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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.02.2026

PRONOUNCED ON : 02.04.2026

CORAM

**THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN
AND
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**
CMA Nos. 184 & 185 of 2025

Radiance Realty Developers India Limited
First Floor, New Door No.111, Old No.110,
33 Feet Road, Anna Salai, Guindy,
Chennai – 600 032
represented by its Authorized Signatory,
K. Kannadasan.

Appellant(s) in both
appeals

Vs

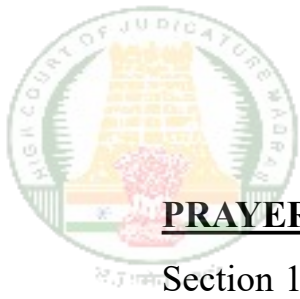
1. M. Rekha

First Respondent in CMA No.184 of
2025/Respondent in CMA No.185 of
2025

2.Punjab National Bank
Saligramam Branch, No.21,
Kalaingar Street, Kavari Rangan Nagar,
Saligramam, Chennai – 600 093.

Second Respondent in
CMA No.184 of 2025

PRAYER in CMA No. 184 of 2025: Civil Miscellaneous Appeal filed under Section 13 of Commercial Courts Act, r/w Order XLIII Rule 1 of CPC to allow the Civil Miscellaneous Appeal to set aside the order dated 29.07.2024 (the impugned order) passed in IA No.1 of 2024 in COS (SR) No.185 of 2024 on the file of the Learned Principal Judge, Commercial Court, Egmore, Chennai.



PRAYER in CMA No. 184 of 2025: Civil Miscellaneous Appeal filed under Section 13 of Commercial Courts Act, r/w Order XLIII Rule 1 of CPC to allow the Civil Miscellaneous Appeal and set aside the order dated 29.07.2024 (the impugned order) passed in COS SR No.185 of 2024 on the file of the Learned Principal Judge, Commercial Court, Egmore, Chennai.

In both CMAs

For Appellant(s): Mr. Arun C. Mohan

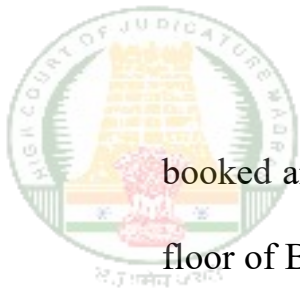
COMMON JUDGMENT

(Judgment of the Court was made by C.V.Karthikeyan J.)

The applicant in IA No.1 of 2024 in COS SR. No.185 of 2024 aggrieved by the rejection of the said Interlocutory Application by order dated 29.07.2024 by the Principal Commercial Court, Egmore, Chennai has filed the present appeal.

2.COS SR.No.185 of 2024 had been filed by the appellant herein- Radiance Realty Developers India Limited, seeking a judgment and decree against the defendant M.Rekha to pay a sum of Rs.41,42,871/- together with interest and future interest in accordance with the construction agreement dated 13.07.2020 and for costs of the suit.

3.In the plaint, it had been contended that the plaintiff had purchased a large extent of land measuring 48.6 grounds at Koyembedu in Chennai to form residential apartments under the name Radiance Icon. The defendant had



booked an apartment on 13.03.2020 having carpet area of 1003 sq.ft in the first floor of Block B in Tower I for a flat bearing No.B 112. Thereafter, the plaintiff and the defendant entered into a construction agreement dated 17.08.2020 for construction of the flat. The total consideration for construction was Rs.85,11,281/-. The defendant also entered into a sale deed dated 17.08.2020 for the purchase of 499 sq.ft. of undivided share in the land for a sale consideration of Rs. 50,14,950/-. Towards the consideration, the defendant had mortgaged the flat and the undivided share of the land and obtained housing loan.

4.It was contended that the plaintiff had completed the construction and informed the defendant to take possession of the flat. However, the defendant did not respond. The plaintiff then found that Punjab National Bank had issued a demand notice on 18.04.2023 to the defendant demanding payment of an outstanding loan amount of Rs.89,55,720/- and since the defendant had failed to repay the loan, had issued possession notice on 18.07.2023 and had also issued sale notice on 29.09.2023 informing that the premises would be E-auctioned and that the reserve price was Rs.1,32,00,000/-.

5.The plaintiff, claiming that the amount towards the sale consideration and the construction had not been paid by the defendant had instituted the suit for recovery of the aforesaid amount of Rs.41,42,871/- towards their claim.



6.The plaintiff also filed an application under Order XXI Rule 46 of the Code of Civil Procedure. This application came up for consideration before the Principal Commercial Court, Egmore, Chennai. By order dated 29.07.2024, the application was rejected as not maintainable. In the order, it had been stated that there was no privity of contract between the plaintiff-Radiance Realty Developers India Limited and Punjab National Bank. It was further observed that the application had been filed under Order XXI Rule 46 of the Code of Civil Procedure, and it was held that the said provision would apply only to execution proceedings and not to original suits. It was also noted that the plaintiff was not a secured creditor and therefore cannot claim that the sale consideration should be paid to them. It was further observed that the property had been attached by the second respondent/Garnishee under SARFAESI proceedings and E-Auction had also been announced. It was thus observed that the first respondent/defendant was a debtor and the second respondent/Garnishee was a secured creditor and the plaintiff being a third party stranger can never enforce any right as against the second respondent/Garnishee. Holding as above, the application was rejected.

7.The learned counsel for the appellant pointing out the facts of the case stated that the defendant had to pay a sum of Rs.38,83,891/- towards construction costs. The defendant had also simultaneously mortgaged the



property and had defaulted in repayment of loan. The learned counsel argued that if there was any excess sale consideration received by the Bank, then the plaintiff can legitimately expect the same to be paid towards the suit claim.

8. However, one fundamental aspect which has to be noted is that the Interlocutory application had been filed under Order XXI Rule 46 of the Code of Civil Procedure, which provision is applicable only when a decree had been passed and towards execution of such decree. Here the suit itself had not been numbered and taken on file. The said provision is not applicable. The defendant cannot be termed as a judgment debtor and the plaintiff cannot be termed as a decree holder. That particular contract and relationship is only *interse* between the defendants and not between the plaintiff and any one of the two defendants.

9. In *Bhagyoday Cooperative Bank Ltd V. Ravindra Balkrishna Patel deceased through his Lrs. and others* reported in 2022 Livelaw (SC) 1020, it had been very clearly held that Order 21 Rule 46 A of CPC is part of the scheme of the provisions relating to executions and can be claimed only by a decree holder as provided under Section 51 of CPC and Order 21 Rule 11 of CPC. The said provision is not applicable to original suits.



10. We find no infirmity in the order under appeal. The appeals stand dismissed. No costs.

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(C.V.K.J.,) (K.B.J.,)
02.04.2026

Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No
sli
To

Punjab National Bank
Saligramam Branch, No.21,
Kalaingar Street, Kavari Rangan Nagar,
Saligramam, Chennai – 600 093.



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**C.V.KARTHIKEYAN, J.
AND
K.KUMARESH BABU, J.**

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**Pre-delivery Judgment in
CMA Nos. 184 & 185 of 2025**

.04.2026