

**IN THE COURT OF THE I ADDITIONAL CHIEF JUDGE: CITY CIVIL COURT
AT: SECUNDERABAD**

O.S.NO. 122 OF 2012

Between:

M/s. Metha & Modi Homes

...Plaintiff

AND

Smt. A. Susheela

...Defendant

WRITTEN ARGUMENTS FILED ON BEHALF OF THE PLAINTIFF

This suit is filed for recovery of sum of Rs. 12, 14,531/-. The Plaintiff is a builder carrying on the business of development of open lands & construction of Multi Storied Complex & Villas. In one such project developed by the Plaintiff under the name & style of Silver Oak Bunglows. The Defendant have agreed to purchase Villa No. 228 for total sale consideration of Rs. 46,00,000/- (Forty Six lakhs). The transaction took a shape of execution of a registered sale deed in favour of the Defendant for a plot of land and execution and registered of an agreement for construction of a Villa thereon. All the necessary preliminaries like obtaining permission for construction, approval of land & obtaining all the other necessary infrastructure was the burden of the Plaintiff. The Defendant have to pay the cost of the villa in installments as per the schedule contained in the agreement for construction. The Defendant had issued post dated cheques to cover the installments but as some of them were dishonored, proceedings under 138 of N.I. Act were initiated. At that stage the Defendant approached the Plaintiff for settlement and also invoked the clause for referring to Arbitration available under the agreement.

The matter was settled and the complaint under N.I. Act was withdrawn. Thereafter the Defendant addressed a letter dated 08.07.2009

marked as Document No. , received by the Plaintiff at Secunderabad under which the Defendant agreed to pay a sum of Rs. 13,53,586/- including VAT, Service Tax and etc. To cover the payment of the said sum the Defendant issued 4 cheques out of which two have been honored & the other two have been returned unpaid by the bankers of the Defendant. The present suit is for recovery of amount due under those two cheques and other incidental charges like interest etc., aggregating to Rs. 12,14,531/-.

The Defence is threefold, that the construction of the Villa is not complete, that this Hon' ble court has no jurisdiction and that the Agreement of Construction contains an arbitration clause and therefore the suit is not maintainable.

The admitted fact are that the Defendant has address the letter dated 08.07.2009 under which the Defendant has agreed to pay the balance amount of Rs. 13,53,586/- and that she had issued 4 cheques thereof. It is also a fact that in the said letter she has specifically admitted that construction of the said Bungalow is fully completed in all respects & that she will not raise any objections on this count hereafter. On the issuance of this letters and the four cheques the earlier case filed under Section 138 of N.I. Act was withdrawn. As said earlier the first two cheques were honored and the later two cheques were dishonored. The suit is a money suit simplicitor. As the subsequent two cheques were dishonored a proceedings under section 138 of N.I. Act was initiated and which is pending in Hon' ble High Court and which neednot detain us in this suit.

Reply to the objections raised by the Defendant.

1. This Hon' ble Court has certainly got jurisdiction to try the suit as it is not one for implementation of right in an immovable property. So section 90 & 20 of C.P.C would not apply. In so far as the claim is only for recovery of money, the suit can be filed were the cause of action arises. The letter dated 08.07.2009 was addressed to Plaintiff at Secunderabad. The cheques were delivered at Secunderabad to the Plaintiff who has deposited in their account at Secunderabad. Hence the cause of action wholly arises for the recovery of money at Secunderabad. Hence this Hon' ble Court has got jurisdiction to try this suit.

2. Regarding Arbitration – Admittedly there is no arbitration clause in the letter dated 08.07.2009. The earlier arbitration clause has worked itself out. In any event the application under Arbitration Act has been filed long after filing of written statement and hence it is not maintainable in view of the provisions of section 8 of Arbitration & Conciliation Act of 1996. In any event the enter trail has been conducted evidence has been led, documents have been marked & hence the Arbitration agreement which has already been worked upon does not survive at this stage.

3. The third point that was raised was with registration non-completion of the construction. The contention of the Defendant on this ground is contained in the written statement at Para no.7. The same contention was raised in the evidence of DW1. In so far as this contention in concerned two factors may be noticed. In the letter dated 08.07.2009 she has specifically admitted that the construction of the villa is fully completed in all respects and that she will not raise any objections on this count hereafter. Further in the cross-examination of the Defendant whose evidence was recorded by a commissioner she has clearly admitted all these aspects. The last portion of the

cross-examination starting with the sentence ***"I agree to pay a sum of Rs13,53,586/- towards full & final settlement of costs of the Villa including charges like VAT, Service Tax, Stamp duty & Registration charges, charges for additional alterations etc., It is true in that letter I had admitted the construction of the Bungalows if fully completed in all respects and we shall not raise any objections on this count hereafter. It is true after the compromise the Plaintiff withdrew the first case LAC 269 of 2009 was withdrawn and cheque was returned to us. It is true that I gave the cheques aggregating to Rs. 13,53,586/-. It is true that first two cheques were honored and the other two cheques were dishonored and the present case is between two dishonored cheques. It is true that sanitary and C P fittings are done just before a week we take possession and occupy the premises. Similarly it is true the external & internal painting of the Villa i.e., final coat just before our occupation will be done. I am willing to pay the balance amount (claimed amount) in the suit & take possession of the property"***. In view of this clear admission it is submitted that the suit has to be decreed as prayed for. In the same para she has also admitted that all those items of work complained by her in the written statement & evidence will be done only just before occupation by the Plaintiff.

Hence there is no substance in the defence & suit should be decreed as prayed for.

Date: 03.03.2017.

Counsel for Plaintiff

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Filed on: 03.03.2017

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