



WEB COPY



O.S.A. (CAD) No.73 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2025

CORAM :

THE HON'BLE MR. K.R. SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE SENTHIL KUMAR RAMAMOORTHY

O.S.A. (CAD) No.73 of 2024

and C.M.P.No.13606 of 2024

M/s. Karismaa Foundations Pvt Ltd.,
Rep by its Managing Director,
Having its Registered office at
No.34, 4 th Main Road, Gandhi Nagar,
Adyar, Chennai 20.

.. Appellant

Vs

1. G. Sree Vidhya
2. Rakesh P.Sheth
3. Roshini P.Sheth
4. Premsai Chandur

.. Respondents

Prayer : Appeal filed under Section 13(1A) of the Commercial Courts Act, 2015, against the judgment and decree dated 28.03.2024 passed in A.No.622 of 204 in C.S.No.46 of 2018 on the file of original side of this Court.



O.S.A. (CAD) No.73 of 2024

severally against the defendants for a sum of Rs.1,95,96,780.60. After the suit was filed, proceedings were initiated against the appellant before the National Company Law Tribunal, Chennai. While those proceedings were pending, the appellant and the first respondent entered into a Memorandum of Compromise dated 14.09.2019. In terms thereof, the appellant agreed to pay the first respondent a sum of Rs.1,25,00,000/- in full and final settlement. In case of default, the Memorandum of Compromise provided for the payment of additional interest at 10% per annum. It also provided for dispute resolution by arbitration.

3. In view of the payment of a sum of Rs.55 lakhs in terms of Clause 2 of the Memorandum of Compromise, the first respondent applied for amendment of the plaint so as to correspondingly reduce the suit claim. Such amendment was allowed and an amended plaint was filed on 24.07.2023. The challenge to the order allowing the amendment came to be rejected by the Hon'ble Supreme Court subsequently. In the amended plaint, the first respondent prayed for a decree in a sum of Rs.1,10,24,520.54. The application for summary judgment was filed in these facts and circumstances seeking a summary judgment for the entire



O.S.A. (CAD) No.73 of 2024

suit claim.

WEB COPY

4. Learned counsel for the appellant challenges the order of the learned Single Judge primarily on the ground that the Court recorded the finding that the first defendant/appellant herein had made out a probable case for defending the suit. Once such a finding is recorded, the learned counsel contends that a conditional order under Rule 7 of Order XIII-A cannot be issued. By referring to the said rule, he submits that a conditional order may be issued only if the Court concludes that it is possible that a defence may succeed, but it is improbable that it shall do so. Learned counsel also contends that an additional sum of Rs.45 lakhs was paid by the appellant pursuant to the second Memorandum of Compromise, which is also dated 14.09.2019. He also contends that the cause of action has been fundamentally altered by the amendment and that interference is warranted with the impugned order.

5. Learned senior counsel for the first respondent refutes these contentions. He points out that learned Single Judge recorded a conclusion that the sum of Rs.70 lakhs is an undisputed amount, which is due and



O.S.A. (CAD) No.73 of 2024

payable to the first respondent. In those circumstances, he contends that paragraph 36 of the impugned order cannot be read in isolation.

6. Rule 6 of Order XIII-A confers wide powers on the Court hearing an application for summary judgment to issue not only the orders listed therein, but any other orders. This is evident from the use of the inclusionary word “including” in sub-rule (1) of Rule 6. The Memorandum of Compromise has been placed on record. Clauses (2) and (3) thereof are as under:-

" 2. The Corporate Debtor shall discharge the said debt of the Corporate Debtor the entire debt of Rs.1,25,00,000/- in instalments in the following manner:

a. Rs.55,00,000/- on Order of Withdrawal by The Hon'ble NCLT, Chennai vide DD numbers

i. 102847 for INR 20,00,000/- (Rupees Twenty Lakhs only) drawn on Axis Bank dated 13th day of September 2019.

ii. 000910 for INR 35,00,000/- (Rupees Thirty-Five Lakhs only) drawn on Axis Bank dated 13th September 2019.

b. Rs.70,00,000/- vide Cheque No.001112 dt. 31.03.2019 drawn on ICICI Bank Ltd.

3. The Parties hereby agree that the said sum is payment would be Full and Final Settlement of all claims arising out of



WEB COPY



O.S.A. (CAD) No.73 of 2024

the Agreement for construction dated 10.11.2014 including all interest for delayed payments, litigation costs, etc. The Parties agree that the said sum of Rs.1,25,00,000/- is a crystallized sum of interest including all interest for delayed payments till the actual date of payment and thus, it is agreed that the sum of Rs.1,25,00,000/- includes a component of "time value for money" as defined under section 5(8) of the IBC."

The admitted position is that the first instalment of Rs.55 lakhs was paid by the appellant, but the second instalment of Rs.70 lakhs was not paid. This was noticed by the learned Single Judge, who recorded as under in paragraph 32:-

"32. Therefore, after giving due consideration to the fact that the plea of limitation raised by the defendants is not a moonshine defence as it requires further consideration for which oral evidence of the parties is required, the plaintiff is not entitled for a summary judgment as prayed for in this application. However, considering the fact that Rs.70,00,000/- is an un-disputed amount, the first defendant must be put on terms for allowing them to defend the suit, on merits."

Thereafter, in paragraph 36, the Court also recorded as under:-

"36. Insofar as the limitation plea is concerned, the first defendant has made out a probable case for defending the suit on the ground that the suit is barred by limitation since the amendment applications seeking amendment of the claim was filed beyond the period of three years from the date of the Memorandum of Compromise."

7. As correctly contended by the learned senior counsel for the first respondent, paragraph 36 cannot be read in isolation and is required to be



O.S.A. (CAD) No.73 of 2024

read in the context of the entire judgment. When so read, the only reasonable conclusion is that the Court held that the first defendant has a probable case to defend the suit on the ground of the suit not being barred by limitation. The Court did not conclude that the first defendant/appellant herein has a probable case to defend the entire suit claim. The direction to the appellant herein to deposit a sum of Rs.70 lakhs, which was construed as an undisputed amount by the learned Single Judge, cannot be faulted in the facts and circumstances. It should also be noticed in this connection that the learned Single Judge has recorded that no opinion is being expressed on the merits of the respective contentions.

In the circumstances, we see no reason to interfere with the impugned order. Hence, Original Side Appeal (CAD) No.73 of 2024 is dismissed, without any order as to costs. Consequently, connected miscellaneous petition also stands dismissed.

(K.R.SHRIRAM., CJ.) (SENTHILKUMARRAMAMOORTHY, J.)
20.01.2025



O.S.A. (CAD) No.73 of 2024

Index : Yes/No
NC : Yes/No
WEB COPY
sra

THE HON'BLE CHIEF JUSTICE
AND
SENTHILKUMAR RAMAMOORTHY,J.

(sra)

To:

1. The Section Officer,
Original Side,
Madras High Court, Chennai.

O.S.A. (CAD) No.73 of 2024



WEB COPY



O.S.A. (CAD) No.73 of 2024

20.01.2025