



*Civil Suit No.653 of 2017*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.06.2024

CORAM

**THE HONOURABLE Mr. JUSTICE P.VELMURUGAN**

**Civil Suit No.653 of 2017**

M/s.Artha Real Estate Corporation Limited  
No.110/37, Solitaire Building,  
Service Road, Outer Ring Road,  
Marathahalli, Bangalore – 560 037.

... Plaintiff

Vs.

D.Dinakaran  
Proprietor  
M/s.Green Avenue Homes & Gardens  
39-C, Second Floor, K.B.Dasan Road,  
Teynampet, Chennai – 600 018.

... Defendant

**Prayer:-**

Civil Suit has been filed under Order XXXVII Rule 1 of CPC read with Order VII Rule 1 of Original Side Rules for a judgment and decree in favour of the plaintiff as against the defendant on the following terms :

a) to direct the defendant to pay the principal sum of Rs.4,71,34,690/- together with interest on Rs.4,71,34,690/- from the date



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of plaint till the date of realization at the rate of 24% p.a., on the amount due;

ii) to pay the cost of the suit.

For Plaintiff : Mr.R.Venkatraman

For Defendant : Set *ex-parte* on 16.12.2020

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### **J U D G M E N T**

The Civil Suit has been filed to direct the defendant to pay principal sum of Rs.4,71,34,690/- together with interest on Rs.4,71,34,690/- from the date of plaint till the date of realization at the rate of 24% p.a., on the amount due and also direct the defendant to pay suit costs.

2.The brief facts, in nutshell, are thus:-

2.1. The plaintiff/Company submits that M/s.Bennett Property



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Holdings Company Limited, a unit of Times of India Group, had business transactions with the defendant, wherein the plaintiff was providing marketing services for the building projects developed by the defendant at various locations. The plaintiff had been marketing the defendant's properties in terms of the Agreement dated 02.03.2010. Originally, the said agreement was entered by the defendant with M/s.Artha Financial Services Limited for marketing the projects developed by the defendant. However, through the business transfer agreement dated 03.02.2011, M/s.Bennett Coleman & Company Limited took over the assets, including the pending business transactions, receivable etc., from M/s. Artha Financial Services Limited. Thereafter, a Marketing Agreement dated 02.03.2010 was entered between M/s.Bennett Coleman & Company and the defendant. Subsequently, by a Demerger Arrangement, which was duly approved by the Hon'ble High Court of Mumbai in Company Petition No.427 of 2011 dated 14.10.2011 as amended by order dated 20.11.2011 and 02.12.2011, the assets, including the pending business transaction and receivable etc., of M/s.Bennett Coleman & Company Limited were taken over by M/s.Bennett Property Holdings Limited. Thereafter, by a business transfer agreement dated 06.08.2014, the assets



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and receivable of M/s.Bennett Property Holdings Limited were taken over by M/s.Artha Real Estate Corporation Limited. Therefore, the plaintiff is legally entitled to recover the dues payable by the defendant.

2.2. It is stated that M/s.Bennett Property Holdings Company Limited, having the role of marketing agency, marketed the defendant's building projects having a value of Rs.1,11,45,16,910/- (Rupees One Hundred Eleven Crores Forty Five Lakhs and Sixteen Thousand Nine Hundred Ten only) as on 31.03.2014 and they were entitled for a commission of Rs.13,70,20,241/- (Rupees Thirteen Crores Seventy Lakhs Twenty Thousand Two Hundred Forty One Only). Further, the Agreement between M/s.Bennett Property Holdings Company Limited and the defendant for rendering marketing services for the properties developed by the defendant was entered under several agreements from time to time. The defendant has made payments on several dates towards the commission due and payable to M/s.Bennett Coleman & Company Limited.

2.3. It is further stated that the amount due from the defendant to M/s.Bennett Property Holdings Company Limited stood at a sum of Rs.4,46,34,690/- (Rupees Four Crores Forty Six Lakhs Thirty Four



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Thousand Six Hundred and Ninety only) after deducting the part payments made on multiple dates and the defendant offered to set off an amount of Rs.2,80,20,000/- (Rupees Two Crores Eighty Lakhs Twenty Thousand only) towards the amount due as commission, by transferring five plots in one of the projects developed by the defendant at Oonamanjeri and known as Dakshin Avenue IV and to construct five Villas thereon for the absolute ownership of M/s.Bennett Property Holdings Company Limited. However, the defendant has failed to develop the said project and abandoned the project due to various financial difficulties faced by him. As a result, the proposal of setting off dues to an extent of Rs.2,80,20,000/- (Rupees Two Crores Eighty Lakhs Twenty Thousand only) became unworkable and was abandoned. It is the claim of the plaintiff that the defendant is liable to pay a sum of Rs.4,46,34,690/- (Rupees Four Crores Forty Six Lakhs and Thirty Four Thousand Six Hundred and Ninety only) along with an interest at the rate of 24% p.a., on the principal sum, after deducting the part payments made on multiple dates to the plaintiff. Further, the defendant has also admitted his liability by his letters dated 15.06.2013 and 20.04.2014.



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2.4. Apart from the above, the defendant is also liable to repay a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) along with interest on the principal at the rate of 36% p.a., towards loan advanced by M/s.Bennett Property Holdings Company Limited on 17.07.2014, to meet some urgent financial commitments. Therefore, the defendant is liable to pay, in all a sum of Rs.4,71,34,690/- (Rupees Four Crores Seventy One Lakhs Thirty Four Thousand Six Hundred and Ninety Only) together with interest at the rate of 24% p.a. The plaintiff restrict their interest on the sum of Rs.25,00,000/- advanced as a loan at the rate of 24% p.a., instead of the agreed interest at the rate of 36% p.a.

2.5. It is stated that the amount due and payable by the defendant to M/s.Bennett Property Holdings Limited has been assigned to the plaintiff by terms of the business transfer agreement dated 06.08.2014. Therefore, the plaintiff is legally entitled to receive the entire suit claim from the defendant and in any event, the defendant is liable to pay the suit claim only to the plaintiff. Hence, the plaintiff issued a legal notice dated 28.11.2016 to the defendant demanding to repay the commission amount due. However, the defendant has not showed any inclination to pay the amount due to the plaintiff and hence, the plaintiff is constrained



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to the file the present suit.

3. Since the defendant remained absent, the defendant was set *ex-parte* by this Court on 16.12.2020.

4. On the side of the plaintiff, the Authorized Signatory of the plaintiff/Company, Mr.A.Senthil Kumar was examined as P.W.1 and he has reiterated the averments made in the plaint and also marked 14 documents as Exs.P1 to P14.

5. Heard the learned counsel appearing for the plaintiff and perused the materials available on record.

6. On a perusal of the plaint averments and also Proof Affidavit of the plaintiff and documents marked on behalf of them, this Court finds that the suit claim is proved by the plaintiff, and hence, the



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plaintiff/Company is entitled to the decree as sought for in the plaint.

Accordingly, the suit is decreed as prayed for, with costs. Consequently, connected pending applications, if any, are closed.

**28.06.2024**

Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

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**List of Witness examined on the side of the plaintiff**

A.Senthil Kumar - PW1

**List of documents marked on the side of the plaintiff**

| SL. No | Exhibits | DESCRIPTION OF DOCUMENTS                                                                                                       | DATED      |
|--------|----------|--------------------------------------------------------------------------------------------------------------------------------|------------|
| 1.     | P1       | Photocopy of the Board Resolution of the plaintiff                                                                             | 30.07.2018 |
| 2.     | P2       | Photocopy of the Marketing Agreement entered between M/s.Artha Financial Services Limited and the defendant                    | 02.03.2010 |
| 3.     | P3       | Photocopy of the Business Transfer Agreement between M/s.Artha Financial Services Limited and M/s.Bennett Coleman & Co., Ltd., | 03.02.2011 |
| 4.     | P4       | Photocopy of the Annexure to Marketing Agreement dated 02.03.2010 between M/s.Bennett Coleman & Co., Ltd., and the defendant   | 11.07.2011 |



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|     |     |                                                                                                                                                     |            |
|-----|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 5.  | P5  | Photocopy of the annexure between M/s.Bennett Property Holding Company Ltd., and the defendant                                                      | 03.01.2012 |
| 6.  | P6  | Office copy of the letter from the defendant to M/s.Bennett Property Holdings Company Limited                                                       |            |
| 7.  | P7  | Photocopy of the Marketing Agreement between M/s.Bennett Property Holdings Company Limited and the defendant                                        | 06.09.2012 |
| 8.  | P8  | Office copy of the Letter from defendant to M/s.Bennett Property Holdings Company Limited                                                           | 15.06.2013 |
| 9.  | P9  | Photocopy of the Sale cum Construction Agreement between the defendant and others and M/s.Bennett Property Holdings Company Limited                 | 28.03.2014 |
| 10. | P10 | Office copy of the letter from the defendant to M/s.Bennett Property Holdings Company Limited                                                       | 20.04.2014 |
| 11. | P11 | Photocopy of the Business Transfer Agreement between M/s.Bennett Property Holdings Company Limited and between M/s.Artha Financial Services Limited | 06.08.2014 |
| 12. | P12 | Office copy of the legal notice issued to the defendant                                                                                             | 28.11.2016 |
| 13. | P13 | Return Cover addressed to the defendant                                                                                                             | 02.12.2016 |
| 14. | P14 | Return Cover addressed to the defendant                                                                                                             | 14.02.2017 |

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**P.VELMURUGAN, J**

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