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APPEAL(CAD) No. 22 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.01.2026

PRONOUNCED ON : 19.02.2026

CORAM

**THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN
AND
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

**APPEAL(CAD) No. 22 of 2023
and
CMP No.24440 of 2024**

1. M/s.Malar Homes,
Rep. by its Managing Partner,
T.Gokulakrishnan, 1/7,
Sengeni Amman Koil 2nd Street,
Maduvankarai, Guindy,
Chennai-600 032.

2. T.Gokulakrishnan

Appellant(s)

Vs

1. R.Saroja

2.A.Seenivasan

Respondent(s)

PRAYER: Appeal filed under Section 13 of Commercial Court Act to set aside the judgment and decree dated 17.08.2022 passed by the Commercial Court at Chennai in COS No.216 of 2022.

For Appellant(s): Mr.S.Ramesh

For Respondent(s): Mr.S.Rajasekar for R1



JUDGMENT

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

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The first and second defendants in COS No.216 of 2022 have filed the present appeal questioning the judgment and decree dated 17.08.2022, passed by the Commercial Court at Chennai.

2.COS No.216 of 2022 had been initially instituted in the Original Side of this Court as CS No.794 of 2012 and later transferred to the Vth Additional City Civil Court, Chennai and renumbered as O.S.No.3970 of 2022 and on constitution of the Commercial Court at Chennai, had been again transferred and renumbered as COS No.216 of 2022.

3.The suit had been filed by the plaintiff seeking a direction against the first and second defendants to pay a sum of Rs.50,50,000/- together with interest at 15% per annum on 40,00,000/- from 01.03.2011 till the date of the plaint and future interest and a further direction against the first and second defendants to pay damages to a sum of Rs.20,20,000/- towards loss of rental income, cost of unfinished civil work along with future rents and for mandatory injunction directing the first and second defendants to deliver the schedule mentioned flats to the plaintiff and for a declaration that the agreement of sale entered into with the third defendant as null and void and for the costs of the



suit. However, owing to the subsequent events during trial, the relief sought was confined only to the relief seeking damages for a sum of Rs.20,20,000/- towards the loss of rental income, cost of unfinished civil work along with future rents.

4.The schedule of properties in the plaint for which damages was sought were two flats, flats A and B both in the first floor, admeasuring 1280 sq.ft each inclusive of common area at D.No.27 A, 3rd street, Abhiramapuram, Chennai 600 018.

5.The Commercial Court by judgment dated 17.08.2022 had decreed the suit with respect to the relief of payment of damages. The damages had been crystallised to Rs.42,40,000/-, at Rs.80,000/- per month for both flats A and B for the period from April 2011 till September 2015. It had also directed that this amount shall be paid together with interest at 15% per annum from the date of plaint till the date of decree and thereafter at 6% per annum till the date of realisation of the entire amount. Challenging that judgment and decree, the present appeal has been filed by the first and the second defendants.

6.In the plaint, the plaintiff Mrs.R.Saroja contended that she had entered into a joint development agreement with the first defendant, M/s.Malar Homes, represented by its Managing Partner, Mr.T.Gokulakrishnan, who was also impleaded in his individual capacity as the second defendant, to develop the



sub-divided portion of the property measuring an extent of 2835 sq.ft. at D.No.27 A, 3rd street, Abhiramapuram, Chennai 6000108. She had executed a registered Power of Attorney in favour of the second defendant on 13.06.2007 to complete the joint venture apartment project.

7.It was contended that the joint venture was initiated in the year 2005 and an agreement was written down in the year 2007. There was however considerable delay in commencing the project. The entire project was thereafter re-worked and a Memorandum of Understanding was entered on 20.02.2010. The first defendant agreed to put up a stilt in the ground floor and construct the first and second floors with a total of four flats. Two flats were allotted to the plaintiff and two flats were allotted to the share of the first defendant. The plaintiff was also entitled to monetary consideration of Rs.1.25/- crores. It had been contended that there was considerable delay in completing the project though the time limit was determined at six to eight months from February 2010. On the date of the plaint, it was contended that out of the monetary consideration of Rs.1.25/- crores, the first and second defendants had paid only Rs.85,00,000/- and therefore, a relief was sought for the payment of balance Rs.40,00,000/-, but subsequently, the said amount was paid. The first defendant had also agreed to renovate the existing bungalow of the plaintiff in the adjoining land.



8.It had been further contended that the first defendant also signed a letter of undertaking on 16.09.2010 after identifying a buyer for flat D in the second floor and assured to make the balance payment and hand over possession of the flats A and B allotted to the plaintiff by March 2011.

9.The plaintiff contended that there was a clause in the agreement that while identifying the buyer, the plaintiff would be consulted and the flats could be sold only after obtaining the consent of the plaintiff. The sale in favour of the purchaser of flat D was agreed by the plaintiff and the sale deed was also executed on 13.09.2010. It had been stated that the first and second defendants did not complete the construction of the flats in the first floor within the time period fixed.

10.With respect to the other flat in the second floor, the first and second defendants issued a letter on 11.08.2011 indicating the prospective purchaser. A reply was given on 28.08.2011 by the husband of the plaintiff. The first and the second defendants however entered into an agreement with the prospective purchaser who was impleaded as third defendant and it was under those circumstances that a relief was sought, seeking a restraint on execution of any document conveying the flat to the third defendant. But however, subsequently during the pendency of the trial, the flat had actually been sold to the third defendant and therefore, that relief did not survive for adjudication.



11.The plaintiff cancelled the General Power of Attorney after issuing a notice and registered the revocation document also. The plaintiff then raised a demand for damages to a sum of Rs.20,00,000/- including loss of rental income for the two flats from April 2011 and also costs of civil work left unfinished by the first defendant and also damages for the mental agony suffered by the plaintiff. It was under those circumstances that the suit had been filed for the reliefs aforementioned.

12.It must also be stated that during the pendency of the suit, the flats A and B mentioned in the schedule to the plaint had been handed over to the plaintiff on September 2015. The only relief which therefore stood for consideration is the claim for loss of rental income and damages for the delay in handing over the possession of the two flats.

13.The first defendant filed written statement. It was contended that initially an agreement was entered into in September 2005 for development of the properties by constructing flats and to complete repairing works in the adjoining building. It was stated that a contractor had already been engaged to carry out the repair work, but owing to disputes, they had left halfway through. Under the original agreement, the plaintiff was to receive one flat of 1250 sq.ft and proportionate UDS of 708 sq.ft and also a sum of Rs.65,00,000/-. The remaining three flats were allotted to the first defendant. Thereafter, a

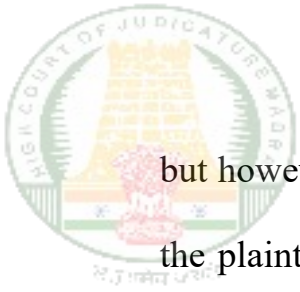


Memorandum of Understanding was entered into on 05.04.2006. Subsequently, another agreement was entered into on 14.06.2007, called Amendment of Agreement. A final agreement was entered into on 20.02.2010.

14.The plaintiff was entitled to two flats and the first defendant was entitled to the other two flats. The first defendant sold one flat to a purchaser. The first defendant also identified a purchaser for the other flat. It was contended that at all material point of time, the plaintiff and her husband hindered the work and the civil works had to be redone again. It was contended that the plaintiff and her husband wanted the market rate to increase to gain maximum profit. The first defendant stated that the plaintiff and her husband delayed the fixing of tiles and wood work so that the works are completed at a later point of time so as to give an impression that the flats are new flats. It was specifically stated that the construction of the entire flats were completed in November 2010. There were only minor works to be done.

15.It was further contended that the plaintiff has to pay Rs.10,00,000/- towards the work done in the adjacent bungalow and another sum of Rs.10,00,000/- for the additional work done and materials used in the two flats.

16.It was further contended that the third defendant had been identified as a purchaser. He had obtained Bank loan for payment of the sale consideration,



but however the sale deed could not be executed owing to the protests raised by the plaintiff and her husband. It was contended that after having received and enjoyed the money paid by the first defendant, the plaintiff had unilaterally cancelled the Power of Attorney. It was contended that the first defendant was not liable for any of the reliefs sought and that the suit should be dismissed.

17. On the basis of the above pleadings and owing to the fact that the defendants had paid a sum of Rs.40,00,000/- claimed by the plaintiff towards the balance monetary consideration, and had also handed over the possession of the flats A and B to the plaintiff and the sale deed in favour of the third defendant had also been executed, the relief relating to the claim of damages was alone put to trial.

18. During trial, the husband of the plaintiff was examined as PW1 and a Civil Engineer was examined as PW2. The plaintiff marked Exs.P1 to P21. Ex.P2 dated 13.06.2007 was the copy of the General Power of Attorney and Ex.P10 dated 13.06.2007 was the copy of the revocation of the said Power of Attorney. Ex.P3 was the Memorandum of Understanding dated 20.02.2010 and Ex.P4 was the Letter of Understanding dated 16.09.2010. The letters exchanged between the parties were marked as Exs.P6, P7, P9, P11, P12 and P15. The report of the Advocate Commissioner dated 12.04.2014 was marked as Ex.P13. The reports of the Civil Engineer were marked as Exs.P19 and 20.



19.The second defendant examined himself as DW1 and marked Exs.D1 to D7. Exs.D1 and D2 were the earlier agreements in September 2005 and April 2006. Ex.D4, D6 & D7 were copies of the building plan.

20.The Trial Judge examined Ex.P3, by which, the first and second defendants had agreed to complete the construction work and handover two apartments to the plaintiff within a period of six to eight months. It was observed that the first and second defendants had not completed the construction or handed over the flats to the plaintiff. Even when the plaint was presented before the Court, the construction work was not completed and an Advocate Commissioner had been appointed, whose report has been marked as Ex.P13. A Civil Engineer had measured the construction and noted the physical features in the report. The report was also annexed with the report of the Advocate Commissioner. The works which had not been completed had also been mentioned and the total estimate of the unfinished work was also given. It was also observed that when the suit was pending in the Original Side of the High Court, a direction had been passed against the first and second defendants to complete painting, wood work, electrical work and other works and hand over the possession of A and B flats to the plaintiff. It was therefore held by the Trial Judge that the delay was only owing to the defendants.



21. With respect to the issue of damages and the rental value, the Trial Court relied on the evidence of PW2, who had determined the monthly rent at Rs.47,965/- for flat A and Rs.48,303/- for flat B. The Trial Court had fixed a uniform rent of Rs.40,000/- for each of the two flats and had observed that the loss of rental income was Rs.80,000/- per month. It was also observed that the plaintiff had suffered rental income for a period of 53 months from April 2011 till September 2015. The damages were therefore crystallised at Rs.42,40,000/-. Though the plaintiff had claimed Rs.20,20,000/-, the suit was partly decreed and dismissed with regard to the other reliefs which had become infructuous. Questioning this judgment and the reasonings thereunder, the first and second defendants have filed the present appeal.

22. Mr. S. Ramesh, learned counsel for the appellants/first and second defendants took the Court through the facts of the case. He stated that even according to the plaintiff, an agreement between the first and second defendants and the plaintiff was initiated in the year 2005 and an agreement was entered into in the year 2007 and subsequently, Memorandum of Understanding was again entered into on February 2010. The learned counsel stated that the terms had been varied in accordance with the wishes of the plaintiff. The learned counsel pointed out that the appellants had performed their part of the agreement, but unfortunately, there was obstruction at every stage from either the plaintiff or her husband. He pointed out that there was an obstruction in



laying of the tiles and completing the wood work. He stated that the first respondent wanted to delay the completion of construction of the flats, particularly, the interior works only to take advantage of the increase in the market value. The learned counsel pointed out Ex.P13, which was the report of an Engineer annexed along with the report of the Advocate Commissioner, wherein, the total value of the unfinished work was estimated to Rs.5,00,000/- He contended that the bonafide of the appellants could be seen from the fact that they paid the balance consideration to be paid to the respondent. Further, the sale deed had also been executed in favour of the third defendant in the suit. With reference to the issue of damages, the learned counsel pointed out that PW2 had inspected the building after the cross examination of PW1 was completed and after PW1 had admitted that he had not produced any document to determine the rental value and the loss suffered by him. The learned counsel for the appellants therefore contended that the Court should reject the report of PW2. The learned counsel asserted that the delay in handing over the flats is only owing to the conduct of the plaintiff and her husband and stated that the suit should be dismissed and even if decreed should only be confined to the penalty as agreed by the parties in their agreement.

23.Mr.S.Rajasekar, the learned counsel for the first respondent however denied and disputed the said contentions. The learned counsel pointed out that it was reasonably insisted by the first respondent who had to live in the



adjoining flats to be informed about the intending purchaser and about his details since there was no necessity for the first respondent to live with a neighbour with whom peace would not reign. The learned counsel stated that the appellants had completed the flats allotted to them in the second floor at a very fast rate and one of the flats had actually been conveyed and the purchaser for the other flat had also been identified. However, the appellants had not proceeded with the same speed in completing the flats in the first floor, which fell to the share of the first respondent.

24. The learned counsel stated that the delay was deliberate and damages therefore should be imposed on the appellants for the delay in handing over of the flats. The learned counsel stated that in this connection to determine the rental value, the first respondent had examined PW2, the Engineer who had forwarded his reports. He contended that the reports, Exs.P19 and 20 had been finalised taking into consideration all factors and as a matter of fact stated that it was on the lower scale. The learned counsel argued that the appellants did not have the monetary capacity to complete the constructions of flats within the time stipulated. He therefore insisted that the appeal should be dismissed and the decree of the Trial Court should be affirmed.

25. We have carefully considered the arguments advanced. The following points arise for consideration:



(i) Whether the contention of the appellants that the delay in completion of construction of the flats in entirety was only owing to the obstructive nature of the respondents had been established during trial?

(ii) If the delay was attributable also on the appellants, the quantum of damages payable by the appellants?

(iii) Whether this Court can take into consideration Exs.P19 and 20, the reports of PW2, the Civil Engineer when admittedly the Civil Engineer visited the suit properties after cross examination of PW1?

26. Since the evidence relating to the three issues are interlinked, all the three issues are taken up for consideration together.

27. The first respondent herein and the appellants had entered into a Memorandum of Understanding on 20.02.2010 with respect to construction of four flats in the land belonging to the first respondent. The understanding envisaged that the appellants herein would construct four flats leaving a stilt in the ground floor and putting up two flats each in the first and second floors in the land belonging to the first respondent. The appellants also undertook the



repair works in the bungalow of the first respondent which was just adjoining.

As a matter of fact, the parties had commenced discussions in the year 2005 and an agreement had been entered into in September 2005, which had been produced by the appellants and marked as Ex.D1. In the plaint, the first respondent had also contended that the joint venture had been initiated in the year 2005 and later culminated in an agreement in the year 2007. However, the fact that there was an agreement in the year 2005 had not been stated explicitly in the plaint by the first respondent. This fact would only go to show that both parties had been protracting coming to terms on the issue of construction of flats right from the year 2005 onwards. Therefore, there cannot be a definite finding rendered that the appellants alone were the cause for the delay. But the fact remains that the parties continued to have a business relationship in spite of the project not starting from the year 2005 till the year 2010. In the year 2007, the respondents had executed a General Power of Attorney, which was marked as Ex.P2 and dated 13.06.2007. The Memorandum of Understanding on which construction was commenced by the appellants, had been entered into only on 20.02.2010, nearly 4 ½ years after Ex.D1, the first agreement in September 2005. There was also an earlier Memorandum of Understanding on 05.04.2006, which was marked as Ex.D2. These three documents Ex.D1, Ex.D2 and Ex.D3 itself would show that negotiations went on for a protractive period of time. It is contended by the appellants that it was the first respondent who protracted negotiations and in finalising the terms of the agreement. A building plan had



been obtained on 12.09.2009, which had been marked as Ex.D7. The revised plans were obtained on 05.03.2010 and marked as Ex.D6 and Ex.D7.

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28. But however the prevailing agreement was the Memorandum of Understanding under Ex.P3. In Ex.P3, it had been provided as follows:

The builder will complete and handover the apartments in 6 to 8 months from the time of signing this MOU.

29. This clause had been emphasised by the learned counsel for the first respondent who argued that since the construction had not been completed and the two flats had not been handed over to the first respondent, the appellants must pay damages for the delayed handing over of the flats. But however, a further perusal of the agreement would show that there was no possibility of the appellants commencing construction on the date when the Memorandum of Understanding, dated 20.02.2010, was executed since even in the said Memorandum of Understanding, it had been stated as follows:

The Builder will have a revised plan sanctioned by the appropriate authority and build 4 apartments in the subdivided plot as in Schedule 'B'.

It is thus evident that on the date of Memorandum of Understanding, there was no sanctioned plan to enable construction to commence. The revised



sanctioned plan was issued later on 05.03.2010 as seen from Exs.D6 and D7.

Therefore, there could not have been a possibility of strict adherence to the time limit mentioned in Memorandum of Understanding. It is further seen from Ex.P4 dated 16.09.2010 that two flats were allotted to the owners and that the flats will be handed over to the owners by 15th January 2011 and wood work and interior final painting would take two months after that date. It had been further undertaken as follows:

*In case of any delay, Rs.6,000/- PM will
be paid as penalty till handover/completion.*

30.It is thus seen that both parties had consciously agreed that the penalty payable for delayed handing over of possession of the flats was Rs.6,000/- per month. When sanctity is insisted on performance of the agreement with respect to the time limit stipulated, sanctity must also be attached to this clause also. It was further contended that all works including in the common areas will be completed by March 2011. Thus, the time period for completion of work had been extended and there is no evidence that this extension of the time had been protested by the first respondent. This document had been marked by the first respondent. Further, it had been also stated as follows:

Construction Agreement will be signed for owners within 2 weeks.

31.No document relating to such construction agreement had been produced before this Court.



32.It has to be therefore held that the parties were still negotiating and did not reach finality in their agreement. But however very pertinently, penalty had been determined at Rs.6,000/- per month, specifically for the delay in handing over the flats. In the plaint, the first respondent had also referred to this document Ex.P4 and had also stated that the appellants had undertaken to handover possession of the flats by March 2011. But however the quantum of penalty determined had been stated suppressed in the plaint.

33.Letters were then exchanged between the parties with each raising allegations against each other. The first from the appellants on 11.08.2011 under Ex.P6 for which a reply was given by the first respondent under Ex.P7 on 28.08.2011. In Ex.P6, the appellants had given their own reasons as to why the flats could not be completed within March 2011. A reply had been issued under Ex.P7 on 28.08.2011. In that reply, the husband of the first respondent had stated as follows:

1.Must complete the flat belonging to me in a month's time including wood works as specified in MOU.

Therefore, the time limit had again been shifted from August 2011 to October 2011. A perusal of the tenor of the letters exchanged between the parties would show that there has been complete breakdown of mutual trust.



34.It had then come to the knowledge of the first respondent that the appellants had entered into an agreement of sale with the third defendant in the suit. This prompted the first respondent to proceed to revoke the Power of Attorney given in favour of the appellants. This revocation deed was marked as Ex.P10 dated 09.04.2012. In the revocation deed, the first respondent had stated as follows:

I hereby CANCEL the said Power of Attorney absolutely and completely and revoke all the Powers and Authorities thereby and thereunder given to him either expressly or impliedly, to all interests and purpose. I now hereby revoke and declare as null and void all and singular the Power and Authority conferred on the said Mr.T.Gokula Krishnan through the above mentioned General Power of Attorney.

35.It is therefore evident that on and from this date, the appellants could not act on behalf of the first respondent with respect to the suit properties.

36.They had an obligation to construct the flats, but the first respondent had revoked all powers and authorities given either expressly or impliedly. Under the Power of Attorney which had been marked as Ex.P2 dated 13.06.2007, the authority given was as follows:

3.To enter into an agreement/MOU for



sale with any third parties, sign the sale agreement(s) on my behalf and also to receive the advances/sale consideration in respect of the schedule B property measuring about 2835 Sq.ft. The Sale of Undivided Share of land by the Power Agent is limited to maximum 2135 Sq.ft. as the Principal is intend to retain about 700 Sq.ft for the purpose of owning one flat in the proposed construction of residential building in the Schedule B.

37.Thus, effectively, the first respondent had revoked the authority given to the appellants to sell the flat in favour of the third defendant. The flat had actually been conveyed subsequently to the same intended party/the third defendant. This also indicated that both parties have been oscillating in their relationship, taking extreme stands and levelling allegations against each other. However, the fact remains that the penalty for delayed handing over of the flats was fixed at Rs.6,000/- per month and that has not been altered and even sought to be altered by any of the letters exchanged between the parties on subsequent dates.

38.Further letters were then exchanged. The first one on 10.04.2012 under Ex.P11 by the appellants to the first respondent, wherein, it had been specifically stated as follows:

Moreover the two flats falling to your share are fit and ready for occupation for the past 6 months. We can handover



possession, once the accounts are reconciled and all pending payments are made.

39.This letter was replied by the first respondent under Ex.P12 dated 10.05.2012, wherein, she had stated as follows,

4) I still disagree with your contention that the two flats falling to my share are fit and ready for occupation. To set right the controversy I would like to make an inspection of the aforesaid flats with the help of a Chartered Civil Engineer on a day convenient to both of us. You may indicate few days falling in this month and the convenient time for such inspection. Once an independent assessment is done by the Chartered Civil Engineer I will be in a position to take appropriate decision. Hope you would co-operate in this regard and hand over the flats completely finished with everything agreed upon in the Memorandum of Understand fulfilled, including wood works.

40. It is thus seen that the correspondences exchanged between both sides only contain allegations against each other.

41.The plaint was then presented on 30.11.2012. During the pendency of the suit, an Advocate Commissioner had been appointed. He filed a report enclosing a report of an Engineer. This document had been marked as Ex.P13.



The Engineer was appointed to determine the unfinished work, their estimates, measurements as well the status on painting, electrification, flooring works etc.

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42.The Engineer had also given a report dated 12.04.2013 listing out the works which had not been done and estimated their total cost at Rs.5,83,994.30. Even though it is claimed that the respondents had raised objections to the same, the said objections are not on record. Be that as it may, while examining the issue as to who was responsible for the delay, it is evident that both sides are equally responsible. But again, it is to be pointed out that the penalty for delayed handing over of the flats was determined at Rs.6,000/- per month and in the plaint that had not been questioned or challenged or objected to or claimed to have been altered.

43.PW1 had been examined and cross examined. He reiterated the same facts. The reason for the delay was placed solely on the appellants. DW1 had been cross examined and he placed the reasons for the delay solely on the first respondent.

44.However, since the issue had narrowed down only to the payment of damages for the delayed handing over of the flats, which damages were quantified at Rs.20,20,000/- in the plaint, PW1 was questioned as to how he had determined that amount. The plaint also did not contain a work sheet as to



how that particular amount was crystallised. It had only been mentioned as follows:

A demand was also made for the balance sum of Rs.40,00,000/- with a reasonable interest @ 18% per annum from March 2011 apart from the damages to tune of Rs.20 lacs inclusive of loss of rental income for the two flats from April 2011, cost of painting the exterior of the bungalow and other civil work left unfinished by the first defendant and damages for mental agony suffered by the plaintiff.

45.It had been stated that this Rs.20,00,000/- was inclusive of loss of rental income for the two flats from April 2011 and for the cost of unfinished work. But however, the rental income was then mentioned in the plaint at Rs.45,000/- per flat per month. The first respondent had calculated the loss of rental income at Rs.90,000/- per month for the two flats from April 2011 till November 2012, which was when the plaint was presented. But again, no working sheet was produced determining the rent at Rs.45,000/-. During his cross examination, PW1 admitted to this fact and stated as follows:

Since I did not get any revenue from the flats and was also denied access to the flats, I have made a claim of Rs.20,20,000/-. I have not filed any documentary proof in support of such claim. I deny the suggestion that my claim is speculative.



46. This admission was on 11.12.2017 and is very significant. Even during the pendency of the suit, for five years from the date of presentation, the first respondent had not taken any steps to determine the probable rental value. Thereafter, the first respondent had engaged a Civil Engineer who was examined as PW2. He had inspected the suit schedule flats on 18.12.2018 to determine the rental value. In his cross examination, he admitted that he did not issue any notice to the appellants before his inspection. He further stated that he was requested by the first respondent to inspect and give a report just one week prior to 18.02.2018. It is thus seen that the entire exercise had been undertaken after the cross examination of PW1 had been completed.

47. Any plaintiff who comes to Court with specific allegations must have marshalled his documentary and oral evidence before the commencement of trial and not indulge in gathering evidence during the course of trial and moreover particularly, after admitting that he had not filed any documentary proof for the claim made, in this instant case of Rs.20,20,000/-. Having mentioned the rental income at Rs.45,000/- per month in the plaint, the plaintiff was duty bound to produce documents to that effect along with the plaint. That amount should have been stated in the plaint on the basis of documents available. Failure to do so would only render the documents subsequently produced as having been produced to be inconsonance with the pleadings already pleaded. Any document subsequently produced would only be in



alignment with the pleadings and they can never be stated to be an independent unbiased assessment of the rental value.

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48. The learned Trial Judge had granted damages payable from April 2011 till September 2015. But however, the documents themselves show that the first respondent had extended the period for further time in the reply under Ex.P7 and shifted the time period to September 2011. In view of these facts which have been deduced from the documents and the evidence adduced by the parties, it is clear that time was never the essence of the agreement and even if time period had been determined in the Memorandum of Understanding under Ex.P3, it was impossible to keep up with that time period since the revised plan was not even sanctioned on that date. Further, the claim for damages on the basis of loss of rental income does not admit to logic. If the first respondent seeks damages for loss of rental income, then it is obvious that the flats were not to be a place of personal residence. If that be the case, the first respondent had no right to question the sale in favour of the third defendant. This objection to convey the property to the third defendant was wholly unjustified. We would therefore answer the points framed for consideration that the delay was owing to the conduct of both parties at irregular intervals. It is evident that there was complete breakdown of trust and moreover with the revocation of Power of Attorney in April 2012 under Ex.P10, the authority and the responsibility of the appellants to commit to their obligations under the Memorandum of



Understanding stood diluted. It is to be however stated that they still proceeded with the completion of the flats.

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49.The reports of PW2, the Engineer will necessarily have to be rejected as they have been prepared during the course of trial, after commencement of recording of evidence and most specifically, after the cross examination of PW1 and more importantly, after the admission of PW1 that he had not produced any document to substantiate the quantum of damages and further since PW2 had been appointed by PW1 and was therefore obliged to PW1. Admittedly, PW2 is not an independent Engineer appointed by the Court. The Engineer appointed by the Advocate Commissioner, had given a report under Ex.P13 that the estimate of the unfinished work amounted to Rs.5,83,994.30.

50.In view of these reasons, we would interfere with the amount determined by the learned Trial Judge as damages and retain the amount as determined by the parties in the letter of undertaking Ex.P4, dated 16.09.2010 and quantify the same from September 2011 till September 2015, which should be for 48 months. The amount agreed by the parties was Rs.6,000/- per month, which comes to Rs.2,88,000/-.

51.Accordingly, we hold that the damages for 48 months should be Rs.2,88,000/-. We would partly allow the appeal and determine the quantum of



damages payable by the appellants to the first respondent at Rs.2,88,000/- together with interest at 15% per annum from the date of the plaint till this date and thereafter, interest at 6% per annum till the date of realisation of the entire amount. In view of the fact that we have rendered a finding that the delay was also due to the conduct of the first respondent and also of the appellants, we are not inclined to grant costs to either side.

52.The appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is also closed.

(C.V.K.J.,) (K.B.J.,)
19.02.2026

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
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To
The Commercial Court,
Chennai.



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APPEAL(CAD) No. 22 of 2023



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

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**Pre-delivery Judgment in
APPEAL(CAD) No. 22 of 2023**

19.02.2026