

IN THE HIGH COURT FOR THE STATE OF TELANGANA : AT HYDERABAD

I.A. NO. OF 2019
IN
CCCA NO. 20280 OF 2019

BETWEEN:

M/s Modi & Modi Constructions,
a Partnership Firm
having its Registered Office at 5-4-187/3 & 4,
Soham Mansion, M.G. Road,
Secunderabad
Rep by its Managing Partner,
Sri Soham Modi, S/o Sri Satish Modi
Aged about 44 years, Occ: Business.

... Petitioner/Appellant

AND

1. Smt A. Vijaya Lakshmi, W/o A. Bhaskar,
Aged about 56 years, Occ: Housewife,
2. A. Mahesh Kumar, S/o A. Bhaskar ,
Aged about 31 years, Occ: Service,

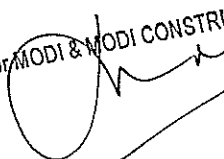
Both R/o H.No.1-24-253/1, Plot No.32,
Sri Sai Nagar Colony, Loathukunta, Alwal,
Secunderabad.

... Respondents/Respondent s

AFFIDAVIT

I, Soham Modi, S/o Satish Modi, Aged about 50 years, Occupation: Managing Partner of the Petitioner Firm, R/o 5-4-187/3 & 4, 3rd Floor, M.G.Road, Secunderabad, do hereby solemnly affirm and state on oath as follows:-

1. I am the Managing Partner of the Petitioner Firm and as such I am well acquainted with the facts of the case.
2. I submit that the Petitioner Firm has filed O.S.No.98 of 2014 on the file of the Additional Chief Judge, City Civil court , Secunderabad against the Respondent s herein for recovery of Rs.20,48, 487/- with interest @ 18% per annum from the date of the suit till the date of realisation and also for costs of the suit.

For MODI & MODI CONSTRUCTIONS

Partner

3. I submit that the Petitioner Firm is a reputed Builder having developed several apartment complexes within the twin cities of Hyderabad and Secunderabad and the surrounding areas of R.R. District, Nalgonda District etc. One of the projects of the Petitioner is NEELAGIRI HOMES in Survey Nos.128, 129, 132 136 of Rampalli Village, Keesara Mandal, R.R. District where the Respondents/Defendants had approached the Petitioner/Plaintiff for purchase of Villa No.46 in the said Venture and the total consideration was fixed @ Rs.39,00,000/- apart from the stamp duty, registration and other incidental charges as well as payment of VAT and service tax. It is submitted that pursuant to the part payment of the amounts payable, the Petitioner had executed and registered a sale deed in respect of land and further both the parties entered into a construction agreement for construction of the Villa on the said land. It is submitted that by the date of execution of the document, the Respondents have paid Rs.25,95,000/-. It is submitted that the balance amount was payable and there were penal clauses for late payment in the agreement itself and as the Respondents failed to pay the amounts within time the Petitioner has demanded the balance amount along with interest payable there upon and the VAT, service tax, registration charges etc. before handing over of the possession. However, the Respondents failed to make payment and issued a false and untenable notice which was suitably replied by the Petitioners and thereafter the Petitioner has filed a suit for recovery of the said amount.

4. I submit that simultaneously and during the same period the Respondents have also filed a case before the District Consumer Redressal Forum in CC No.137/2014 with false averments seeking delivery of possession. It is submitted that the said Forum has directed delivery of possession of Villa No.46 to the Respondents upon payment of Rs.3,30,000/-. It was further clarified that the Respondents should abide by the orders of the Civil Court in so far as the other claims of the Petitioner are concerned. It is submitted that against this order both the Pt. and the Respondents have filed an Appeal before the said Consumer Disputes Redressal Commission in FA No.138 of 2015 and FA No.152 of 2015. It is submitted that both the FAs were dismissed directing both the parties to bear the costs. However, against this order, the Petitioners have filed a revision before the National Consumer Forum and the National Consumer Forum has passed erroneous orders directing the Pt. to pay the Respondents interest @ 9% on the amounts paid by the Respondents from 01.03.2014 till date of production of Occupancy Certificate with costs of Rs.10,000/-. It is submitted that this order of the National Forum is totally erroneous and without considering the pleadings and material on record in the correct perspective. However subsequently the Petitioner and the Respondents have come to an understanding about the subject matter of the Consumer case only and settled the amounts to be paid under the orders of the Consumer Forum of National Forum @ Rs.10,60,000/-. However only the claim of the Respondent is settled and Petitioner is at liberty to

Partner
For MODI & MODI CONSTRUCTIONS

pursue the present Appeal for adjudication of the amounts due for non payment of the amounts within time in accordance with law by this Hon'ble Court and the compromise is limited only to the subject matter before the Consumer Forums.

5. I submit that upon the trial court was influenced by the findings of the Consumer For a and as such erroneously declared that the Petitioner is not entitled to any amount from the Respondent s and dismissed the suit. But in the circumstances of the case without any costs, the judgement and decree of the trial court is totally erroneous and liable to be set aside. The grounds of Appeal may be read as part and parcel of this Affidavit. It is submitted that the Respondent s are due huge amounts to the Petitioner Firm and they have taken possession under the orders of the Consumer Fora upon payment of a paltry sum and thereafter extracted huge amounts from the Pt.. Firm towards compensation payable though the same is not due at all in the facts and circumstances of the case and the Petitioner Firm was forced to pay the said amounts to avoid further complications and ,as the Petitioner Firm had a remedy in the form of the present Appeal. Thus, the case is a fit case for early and expeditious hearing and the Petitioner Firm is praying the Hon'ble Court to fix a date for hearing the same expeditiously failing which the Petitioner Firm will suffer serious loss and hardship.

It is, therefore, prayed that the Hon'ble Court may be pleased to expedite the hearing of the Appeal and fix date for hearing the same and pass such other order or orders in the interest of justice.

Sworn and signed before me on
this the day of September, 2019
at Hyderabad.

Advocate/Hyderabad

For MODI & MODI CONSTRUCTIONS
Partner
Deponent

VERIFICATION

I, Soham Modi, S/o Satish Modi, Aged about 50 years, Occupation: Managing Partner of the Petitioner Firm, R/o 5-4-187/3 & 4, 3rd Floor, M.G.Road, Secunderabad, being the deponent herein, do hereby verify and declare that the above paragraphs are true and correct to the best of my knowledge, information and belief and as per legal advice.

Verified on this the day of September, 2019 at Hyderabad.

Counsel for the Petitioner

For MODI & MODI CONSTRUCTIONS
Partner
Deponent

