



C.S.No.444 of 2006

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 16.04.2024	Judgment Pronounced on 30.04.2024
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CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

C.S.No.444 of 2006

M.M.Gupta

.. Plaintiff

/versus/

1.M/s.Maars Software International Limited,
No.92, 2nd Floor, East Coast Chambers,
G.N.Chetty Road,
T.Nagar, Chennai – 600 017.

2.M/s.Scope International Private Limited,
A Subsidiary Company owned by
Standard Chartered Bank
Cards Building, First Floor,
No.11, Haddows Road,
Chennai-600 006.

3.M/s.Industrial Bank of India Limited,
Having its Branch office at
No.115, Anna Salai, Saidapet,
Chennai – 600 015.



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4. Stressed Assets Stabilization Fund

Rep. by its Deputy General Manager,
No.115, Anna Salai, Saidapet,
Chennai – 600 015. .. Defendants

[4th defendant impleaded as per
order dated 03.12.2021 vide
A.No.4337 of 2021 in C.S.No.44
of 2006]

[D2 to D4 deleted as per order
dated 05.01.2023 vide A.No.4504
of 2022, 8877, 7872 of 2019 and
2902 of 2006 in C.S.No.444 of
2006]

Prayer: This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules r/w Order VII Rule 1 of the Code of Civil Procedure, prayed for a judgment and decree against the Defendant:-

a) Directing the 1st defendant to execute and register the sale deed in favour of the plaintiff and or his nominees on receipt of the balance sale consideration of Rs.5 lakhs by the plaintiff to the 3rd defendant and payment of Rs.695 lakhs by the plaintiff to the 3rd defendant towards one time settlement on behalf of the 1st defendant, within a time frame as may be fixed by this Court and on failure of the 1st defendant to do so, to direct an officer of this Court to execute and or nominees;

b) Directing the 3rd defendant to receive a sum of Rs.695 lakhs and transfer the suit schedule property along with the 1st defendant and or independently of the 1st defendant and to simultaneously release its



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charge, claim in respect of the schedule mentioned property and hand over the original title deeds of schedule mentioned property to the plaintiff;

c) Declaration that the sale certificate and sale deed of the suit property executed by the 3rd defendant in favour of the 2nd defendant is null and void and non-existing in law or;

d) In the alternate in the event of prayer (a), (b) and © above are not granted by this Court, this Court may be pleased to direct the defendants to pay the plaintiffs jointly or severally a sum of Rs.1,10,00,000/- (Rupees One Crore Ten Lakhs only) towards refund of advance, and a sum of Rs.6,95,00,000/- (Rupees Six Crores Ninety Five Lakhs) towards damages, totalling to all to Rs.8,05,00,000/- (Rupees Eight Crores Five Lakhs) with interest at the rate of 12% p.a., from 17th June 2004 on the sum of Rs.1,10,00,000/- till the date of realization and on the sum of Rs.6,95,00,000/- from the date of filing of the suit till the date of realisation.

c).Directing the defendant to pay the cost of the suit.

For Plaintiff

: Mr.AR.L.Sundaresan
Senior Counsel
for Mr.T.Saikrishnan
& Mr.PAmbili Menon



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For Defendants

For D1 : No appearance

For D2 to D4 : Exparte

JUDGMENT

The plaintiff has filed the Civil Suit for specific performance of the Memorandum of Understanding dated 26.03.2004 in and by which, the 1st defendant had agreed to sell the suit schedule property to the plaintiff for a total sale consideration of Rs.8.10 crores, or alternatively for refund of advance/damages.

2.It is the case of the plaintiff that the 1st defendant was looking out to sell the suit property, in order to settle the dues to the 3rd defendant, Bank and the 1st defendant was negotiating for a one time settlement with the Bank. The plaintiff evinced interest in purchasing the suit property which was under lease to the 2nd defendant. The plaintiff and the 1st defendant entered into a Memorandum of Understanding on 26.03.2004 and the plaintiff paid a sum of Rs.10,00,000/- across



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execution of the said Memorandum of Understanding. Thereafter, the plaintiff released a further sum of Rupees One crore on 17.06.2004 directly to the Bank in part performance of the Memorandum of Understanding and towards adjustment of sale consideration to the extent of Rupees One crore. However, the 2nd defendant, lessee filed a suit in C.S.No.307 of 2004 and obtained an exparte injunction against the 1st defendant, restraining the 1st defendant from alienating or encumbering the suit property. The 1st defendant was also not in a position to honour his obligations under the Memorandum of Understanding and the 1st defendant was also representing to the plaintiff that the 1st defendant would get the exparte order of injunction in O.A.No.306 of 2004 in C.S.No.307 of 2004 vacated. The plaintiff, expressing readiness and willingness to perform his obligations under the said Memorandum of Understanding, has filed the suit since the 1st defendant was evading compliance of the terms of the Memorandum of Understanding. The plaintiff also alleges that he suffered irreparable loss, apart from the mental agony and inconvenience only as a result of the careless and negligent attitude of the 1st defendant.



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3. In the meantime, proceedings were initiated against the 1st defendant by the Bank and possession notice was also issued and the defendant was called upon to hand over possession of the suit property. On 13.04.2006, the Bank has intimated the 1st defendant about the taking over symbolic possession of the suit property. In the meantime, the Bank has brought the property for sale. Writ petitions came to be filed before this Court in W.P.Nos.21831, 31090 & 34813 of 2013 and in and by a common judgment dated 10.09.2018, it was held that the proceedings initiated by the Bank under the SARFAESI Act would prevail over all contractual agreements and therefore, Section 13(4) proceedings were upheld and the Hon'ble Division Bench of this Court held that the plaintiff was entitled only to the return of the advance amount and cannot seek for enforcement of the Memorandum of Understanding dated 26.03.2004. The plaintiff has also prayed for an alternate relief of refund of advance of Rs.1.10 crores and Rs.6.95 crores towards damages, totally in all Rs.8.05 crores, together with interest at 12% per annum from 17.06.2004 on Rs.1.10 crores, till the date of realization and on Rs.6.95 crores from the date of filing of the suit, till the date of



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realization.

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4.The defendants, despite receipt of summons, have not chosen to contest the suit.

5.The only issue that needs to be determined is whether the plaintiff is entitled to a decree for damages as prayed for?

6.The plaintiff has examined himself as P.W.1 and has adduced oral and documentary evidence before the Additional Master and marked the following exhibits, namely Ex.1 to Ex.38 on his side.

7.Ex.P1 is the photocopy of the unregistered lease deed between the defendant and M/s.Scope International Pvt., Ltd., dated 05.08.2002. (Subject with proof and relevance); Ex.P2 is the certified copy of the lease deed between the defendant and M/s.Scope International Pvt., Ltd., dated 09.01.2004; Ex.P3 is the original memorandum between plaintiff and the defendant dated 26.03.2004; Ex.P4 is the photocopy of the letter from the counsel for the M/s.Scope



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International Pvt., Ltd., to the defendant dated 01.04.2004 (Subject with proof and relevance); Ex.P5 is the photocopy of the proposal of the one time settlement of dues made by the Industrial Development Bank of India to the defendant dated 27.05.2004 (Subject with proof and relevance); Ex.P6 is the photocopy of the letter of acceptance of the OTS by the defendant dated 01.06.2004 (Subject with proof and relevance); Ex.7 is the photocopy of the letter of Industrial Development Bank of India to the defendant dated 03.06.2004 (Subject with proof and relevance); Ex.P8 is the original letter from the defendant to the plaintiff dated 04.06.2004; Ex.P9 is the photocopy of the letter from the defendant to Industrial Development Bank of India dated 11.06.2004 (Subject with proof and relevance); Ex.P10 is the original letter from IDBI Bank to the defendant dated 16.06.2004; Ex.P11 is the original letter from the defendant to the Industrial Development Bank of India dated 16.06.2004; Ex.P12 is the original letter of confirmation from the defendant to the plaintiff dated 16.06.2004; Ex.P13 is the original letter from the defendant to Industrial Development Bank of India dated 17.06.2004; Ex.P14 is the original letter from the plaintiff to Industrial Development Bank of India dated 17.06.2004; Ex.P15 is the original



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letter from the plaintiff to the defendant dated 17.06.2004; Ex.P16 is the original letter from the plaintiff to the defendant dated 17.06.2004; Ex.P17 is the original letter from the Industrial Development Bank of India to the defendant dated 17.06.2004; Ex.P18 is the original letter from the Industrial Development Bank of India to the plaintiff dated 17.06.2004; Ex.P19 is the original letter from the Industrial Development Bank of India to the defendant dated 13.06.2005; Ex.P20 is the original letter from the plaintiff to the defendant dated 14.06.2005; Ex.P21 is the photocopy of the letter from the M/S.Scope International Pvt., Ltd., to the defendant dated 18.08.2005 (Subject with proof and relevance); Ex.P22 is the photocopy of the letter from the defendant to M/s.Scope International Pvt., Ltd., dated 23.08.2005 (Subject with proof and relevance); Ex.P23 is the photocopy of the notice under Section 13 of Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act issued by the Industrial Development Bank of India to the defendant dated 17.10.2005; Ex.P24 is the photocopy of the possession of secured assets notice issued by the Industrial Development Bank of India to the defendant dated 18.01.2006; Ex.P25 is the photocopy of the letter from the plaintiff to the defendant dated



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24.01.2006; Ex.P26 is the photocopy of the letter from the defendant to the plaintiff dated 11.02.2006; Ex.P28 is the photocopy of the letter from the defendant to the plaintiff dated 11.02.2006; Ex.P29 is the photocopy of the notice for symbolic possession of Padur property issued by the Industrial Development Bank of India to the defendant dated 13.04.2006; Ex.P30 is the photocopy of the notice of symbolic possession of Padur property issued by the Industrial Development Bank of India to the defendant dated 15.04.2006; Ex.P31 is the printout copy of the Registration-cum-membership certificates issued by Federation of Indian Export Organization (FIEO) dated 25.04.2023; Ex.P32 is the printout copy of the Registration-cum-membership certificate issued by the Plastics Export Promotion Council dated 26.04.2006; Ex.P33 is the printout copy of Certificate of Incorporation issued by Registrar of Companies, Tamil Nadu for MMG Holdings (P) Ltd., dated 13.05.2023, 13.05.2023 and 25.03.2023; Ex.P34 is the photocopy of the Memorandum and Articles of Association of MMG Holdings (P) Ltd., dated 05.04.2004; Ex.P35 is the original of Net worth statement dated 31.03.2004 to 31.03.2008; Ex.P36 is the photocopy of the audited balance sheet copies of the Company MMG Holdings (P) Ltd., dated



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31.03.2005, 31.03.2006, 31.03.2007 & 31.03.2008; Ex.P37 is the original 65B affidavit dated 26.02.2024 and Ex.P38 is the copy of the order in W.P.No.21831, 31090 & 34813 of 2013 dated 10.09.2018.

8.I have heard Mr.ARL.Sundaresan, learned Senior Counsel appearing for Mr.T.Saikrishnan and Mr.P.Ambili Menon, learned counsel for the plaintiff.

9.Mr.ARL.Sundaresan, learned Senior Counsel for the plaintiff would submit that though the case has a checkered history, it now boils down to payment of damages alone since the plaintiff's right for specific performance of the Memorandum of Understanding was negated by the Division Bench of this Court and the amount advanced under the Memorandum of Understanding to the tune of Rs.1.10 crores was also refunded pursuant to orders of the Court.

10.The learned Senior Counsel would invite my attention to Section 21 of Specific Relief Act which is extracted for ready reference:

“21.Power to award compensation in



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certain cases:-

(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach [in addition to] such performance.

(2) If, in any such suit, the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3) If, in any such suit, the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4) In determining the amount of any compensation awarded under this Section, the Court shall be guided by the principles specified in Section 73 of the Indian Contract Act, 1872 (9 of 1972).

(5) No compensation shall be awarded under this Section unless the plaintiff has claimed such compensation in his plaint;

Provided that where the plaintiff has not claimed any such compensation in the plaint, the Court shall, at any stage of the proceeding, allow him to amend the plaint, on such terms as may be just, for including a claim for such compensation.

Explanation.- The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this Section. ”

11.The learned Senior Counsel also contended that the



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plaintiff was always ready and willing to perform his obligations under the Memorandum of Understanding and he had parted with a huge sum of Rs.1.10 crores which came to be refunded only recently and therefore, the huge investment of Rs.1.10 crores was virtually a dead investment for the plaintiff and if the plaintiff had invested the same amount in any other immovable property, the gain that would have occasioned to the plaintiff would have been multi fold. In fact, he would also bring to my attention that the property was sold by the Bank for a sum of Rs.11.59 crores and the Bank's dues were set off from the said sale consideration.

12. According to the learned Senior Counsel, the 1st defendant has clearly made a gain of about Rs.6.52 crores, especially after having defaulted to the Bank and also not keeping up the commitment given to the plaintiff. The learned Senior Counsel would therefore state that the claim for alternate relief for damages should be awarded in favour of the plaintiff.

13. On a perusal of Section 21 of the Special Relief Act, which has been extracted herein above, it is seen that when the Court declines



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relief of specific performance and the contract is broken by the defendant, then the plaintiff shall be entitled to compensation for breach.

It is also stipulated in Section 21(5) of the Specific Relief Act that no such compensation shall be awarded, unless the plaintiff has claimed the same in the plaint. Here, admittedly, the claim for damages has been incorporated in the plaint and therefore, damages can be awarded to the plaintiff, if it is found that the 1st defendant has committed breach of the contract.

14. On a perusal of the documents that have been exhibited as Ex.P1 to Ex.P38, I find that the plaintiff has not been guilty of any lack of readiness and willingness. The 1st defendant, has utilized the huge advance of Rs.1.10 crores from the plaintiff, for clearing part of his loan account and subsequently, for not having honoured his commitments to the Bank, the property was also sold for about Rs.11.59 crores, in the year 2006. Therefore, even from the admitted facts available in the present case, it is seen that the value of the property even in the year 2006 was more than Rs.11.50 crores, that too, the price which was fetched in a Private Treaty between the Bank and the auction purchaser. Therefore, certainly, the said amount could be taken as bare minimum



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price that the property would have fetched in the open market.

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15. Therefore, the 1st defendant cannot walk away with the additional value of the property, taking advantage of the sale of the property by the Bank to the auction purchaser. The 1st defendant has clearly committed breach of his obligations and has not come forward to fulfill the terms of the Memorandum of Understanding, though the plaintiff has been ready and willing to perform his obligation under the Memorandum of Understanding.

16. Section 73 of Indian Contract Act, 1872 deals with compensation for loss for damages caused by breach of contract. In the present case, I have already found that the 1st defendant has committed breach and thereby the plaintiff has become entitled to receive from the 1st defendant, compensation costs for the loss and damage caused by the plaintiff, as a result of the breach committed by the 1st defendant. The damages sought for by the plaintiff is also not remote or indirect loss of damages sustained by the reason of the breach and therefore, the plaintiff is entitled to damages.



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17.In terms of the explanation under Section 73 of the Indian Contract Act, while estimating the loss of damages arising from breach of contract, the means which existed of remedying the inconvenience caused by non performance of the contract has to be taken into account.

18.Even applying the purport of the explanation, I do not deem it fit to find fault with the plaintiff, since at all relevant points of time, the plaintiff has exhibited readiness and willingness to perform his part of the obligations and only utilizing the huge sum of Rs.1.10 crores advanced by the plaintiff, the 1st defendant has been in a position to even negotiate for a one time settlement with the Bank.

19.The plaintiff admittedly has got back his advance amount of Rs.1.10 crores in other legal proceedings and considering that the decree is being granted only for damages. I restrict the interest portion from the date of filing of the suit alone.

20.Considering the fact that the property has fetched Rs.11.59 crores even in 2006, the plaintiff is certainly entitled to damages as



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prayed for, namely Rs.6.95 crores.

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21.In fine, the suit is decreed and the 1st defendant is directed to pay a sum of Rs.6.95 crores to the plaintiff together with interest at 6% per annum from the date of filing of the suit till the date of realization, together with proportionate costs.

.05.2024

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Index : Yes / No

Neutral Citation : Yes / No

List of Witness on the side of the plaintiff:

P.W.1 – M.M.Gupta

List of Exhibits on the side of the plaintiff:

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Date</i>	<i>Description</i>
1.	Ex.P1	05.08.2002	Photocopy of the unregistered lease deed between the defendant and M/s.Scope International Pvt., Ltd.
2.	Ex.P2	09.01.2004	Certified copy of the lease deed between the defendant and M/s.Scope



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			International Pvt., Ltd.
3.	Ex.P3	26.03.2004	Original memorandum between plaintiff and the defendant.
4.	Ex.P4	01.04.2004	Photocopy of the letter from the counsel for the M/s.Scope International Pvt., Ltd., to the defendant.
5.	Ex.P5	27.05.2004	Photocopy of the proposal of the one time settlement of dues made by the Industrial Development Bank of India to the defendant.
6.	Ex.P6	01.06.2004	Photocopy of the letter of acceptance of the OTS by the defendant.
7.	Ex.P7	03.06.2004	Photocopy of the letter of Industrial Development Bank of India to the defendant.
8.	Ex.P8	04.06.2004	Original letter from the defendant to the plaintiff.
9.	Ex.P9	11.06.2004	Photocopy of the letter from the defendant to Industrial Development Bank of India.
10.	Ex.P10	16.06.2004	Original letter from IDBI Bank to the defendant.
11.	Ex.P11	16.06.2004	Original letter from the defendant to the Industrial Development Bank of India.
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14.	Ex.P14	17.06.2004	Original letter from the plaintiff to Industrial Development Bank of India.
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17.	Ex.P17	17.06.2004	Original letter from the Industrial Development Bank of India to the defendant.
18.	Ex.P18	17.06.2004	Original letter from the Industrial Development Bank of India to the plaintiff.
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22.	Ex.P22	23.08.2005	Photocopy of the letter from the defendant to M/s.Scope International Pvt., Ltd.
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24.	Ex.P24	18.01.2006	Photocopy of the possession of secured assets notice issued by the Industrial Development Bank of India to the defendant.
25.	Ex.P25	24.01.2006	Photocopy of the letter from the plaintiff to the defendant.
26.	Ex.P26	24.01.2006	Photocopy of the letter from the defendant to the plaintiff.
27.	Ex.P27	11.02.2006	Photocopy of the letter from the defendant to the plaintiff.
28.	Ex.P28	07.03.2006	Photocopy of the letter from the defendant to the plaintiff.



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29.	Ex.P29	13.04.2006	Photocopy of the notice for symbolic possession of Padur property issued by the Industrial Development Bank of India to the defendant.
30.	Ex.P30	15.04.2006	Photocopy of the notice of symbolic possession of Padur property issued by the Industrial Development Bank of India to the defendant.
31.	Ex.P31	25.04.2023	Printout copy of the Registration-cum-membership certificates issued by Federation of Indian Export Organization (FIEO).
32.	Ex.P32	26.04.2023	Printout copy of the Registration-cum-membership certificate issued by the Plastics Export Promotion Council.
33.	Ex.P33	13.05.2023, 13.05.2023 & 25.03.2023	Printout copy of Certificate of Incorporation issued by Registrar of Companies, Tamil Nadu for MMG Holdings (P) Ltd.
34.	Ex.P34	05.04.2004	Photocopy of the Memorandum and Articles of Association of MMG Holdings (P) Ltd.
35.	Ex.P35	31.03.2004 to 31.03.2008	Original of Net worth statement.
36.	Ex.P36	31.03.2005, 31.03.2006, 31.03.2007 & 31.03.2008	Photocopy of the audited balance sheet copies of the Company MMG Holdings (P) Ltd.
37.	Ex.P37	26.02.2024	Original 65B affidavit.
38.	Ex.P38	10.09.2018	Copy of the order in W.P.Nos.21831, 31090 & 34813 of 2013.



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List of Witness on the side of the Defendants:

Nil.

List of exhibits marked on the side of the plaintiff:

Nil.

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P.B.BALAJI.J.

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