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C.S.No.787 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2023

CORAM:

THE HONOURABLE MS JUSTICE R.N.MANJULA

C.S.No.787 of 2015

M/s.Vishranthi Homes Pvt. Ltd.,
Represented by its Managing Director,
No.351, Avvai Shanmugam Salai,
Vadhiraja Centre,
III Floor, Gopalapuram,
Chennai – 600 086.

... Plaintiff

Vs.

M/s.Microguard HSC Solutions Pvt. Ltd.,
Rep. by the Managing Director,
raja Mohammad Kasim,
No.60, 1st Floor,
3rd Main Road, Kasthuribai Nagar,
Adyar, Chennai – 600 020.

... Defendant

Prayer: Complaint filed under Order VII Rule 1 of of C.P.C., r/w. Order IV
Rule 1 of original side rules praying for,

- i. directing the defendant herein to pay to the plaintiff herein a sum of
Rs.1,29,00,000/- together with interest @ 18 % p.a. at Rs.75,00,000/-
from the date of the complaint till the date of payment;
- ii. awarding costs to the plaintiff.



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For Plaintiff : Mr.R.Krishna Prasad for
M/s.Sarvabhauman Associates

For Defendant : Set exparte

J U D G M E N T

The plaintiff filed the Civil suit for recovery of a sum of Rs.75,00,000/- together with interest @ 18% p.a.

2. The plaintiff is a company, engaged in the business of construction of residential and commercial buildings in the name and style 'Vishranthi Homes' and they have a got good reputation. The plaintiff had on going project at Mahabalipuram Road, Karapakkam, Chennai and for which they required certain fire extinguishing systems. The defendant Company is engaged in supplying fire extinguishing systems. The plaintiff has placed purchase order on 28.03.2011 with the defendant company for supply of X-Fire automatic fire extinguishing systems for their project at Karapakkam. The plaintiff has also paid a sum of Rs.75 lakhs as advance through RTGS from the plaintiff's Indian Overseas Bank, Thiruvannamiyur Branch as demanded by the defendant in their letter dated 28.03.2011 and the same was acknowledged by the defendant on the very same day. Even thereafter



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the defendant did not take any steps to supply the products. Several reminders and phone calls made to the defendant, also went futile. In view of the failure on the part of the defendant to supply the equipments, the plaintiff has placed orders with the third party company and completed their project. Thereafter, the plaintiff had sent a letter to the defendant on 27.06.2014 demanding to refund their advance amount. On receiving the said notice, the defendant sent a reply on 18.07.2014 by requesting time to revert back their Managing Director as he had been to Malasia. The plaintiff sent a remainder once again on 18.07.2014 for refund of the advance amount. But the defendant did not respond in any responsible manner. Thereafter on 09.08.2014, the defendant sent a letter by shifting blame upon the plaintiff and threatened to forfeit their advance amount by making false allegations. Hence the plaintiff had issued a legal notice on 12.01.2015 by claiming advance amount of Rs.75 lakhs together with interest at 18% per annum from the date of placing purchase order i.e., 28.03.2011. The defendant sent reply on 21.02.2015 by disowning his liability. Hence, the plaintiff was constrained to sue for recovery of a sum of Rs.75 lakhs along with interest at 18 % per annum from 28.03.2011 till the date of payment.



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3. During the trial, the President and the authorized signatory of the plaintiff company viz., Mr.C.R.Devendra, was examined as PW1 and Exs.P1 to P15 were marked on the side of the plaintiff.

4. Despite notices served on the defendant and their name printed in the cause list, they had neither appeared in person nor through counsel on their behalf. Hence, vide order of this Court, dated 26.07.2019, the defendant was set ex parte.

5. Heard Mr.R.Krishna Prasad, learned counsel for M/s.Sarvabhauman Associates for the plaintiff.

6. Based on the pleadings, the following issue is framed by this Court for determination:

“Whether the plaintiff is entitled to recover the suit amount with interest from the defendant as prayed for?”

7. The learned counsel for the plaintiff submitted that the purchase order for fire extinguishing systems was placed with the defendant company and in continuation thereof, the defendant had sent a letter dated 28.03.2011



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by demanding to pay a sum of Rs.75 lakhs as advance payment. In Ex.P2, the defendant had furnished the account number and all other details of his company. On the same day itself, the plaintiff has transferred a sum of Rs.75lakhs through RTGS to the account of the defendant company which has been already furnished. The above details regarding the transfer of funds have been intimated to the defendant through a letter dated 28.03.2011 and the same was marked as Ex.P3. On receipt of the said payment of Rs.75 lakhs, the defendant has given an advance receipts on the same day itself. The stamped receipt issued by the defendant is marked as Ex.P4. The plaintiff company continues to make demands for the supply of the fire extinguisher system. Since the order was not fulfilled for nearly 29 months, the plaintiff has sent a letter by demanding the defendant to refund the advance amount of Rs.75 lakhs. The said letter dated 27.06.2014, is marked as Ex.P5 and the same was acknowledged by the defendant vide his letter dated 18.07.2014 and that has been marked as Ex.P6. On the same day itself, the plaintiff sent a letter to the defendant which is marked as Ex.P7. However on 24.07.2014, the defendants had sent a letter to the plaintiff by requesting them to furnish the location of the plot and other



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details in order to deliver the fire extinguisher system. In fact in that letter the defendant has specifically stated that the shipments were received by then and hence they would be in a position to deliver the same. These letters are marked as Ex.P8. However, the plaintiff who is not in a position to purchase the fire extinguishing system due to efflux of time. Since the orders have been placed as early as in March 2011 and it remained unfulfilled till August 2015, the plaintiff had purchased the fire extinguishing systems from some other source. Since the delayed delivery is not going to serve the purpose of the plaintiff, the plaintiff had requested to refund the advance amount. But the defendant without taking into consideration of the hardships caused by him to the plaintiff, sent a letter on 09.08.2014 by stating that if the plaintiff did not come forward to take delivery of the fire extinguishing systems, the advance amount paid by the plaintiff will be forfeited. The said letters exchanged between the plaintiff and the defendant are available as Ex.P9 and P10. After giving appropriate reply, the plaintiff have given legal notice and thereafter filed the suit.

8. The plaintiff is a builder and he has placed order for X-fire



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extinguishing system with the defendant company. The defendant is to instal the same in the building constructed by him within the specific time.

If the defendant did not come forward to deliver to instal the X Fire Extinguishing system before completing the building project, that will not serve any purpose. Since the defendant did not deliver the fire extinguishing system in time, it is right on the part of the plaintiff to repudiate the contract and claim to refund the advance amount along with interest. The letters sent by the defendant would show the unwillingness to accept the failure on his part in fulfilling the purchase order. The plaintiff waited for 34 months and thereafter he was compelled to purchase the systems elsewhere. After the plaintiff was constrained to seek for refund of the advance amount with interest, the defendant had been sending letters as though fire extinguishing systems were ready for installation. The inordinate delay on the part of the defendant had frustrated the whole project. The recalcitrant attitude of the defendant in refusing to refund the advance amount had caused more loss to the plaintiff. Since the plaintiff has proved his case, he is entitled to recover the advance amount along with interest.

9. In view of the above, the issue framed by this Court is answered in



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favour of the plaintiff and the plaintiff is entitled to recover the advance amount from the defendant. The defendant is directed to refund the advance amount of Rs.75 lakhs along with interest at 12% p.a. from the date of plaint till the date of decree and 9% thereafter to the plaintiff.

10. With the above terms, the Civil suit is decreed. No costs.

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Index: Yes/No
Speaking order/Non speaking order
vum

Witnesses examined on
behalf of the Plaintiff:

P.W.1 – C.R.Devendra

Witnesses examined on
behalf of the Defendant:

None

Exhibits marked on behalf
of the Plaintiff :

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- Ex.P1 - the original Authorization Letter dated 15.02.2020
- Ex.P2 - the original purchase order, dated 28.03.2011
- Ex.P3 - the original Requisition letter dated 28.03.2011
- Ex.P4 - the original Advance Receipts dated 28.03.2011
- Ex.P5 - the original letter dated 27.06.2014 along with Acknowledgment card
- Ex.P6 - the original reminder letter dated 18.07.2014 along with acknowledgment card
- Ex.P7 - the original letter dated 18.07.2014
- Ex.P8 - the original letter dated 24.07.2014
- Ex.P9 - the office copy of the letter dated 05.08.2014 along with original receipt
- Ex.P10 - the original letter dated 09.08.2014
- Ex.P11 - the office copy of the letter dated 19.08.2014 along with original acknowledgment card
- Ex.P12 - the original letter dated 10.09.2014
- Ex.P13 - the office copy of the legal notice dated 12.01.2015
- Ex.P14 - the office reply legal notice dated 21.02.2015
- Ex.P15 - the original statement of Accounts, dated 21.02.2015

Exhibits marked on behalf
of the Defendant:

Nil

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R.N.MANJULA,J.

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