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A.No.5004 of 2022

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in
C.S.No.729 of 2019
K.KUMARESH BABU., J

This application had been filed seeking to set aside the ex parte order dated 23.08.2020 passed against the applicant/defendant. The suit had been initiated by the respondent/plaintiff seeking for the following reliefs:-

a) Recovery of a sum of Rs.51,20,000/- with future interest @ 18% from the date of the plaint till the date of realization from the defendant;

b) Recovery of a sum of Rs.21,44,000/- with future interest @ 18% from the date of the plaint till the date of realization from the defendant;

c) Recovery of a sum of Rs.5,44,000/- with future interest @ 18% from the date of the plaint till the date of realization from the defendant;

d) Recovery of a sum of Rs.5,00,000/- with future interest @ 18% from the date of the plaint till the date of realization from the defendant;

e) Recovery of a sum of Rs.18,00,000/- with future interest @ 18% from the date of the plaint till the date of



WEB COPY



A.No.5004 of 2022

realization from the defendant;

f) Grant an order of mandatory injunction, directing the defendant to return all the original title deeds of the item 1 of schedule of the property hereunder, more-fully described in the schedule II as hereunder which were handed over to the defendant by the plaintiff in pursuance to the Joint Venture Agreement dated 09.07.2015, to the plaintiff herein on a date to be fixed by this court.

g) Grant an order of permanent injunction, restraining the defendant, their men, agents and servants, from in any manner, from alienating or dealing or encumbering with the property, more fully mentioned in the schedule I of the property.

2. This Court by order 20.12.2019, had granted an interim injunction restraining the respondent/defendant from alienating or encumbering or otherwise dealing with the property pending disposal of the suit in respect of the flat measuring 1125 sq ft., with corresponding undivided share (UDS) of 583 sq ft. The said interim order had been extended periodically. When the applications were listed for further hearing on 20.08.2020, this Court



A.No.5004 of 2022

had recorded that the applicant/defendant had admitted the claim to the tune of Rs.50,00,000/- and that the learned counsel had sought time to get instructions as to furnishing of security to the tune of Rs.50,00,000/-. Again when the matter was taken up on 27.08.2020, the learned counsel appearing for the applicant/defendant undertook to pay a sum of Rs.25,00,000/- to the respondent/plaintiff within a period of eight weeks. Recording the said undertaking, the applications were posted on 15.10.2020 “for reporting compliance”. But however, the matter had been listed on 16.10.2020, the learned counsel who appeared for the applicant/defendant taking umbrella under the pandemic situation, had submitted that the applicant/defendant is prepared to pay a sum of Rs.10,00,000/- immediately and sought time to pay a sum of Rs.10,00,000/- within a period of one month thereafter and the remaining later. This Court had recorded the said statement and directed the applicant/defendant to pay a sum of Rs.10,00,000/- on or before 23.11.2020. Further time was sought for by the applicant/defendant to pay the said sum and this Court also extended the time finally till 08.12.2020.

3. Again when the matter was taken up on 08.12.2020, it was recorded by this Court that no amount had been paid by taking the admission of the applicant/defendant in their counter affidavit filed by them



A.No.5004 of 2022

in the application, this Court passed an interim decree for a sum of Rs.50,00,000/- with interest and closed all the applications. Thereafter, again when the matter was listed on 28.07.2020, wherein the learned counsel who had appeared for the applicant/defendant submitted that he had no instructions and he is withdrawing his Vakalath. On his submission, the Registry was directed to verify the Vakalath and print the name of the counsel if any one entered appearance on behalf of the defendant or else print the name of the applicant/defendant.

4. When the matter was taken up on 23.08.2022, the applicant/defendant had failed to appear before this Court and he was set exparte. When the Suit was taken up for hearing on 23.09.2022, the applicant/defendant was present in person, recording his presence this Court had given him an opportunity to put forth his case in accordance with the procedure contemplated.

5. Again when the matter was taken up on 30.09.2022, there was no appearance on behalf of the applicant/defendant either in person or through counsel. Hence, this Court directed the Suit to be listed on 11.10.2022 for arguments. Subsequently, the instant application had been moved by the



A.No.5004 of 2022

applicant/defendant seeking to set aside the exparte order dated 23.08.2022.

WEB COURT

This Court while dealing with the said application on 10.11.2022, had called upon the applicant/defendant to first pay a sum of Rs.10,00,000/- for which time was granted till 23.11.2020, on or before 28.11.2022. The applicant/defendant sought for further time on 28.11.2022 and the application was directed to be listed on 12.12.2022. Even on 12.12.2022, since no payment was made, this Court had extended the time till 19.12.2022. The partner of the applicant/defendant was present before this Court on 19.12.2022 and had submitted that due to the financial crunch, he was not able to pay the amount of Rs.10,00,000/- and had intimated to this Court that he will be in a position to make the payment in January 2023. This Court recording the said request, had directed the application to be listed on 10.01.2023 and also directed the partner of the applicant/defendant to be present in person on the said date. On 10.01.2023, the partner was present before this Court and presented a Demand Draft for a sum of Rs.3,00,000/- in favour of the respondent/plaintiff. The learned counsel appearing for the respondent/plaintiff had received the DD without prejudice to his contentions in this Application and for further payment, the Application was listed on 30.01.2023. On that date, the partner representing the applicant/defendant was not present and thereafter, the matter was



A.No.5004 of 2022

adjoined to 01.02.2023. On 01.02.2023, the partner of the applicant/defendant was present in person and had given an undertaking that he would make a payment of Rs.3,00,000/- on or before 20.02.2023. On 20.02.2023, a further request was made to extend the time till 28.02.2023. On 28.02.2023, the applicant/defendant had submitted a banker's cheque for a sum of Rs.2,00,000/-, which had been handed over to the learned counsel appearing for the respondent/plaintiff and was directed to be listed on 15.03.2023.

6. When the matter was taken up on 15.03.2023, the learned counsel appearing for the applicant/defendant sought two weeks time to make the payment, recording the said statement, time was extended till 24.03.2023. On 24.03.2023, the learned counsel appearing for the applicant/defendant presented a DD for a sum of Rs.1,00,000/- and sought time till 05.04.2023. This Court considering the conduct of the applicant/defendant which has been recorded supra, refused to entertain the request and directed the learned counsel for the applicant/defendant to make the full payment of Rs.5,00,000/- on or before 05.04.2023.

7. Again on 05.04.2023, a request was made by the learned counsel



A.No.5004 of 2022

appearing for the applicant/defendant that the balance amount would be paid on or before 24.04.2023 and the partner of the applicant/defendant was also present before this Court. When the matter was taken up on 24.04.2023, further time was sought for to make the aforesaid payment.

8. What this Court had directed the applicant/defendant was the admitted amount as against the Suit claim. Further this Court had passed an interim decree as early as on 08.12.2020. The interim decree had been passed by this Court in spite of sufficient opportunities given to him to make the part of the admitted amount. The original direction to make the payment was made by this Court as early as on 27.08.2020. This order of payment was made based on the undertaking given on behalf of the applicant/defendant. It is also seen that the applicant/defendant had been appearing in person before this Court and had undertook to pay the admitted amount. Only on his failure to comply with his own undertaking, this Court had granted the interim decree based upon his admission. Even thereafter, the applicant/defendant was set exparte on 23.08.2022.

9. When the Suit was directed to be listed for arguments on two occasions, especially on 11.10.2022, the present Application had been filed.



A.No.5004 of 2022

This would pre-suppose that the applicant/defendant had been watching the proceedings of this Court and cannot be said to be unaware of the proceedings of this Court. When the applicant/defendant had moved this Application, this Court had directed him to make a payment of Rs.10,00,000/- as undertook earlier, even for that time has been periodically granted and the applicant/defendant was trying to make piecemeal payments which was also entertained by this Court. When the matter was taken up on 15.03.2023, an undertaking was given that the amount of Rs.5,00,000/- would be paid within a period of two weeks finally. Without giving any reasons, as to why he cannot comply with, a DD was sought to be produced which this Court refused to receive, but directed the applicant/defendant to make payment in full by 05.04.2023. On 05.04.2023, again this Court extended time till 24.04.2023. When the matter was taken up today (i.e., 24.04.2023) situation did not improve and further time has been sought for. This Court has been taking very lenient view as regard to the payment of money. The conduct of the applicant/defendant right from the beginning seems to only drag on the right of the respondent/plaintiff in securing her interest. The applicant has also taken this Court for a ride by repeatedly taking adjournments and one pretext or another by giving undertaking to make payments. Hence, I am not inclined to entertain the present



A.No.5004 of 2022

Application and the same is dismissed in *limine*. However there shall be no order as to costs.

24.04.2023

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Index :Yes/No
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WEB COPY



A.No.5004 of 2022

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pbn

A.No.5004 of 2022
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