

DECREE IN ORIGINAL SUIT
IN THE COURT OF THE I JUNIOR CIVIL JUDGE : CITY CIVIL COURT
SECUNDERABAD.

Present: Smt.A. Nirmala,
I Junior Civil Judge,

Dated: This the 27th day of March, 2023

O.S.No. 1082 of 2021

Between:

M/s B & C Eastes

A Partnership firm, Represented by its Managing Partner,
Sri. Soham Modi S/o Sri. Satish Modi, Aged about 51, having its office at
5-4-187/3&4, IInd floor, Soham Mansion, M.G. Road,
Secunderabad-500003.

...Plaintiff

AND

The Branch Manager,
HDFC Bank Limited,
Ground floor, Usha Kiran Complex, S.D. Road, Secunderabad.

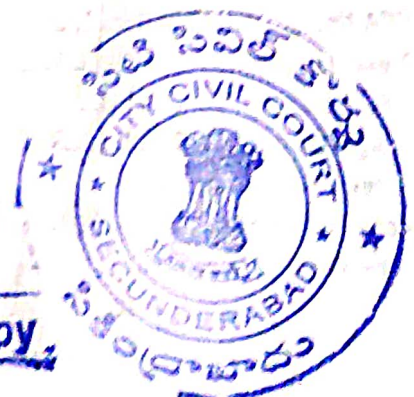
...Defendant

Claim: Suit filed Under order VII Rule 1 & 2 read with Section 26 of CPC prays for bank guarantee amount of Rs. 9,25,000/- together with interest @ 18% per annum from 05-09-2018 to till the date of realization of the bank guarantee.

Cause of Action in the suit: Arose when the plaintiff applied for the bank guarantee on 20-09-2013 for Rs. 9,25,000/- and secondly, defendant got issued the bank guarantee dated 20-09-2013 for a period of 5 years from 20-09-2013 to 04-09-2018 vide Bank guarantee no. 021GT02132630001 dated 20-09-2013 for Rs. 9,25,000/-, thirdly on 30-12-2019 the plaintiff furnished the indemnity as required by the defendant, fourthly and on 20-09-2019 the plaintiff issued the letter to the defendant for cancellation of the bank guarantee and finally on 07.02.2020 when plaintiff issued the notice to the defendant for refund of bank guarantee. Hence the cause of action is still subsisting.

Jurisdiction: The Suit Schedule Premises is situated at 5-4-187/3 & 4, IInd floor, Soham Mansion, M.G. Road, Secunderabad-500003, within the

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territorial limits of the jurisdiction of this Hon'ble Court got territorial Jurisdiction to entertain the present suit.

Valuation of suit : The suit is valued for Rs. 9,25,000/- per annum is paid Court Fees of Rs. 11,676/- is paid U/Sec.26(C), of APCF and SV Act.,

Plaint presented on : 23.09.2021 Complaint numbered on : 18.11.2021

This suit coming on this day before me for final hearing and disposal in the presence of **Sri. Thumu Chandra Shekar**, Advocate for Plaintiff and this court doth order and decree as following:

The suit is dismissed without costs.

Given under my hand and seal of the Court this the 27th day of March, 2023.

A. Alavudheen
I JUNIOR CIVIL JUDGE
CITY CIVIL COURT, SECUNDERABAD.

MEMO OF COSTS

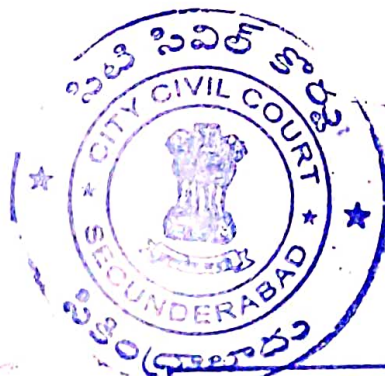
	Plaintiffs	Defendants
1)Stamp on Plaint	Rs. 11,676-00	--
2)Stamp on Power	Rs. 2-00	Ex-parte
3)Advocate fee	Rs. -00	-
4)Process fee	Rs. 100-00	-
5)Misc. Charges.	Rs. 100-00	-
Total Rs.	11,878-00	--

A. Alavudheen
I JUNIOR CIVIL JUDGE
CITY CIVIL COURT, SECUNDERABAD.

Note:- The parties should apply as soon as possible for the return of all exhibits which they may wish to preserve, as the record will be destroyed after three years from this date".

IN THE COURT OF THE I ADDL
CHIEF JUDGE: C.C.C. SEC'BAD
PHOTO COPY SECTION

PCA.No. 2572/2023
Presented on 04/04/23
D.F. Called on 31/05
Charges Deposited on 03/06 Rs. 40
Receipt No.
Made Ready on 08/06/23
Copy Delivered on



CERTIFIED TO BE TRUE PHOTO COPY

C. SUPERINTENDENT

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C. Superintendent

8/6/23

IN THE COURT OF THE I JUNIOR CIVIL JUDGE,
CITY CIVIL COURT, AT SECUNDERABAD

PRESENT: SMT. A.NIRMALA
I JUNIOR CIVIL JUDGE

DATED THIS THE 27th DAY OF MARCH, 2023

O.S. No.1082 OF 2021

Between:

M/s. B & C Eastes
A Partnership Firm,
Represented by its Managing Partner,
Sri.Soham Modi S/o.Sri.Satish Modi,
Aged : 51 Years, having its office at
5-4-187/3 & 4, IInd Floor
Soham Mansion, M.G.Road,
Secunderabad - 500003

....**Plaintiff**

AND

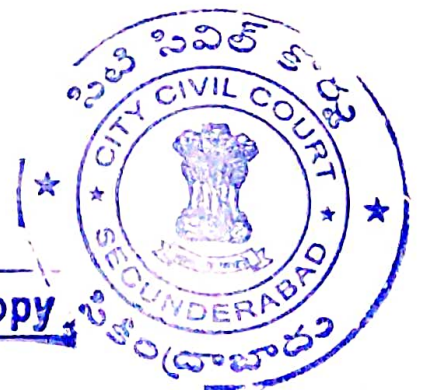
The Branch Manager,
HDFC Bank Limited,
Ground Floor, Usha Kiran Complex,
S.D.Road, Secunderabad.

...**Defendant**

This suit is coming on this day before me for final hearing in the presence of **Sri.T.Chandra Shekar, Advocate for Plaintiff** and **Defendant Set Exparte**, and the matter having been heard and stood over for consideration till today, this Court delivered the following:-

[Handwritten Signature]

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J U D G M E N T

This suit is filed for recovery of an amount of Rs.9,25,000/- together with interest @ 18% per annum 05.09.2018 to till the date of realisation.

2. The brief averments of the plaint are as follows:

The Plaintiff submitted that the Defendant is the banker and the Plaintiff has provided a fixed deposit No.50300012807712 and the Plaintiff has provided fixed deposit by way of specific lien bank guarantee for an amount of Rs.9,25,000/- (Rupees Nine lakhs twenty five thousand only). The bank guarantee was applied on 20th September 2013 with specific request for validity upto 4th September 2018, accordingly the bank guarantee was issued for the Beneficiary "The Commissioner GHMC Hyderabad" for the said amount vide Bank Guarantee No.021GT 02132630001 dated 20.09.2013 for Rs.9,25,000/- (Rupees Nine Lakhs Twenty Five thousand only) it is valid upto 04.09.2018.

3. It is further submitted that the bank guarantee has expired and lapsed by passage of time as mentioned in the bank guarantee after 4th September 2018. That the contract of bank guarantee has expired and

J. Narasimha

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become null and void after 4th September 2018, and is no longer an enforceable contract. The Bank Guarantee is the contract primarily between the Plaintiff and Defendant and enforceable by beneficiary only during validity period ending on 24.09.2018 and beneficiary has no subsisting right. The Plaintiff and Defendant have no subsisting obligations after 24.09.2018.

4. The Plaintiff further submitted that amount of fixed deposit kept with Defendant bank is no longer available for or the purpose of Lien for bank guarantee, as the main contract of bank guarantee has expired and rendered unenforceable. The bank has no right of any lien over the fixed deposit anymore. The Plaintiff has demanded the refund of the fixed deposit held by the Defendant upon which the Defendant does not have any lien anymore after the expiry of the bank guarantee. Inspite of several demands and representations in writing to the defendant and the defendant have failed to refund the amount of the fixed deposit kept as lien against the expired bank guarantee. The Plaintiff has cancelled the lien over the fixed deposit free of all the charges and liens. The Plaintiff hereby cancel the lien in favour of the bank in respect of the fixed deposit kept against the bank guarantee issued under the reference and hence the same is not enforceable by the bank anymore.

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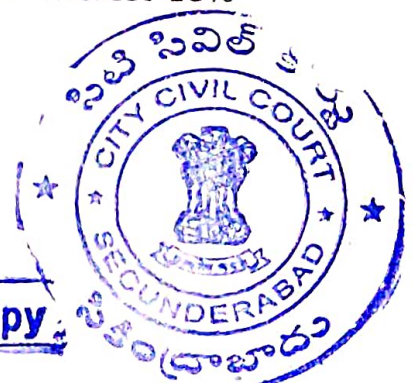


5. The Plaintiff further submitted that during the several demands made by the Plaintiffs, The Plaintiffs should provide letter of indemnity, inspite the fact that the bank guarantee is no longer in force, and being in urgency for the funds to get release from the fixed deposit in the Defendant bank and the Plaintiff was compelled to issue such an indemnity which was not a requisite and legitimate demand on the part of the Defendant, but, for the satisfaction of Defendant the Plaintiff furnished the indemnity was also furnished on 30th of December 2019 which has been received under acknowledgment by the Defendant. The Plaintiff already furnished occupancy certificate dated 23.12.2017 issued by the GHMC in favour of the Plaintiff.

6. The Plaintiff further submitted that the Defendant has denying and refusing to release the fixed deposit amount kept as Lien by the Plaintiff herein. The act of Defendant bank in withholding the fixed deposit of the Plaintiff amounts are in contrary and illegal and the Plaintiff got issued a letter dated 20.09.2019 to the Defendant by cancelling the bank guarantee and the same was received by the Defendant on 20.09.2019. In this regard got issued legal notice dated 07.02.2020 for call for the Defendant to remit the bank guarantee amount of Rs.9,25,000/- (Rupees Nine Lakhs Twenty Five Thousand Only) together with the interest 18%

H. Murali

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per annum till the date of realization, holding the Defendant bank responsible for all cost and consequences. The Defendant has got received the notice by way of email on the same day and, but the Defendant failed to comply the same and hence the Plaintiff has no other alternative filing the present suit for recovery of the bank guarantee amount of Rs.9,25,000/- (Nine Lakhs Twenty Five Thousand Only) together with interest 18% per annum from the date of 05.09.2018 till the realization of the bank guarantee.

7. Sri M.P.Kashyap, Advocate filed vakalat for defendant. But written statement not filed within the mandatory period. Hence, defendant set exparte.

8. To prove its case, the Manager of plaintiff got himself examined as PW1 and got marked Exs.A1 to A8.

9. POINT No.1 :

It has been the claim of plaintiff that defendant bank has provided a fixed deposit No. 50300012807712 to the plaintiff by way of Specific Lien Bank guarantee for an amount of Rs. 9,25,000/- for the beneficiary "The Commissioner of GHMC, Hyderabad", the said guarantee has expired and lapsed by 4.9.2018, thus the contract of bank guarantee has expired

H. Alimullah
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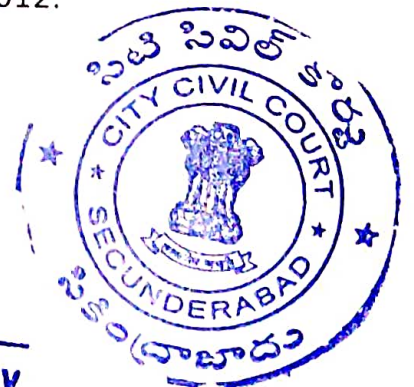


and become null and void after 4.9.2018. As the bank has no right of any lien over the fixed deposit, the plaintiff bank has demanded the refund of fixed deposit held by the defendant, but the defendant inspite of several demands and representations, have failed to refund the amount of fixed deposit, the plaintiff got issued letter, dated 20.9.2019 to the defendant by cancelling the bank guarantee and the same was received by the defendant on 20.9.2019. That the plaintiff got issued legal notice, dated 7.2.2020 to the defendant to remit the bank guarantee amount of Rs. 9,25,000/- together with interest @ 18% p.a. till date of realisation, the defendant have received the notice by way of email, but failed to comply the same.

10. To substantiate the case of plaintiff, Assistant Finance Manager of plaintiff got examined as Pw1 and got marked Exs.A1 to A8. Ex.A1 is office copy of legal notice, dt. 7.2.2020, Ex.A2 is original postal receipt, dt. 11.2.202, Ex.A3 is original occupancy certificate, dt. 18.3.2016, Ex.A4 is original occupancy certificate, dt. 17.11.2017, Ex.A5 is original occupancy certificate, dt. 23.12.2017, Ex.A6 is original occupancy certificate, dt. 26.2.2018, Ex.A7 is original occupancy certificate, dt. 4.10.2018, Ex.A8 is original authorisation letter, dt. 10.11.2012.

A. Murali

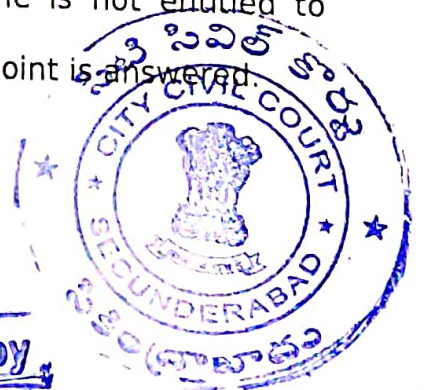
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11. On perusal of documents Exs.A1 is legal notice issued by the plaintiff to the defendant and Ex.A2 is postal receipt. Exs. A3 to A7 are occupancy certificates issued by the GHMC, stating that plaintiff who is owner / developer has given the building completion notice that the building has been completed as per the specifications of Sanctioned Plans and it is declared that the building conforms in all respects to the requirements of the building regulations contained under the statutory provisions in the respective municipal Act and building bye laws / Rules issued by the Government. Further it is stated that this is to certify that the building has been inspected and is declared fit for occupation. It shows that the plaintiff has completed the building and the GHMC given the occupancy certificate. But, plaintiff to prove his contention that the defendant has provided fixed deposit by way of specific lien bank guarantee for an amount of Rs. 9,25,000/- in favour of plaintiff, he has not filed any document i.e. bank guarantee or fixed deposit form, hence mere filing of occupancy certificates does not establish the plaintiff's case that defendant has provided bank guarantee and it has been lapsed. Hence, the plaintiff failed to establish his case, as such he is not entitled to decree the suit as prayed by him. Accordingly, this Point is answered.

[Signature]

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12. POINT NO.2

In the result, the suit is dismissed without costs.

Typed to my dictation by Stenographer, corrected and pronounced by me in the Open Court on this the 27th day of March, 2023.

[Signature]
I JUNIOR CIVIL JUDGE
CITY CIVIL COURT, SECUNDERABAD.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For the Plaintiffs:-

PW1: Gosika Naveen

For the defendants:-

--None--

DOCUMENTS MARKED

For the Plaintiffs:-

- Ex.A1 - Office copy of legal notice, dt. 7.2.2020,
- Ex.A2 - Original postal receipt, dt. 11.2.202,
- Ex.A3 - Original occupancy certificate, dt. 18.3.2016,
- Ex.A4 - Original occupancy certificate, dt. 17.11.2017,
- Ex.A5 - Original occupancy certificate, dt. 23.12.2017,
- Ex.A6 - Original occupancy certificate, dt. 26.2.2018,
- Ex.A7 - Original occupancy certificate, dt. 4.10.2018,
- Ex.A8 - Original authorisation letter, dt. 10.11.2012.

For the Defendants:

--Nil--

[Signature]
IN THE COURT OF THE I ADDL
CHIEF JUDGE: C.C.C. SEC' BAL
PHOTO COPY SECTION

PCA.No.....2592/2028
 Presented on.....04/04/23
 C.F. Called on.....31/05
 Charges Deposited on.....03/06/23 Rs 40
 Receipt No.....
 Made Ready on.....08/06/23
 Copy Delivered on.....

[Signature]
8/6/23

[Signature]
I JUNIOR CIVIL JUDGE
CITY CIVIL COURT, SECUNDERABAD.

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SUPERINTENDENT

