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C.S. No.710 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	16.12.2022
Pronounced on	13.04.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.S.No.710 of 2008

Mr.Jens Bothe, S/o.Hermann Bothe,

at Hohe Bleichen,

13 D 20354, Hamburg, Germany

... Plaintiff

[Amended as per order dated 06.01.2021, in
A.No.3116 of 2020 and time extended as per
order dated 03.02.2021]

VS

True Value Homes (India) Pvt. Ltd.,

Rep. by its Managing Director,

No.21, C.V.Raman Road,

Alwarpet,

Chennai – 600 018.

... Defendant

Civil Suit filed under Order VII Rule 1 of C.P.C. read with Order IV Rule 1 of Original Side Rules, to pass a Judgment and Decree against the defendant;

- a) directing the defendant to pay a sum of Rs.1,55,79,991/-
[equivalent to Euros 273,172 at the rate of INR 57 per Euro]



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together with interest at the rate of 18% per annum on the principal amount of Rs.1,28,60,625/- (Equivalent to Euros 225,625/- at the rate of INR 57 per Euro) from the date of plaint till date of realization;

- b) granting permanent injunction restraining the defendant from using the Concept, Preliminary and other Designs prepared by the Plaintiff enclosed with the plaint as Annexure I to IV of which the plaintiff has exclusive copyright till realization of the decree amount;
- c) to pay costs of this suit; and
- d) pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

For Plaintiff : Mr.B.N.Suchindran

For Defendant : Mr.Jayesh B.Dolia
for M/s.Aiyar and Dolia

JUDGMENT

The plaintiff has filed the present money suit to recover a sum of Rs.1,55,79,991/- (equivalent to Euros 2,73,172 @ rate of INR 57 per Euro together with interest at the rate of 18% per annum on the principal amount of Rs.1,28,60,625/- (Equivalent to Euros 2,25,625/- at the rate of INR 57 per Euro) from the date of plaint till date of realization from the defendant.



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2. The plaintiff has also prayed for a permanent injunction to restrain the defendant from using the Concept, Preliminary and other Designs prepared by the Plaintiff enclosed with the plaint as Annexure I to IV of which the plaintiff has exclusive copyright till realization of the decree amount and to pay costs of this suit.

3. In the written statement, the defendant has prayed for a counter-claim for a sum of **Rs.1,50,00,000/-** and has paid a court fee of **Rs.1,53,525/-** and for dismissal of the suit with exemplary cost.

4. Following issues were framed by this Court on 08.12.2010:-

- i. *Whether there was a concluded contract between the plaintiff and defendant?*
- ii. *Whether the defendant unilaterally terminated the contract dated 22.12.2005?*
- iii. *Whether the plaintiff performed their part of the obligation under the agreement dated 22.12.2005?*
- iv. *Whether the defendant continued to use the Concept Design and name of the plaintiff in their website?*
- v. *Has the defendant paid the charges for the Concept Design uploaded by the plaintiff in the website of the defendant?*
- vi. *Whether the defendant implemented the project design of the plaintiff in any of its project?*



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- vii. Whether the Design of the plaintiff was suitable to the Indian sub-continent and environment?*
- viii. Whether the plaintiff is entitled to the suit claim?*
- ix. Whether the defendant is entitled to relief of counter claim, as there was no consensus ad idem on the conceptual design of the plaintiff?*
- x. To what other reliefs are the parties entitled for?*

5. The plaintiff, an Engineering Company ((BRT) Engineering GmbH) incorporated in the laws as in force in Germany represented by its authorized signatory and has filed this suit to recover the aforesaid amount.

6. The plaintiff claims to be a renowned Architects and Design Consultants from Germany engaged in the business of Concept Designing for construction of Multi Storied Buildings and further claim to be pioneer in such design.

7. It is the case of the plaintiff that one Mr.Raja Shyam Sundar of M/s.Threshold Architects, Chennai, a local architect of the defendant, introduced the defendant to the plaintiff and in the course of interaction,



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the defendant showed interest in the Architectural Consultancy Services of the plaintiff.

8. It is the case of the plaintiff that the defendant engaged the services of the plaintiff for rendering architect's services in respect of an IT Project at Kandanchavady and that there were exchange of communications as evident from e-mails in Ex.P3, Ex.P4 resulting in raising of Ex.P.5 invoice dated 15.08.2005 for a sum of **10,000 Euros** for the architectural Concept Design to be provided by the plaintiff.

9. The further case of the plaintiff is that the aforesaid amount of **10,000 Euros** was also paid by the defendant on 23.08.2005 towards the preliminary services rendered by the plaintiff for giving the Concept Design for the proposed IT Project at Kandanchavady to be built by the defendant herein.

10. It is the further case of the plaintiff that being satisfied with the said Concept Design provided and the exchange of communications and interaction between the plaintiff and the defendant and the said Mr.Raja



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Shyam Sundar of M/s.Threshold Architects, Chennai, the plaintiff and defendant signed Ex.P.7 agreement dated 23.08.2005 to provide Consultancy services for the IT project at Kandanchavady by the plaintiff to the defendant.

11. It is the further case of the plaintiff that the Consultancy in the said IT Project was divided into three phases and payment was to be made by the defendant accordingly for the services rendered by the plaintiff at each stage within 15 days from the date of submission of designs/services by the plaintiff to the defendant on the invoices raised as per Clause 7.3 of the Ex.P.7 agreement dated 23.08.2005.

12. According to the plaintiff, the defendant was liable to pay the Design Fees to the plaintiff for the following Phases respectively as per clause 6.1 of Ex.P.7 agreement dated 23.08.2005 :-

Phase	Work	Payment in Euro
PHASE 'A'	Concept & Preliminary Design	175,000/-
PHASE 'B'	Design development	185,000/-
PHASE 'C'	Meeting visits	30,000/-
Total		3, 90,000/-



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13. The payment stages for the Design Fees by the defendant for each phase were fixed as follows as per clause 7.1 of Ex.P.7 agreement dated 23.08.2005 :-

PHASE 'A'

Stage	Percentage of total work	Payment in Euros
Initial	15%	26,250/-
On submission of Preliminary Design	50%	77,500/- (After deduction of Euros 10,00 for Concept Design)
On submission of Final Design	35%	61,250/-
Total		1,65,000/-

PHASE 'B'

Stage	Percentage of total work	Payment in Euros
Initial	15%	27,750/-
On submission of Preliminary Design	50%	92,500/-
On submission of Final Design	35%	64,500/-
Total		1,85,000/-



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PHASE 'C'

Stage	Payment in Euros
Equal payment every three months during the construction period	30,000/-

14. It is the further case of the plaintiff that as the Concept Design had already been received and acted upon by the plaintiff and the plaintiff received a payment of Euro 26,250/- against invoice dated 13.01 2006 for the start of Phase "A" being 15% of the total payment of Phase "A" of the IT Project at Kandanchavady.

15. The further case of the plaintiff is that a meeting between the Directors/Architects of the plaintiff and Mr.Murugesan, Director Personnel of the defendant took place on 30.01.2006 at Hamburg for the presentation of the Preliminary Design prepared by the plaintiff based on the information/instructions furnished by the defendant vide Ex.P8 letter dated 13.01.2006 for clearance by the defendant, where the defendant made major modification of the design and requested to change the position of the building line stating that the above mentioned defendants information/ instruction were incorrect, pursuant to which 2nd preview of



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the Preliminary Design was prepared which was necessitated on account of incorrect details furnished by the defendant in Ex.P.8 letter dated 13.01.2006.

16. The further case of the plaintiff is that apart from engaging the services of the plaintiff for the aforesaid IT Project at Kandanchavady, the defendant entrusted to the plaintiff the job of Concept Designing for the defendant's second project called "Twin Tower Project" at MRC Nagar where Tower-I was to house Sun TV and Tower-II was to be to rented out for which the plaintiff quoted Euros10,000 as advance.

17. It is submitted that the same was accepted by the defendant vide Ex.P.33 letter dated 10.02.2006, pursuant to which the plaintiff sent a Concept Design on 20.03.2006 vide Ex.P.35 and also informed them about the uploading of the same to the defendant's server Vide Ex.P.37 dated 20.03.2006 and therefore a request for payment was made by the plaintiff in Ex.P.36 dated 20.03.2006. It is submitted that no payment was made by the defendant till date.



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18. The further case of the plaintiff is that by Ex.P.40 e-mail /'dated 25.03.2006, the defendant indicated that the Concept Design of the plaintiff has been appreciated by the Managing Director of Sun-TV, except the fact that the triangular office in the concept design may not be of efficient use for office area.

19. Therefore, the defendant requested the plaintiff for change in the interior office layout, as well as additional design option to enable the defendant to convince the Management of Sun-TV, pursuant to which the plaintiff clarified to the defendant on 28.03.2006 that the triangular office space had good space for efficient usage and offered to deliver additional layout plans subject to condition the defendant paid additionally Euros 8000 for providing design options as entirely a new Concept Design was involved. The defendant however failed to respond.

20. Therefore, the plaintiff Vide Ex.P.42 sent email dated 06.04.2006 with additional floor plan layouts which though defendant having received the communication chose not to reply or respond to the additional design options for the triangular layout plans which according



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to plaintiff proves that the plaintiff had at no point of time refused to carry out the work given to plaintiff.

21. The further case of the plaintiff is that based on the information/instruction furnished by the defendant at the above said meeting held on 30.01.2006 and on additional documents for preparation sent by the defendant vide Ex.P12 and Ex.P14 e-mails dated 10.02.2006 and 11.02.2006 for the IT Project at Kandanchavady , the plaintiff submitted the 2nd preview of Preliminary Design on 27.03.2006 to the defendant as per the clause 3.2(a) of the Ex.P7 agreement dated 22.12.2005 covering 50% of Phase "A" of the IT Project at Kandanchavady and raised an invoice vide Ex.P.22 dated 28.03.2006 for the sum of Euro 77,500/- for payment within 15 days of receipt of the said invoice (i.e. on or before 14.04.2006) pursuant to Clause 7.1 of the Ex.P7 agreement dated 22.12.2005.

22. It is submitted that though the defendant acknowledged the Ex.P.22 invoice dated 28.03.2006, the defendant never paid the same despite several reminders as is evident from Ex.P.24 dated 16.06.2006 and



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Ex.P.25 dated 25.08.2006.

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23. It is the further case of the plaintiff that the defendant has not paid the amounts due under Ex.P.7 agreement dated 22.12.2005 for the IT project at Kandanchavadi under invoice Ex.P.22 dated 28.03.2006 and for invoice under Ex.P.36 dated 20.03.2006 pursuant to letter of Acceptance of Fee Proposal by the defendant under Ex.P.33 followed by submission of Concept Design for the Sun-TV MRC Nagar Project by the plaintiff to the defendant.

24. It is the further case of plaintiff that the plaintiff has issued two separate legal notices to the defendant vide Ex.P.27 and Ex.P.45 dated 27.02.2007 in respect of the dues for the invoices for both the projects separately and called upon the defendant to pay the same.

25. It is submitted that the defendant after receiving the legal notices Ex.P.27 and Ex.P.45 dated 27.02.2007 issued two separate reply notices vide Ex.P.28 dated 06.03.2007 and Ex.P.29 dated 26.03.2007, raising untenable contentions and refusing to pay the said amounts.



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26. It is further case of the plaintiff that as per the Ex.P7 agreement dated 22.12.2005 relating to IT project at Kandanchavady, for the services rendered on submission of Preliminary Designs, the plaintiff was entitled to a sum of Euros 77,500 and as per clause 12.3 of the contract the plaintiff is entitled to 50% of the agreed fees for services not rendered amounting to Euro 138,124/- due to unilateral termination (without cause) of the contract by the defendant. Further a sum of Euros 10,000 in respect of Twin Tower Project at MRC Nagar is payable by the defendant for the Concept Design provided for the above said project.

27. Therefore the plaintiff was entitled to Euro 215,625/- (77,500+138,125) for the IT project at Kandanchavady and Euro 10,000/- (for invoice dated 20.03.2005, which remains unpaid) for the Twin Tower Project at MRC Nagar together with interest at 12% till the date of realization as detailed below:-

S.No	Project	Particulars	Amount(Euros)
1	IT Project at Kandanchavady	Design fees payable after delivery of Preliminary Design for Phase A	77,500/-
		50% of agreed fees for the services not rendered due to unilateral withdrawal by the defendant from	138,125/-



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		contractual obligations for part of Phase-B and C, and part of Phase-A	
		Total	215,625/-
2	Twin Tower Project at MRC Nagar	Towards Concept Design	10,000/-

28. It is further case of the plaintiff that the defendant having availed the professional services of the plaintiff, was bound in law to honour its commitments and make payments to the plaintiff for the said services rendered. It is further case of the plaintiff that though the plaintiff performed its part of the contractual obligations, the defendant has failed to discharge its obligations under the Ex.P7 agreement dated 22.12.2005 and has practically withdrawn itself from the contract without just cause or a valid reasons and without prior intimation to the plaintiff and that the defendants actions and inactions have caused the plaintiff great financial loss for which the defendant solely remains liable.

29. In the plaint, the plaintiff has demanded 50% of the entire amount for Phase 'B' & 'C' and a portion of phase 'A' for which service was yet to be rendered and of the entire amount for the services rendered in phase A. The details are as under:-



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PHASE 'A'

Stage	Percentage of total work	Payment in Euros	Remarks
Initial	15%	26,250/-	SP/AP
On submission of Preliminary Design	50%	77,500/-(After deduction of Euros 10,00 for Concept Design)	SP/ANP
On submission of Final Design	35%	61,250/-	SNP/ANP
Total		1,65,000/-	

PHASE 'B'

Stage	Percentage of total work	Payment in Euros	Remarks
Initial	15%	27,750/-	SP/AP
On submission of Preliminary Design	50%	92,500/-	SP/ANP
On submission of Final Design	35%	64,500/-	SNP/ANP
Total		1,85,000/-	

PHASE 'C'

Stage	Payment in Euros	Remarks
Equal payment every three months during the construction period	30,000/-	SNP/ANP

*SN- Service Provided
 SNP- Service Not Provided
 AP-Amount Paid
 ANP- Amount Not Paid



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30. The case of the plaintiff is that on the strength of Clause 12 and 13 of the Ex.P.7 agreement dated 22.12.2005 and on the strength of invoice raised in Ex.P.36 for submission of Concept Design for the Sun-TV MRC Nagar Project by the plaintiff to the defendant, the plaintiff is entitled to the amounts.

31. On behalf of the plaintiff, Mr.Jens Bothe was examined as PW1 and Ex.Nos.P.1 to P.46 were marked as detailed below:-

Sl.No.	Ex.No.	Date	Description
1	P1	25.01.2012	The Board resolution authorizing plaintiff
2	P2	01.06.2005	The photocopy of the letter
3	P3	12.08.2005	The e-mail from the plaintiff to the defendant.
4	P4	12.08.2005	The print out copy of e-mail
5	P5	15.08.2005	The office copy of invoice
6	P6	23.08.2005	The print out copy of e-mail from the plaintiff to the defendant
7	P7	22.12.2005	The agreement between the plaintiff and the defendant
8	P8	13.01.2006	The fax letter received from the defendant to the plaintiff
9	P9	13.01.2006	The office copy of the invoice from the plaintiff to the defendant
10	P10	30.01.2006	The print out of e-mail from the plaintiff to the defendant
11	P11	-	The plaintiff's protocol copy of the meeting between the defendant and the plaintiff
12	P12	10.02.2006	The print out of e-mail from the defendant to the plaintiff



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13	P13	10.02.2006	The print out of e-mail from the plaintiff to the defendant
14	P14	11.02.2006	The print out of e-mail from the defendant to the plaintiff
15	P15	14.02.2006	The print out of e-mail from the plaintiff to the defendant
16	P16	17.02.2006	The print out of e-mail from the plaintiff to the defendant
17	P17	21.02.2006	The print out of e-mail from the defendant's architect to the plaintiff
18	P18	22.02.2006	The print out of e-mail defendant's architect to the plaintiff
19	P19	10.03.2006	The print out of e-mail from the plaintiff to the defendant
20	P20	21.03.2006	The print out of e-mail from the defendant to the plaintiff
21	P21	27.03.2006	The print out of e-mail from the plaintiff to the defendant
22	P22	28.03.2006	The office copy of the invoice from the plaintiff to the defendant
23	P23	20.04.2006	The office copy of letter
24	P24	16.06.2006	The print out of e-mail from the plaintiff to the defendant
25	P25	25.08.2006	The office copy of the letter from the plaintiff to the defendant
26	P26	04.09.2006	The office copy of the letter from the plaintiff to the defendant
27	P27	27.02.2007	The office copy of the legal notice from the plaintiff to the defendant
28	P28	06.03.2007	The reply from the defendant's counsel to the plaintiff's counsel
29	P29	26.03.2007	The reply from the defendant's counsel to the plaintiff's counsel
30	P30	25.01.2006	The print out of e-mail from the plaintiff to the defendant
31	P31	30.01.2006	The print out of e-mail from the defendant to the plaintiff
32	P32	01.02.2006	The office copy of the proposal from the plaintiff to



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			the defendant
33	P33	10.02.2006	The fax from the defendant to the plaintiff
34	P34	03.03.2006	The print out of e-mail from the plaintiff to the defendant
35	P35	20.03.2006	The print out of e-mail from the plaintiff to the defendant
36	P36	20.03.2006	The office copy the invoice from the plaintiff to the defendant
37	P37	20.03.2006	The print out of e-mail from the plaintiff to the defendant
38	P38	24.03.2006	The print out of e-mail from the defendant to the plaintiff
39	P39	24.03.2006	The print out of e-mail from the plaintiff to the defendant
40	P40	25.03.2006	The print out of e-mail from the defendant to the plaintiff
41	P41	28.03.2006	The print out of e-mail from the plaintiff to the defendant
42	P42	06.04.2006	The print out of e-mail from the plaintiff to the defendant
43	P43	23.05.2006	The print out of e-mail from the plaintiff to the defendant
44	P44	16.06.2006	The print out of e-mail from the plaintiff to the defendant
45	P45	27.02.2007	The office copy of the legal Notice along with acknowledgment
46	P46	-	The original plaintiff's copy right

32. The learned counsel for the plaintiff has relied on the following case laws:-



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- a) ***Dhurandhar Prasad Singh v. Jai Prakash University, (2001) 6 SCC 534;***
- b) ***Govt. of Orissa v. Ashok Transport Agency, (2005) 1SCC 536;***
- c) ***National Textile Corpn. Ltd. v. Nareshkumar Badrikumar Jagad, (2011) 12 SCC 695;***
- d) ***United Bank of India v. Naresh Kumar, (1996) 6 SCC660;***
- e) ***Aloka Bose v. Parmatma Devi, (2009) 2 SCC 582;***
- f) ***Govind Rubber Ltd. v. Louis Dreyfus Commodities Asia (P) Ltd., (2015) 13 SCC 477;***
- g) ***Old World Hospitality Pvt. Ltd. v. India Habitat Centre, (1998)73 DLT 374.***

33. On behalf of the defendant, Mr.K.Murugesan was examined as DW1 and only Ex.D.1 was marked.

Sl.No.	Ex.No.	Date	Description
1	D1	09.07.2010	The authorization letter

34. The defendant has denied the liability. As mentioned above, the defendant has made counter-claim for a sum of Rs.1,50,00,000/- and has paid a sum of Rs.1,53,525/- towards Court Fee.



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35. The defendant has resisted the suit on two grounds viz., that the defendant did not find the designs furnished by the plaintiff for IT Project at Kandanchavady useful and therefore the defendant did not proceed further with the Twin Tower Project at MRC Nagar and therefore was not liable to pay any other amount to the plaintiff.

36. The case of the defendant is that the plaintiff without understanding the nature and soil condition in Chennai and the ground reality in the city of Chennai suggested a design which did not meet its requirement. Not being satisfied with the proposals given by the plaintiff exchanged vide several E-mails, sent Additional documents for preparing of a second preview of the Preliminary Design but nothing turned useful.

37. It is further case of the defendant that in order to encourage the plaintiff, the defendant asked them to consider taking up the job of Concept Design for the Twin Tower Project at MRC Nagar which Tower I



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was to be offered to Sun TV. It is submitted that Later on, this project could not be implemented by this defendant and whatever work was done for by the plaintiff for this project was paid and settled and no further payment was to be made.

38. It is the further case of the defendant that the Concept Design of the plaintiff was not utilized and therefore the plaintiff is not entitled to any service charges and that the Ex.P7 agreement dated 22.12.2005 in respect of IT Project at Kandanchavady was never acted upon and did not take off even at the preparatory stage and it was aborted and given up since there was lack of understanding by the plaintiff with respect to the Indian conditions and therefore the designs was never used or implemented in the defendant buildings.

39. It is further submitted that Ex.P7 agreement dated 22.12.2005 is neither stamped nor registered and hence the reliance placed by the plaintiff on the agreement is wrong and the claim is not valid in law.



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40. It is the further case of the defendant that as the defendant did not utilize the designs of the plaintiff, the plaintiff is not entitled to any compensation and the Ex.P7 agreement dated 22.12.2005 was aborted due to lack of understanding and not unilaterally terminated.

41. It is further submitted that there was no concluded contract as there was no Censuses-Ad-Idem between the parties with regard to the designs provided by the plaintiff and therefore the defendants never utilized it at any of projects.

42. It is the further case of the defendant that they are entitled to recover a sum of Rs.1,50,00,000/- on the ground that the designs that were furnished by the plaintiff did not meet the requirements resulting in unwarranted delay in the commencement of the respective projects and with the contract being awarded to some other person by the defendant customers.



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43. The learned counsel for the defendant has relied on the following case laws:-

- a) ***M/S Nibro Limited v. National Insurance Co. Ltd, ILR(1991)II Delhi;***
- b) ***BOC Indian Limited v. Zinc Products and Co.Pvt.Ltd, (1997) 24CLA119;***
- c) ***K.N.Sankaranarayanan & another v. Shree Consultations and Services Pvt Ltd., and 3others (1994) 1 L.W;***
- d) ***Avinash Kumar Chauhan v. Vijay Krishna Mishra (2009) 2 SCC.***

44. I have heard the learned counsel for the plaintiff and the learned counsel for the defendant. I have perused the Plaint, the Written Statement to the plaint, the written statement, the written submissions and Exhibits filed on behalf of the plaintiff and the defendant. I have also perused the deposition of the respective witnesses before the learned Master.

45. A reading of the Written Statement filed by the defendant shows that there are bundles of contradictions. The deposition of the witness of the defendant does not further the case of the defendant.



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46. The proof affidavit filed in support of the plaintiff and the Exhibits marked on behalf of the plaintiff and in the deposition of the plaintiff during cross examination confirms that there was a concluded contract between the plaintiff and the defendant in terms of Ex.P.7 agreement dated 22.12.2005 for IT project at Kandanchavady. The Ex.P.8 dated 13.01.2006 pertains to a fax letter of the defendant giving details for preparation of design by the plaintiff wherein it has been stated “Further to signing of the agreement”. The admitted portion of the defendant in his deposition during cross examination is extracted below:-

“Q. Is Ex.P7 the agreement refer to in Ex.P8?

A. Yes

Q.Is it correct to state that on the basis of Ex.P7 you had further transaction with the plaintiff?

A. Yes

Q. Please see clause 6 and 7 in Ex.P7 . Were these the financial terms agreed with the plaintiff for services to be provided by them?

A. Yes.”



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47. Thus, Issue No.(i) has to be answered in favour of the plaintiff.

Clause 12.3 of Ex.P.7 agreement dated 22.12.2005 is the termination clause. It clearly indicates that if the agreement/contract is terminated, the plaintiff is entitled for a compensation for the services rendered and to be rendered. Clause 12.1, 12.2 and 12.3 of Ex.P.7 Contract are reproduced below:-

Clause 12.1	Clause 12.2
An important reason for a termination of the contract by the Client is given if it is not (going to be) possible to complete or to continue the project, because a building license cannot be granted or can only be granted under circumstances unacceptable for the Client. The same applies if the building project is grinded to a halt or stopped due to force majeure or other inevitable circumstances for which the client is not responsible.	If the Client has terminated the contract for a (important) reason for which he is not responsible in terms of No.12.1 or for which the Architect is responsible especially if by fault of the Architect the completion of the contract has become impossible or if the Architect falls behind with his contract duties or the services rendered by the Architect are lastingly imperfect or uncompleted, the Architect is only entitled to a compensation for services rendered until the termination which are self-contained, proven and utilizable and for the provably incurred and necessary additional costs as in S 6.2. There are no further claims for compensation.
12.3	
In case of a (free) termination by the Client without an important reason or in case of a termination by the Architect for an important reason for which the Client is responsible. The Architect is also entitled to a	



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compensation accounting for services which have not yet been provided, but commissioned, less spared expenses. The spared expenses are estimated with 50% flat, so that the Architect is entitled to the payment of 50% of the agreed fees for the services not rendered. Counter evidence is admissible for both parties.

48. Clause 12.1 of Ex.P7 dated 22.12.2005, applies to a situation where there is an impossibility to proceed with the project either on account of the fact that the building license cannot be granted or can be granted under the circumstances unacceptable to the defendant. It also applies to situations where the building project comes to a grinding halt or stop due to force majeure.

49. Thus, clause 12.1 of Ex.P7 dated 22.12.2005, applies to a situation where the contract cannot be taken to its logical end on account of the facts stated therein. It would absolve the defendant of all obligation.

50. Clause 12.2 of Ex.P7 dated 22.12.2005, on the other hand, applies to a situation outside the situations contemplated in clause 12.1. If the client terminates the contract for important situations/reasons for which he is not responsible in terms of clause 12.1 or where the architect



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is responsible for the impossibility or if the architect falls behind with his duties or the services rendered by the plaintiff or lastingly imperfect or incomplete, the plaintiff is only entitled to compensation for the services rendered until the termination which are self contained, proven and utilizable and for the probably incurred and necessary additional cost as in Clause 6.2.

51. As, as far as IT project at Kandanchavadi, is concerned, there is a voluntary termination of the contract without any important reason contemplated in Clause 12.1 of Ex.P7, dated 22.12.2005.

52. The plaintiff has performed its obligations under Ex.P.7 agreement dated 22.12.2005 for the IT project at kandancahvady For the work rendered under Ex.P.7 agreement dated 22.12.2005, the plaintiff also raised invoices in Ex..P5 dated 15.08.2005, Ex.P9 dated 13.01.2006 and Ex.P22 dated 28.03.2006. The defendant has also settled payment for the Ex.P 5dated 15.08.2005 & Ex.P9 dated 13.01.2006 raised by the Plaintiff for a sum of Euros 10,000/- and Euros 26,250/- respectively.



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53. Only vide Ex. P28 dated 6.3.2017 in reply to Ex. P27 and Ex.P.45 legal notices dated 27.2.2007, for the first time, the defendant stated that the project could not be implemented for the reason beyond the control of the defendant. In Ex. P 29 dated 26.3.2007, the defendant further stated that the Concept Design given by the plaintiff did not meet the defendant's requirement without considering soil conditions and was misinterpreted by the plaintiff. The defendant has not given a categorical no for the work undertaken by the plaintiff.

54. However, did not inform the same to the plaintiff till it replied to Ex. P27 and Ex.P.45 legal notices dated 27.2.2007 of the plaintiff vide Ex. P 28 dated 6.3.2017 and further reply vide Ex. P29 dated 26.3.2007. Thus, the defendant has unilaterally terminated the contract.

55. Payment for Ex.P22 has not been paid. The defendant has not disputed the work done by the plaintiff pursuant to Ex.P.7 agreement dated 22.12.2005 for the IT project at Kandanchavady.



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56. As per Clause 12.3 of Ex.P7 agreement dated 22.12.2005, the plaintiff is also entitled to a compensation for services which were not yet been provided, but commissioned, less spared expenses. The spared expenses are estimated with 50% flat, so that the Architect is entitled to the payment of 50% of the agreed fees for the services not rendered. The plaintiff is thus entitled to payment in terms of clause 12.3 of Ex.P7 agreement dated 22.12.2005. Therefore, issue No. (ii) and (iii) is answered in the affirmative in favour of the plaintiff.

57. Ex.P.36 is an invoice for the work undertaken by the plaintiff pursuant to letter of confirmation of the defendant in Ex.P33 letter dated 10.02.2006 , where the defendant has categorically confirmed their acceptance for Concept Design fee proposal of the plaintiff for Twin Tower Project at MRC Nagar.

58. Issue No.(iv) as to whether the defendant used the Concept Design of the plaintiff or not can be answered partly in as much as the defendant in the Written Statement has admitted to the same in para 15 which reads as under:-



15.It is submitted that the website referred was not updated regularly due to pre-occupation of the defendant. The website has now been changed and modified by giving correct description and status of the project and the name of the plaintiff have been deleted. The name of the plaintiff was incorporated in the site when the talks were on for the project . This defendant has never used the Concept Design or plan of the plaintiff.

59. However, whether the Concept Design of the plaintiff was actually used for construction of the IT project at Kandanchavady or not there is no evidence by the plaintiff. Therefore, it is answered in the negative.

60. Pursuant to Ex.P.33 letter dated 10.02.2006 of the defendant, Ex.P.36 invoice dated 20.03.2006 was raised by plaintiff on the defendant for Twin Tower Project at MRC Nagar. Ex.P.35 and Ex.P.37 e-mails from the plaintiff to defendant dated 20.03.2006 indicates the submission of Concept Design for Twin Tower Project at MRC Nagar and uploading the same into the defendants server which has been confirmed by further e-mails, vide Ex.Nos.P.38, 39, 40, 41, 42,43,44.

61. Despite repeated reminders as above, the defendant failed to



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respond. Thus, it is clear that having committed to take the work of the plaintiff for IT project at Kandanchavadi by confirming to Ex.P.7 dated 22.12.2005 and by placing order for Concept Design vide Ex.P.33 dated 10.02.2006 the defendant has failed to pay the amount.

62. The Preliminary Designs have been given for IT project at Kandanchavady in accordance with Ex.P.7dated 22.12.2005 as is evident from Ex.P21dated 27.03.2006 for which invoice Ex.P.22dated 28.03.2006 was raised. It was followed by Ex.P.36 dated 10.02.2006 invoice for the submission of Concept Design for the Twin Tower Project at MRC Nagar vide Ex.P35 dated 20.03.2006 pursuant to Ex.P.33 letter of acceptance dated 10.02.2006 of the defendant.

63. There are no records to show that for the Twin Tower Project at MRC Nagar, the defendant has paid the initial advance, Euros10,000 towards P36 invoice dated 20.03.2006 after the Concept Design was uploaded in the defendant's Website by the plaintiff, vide Ex.35 dated



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20.03.2006 as was intimated to the defendant vide Ex.P 37 e-mail dated 20.03.2006. Since the defendant has not paid for the Concept Design uploaded in the defendant's website by the plaintiff vide Ex.35, issue No.(v) has to be answered against the defendant and in favour of the plaintiff.

64. Therefore, issue No. (v) is answered against the defendant as the defendant has not paid any amount towards Ex.P.36 dated 10.02.2006 for submission of Concept Design for the Twin Tower Project at MRC Nagar.

65. There is no evidence to substantiate whether the Concept Designs of the plaintiff were actually utilized by the defendant or not even after termination of the contract. Therefore, issue No (vi) is answered in the negative.

66. Issue No.(vii) is irrelevant. Whether the defendant implemented the project design given by the plaintiff or not is of no relevance to the case as the plaintiff has also not claimed any compensation. Therefore, Issue No. (vii) is irrelevant and not answered. In any event, the defendant



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has not produced any evidence to substantiate that the design given by the plaintiff would not suit the condition prevailing in Indian Sub Continent and Environment.

67. Under the provisions of the Copyrights Act, architectural designs are artistic work within the meaning of Section 2 of the Copyrights Act, 1957. The plaintiff has a copyright in its the architectural designs. The defendant cannot use the use or replicate its use without getting a license or assignment from the plaintiff.

68. In the light of the above, it is concluded that there was a contract between the plaintiff and defendant for the IT project at Kandanchavady and therefore the plaintiff is therefore entitled for compensation under Ex.P7 agreement dated 22.12.2005.

69. Therefore, the plaintiff is entitled for compensation for the services provided in connection with IT project at Kandanchavadi and for 50% of the agreed fees for services not provided due to unilateral termination of agreement by the defendant under Ex.P7 agreement dated



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22.12.2005. Therefore, issue No.(i) to (iv) are answered in favour of the plaintiff and against the defendant. In view of the above, issue No.(viii) is also answered in favour of the plaintiff.

70. The defendant has not established the case for distancing itself from the liability on account of the contract and the arrangement with the plaintiff. The defendant has also not made out a case for a counterclaim/set off. Therefore, Issue No.(ix) is also answered against the defendant.

71. In the result, the plaintiff succeeds. The set off/counterclaim of the defendant fails. The plaintiff is entitled for interest at 12% on the amounts payable for breach of contract in Ex.P7 Agreement dated 22.12.2005 from 15.04.2006 till the date of Plaint. Similarly, the plaintiff is also entitled for interest on the amount remaining unpaid against Ex.P36 dated 20.03.2006 from 04.04.2006 till the date of plaint. On the aforesaid amount, the plaintiff is further entitled to interest at 9% from the date of the suit till date of realization.



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72. The Civil Suit stands decreed in terms of the above observations. No cost.

13.04.2023

Index: Yes/ No
Neutral Citation: Yes/No
Speaking/Non-speaking Order

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C.SARAVANAN, J.

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Pre-Delivery Judgment made
in
C.S.No.710 of 2008

13.04.2023