



Crl.O.P.No.11054 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 29.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

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and Crl.M.P.No.5717 of 2016

1. M/s KGS Developers Ltd,
No.63 Kamaraj Avenue,
1st street,
Adayar,
Chennai-600020.
2. Gigi George
3. K.Kumaran
4. P.V.Shanmugam
5. M/s KGS Constructions Ltd,
No.63 Kamaraj Avenue,
1st street,
Adayar,
Chennai-600020.

...Petitioners

-Vs-

Rakesh Sheth

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records and to quash the complaint in C.C.No.1407 of 2013, on the file of the IX Metropolitan Magistrate, Saidapet, Chennai.

For P1, P2, P4 and P5 : M/s Rekha Sidharth
For P3 : No appearance

For Respondent : No appearance



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ORDER

Today, this matter has been listed under the caption “Entire Bundle not available cases”.

2. This Criminal Original Petition has been filed challenging the proceedings in C.C.No.1407 of 2013, on the file of the IX Metropolitan Magistrate, Saidapet, Chennai.

3. Heard the learned counsel for the petitioners 1, 2, 4 and 5. Though notice was served on the respondent and his name is printed in the cause list, today, no one appeared before this Court on behalf of the respondent in person or through pleader.

4. The respondent filed a complaint as against the petitioners. The crux of the complaint is that the petitioners dishonestly induced the respondent to hand over the Managing Directorship of M/s KGS Constructions Ltd and thereby, cheated the respondent. The respondent started a company known as M/s Milestone Shelters (P) Ltd., along with his wife. The respondent is the Managing Director and he performed certain works for the first accused company promoted by the other accused. The accused made an offer to the



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respondent that they were interested in collaborating with the respondent company. Lot of negotiations took place and subsequently, the respondent agreed for the same. In the year 2010, the name of the respondent company M/s Milestone Shelters Pvt Ltd was changed to M/s KGS Constructions Ltd.,. During the month of March and April, 2010, the second to fourth accused purchased 42.6% stake in the fifth accused company, while M/s Reliance Capital Ltd acquired 14.90% stake in the said company M/s KGS Constructions Ltd.,. The respondent and his wife held the remaining 42.50%. The said company was able to generate profit consistently despite of the global recession in the Real Estate Market. Therefore, the accused 2 to 4 wanted to purchase the entire shareholding of the respondent. There was various deliberations and negotiations which took place, in pursuant to which a Memorandum of Understanding came to be executed between the petitioners and the respondent. On 25.01.2012, as per the Memorandum of Understanding, shares owned by the respondent and his wife were to be purchased by the petitioners to the tune of Rs.6 Crores on or before 15.02.2012. However, the petitioners never fulfilled their promise and then after reworking the agreement, induced the respondent to enter into another Memorandum of Understanding dated 30.01.2012. Accordingly, the petitioners once again promised to settle the due to the tune of Rs.3,75,00,000/-. They also issued post dated cheques of Rs.25,00,000/- each.



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However, all the cheques were dishonoured, since “stop the payment” instruction was issued by the petitioners. Hence, the complaint.

5. On receipt of the complaint, the Trial Court had taken cognizance for the offences under Sections 417, 418, 420 and 120B IPC.

6. A perusal of the Memorandum of Understanding dated 29.11.2012, reveals that there is a specific clause for arbitration if any dispute arose in respect of the said Memorandum of Understanding. It is relevant to extract the said portion as follows:-

“13. In the event any dispute arising out of this MOU and same shall be referred to the sole arbitrator appointed by the party of the third part. The place of Arbitration shall be at Chennai only. The Arbitration proceeding shall be governed as per the provisions of the Arbitration and Conciliation Act, 1996.”

7. Accordingly, they approached the Arbitrator and the Arbitrator by an Award dated 03.01.2015 in Arbitration Case No.1 of 2013 passed an Award, thereby directed the petitioners to pay a sum of Rs.3,62,50,000/- and another sum of Rs.43,49,305/- in favour of the respondent. Thereafter, for the very same set of allegations, the respondent filed the present complaint.



8. A perusal of the said complaint revealed that there is no whisper about the arbitration award passed in the year 2013. That apart, in order to execute the arbitration award, the respondent also filed a claim petition in C.P.No.377 of 2016 before this Court and also Contempt Petition in Cont.P.No.2824 of 2016. By an order dated 01.12.2016, the Court recorded the terms of agreement arrived between the petitioners and the respondent dated 29.11.2016, which is extracted hereunder:-

"a) The Parties of the Second Part agrees to convey, sell, transfer and release the immovable property morefully described in the Annexure A (comprising of Schedule A and Schedule B) to this Agreement to the Parties of the First Part, either in their individual names or jointly or to their nominees on or before 2nd December 2016 and the Parties of the First part agree to have the same conveyed in their name. The cost of transfer, if any, will be borne by the Parties of the Second Part is the rate of 75% of their cost and the balance to the cost of party of the First part.

b) The above sale shall be free from all encumbrances and the Parties of the First Part shall be free to enjoy and possess the said properties free from any claims or encumbrances. The Parties acknowledge that properties mentioned in Schedule B to this Agreement is presently mortgaged to Canara Bank and as such, the Party of the Second Part agrees to release the said mortgage and obtain a No-Objection Certificate from the said Bank on or before 31st March 2017.

c) The Parties of the Second Part shall further compensate the Parties of the First Part with a sum of Rs.1,00,00,000/- (Rupees One Crore Only) which shall be Payable in the following manner and the said Cheques will be



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issued specifically by M/s.KGS Developers Ltd and on signing this Agreement

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a. Rs.50,00,000/- vide Cheque No.994401
dt.10.12.2016.

b. Rs.50,00,000/- vide Cheque No.994402
dt.10.12.2016.

d) In consideration of the above, the Parties to the First Part agree to put on hold all legal proceedings initiated by them, either jointly or severally, against the Parties of the Second Part or its Directors, including but not limited to the following mentioned herein.

i) C.C.No.4382 and 4383 of 2013 filed before the Saidapet Fast Track Court

ii) C.C.No.1407 of 2016

iii) O.P.No.436 of 2016 (S.34 OP)

iv) CrI.O.P.11054 of 2016 - Madras High Court

All the above will be withdrawn only after full and successful completion of Clauses (a) (b) and (c) mentioned above by the KGS Group i.e. the Parties of the Second part, in honouring their commitment towards settlement of all their admitted and existing dues payable to the party of the first part.

e) In consideration of clauses mentioned above and on the fulfilment of the same, both the Parties of the First Part and the Parties of the Second Part agree that they shall have no claims against each other under the arbitral award dated 03.01.2015 passed by Justice Vinod Kumar Sharma and under the order dated 29.07.2015 in A.4445/2013 passed by the Hon'ble Madras High Court and that they expressly waive any rights and claims that they have under the said award and order in consideration of the full and final settlement reached between the Parties as mentioned in clauses (a), (b), and (c) above.

f) The obligation of the Parties of the First Part in clause (d) above i.e. to withdraw all the pending cases shall



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arise only upon the parties of the second part jointly and severally, fulfilling the mandate enshrined under this agreement which inter alia includes transfer of all properties to the Parties of the First Part or its nominees and payment of the sum of Rs.1,00,00,000 [Rupees One Crore Only] as mentioned in Clause (c) above.

g) If there is any default by the Party of Second Part of its obligations under clauses (a), (b), and © mentioned above, the party of the first part shall be entitled to proceed against the parties of the second part jointly and severally in a manner known to law."

9. Thereafter, once again, there was a settlement agreement between the petitioners and the respondent dated 06.07.2017. Thereafter, a contempt petition and a claim petition were filed by the respondent. Finally, on 05.06.2018, once again they entered into a joint memo of compromise. However, it was also not complied with and as such, the respondent filed a Sub Application No.203 of 2018 in Cont.P.No.414 of 2017. This Court by an order dated 04.10.2021 revived the contempt petition.

10. Therefore, all the allegations are civil in nature and had been already dealt with by the Arbitrator as well as this Court. The above said proceedings also shows that there was a dispute between the petitioners and the respondent in respect of their claim. Therefore, the entire proceedings cannot be sustained



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as against the petitioners and it is liable to be quashed. Pending this petition, the fourth petitioner died. Therefore, the entire charges as against the fourth petitioner is abated.

11. Accordingly, the proceedings in C.C.No.1407 of 2013, on the file of the IX Metropolitan Magistrate, Saidapet, Chennai, is hereby quashed. This Criminal Original Petition stands allowed. Consequently, connected Miscellaneous petition is closed.

29.11.2023

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
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To

The IX Metropolitan Magistrate, Saidapet, Chennai.



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G.K.ILANTHIRAIYAN, J.

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