Signature]*

*[Signature]*

*[Signature]*



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comprised in present R.S.No.90/12, previously comprised in R.S.No.90 (part) and situated in Egmore Village in Egmore-Nungambakkam Taluk of Chennai District together with all fitting and fixture including the electricity service connections bearing A/c Nos. 149-26-17, 149-26-30 and 149-26-35 available therein with all the deposits made therein bounded on the.

NORTH BY : The property owned by Mr. Kalyanaraman (R.S.No.90/9 of Egmore Village)

EAST BY : 30 feet wide Road known as Moorthy Street.

SOUTH BY : Plot No.10 owned by Jayalakshmi (R.S.No.90/20) and on the.

WEST BY : The property comprised in R.S.No.89 of Egmore Village.

situated within the registration district of Chennai-Central and registration sub district of Perambet and within the limits of Corporation of Chennai in its division No.069 of Zone 05 and covered under bid No.0131.

**SCHEDULE - B**

The houses in the 1<sup>st</sup> and 3<sup>rd</sup> Floors in the Ground and Premises bearing Old Door No.12, New No.14, Moorthy Street, Agatheeswarar Nagar, Kilpauk, Chennai - 600 010 and 2/3<sup>rd</sup> undivided share of land from the larger extent of 495.5 sq metres or 5333 sq feet measuring from,

East to West : 24.4 metres on the northern side.

East to West : 24.2 metres on the southern side.

North to South : 20.4 metres on the eastern side.

North to South : 20.4 metres on the western side.

comprised in present R.S.No.90/12, previously comprised in R.S.No.90 (part) and situated in Egmore Village in Egmore-Nungambakkam Taluk of Chennai District together with all fitting and fixture including the electricity service connections bearing A/c Nos. 149-26-17, 149-26-30 and 149-26-35 available therein with all the deposits made therein bounded on the.

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*Solici*  
*17/10/22*

*19 OCT 2022*

*10*



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NORTH BY : The property owned by Mr. Kalyanaraman (R.S.No.90/9 of Egmore Village)

EAST BY : 30 feet wide Road known as Moorthy Street,

SOUTH BY : Plot No.10 owned by Jayalakshmi (R.S.No.90/20) and on the

WEST BY : The property comprised in R.S.No.89 of Egmore Village,

situated within the registration district of Chennai-Central and registration sub district of Penamet and within the limits of Corporation of Chennai in its division No.058 of Zone 05 and covered under bill No.0131.

Dated at Chennai on this the 17<sup>th</sup> day of October, 2022.

*Sulini*  
17/10/22  
Plaintiff

*[Signature]*  
Defendants 1 & 4

*[Signature]*  
Defendants 2 & 3

*[Signature]* 3679/2  
Counsel for Plaintiff

*[Signature]* 1425/1498  
Counsel for Defendants 1 & 4

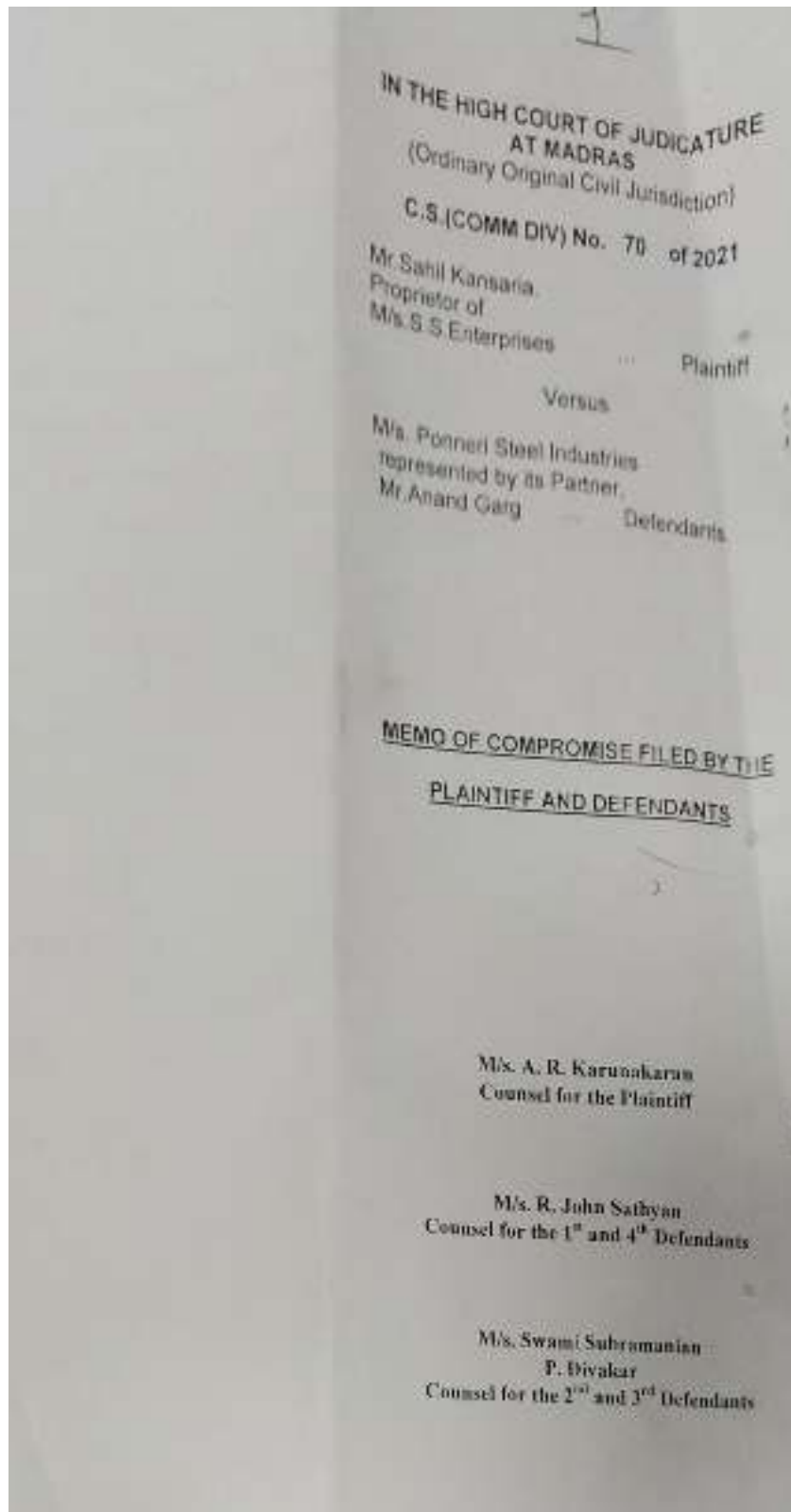
*[Signature]* 554/990  
Counsel for Defendants 2 & 3



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12. All the aforementioned learned counsel before this Commercial Division, advertent to said MOC submit that the same was signed in the presence of each other and on that basis, seek dispensing with the presence of parties for recording memo of compromise. Considering the nature of the matter and the fact that it has been recorded before TNMCC, this request is acceded to.

13. Clause 7 of said MOC reads as follows:

*'7. That this Hon'ble Court may be pleased to pass an order of refund of the Court fee paid by the plaintiff.'*

14. In the light of Section 69-A of 'The Tamil Nadu Court Fees and Suits Valuation Act, 1955 (Tamil Nadu Act XIV of 1955)' [hereinafter 'TN Court Fees Act' for the sake of convenience and clarity], this clause becomes a non-starter.

15. Learned counsel on record for plaintiff Mr.A.R.Karunakaran, very fairly submits that clause 7 of said MOC can be treated as deleted. This submission made on instructions is recorded.

**M.SUNDAR, J.**



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WEB COPY 16. Captioned application ordered in terms of clause 5 of said

mk

MOC. Captioned suit decreed in terms of said MOC (except clause 7 which now stands deleted). Said MOC shall form part of judgment and decree. Captioned main suit and captioned application disposed of in the aforesaid manner. There shall be no order as to costs.

**28.10.2022**

Index : Yes/No  
Speaking/Non-speaking order  
mk

**C.S(Comm. Div.)No.70 of 2021**  
**and**  
**A.No.3015 of 2022**  
**in**  
**C.S(Comm. Div.)No.70 of 2021**