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C.S.No.62 of.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 07.07.2025	PRONOUNCED ON 23.07.2025
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CORAM :

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

C.S.No.62 of 2024

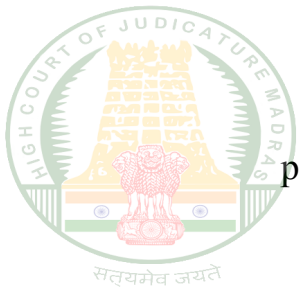
M/s.S.P.M.Infra
Rep., by its Managing Partner
Mr.Voora Ranganathan,
Having registered office at Old No.1,
New No.35, Aziz Nagar, 2nd Street,
Kodambakkam, Chennai – 600 024. ... Plaintiff

vs.

1.Mrs.J.Kalaivani
2.Mr.S.Ramaswamy ... Defendants

Prayer : Civil Suit filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC for the following reliefs:-

- (a) directing defendants to pay a sum of Rs.1,35,00,000/- together with interest at rate of 12% per annum from the date of plaint till the date of realization in full.
- (b) to pay the cost of the suit.
- (c) to pass such further or other order as this Court deem fit and



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proper in the circumstances of the above case.

For Plaintiffs : Mr.L.Dhamodharan

For defendants : D1 & D2 set ex-parte on 04.04.2025

J U D G M E N T

This suit has been filed for recovery of a sum of Rs.1,35,00,000/- from the defendants.

2) The case of the plaintiff is that the plaintiff is a registered partnership firm engaged in the business of property development. The second defendant is the power of attorney holder of the first defendant, authorised to deal with the suit property. The plaintiff approached the defendants with an interest to purchase the suit property for a development project. The defendants agreed to sell the said property for a total sale consideration of Rs.7,50,00,000/-. Accordingly, an agreement of sale was executed between the parties on 28.08.2023, with a condition that the sale transaction should be completed within 90 days from the date of the agreement. Pursuant to the agreement, the plaintiff paid a sum of Rs.1,30,00,000/- as advance. However, the defendants failed and refused to execute the sale deed within the stipulated time. It is the specific case of the plaintiff that the defendants have a practice of collecting advance amounts from different prospective purchasers for the same property,

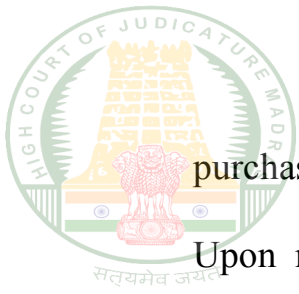


without any intention of honouring the sale. In these circumstances, the plaintiff has filed the present suit seeking recovery of the advance amount of Rs.1,30,00,000/- along with an additional sum of Rs.5,00,000/- towards damages, totalling Rs.1,35,00,000/-.

3) On the side of the plaintiff, the Managing Partner has been examined as PW1 and marked Ex.P1 to Ex.P8. The defendants were set exparte on 04.04.2025.

4) Mr. L.Dhamodharan, learned counsel appearing for the plaintiff.

5) Mr. L. Dhamodharan, learned counsel appearing for the plaintiff, submits that the plaintiff is a registered partnership firm engaged in the business of property development, particularly through construction and sale of flat premises, and has been in the said business for over a decade. He submits that the first defendant is the absolute owner of the suit schedule property and had executed a General Power of Attorney dated 02.06.2022 in favour of the second defendant, authorizing him to deal with the said property. He further submits that the plaintiff approached the defendants with an offer to



purchase the suit property for a total sale consideration of Rs.7,50,00,000/-.

Upon mutual consent, the parties entered into an agreement of sale dated 28.08.2023, under which the sale was to be completed within 90 days. In furtherance of the agreement, the plaintiff paid a total advance of Rs.1,30,00,000/- by way of two cheques: one for Rs.1,00,000/- dated 03.08.2023 and another for Rs.1,29,00,000/- dated 28.08.2023.

6) He contends that at the time of entering into the agreement, the defendants held only 7/8th share in the suit property and had agreed to acquire the remaining 1/8th share before execution of the sale deed. Additionally, the suit property was in possession of tenants, and the defendants undertook to ensure that the tenants would be vacated prior to execution of the sale. Thus, it is submitted that the agreement of sale was a contingent contract, enforceable only upon fulfillment of the above-stated conditions. He submits that despite repeated requests and follow-ups by the plaintiff, the defendants failed to acquire the remaining 1/8th share or vacate the tenants, thereby frustrating the performance of the contract. Owing to the defendants' inaction, both parties mutually agreed to renew the agreement, and accordingly, a renewal agreement of sale dated 26.11.2023 was entered into for an additional period of 30 days. However, even during the extended period, the defendants failed to fulfill their



contractual obligations and remained indifferent to the agreed conditions.

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7) He further submits that upon inquiry, the plaintiff came to know that the defendants were in the habit of obtaining advance amounts from various prospective purchasers using the same property, without any genuine intent to conclude a sale. Realizing the fraudulent intent, the plaintiff issued a legal notice dated 06.02.2024, thereby terminating both the agreement of sale dated 28.08.2023 and the renewal agreement dated 26.11.2023, and called upon the defendants to refund the advance amount of Rs.1,30,00,000/- along with Rs.5,00,000/- as damages. It is contended that the defendants' failure to refund the said amount, despite being unable to comply with the terms of the contract, is unjust and has caused serious financial loss to the plaintiff. The amount paid as advance was from the plaintiff firm's business funds, and due to non-refund, the plaintiff's business operations have been adversely affected.

8) He also submits that the defendants are now attempting to create third-party charges over the suit property, which would defeat the plaintiff's right to recover the advance amount. In support of the plaintiff's claim, the photocopy of the partnership deed and the certificate of registration of the firm have been marked as Ex.P1 and Ex.P2 respectively. The original agreement of



sale and renewal agreement of sale have been marked as Ex.P3 and Ex.P4. It is further submitted that the defendants were set ex-parte on 04.04.2025 after due service of summons, and no defence has been raised on their behalf. Hence, the learned counsel prays that the suit may be decreed as prayed for, in order to secure justice to the plaintiff.

9) Heard the learned counsel for the plaintiff and perused the material available on record.

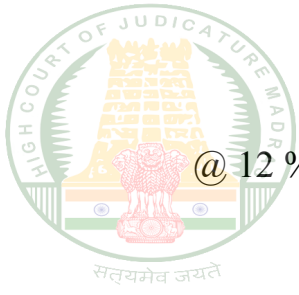
10) From the unrebutted evidence placed on record and the materials marked as exhibits, it is evident that the plaintiff, a registered partnership firm engaged in property development, entered into an agreement of sale dated 28.08.2023 (Ex.P3) with the defendants for the purchase of the suit property for a total consideration of Rs.7,50,00,000/-. In pursuance of the said agreement, the plaintiff paid an advance of Rs.1,30,00,000/- by way of two cheques, as evidenced by the documentary proof. The agreement, being a contingent contract, required the defendants to (i) acquire the remaining 1/8th share of the property and (ii) vacate the existing tenants before executing the sale deed. The plaintiff has also produced the renewal agreement dated 26.11.2023 (Ex.P4) showing that the time for execution was extended by



mutual consent for a further period of 30 days. However, the defendants failed to fulfill the preconditions for executing the sale and remained unresponsive despite repeated requests from the plaintiff. The plaintiff also issued a legal notice dated 06.02.2024 terminating both agreements and demanding refund of the advance amount and damages.

11) The contention that the defendants are in the practice of collecting money from various purchasers using the same property, and their failure to perform the contract even after renewal, strengthens the presumption of mala fide intent. The plaintiff has established, through Ex.P1 and Ex.P2, the firm's legal status and business capacity, and through Ex.P3 and Ex.P4, the execution and breach of the contractual obligations by the defendants. Furthermore, the defendants were set ex-parte on 04.04.2025 after due service. In the absence of any contrary evidence, and in light of the consistent and supported version of the plaintiff, this court considers that the plaintiff is entitled to recover the advance amount of Rs.1,30,00,000/- along with Rs.5,00,000/- as damages, as claimed in the suit.

12) In fine, the suit is decreed as prayed for with cost of the suit, directing the defendants to pay a sum of Rs.1,35,00,000/- along with interest



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@ 12 % per annum within a period of eight weeks from the date of the order.

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Index : Yes / No
Internet : Yes / No
Pbn



List of witnesses examined on the side of the Plaintiff:

PW1- Mr.Voora Ranganathan

List of documents marked on the side of the Plaintiff:

Ex.P1	The photocopy of the partnership deed dated 29.11.2021 (Original is produced, compared and returned to the plaintiff's counsel)
Ex.P2	The photocopy of the register of firm certificate dated 02.02.2022.
Ex.P3	The original agreement of sale dated 28.08.2023
Ex.P4	The original renewal agreement of sale dated 26.11.2023
Ex.P5	The office copy of the legal notice dated 06.02.2024.
Ex.P6	The original acknowledgment card and return cover.
Ex.P7	The office copy of the corrigendum dated 10.02.2024
Ex.P8	The original acknowledgment card and return cover.

List of witnesses examined on the side of the Defendant:

NIL

List of documents marked on the side of the Defendant:

NIL

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K.KUMARESH BABU.J.,

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Pre-Delivery Judgment in
C.S.No.62 of 2024

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