



C.S.No.523 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 19.09.2023

CORAM:

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

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M/s. Dee Cee Builders
represented by its Partner
Mr.D.Satya Narayana
having their office at
No.22, East Road,
West CIT Nagar,
Nandanam, Chennai-600 035.

... Plaintiff

Vs.

1.C.P.Jakachirpian
2.V.Viswambar

... Defendants

Prayer: Civil Suit filed under Order VII Rule 1 of CPC and IV of Original Side Rules praying for the following judgment and decree against the defendants.

i) that the defendants be directed to pay a sum of Rs.80,82,500/- with interest at 18% per annum i.e on the principal a sum of Rs.53,00,000/- and further sum from the date of plaint till the date of realization.

ii) costs of the suit;



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For Plaintiff : Mr.Madhura G.Ramesh
For Mr.P.Subba Reddy

For defendants : Set Exparte - D2

J U D G M E N T

The suit is filed for recovery of a sum of Rs.80,82,500/- together with interest at the rate of 18% on the principal sum of Rs.53,00,000/- and further sum from the date of plaint till the date of realization and for costs.

2.The brief facts of the case of the plaintiff are as follows:

The plaintiff being builders used to buy lands in order to do their real estate business. In the course of their business, the plaintiff had advanced money on two occasions to the defendants to procure the lands i.e on 07.05.2007, a sum of Rs.1,00,000/- by way of cash and Rs.24,00,000/- by way of cheque bearing No.649887 drawn on City Union Bank Limited, T.Nagar Branch, T.Nagar, Chennai-600 017 and on 27.06.2007, a sum of Rs.28,00,000/- by way of cheque bearing No.105734 drawn on City Union



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Bank Limited, T.Nagar Branch, T.Nagar, Chennai-600 017. The defendants

having received the said total sum of Rs.53,00,000/- promised to sell the

lands at Kattangulathur Village, Chengalpet Taluk, Kancheepuram District.

Accordingly, the plaintiff and the defendants had entered into a

Memorandum of Understanding on 07.05.2007 and in the said

memorandum of understanding, the defendants promised that they will sell

the property to the plaintiff and also promised that the above said money

received by them is required to procure the lands and to pay third parties

who wants sell the property to the plaintiff. But having received the entire

sum of Rs.53,00,000/- the defendants did not keep up their promise.

Eventhough the defendants promised on various occasions that they will sell

the properties and keep up their promise, but they did not do so and hence

the plaintiff issued a legal notice on 02.07.2009, which was returned with an

endorsement "unclaimed". In spite of issuance of legal notice, neither the

defendants had procured the lands nor returned the money. In fact, some

of the documents which they have obtained like power of attorney and other

documents are all old one and time barred documents. The plaintiff without

going for any specific performance filing the present suit for recovery of



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money. The total amount due by the defendants are as follows:

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Principal : Rs.53,00,000/-

Interest at 18% p.a : Rs.27,82,500/-
(from 07.05.2007 on
Rs.25,00,000/- till
22.06.2007 and from
28.06.2008 on
Rs.53,00,000/- till
30.04.2010.

Total: Rs.80,82,500/-

Hence, the suit.

3. Though the 1st defendant had filed a written statement, the learned counsel for the plaintiff had made an endorsement to the effect that this civil suit as against the 1st defendant may be given up. In view of the same, by order dated 28.07.2016, this civil suit was dismissed as against the 1st defendant alone.

4. As far as the 2nd defendant is concerned, for non-filing of written



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statement he was set ex parte and ex parte evidence was ordered by this Court on 28.07.2016. Based on the oral and documentary evidence adduced by the plaintiff, the suit was decreed as prayed for on 02.11.2016. Thereafter, the 2nd defendant has filed two applications i) A.No.2000 of 2022 to condone the delay of 1928 days in filing the application to set aside the ex parte decree dated 02.11.2016 and ii) A.No.3179 of 2022 to set aside the ex parte decree dated 02.11.2016 and the same were allowed by this Court on 07.07.2022 and 22.08.2022 respectively. Thereafter, the 2nd defendant has not come forward to file his written statement. Hence the 2nd defendant was again set ex parte on 24.07.2023.

5. On the side of the plaintiff, the partner of the plaintiff firm namely Satyanarayana was examined as P.W.1 and Ex.P.1 to Ex.P.7 were marked.

6. Heard the learned counsel for the plaintiff and perused the records.

7. P.W.1, in his evidence stated that the plaintiff are the builders and they used to buy lands in order to do their real estate business. Ex.P1 is the



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photocopy of the acknowledgment of Registration of firm dated 18.04.2000.

The plaintiff had entered into a Memorandum of Understanding with the defendants on 07.05.2007 for the purpose of procuring lands and had advanced a total sum of Rs.53,00,000/-. Ex.P2 is the self attested copy of the statement of bank account from 02.05.2007 to 31.05.2007. Ex.P3 is the original Memorandum of Understanding dated 07.05.2007 entered into between the plaintiff and the defendant. Having received the entire amount, the defendants did not keep up their promise. Hence, the plaintiff issued a legal notice on 02.07.2009. Ex.P4 is the original legal notice with returned cover and acknowledgment card. Ex.P5 is the original notice dated 16.07.2009 from Assistant Commissioner of Police to the plaintiff. Ex.P6 is the copy of complaint given by the plaintiff against the defendants to the Commissioner of Police. Ex.P7 is the exparte decree against the defendants dated 02.11.2016.

8. The evidence of P.W.1 and documents filed on behalf of the plaintiff remain unchallenged and there is no rebuttable evidence against the case of the plaintiff. Hence, the plaintiff has proved their case.



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9. In the result, the suit is decreed as prayed for with costs as against the 2nd defendant. Time for payment is three months.

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Index : Yes/No
Speaking/Non-speaking order
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Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Date	Description
1.	P-1	18.04.2000	Photocopy of the acknowledgment of registration of firm
2.	P-2	--	Self attested copy of statement of bank account of the plaintiff from 02.05.2007 to 31.05.2007.
3.	P-3	07.05.2007	Original Memorandum of Understanding between the



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S.No.	Exhibits	Date	Description
			plaintiff and the defendants
4.	P-4	02.07.2009	Original Legal Notice sent by the plaintiff's counsel for the defendants.
5.	P-5	16.07.2009	Original notice sent by the Commissioner of Police to the plaintiff.
6.	P-6	15.10.2009	Copy of complaint given by the plaintiff to the Commissioner of Police.
7	P-7	02.11.2016	Photocopy of exparte decree against the 2nd defendant.

Witnesses examined on the side of the plaintiff:

P.W.1. - Mr.D.Satya Narayana



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From the evidence of P.W.1 and the documents filed, it is proved that the defendants had received money from the plaintiff for the purpose of procuring lands and since the defendants have failed to return the amount, the suit has been filed against them for recovery of money. Though the defendant was served summons, they failed to appear before this Court to establish their case.