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A. Nos.976 and 977 of 2025

in

C.S. No.238 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2025

CORAM :

THE HONOURABLE MR.JUSTICE P.DHANABAL

A. Nos.976 and 977 of 2025

in

C.S. No.238 of 2025

M.S. Moorthy

Proprietor

M/s. Moorthy & Associates

... Applicant / Plaintiff

[common in both applications]

Vs.

1. M/s. KRM Home Makers Pvt. Ltd.,

represented by its Director

Mr. R. Suresh Kumar

2. Bank of Ceylon

represented by its Country Manager

3. M/s. Akshara Associates

represented by its Partner Mrs. Sivapoosanam... Respondents / Defendants

[common in both applications]

1.

PRAYER in A. No.976 of 2025: This application has been filed under Order



A. Nos.976 and 977 of 2025

in

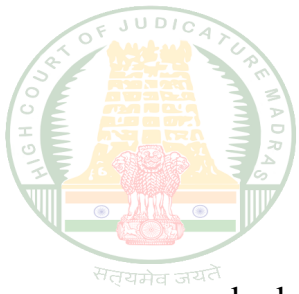
C.S. No.238 of 2025

XIV Rule VIII of Original Side Rules read with Order XXXIX Rule 1 & 2 of

Civil Procedure Code praying to grant an order of interim injunction restraining the 2nd respondent / 2nd defendant from proceeding with or enforcing or exercising security interest or any right for sale / auction in respect of the built up area / constructed units, constructed by the applicant / Plaintiff, without disclosing the Plaintiff's unpaid builder's lien in the suit schedule property, pending disposal of the Suit.

PRAYER in A. No.977 of 2025: This application has been filed under Order XIV Rule VIII of Original Side Rules read with Order XXXIX Rule 1 & 2 of Civil Procedure Code praying to grant an order of interim injunction restraining the 2nd respondent / 2nd defendant, their directions, men, servants, agents or any person claiming under them, from claiming or exercising any right or charge over the Suit schedule property or enforcing its security interest over the Suit schedule property without admitting and disclosing the right / lien of the applicant /Plaintiff in respect of the Suit

Page No.2 of 17



A. Nos.976 and 977 of 2025
in
C.S. No.238 of 2025

schedule property, pending disposal of the above Suit.

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In both applications:

For Applicant : Mr.S. Thanka Sivan

COMMON ORDER

The Plaintiff has filed the main Suit for the relief of declaration declaring that the Plaintiff is entitled to have unpaid builder's lien over the entire unsold built up area constructed by the Plaintiff, till his dues are paid by the 1st defendant and the right of the 2nd defendant is subject to Plaintiff's builder's lien, for declaring that the notice dated 04.06.2025 issued by the 2nd defendant bank under Section 13(4) of the SARFAESI Act with regard to the Suit schedule property without disclosing the Plaintiff's builder's lien / charge over the entire unsold constructed area set out in the schedule as illegal and permanent injunction restraining the the 2nd defendant bank from claiming or proceeding with by exercising any right or charge over the suit Schedule property or any action for enforcing its security interest without disclosing the

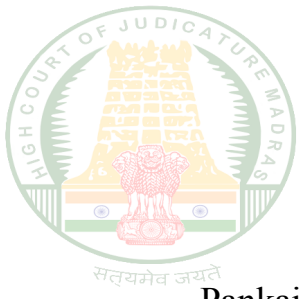


A. Nos.976 and 977 of 2025
in
C.S. No.238 of 2025

Plaintiff's lien / right over the suit Schedule property.

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2. The learned counsel appearing for the applicant / Plaintiff would submit that the applicant / Plaintiff is a registered sole proprietary concern and carrying on the business as a builder and real estate developer / building contractor for more than 25 years. The suit schedule property / land was originally owned by Mr. Pankaj K Patel. The father of Mr. Pankaj K Patel and the father of Mr. Ashok R Patel namely Ratanshi M. Patel are the Director of the 1st respondent / defendant. Earlier, the said persons entered into a registered Sale Agreement dated 02.05.2013 in favour of the M/s. Mitra Home Makers Pvt Ltd., in which, Mr. M. S. Moorthy as well as his wife Mrs. Sujatha Moorthy are the directors / shareholders. The 1st defendant company was incorporated by Mr. Khimji M. Patel, Mr. Ratanshi M. Patel, Mr. M.S. Moorthy and his wife Mrs. Sujatha Moorthy. In so far as the ownership of the said land was concerned, it was agreed upon as 50% would be of the said Mr.



A. Nos.976 and 977 of 2025

in

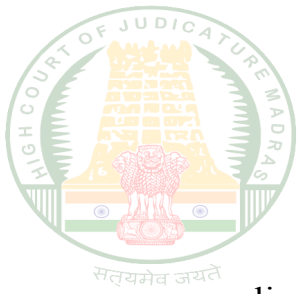
C.S. No.238 of 2025

Pankaj K. Patel and Mr. Ashok R. Patel and 50% would be of M/s. Mitra

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Home Makers Pvt Ltd., by mutual consent in view of financial transactions and debts payable by the family of Mr. Pankaj K. Patel and Mr. Ashok R Patel to M/s. Moorthy Associates. Due to the said Special Purpose Vehicle (SPV), the 1st respondent / defendant was constituted with 50% of the shareholding for the family members of Mr. Ashok R. Patel and Mr. Pankaj K. Patel by nominating their respective fathers Mr. Khimji M. Patel and Mr. Ratanshi M. Patel and 50% shareholding in favour of the Directors of M/s. Mitra Home Makers Pvt. Ltd., viz., Mrs. and Mr. M.S. Moorthy and also they decided to develop the said property by engaging suitable building contractor by constructing apartment complex consisting of 99 apartments and 2 shops and other amenities.

2.1. After considering various offers from the contractors, the directors of the 1st respondent / 1st defendant appointed the applicant / Plaintiff as the building contractor for the said construction project as the cost quoted by the



A. Nos.976 and 977 of 2025

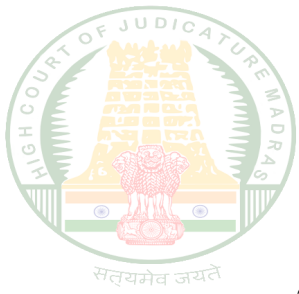
in

C.S. No.238 of 2025

applicant / Plaintiff was reasonable. The project was named as "KRM 99

delights". Subsequently, some inter-se disputes arose relating to the functioning of the 1st respondent / defendant company and the 1st respondent company is in financial crisis. The 1st defendant company entered into a contract agreement dated 01.06.2014 with the applicant / Plaintiff. As per the construction agreement, the Plaintiff concern has to construct the apartment complex as per the CMDA approval and Building Plan approval of Greater Chennai Corporation. The 1st respondent / defendant agreed to pay an initial advance of Rs.2 crores for the purpose of construction materials and further agreed to make payments towards bills that may be raised by the applicant / Plaintiff from stage by stage, with the approval of the architect appointed by the 1st respondent / defendant and the bills would be paid within 15 days. The 3rd respondent was the authorized engineer / architect, who has to inspect the construction activities and to certify the construction bills to be submitted by the applicant / Plaintiff from stage by stage.

Page No.6 of 17



A. Nos.976 and 977 of 2025

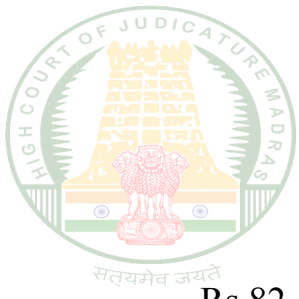
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C.S. No.238 of 2025

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2.2. In the Architecture Design Service Agreement dated 03.07.2014, the original registered land owners Mr. Pankaj K Patel and Mr. Ashok R Patel are the parties. As such, the said agreement was a tripartite agreement, the builder has to follow the standard norms for execution of the contract. By virtue of the above arrangement, the applicant / Plaintiff took up the construction activities by pooling monies on its own in view of the relationship the proprietor of the applicant / Plaintiff had with the director of the 1st respondent and also raised periodical bills to be paid by the 1st respondent. The above said bills raised by the applicant / Plaintiff have been duly certified by the 3rd respondent / defendant and the building project known as "KRM 99 Delights" was completed by the applicant / Plaintiff and due completion certificate was also received by the Plaintiff from the Chennai Metropolitan Development Authority through Completion Certificate dated 10.10.2018. The respondents / 1 and 2 defendants are fully aware of the same. The 1st respondent / 1st defendant is liable to pay the Plaintiff a sum

Page No.7 of 17



A. Nos.976 and 977 of 2025

in

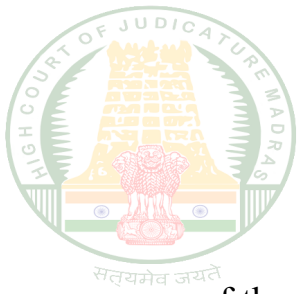
C.S. No.238 of 2025

Rs.82,13,74,406/- towards Principal due as on 10.06.2025 and the principal

amount due is Rs.31,69,88,131/-.

2.3. The 1st respondent / 1st defendant had earlier approached the 2nd defendant bank through its Director who had already existing banking facility with the 2nd respondent for a project loan for the purpose of construction of apartment complex in the aforesaid property measuring 56 cents. The 2nd respondent / defendant completed all documentation formalities for securing its interest by creating mortgage deed dated 16.03.2016. In fact, the registered agreement for sale was made in order to convey 50% share in the land in favour of M/s. Mitra Home Makers Pvt. Ltd., was cancelled at the request of the bank officials in order to facilitate a direct mortgage to be registered in favour of the 2nd respondent from the registered land owners. The 2nd respondent / 2nd defendant has approved and a loan cash credit facility amount of Rs.19 crores to the 1st defendant. The said two Directors

Page No.8 of 17



A. Nos.976 and 977 of 2025

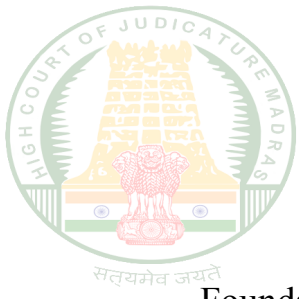
in

C.S. No.238 of 2025

of the 1st respondent / defendant company and their sons who are the original

land owners had siphoned out major portion of the loan amount of Rs.18.25 crores illegally for their personal profits and by stating false reasons as if the bank has not released the loan facility and are delaying payment of bills to the applicant / Plaintiff and the applicant / Plaintiff did not doubt the statement of the said Directors in view of the long relationship.

2.4. The original land owners had executed a registered Deed of General Power of Attorney dated 28.09.2015 in favour of the 1st respondent granting all powers to sell the undivided share of land, constructed apartments etc. and under the said registered Deed of Power of Attorney, the 1st respondent company was having absolute power to deal with the entire project known as "KRM 99 Delights". The 1st respondent company and its funds availed through bank loan from the 2nd respondent / defendant bank, have been completely mismanaged and misappropriated by its Directors by way of transfer of more than Rs.18.25 crores to their personal entity KR



A. Nos.976 and 977 of 2025

in

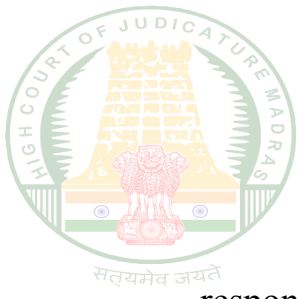
C.S. No.238 of 2025

Foundation without the knowledge of the other Directors in collusion with the

2nd respondent / defendant. Thereafter, the Director of the company authorized other Directors Mrs. Sujatha Moorthy and M.S. Moorthy to run the affairs of the company with all powers and to deal with the project "KRM 99 Delights" on their own by treating that all their accounts were settled and they shall not claim any right in the project. This was informed by a Declaration dated 29.03.2019 and further Deed of MOU dated 01.07.2019.

2.5. In the meantime, due to the internal disputes with the 1st defendant, the project was virtually locked for a long time and the reputation of the project was seriously affected. Hence, the flats could not be sold freely. Later the company managed to repay Rs.26.80 crores to the 1st defendant company and also sold 46 flats and repaid the 2nd defendant. The 1st defendant company negotiated with the 2nd respondent / 2nd defendant and requested for one time settlement and an OTS was also issued by the 2nd

Page No.10 of 17



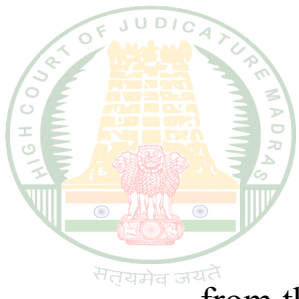
A. Nos.976 and 977 of 2025

in

C.S. No.238 of 2025

respondent on 15.09.2023. During such time, the land owners and their sons were acted with ulterior motive and cancelled the power of attorney executed in favour of the 1st respondent. Thereafter, the 1st respondent / defendant became incapable of dealing with the project.

2.6. The 2nd defendant officials have illegally allowed the project loan amounts in favour of the personal entities of the said Directors which has become the cause for the present situation. In fact, legal proceedings are pending before the NCLT between the Directors and the said Suit is only restricted to the claim of the applicant / Plaintiff for being in possession of the Suit schedule property exercising builder's lien and to protect its claim which is sought to be ignored and defeated by the 2nd defendant bank and the Suit is restricted only to the applicant / Plaintiff regarding construction cost payable by the 1st respondent as the applicant / Plaintiff has admittedly completed the construction of the entire complex and also obtained completion certificate



A. Nos.976 and 977 of 2025

in

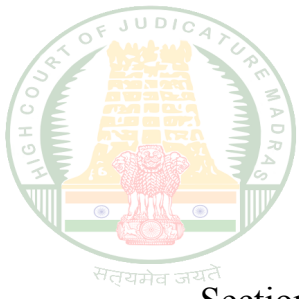
C.S. No.238 of 2025

from the CMDA. The 2nd respondent issued a notice dated 10.02.2025 under

Section 13(2) of the SARFAESI Act for recovering Rs.15,71,92,319/- by the 1st respondent by clearly mentioning the Suit schedule property alone as the security. The applicant is the contractor, who has completed the entire construction and the applicant is entitled for a "builder's lien" in the entire Suit schedule property. The remaining unsold apartments are being rented out by the Plaintiff as per the permission by Board Resolution dated 17.05.2025 of the 1st respondent.

2.7. Again the 2nd respondent issued a notice dated 04.06.2025 under Section 13(4) of the SARFAESI Act and it is not in conformity with Section 13(2) notice and it seeks to defeat the Plaintiff's right of possession over the Suit schedule property for which huge payments have not been settled by the 1st respondent / defendant. In fact, previous notice under Section 13(2) of the covers only the mortgaged land and the consequential notice under

Page No.12 of 17



A. Nos.976 and 977 of 2025

in

C.S. No.238 of 2025

Section 13(4) seeks to cover the entire remaining unsold constructed portions.

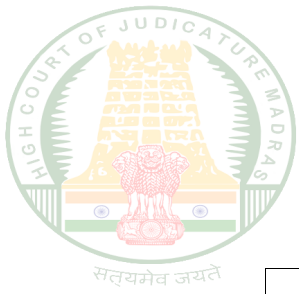
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The 2nd respondent/ defendant bank is acting with the fraudulent intention of defeating the applicant's claim by modifying the Schedule in notice issued under Section 13(4) of the SARFAESI Act. The applicant is having a "builder's lien" over the Suit schedule property. However, the 2nd respondent / defendant bank officials have intentionally failed to disclose the Plaintiff's claim. Therefore filed the Suit and prayed to pass an interim order.

3. This Court heard the applicant's side and perused entire materials. The Plaintiff has produced the copy of the notice dated 10.02.2025 under Section 13(2) of the SARFAESI Act, wherein the details of mortgaged property is shown as Schedule - B as follows:

SCHEDULE 'B' (SCHEDULE OF PROPERTY MORTGAGED)

All that piece and parcel of land measuring 69.77 cents (approximately 2,823.64 sq. mtrs, situated at Old Survey Nos.1414/2A & 1415/1, 1413/Part, 1414/Part, 1414/1 (Plot No.20),



A. Nos.976 and 977 of 2025

in

C.S. No.238 of 2025

WEB COPY

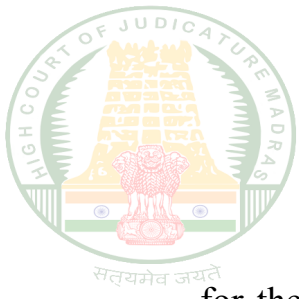
1413 and 1414/1 (Plot Nos.22 and 23), T.S. No.66/1 and 66/2, Block No.46, Ward - D, Jawaharlal Nehru Road (Inner Ring Road), Madhavaram Village, Ambattur Taluk, Thiruvallur District.

Whereas, in Notice under Section 13(4) of the SARFAESI Act dated 04.06.2025, the description of the property was mentioned as follows:-

DESCRIPTION OF THE IMMOVABLE PROPERTY

All that piece and parcel of land measuring 69.77 Cents (approximately 2,823.64 Sq. mtrs, situated at Old Survey Nos.1414/2A & 1415/1, 1413/Part, 1414/Part, 1414/1 (Plot No.20), 1413 and 1414/1 (Plot Nos.22 and 23), T.S. No.66/1 and 66/2, Block No.46, Ward - D, Jawaharlal Nehru Road (Inner Ring Road), Madhavaram Village, Ambattur Taluk, Thiruvallur District (excluding the apartment units and their respective UDS that have been already sold and registered pursuant to the NOC issued by Bank of Ceylon).

4. Therefore, there are some discrepancies between the above said two notices. Further this Court asked the applicant as to whether the applicant is ready to settle the money to the bank. For that, the learned counsel appearing
Page No.14 of 17



A. Nos.976 and 977 of 2025

in

C.S. No.238 of 2025

for the appellant seeks adjournment to get instructions. In the meantime, if

the property brought for sale, the purpose of the Suit will be defeated, hence

he prays an order of injunction from conducting auction. Considering the

facts and circumstances, this Court is inclined to pass an interim order and the

status quo to be maintained.

(i) Issue notice to the respondents returnable by **25.10.2025**.

(ii) Private Notice is also permitted.

(iii) There shall be an order of status quo.

Post the matter **on 25.10.2025**.

13.10.2025

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A. Nos.976 and 977 of 2025
in
C.S. No.238 of 2025

P.DHANABAL.,J

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WEB COPY



A. Nos.976 and 977 of 2025
in
C.S. No.238 of 2025

A. Nos.976 and 977 of 2025
in
C.S. No.238 of 2025

13.10.2025