



WEB COPY



C.S.(Comm.Div).No.40 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.S.(Comm.Div).No.40 of 2022

and

O.A.No.125 of 2022

K.Rasheed Khan

... Plaintiff

VS

1.A.Gunasekaran

2.G.Banumathi

... Defendants

Prayer: Civil Suit is filed under Order VII Rule 1 Civil Procedure Code with Order IV Rule 1 of Original Side Rules and Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, praying to,

(a) direct the Defendants to execute the sale deed in favour of the Plaintiff in respect of the properties morefully described in the schedule A and B hereunder to the Plaintiff conveying the same in favour of the Plaintiff for the consideration o Rs.21,30,00,000/- paid by the plaintiff to the

1/6



C.S.(Comm.Div).No.40 of 2022

defendants within such time as may be directed by this Court and in default direct an officer of this Court to execute the sale deed in favour of the plaintiff.

(b) grant permanent injunction restraining the Defendants, their men, servants or agents from in any manner alienating, encumbering or dealing with the suit properties morefully described in Schedule A and Schedule B.

(c) direct the defendants to pay the plaintiff the costs of the suit.

(d) pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiff : Mr.AR Karthik Lakshmanan

For D1 : Mr.S.Mohan

For D2 : Mr.V.Prabu

J U D G E M E N T

The plaintiff has filed a memo dated 27.03.2023 stating that the dispute between the parties had been settled out of court and the plaintiff received a Demand Draft bearing DD No.020001 drawn on IDBI Bank, T.Nagar, Chennai for a sum of Rs.16,93,50,000/- (Sixteen Crore Ninety Three Lakh



C.S.(Comm.Div).No.40 of 2022

Fifty Thousand only) from the defendants out of Court. The plaintiff also appeared before this Court and admitted the contents of memo. The plaintiff was identified by the counsel on record. The plaintiff further seeks leave of the Court to withdraw the suit. The plaintiff also sought for full refund of Court fee paid by him in the plaint.

2. Accordingly, leave is granted. The suit in C.S.No.40 of 2022 is dismissed as withdrawn.

3. In view of the law laid down by the Hon'ble Apex Court in ***High Court of Judicature at Madras vs. M.C.Subramaniam and others reported in (2021) 3 SCC 560*** in cases where the matter is settled out of court by private negotiation of parties, the refund of court fee can be ordered. The relevant observation of the Hon'ble Apex Court is as follows:

“23. We find ourselves in agreement with the approach taken by the High Courts in the decisions stated supra. The purpose of Section 69-A is to reward parties who chosen to withdraw their litigations in



favour of more conciliatory dispute settlement mechanisms, thus saving the time and resources of the Court, by enabling them to claim refund of the Court fees deposited by them. Such refund of Court, though it may not be connected to the substance of the dispute between the parties, is certainly an ancillary economic incentive for pushing them towards exploring alternative methods of dispute settlement. As the Karnataka High Court has rightly observed in Kamalamma the parties who have agreed to settled their disputes without requiring judicial intervention under Section 89 CPC are even more deserving of this benefit. This is because by choosing to resolve their claims themselves, they have saved the state of the logistical hassle of arranging for a third-party institution to settle the dispute. Though arbitration and mediation are certainly salutary dispute resolution mechanisms, we also find that the importance of private amicable negotiation between the parties cannot be understated. In our view, there is no justifiable reason why Section 69-A should only incentivise the methods of out-of-Court settlement stated in Section 89 CPC and afford step-brotherly treatment to other methods availed by the parties. ”



C.S.(Comm.Div).No.40 of 2022

In view of the law laid down by the Hon'ble Apex Court in the above said decision, the plaintiff is entitled to get refund of the Court fee affixed by him in the plaint. In view of the dismissal of the suit, the connected original application is closed. No costs.

27.03.2023

Index : Yes / No
NCC : Yes / No
dm



WEB COPY



C.S.(Comm.Div).No.40 of 2022

S.SOUNTHAR, J.

dm

C.S.(Comm.Div).No.40 of 2022

27.03.2023