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Appeal (CAD) No.32 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

Appeal (CAD) No.32 of 2023

D.Prema

W/o.Duraisamy

...Appellant

Vs

1. M/s.Shiva Texyarn Ltd.,
Rep. by Vice President
P.Basker
S.F.No.371/5, Paruvai Post
Karadivavi Road
Karanampettai
Tiruppur District

2. M/s.South India INC.,
Rep. by the Proprietor
P.Priya
2/291, K.Periya Thottam
Chettipalayam Main Road
Angeripalayam Post
Tiruppur District

...Respondents

PRAYER: Appeal filed under Section 96 read with Order XLI Rule 1



Appeal (CAD) No.32 of 2023

CPC read with Section 13(1A) of the Commercial Courts Act, 2015 to set aside the judgment and decree dated 30.11.2022 passed in C.O.S.No.19 of 2021 passed by the Principal District Court, Tiruppur.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.K.Govi Ganesan for R1
R2-Given up

JUDGMENT

(Judgment of the Court was made by M.SUNDAR.J.,)

In the captioned appeal, Ms.D.Prema, wife of Duraisamy, appellant, Mr.N.Manokaran, counsel on record for appellant, Mr.C.S.Ramakanth, Legal Officer of R1 company i.e., Shiva Texyarn Ltd., Mr.K.Govi Ganesan, learned counsel on record for R1 are before us.

2. As regards R2 (South India INC.), learned counsel on record for appellant Mr.N.Manokaran has made an endorsement in the case file giving up R2 and a scanned reproduction of the endorsement is as follows:



Appeal (CAD) No.32 of 2023

WEB COPY

I have instructions to make
undersigned that to go up to
2nd Respondent / 1D, who has now filed
an appeal, thus, I may be
permitted to go up to 2nd Respondent

5/9/2024

3. On R2 being given up, R1 (Shiva Texyarn Ltd.,) has now become sole respondent.

4. The narrative thus far means that both parties in the appeal together with their respective counsel are present before this Court.

5. Both learned counsel submit in one voice in unison that the parties resorted to out of Court settlement, parties have arrived at a settlement and have reduced the terms of settlement to writing vide a 'JOINT MEMORANDUM OF COMPROMISE ENTERED INTO BETWEEN THE APPELLANT AND THE 1ST RESPONDENT / DECREE HOLDER dated 01.08.2024' [hereinafter 'said JMoC' denoting 'Joint Memorandum of Compromise']]. A scanned reproduction of the said



Appeal (CAD) No.32 of 2023

WEB COPY

JMoC along with the docket as placed before us is as follows:

IN THE HON'BLE HIGH COURT OF JUDICATURE AT MADRAS
Appeal (CAD) No. 32 of 2023
(ON THE FILE OF THE HON'BLE DISTRICT COURT, TRIPURAR)
Against
C.O.S. No. 19 of 2021

D. Prerna, P/40,
W/O. D. Lakshmi,
S.F. No. 85/28, Lotus Garden 2nd St.,
Selpalayam,
Vannampalayam Village,
Tiruppur District.

-Appellant/
-Third party

1. M/s. Shiva Texyarn Ltd.,
Rep. by V. Baskar,
P. Baskar,
S.F. No. 371/5, Panvel Post,
Kandivan Road,
Kandampanai,
Tiruppur District.

-1st Respondent/
-Plaintiff

2. M/s. South India Ltd.,
Rep. by the Proprietor,
P. Priya,
2/253, K. Periyathottam,
Chelipalayam Neth Road,
Angerpalayam Post,
Tiruppur District.

-2nd Respondent/
-Defendant.

JOINT MEMORANDUM OF COMPROMISE ENTERED INTO BETWEEN THE APPELLANT AND THE 1st RESPONDENT/DECREE HOLDER

1). The Appellant and the 1st respondent submit that the 1st respondent filed C.O.S. No. 19 of 2021 on the file of the Jd. Principal District Court, Tiruppur against the 2nd respondent for recovery of a sum of Rs. 35,03,444/- (Rupees thirty six lakhs, three thousand, four hundred and forty four only) together with interest, being the amount due for supply of cotton yarns. The suit was decreed on 30.11.2022 against the 2nd respondent as under:

D. Prerna

For SHIVA TEXYARN LIMITED
P. BASKAR
VICE PRESIDENT



1. That the suit be and the same is hereby decreed;
2. That the defendant be and is hereby directed to pay a sum of Rs. 36,03,444/- (Rupees Thirty Six Lakhs and Three Thousand Four Hundred and Forty Four only) to the plaintiff with interest at the rate of 12% p.a., on the principal amount of Rs. 28,12,483/- (Rupees Twenty Eight Lakhs, Eighteen Thousand four Hundred and Eight three only) from the date of filing of the suit (29.04.2021) till the date of repayment;
3. That the property mentioned in the plaint, which originally belonged to the defendant, be and the same is hereby attached till realization of the amount due to the plaintiff;
4. That the charge is ordered to be created over the suit property till realization of the amount due to the plaintiff;
5. That the time for repayment of amount is three months; and
6. That the defendant be and is hereby directed to pay Rs. 1,28,118.50 as cost to the plaintiff.

II). The Appellant, who was not a party defendant in the suit, filed CMP No. 15062 of 2023 seeking leave to file the above appeal was allowed on 27.11.2023, and the above Appeal (CAD) No. 32 of 2023 has been taken on file. The appellant had purchased the subject matter suit property under a sale deed dated 19.08.2021 (Doc. No. 3297/2021-Joint Sub Registrar II, Tiruppur) for a valid sale consideration, without the knowledge of the suit. The appellant had also discharged the mortgage loan stood in the name of the 2nd respondent/JO vide Discharge Receipt dated 08.05.2021 (Doc. No. 2298/2021-Joint Sub Registrar II, Tiruppur).

III). During the pendency of the above Appeal (CAD) No. 32 of 2023 filed against COS No. 19 of 2021, both the appellant and the 1st respondent/JO had mutually agreed to settle the dispute between themselves by taking note of the peculiar circumstances. Accordingly, both the appellant and the 1st respondent/Decree holder have agreed to compromise the matter in following terms:

a). That the appellant has agreed to pay a sum of Rs. 20,00,000/- (Rupees Twenty Lakhs only) to the 1st respondent/D.H., to raise the order of attachment and charge made in Clause (3) and (4) of the decree dated 30.11.2022 made in COS NO. 19 of 2021.

D. Premal

For SHIVA TEXYARN LIMITED


P. BASKAR
VICE PRESIDENT



Appeal (CAD) No.32 of 2023

WEB COPY

3

b) That the 1st respondent/D.H. has also agreed to accept the payment of Rs. 20,00,000/- (Rupees Twenty Lakhs only) to set aside (3) and (4) of the decree dated 30.11.2022.

c). That the appellant had remitted the following payments to the 1st respondent/D.H.

09.02.2024	Cheque No. 283606	In favour of Shiva Tex Yarn	Rs. 10,00,000
24.05.2024	Cheque No. 283609	In favour of Shiva Tex Yarn	Rs. 5,00,000
15.07.2024	Cheque No. 283610	In favour of Shiva Tex Yarn	Rs. 5,00,000

d). That in view of the above payments, the 1st respondent/D.H., has no objection to set aside Clause (3) and (4) of the Decree passed against the suit property purchased by the appellant.

e). That the 1st respondent/D.H. is at liberty to execute Clause (2) of the decree in COS No. 19 of 2021 against the defendant/2nd Respondent to realise the decree amount.

f). That the 1st respondent/D.H., has no objection to permit the appellant to get refund of the court fees of Rs. 1,08,104/- (Rupees One Lakh eight thousand and one hundred and four only) in the above appeal (CAD) No. 32 of 2023 less the statutory deductions.

g). That the appellant and the 1st respondent/D.H., have discussed, deliberated the above terms and voluntarily signed this Joint Memo of Compromise with free consent.

It is, therefore, prayed that this Hon'ble court may be pleased to pass a decree in favour of the appellant in Appeal (CAD) No. 32 of 2023 on the file of this Hon'ble Court, in line with the above terms of this Joint Memorandum of Compromise mutually agreed and signed by the parties and thus render justice.

Dated at Chennai on this the 1st day of August, 2024.

D. Ramea
Appellant

Counsel for the appellant.

(N. Manickam)

For SHIVA TEXYARN LIMITED

1st Respondent

RBASKAR
VICE PRESIDENT

Counsel for the 1st respondent.

(K. Gouri Ganesan)

2/8/2024
for D. Ramea
D. Ramea
1/8/2024
for RBASKAR
RBASKAR
1/8/2024



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Appeal (CAD) No.32 of 2023

11-30

Tiruppur District

HIGH COURT :: MADRAS

Appeal (CAD) No.32 of 2023
Against
C.O.S No.19 of 2021
(On the file of the Principal District
Court, Tiruppur)

JOINT MEMORANDUM OF
COMPROMISE ENTERED INTO
BETWEEN THE APPELLANT
AND THE 1ST RESPONDENT /
DECREE HOLDER

M/s.N.Manoharan
Counsel for Appellant

M/s. K. GOVI GANESAN
Counsel for 1st Respondent



Appeal (CAD) No.32 of 2023

WEB COPY

6. This Court had the benefit of interacting with the appellant Ms.D.Prema, wife of Mr.Duraisamy and Mr.C.S.Ramakanth, Legal Officer of R1 company. Both parties confirmed that said JMOC has been signed out of their free will and volition and undertake to abide by the terms thereat.

7. Mr.C.S.Ramakanth also submitted that said JMOC has been signed by Mr.P.Baskar, who is Vice President of R1 Company, he is indisposed today and therefore, he (C.S.Ramakanth) is before this Court along with a Board Resolution. To be noted, a minor correction in said JMOC vide sub-clause (f) of Clause (III) has been counter signed by both parties.

In the light of the narrative thus far, captioned appeal is disposed of in terms of aforementioned said JMOC which shall now form part of the compromise decree. There shall be no order as to costs.

(M.S.,J.) (N.S.,J.)
05.09.2024

Index : Yes / No

Neutral Citation : Yes / No



Appeal (CAD) No.32 of 2023

M.SUNDAR, J.,
and
N.SENTHILKUMAR, J.,

gpa

Appeal (CAD) No.32 of 2023

05.09.2024