

IN THE COURT OF THE I ADDL. CHIEF JUDGE : CITY CIVIL COURT :
AT SECUNDERABAD.

THIS WEDNESDAY, THE 25TH DAY OF JULY, 2018.

PRESENT : SMT. M.R.SUNITHA,
I ADDL. CHIEF JUDGE
CITY CIVIL COURT, SECUNDERABAD

OS.No.98 of 2014

Between:

Modi & Modi Constructions, a partnership firm
having its registered office at 5-4-187/3 & 4,
Soham Mansion, MG Road, Secunderabad
Represented by its Managing Partner
Sri Soham Modi, S/o.Sri Satish Modi, aged 44 years.

... Plaintiff.

And

1. Smt.A.Vijaya Lakshmi, W/o.A.Bhasker, aged 56 years.

2. A.Mahesh Kumar, S/o.A.Bhasker, aged 31 years,
Occupation Service.

Both R/o.H.No.1-24-253/1, Plot No.32, Sri Sai Nagar Colony,
Loathkunta, Alwal, Secunderabad - 15.

..Defendants.

This suit is coming on 10.07.2018 before me for final hearing in the presence of Sri C.Balagopal, Advocate for the Plaintiff and Sri GL Narasimha Rao, Advocate for the defendants and after perusing the material and hearing, the matter having been stood over for consideration till this day and today, this Court delivered the following :

J U D G M E N T

1. This suit is filed by the plaintiff under Section 26 of CPC seeking recovery of Rs.20,48,497/- along with interest @ 18% per annum from the defendants.

2. The case of the plaintiff, in brief, is that the defendants entered into an agreement with the plaintiff, who is a reputed builder, for sale of Villa No.46 admeasuring 125 sq.yards in Nilgiri Homes, situated in Sy.Nos.128, 129, 132 and 136, Rampally Village, Keesara Mandal, Ranga Reddy District for a consideration of Rs.39,00,000/-, which independent villa was in advanced stage and hence the plaintiff agreed

that if the payment was made within four months, they would finish the work and hand over the same and accordingly, the plaintiff executed registered sale deed document No.8452 of 2013 on 16.11.2013 at SRO Keesara, RR District and the defendants have executed an agreement of construction in favour of the plaintiff mentioning the terms of payment, period of completion and interest on late payments and that the defendants have paid Rs.25,95,000/- till date leaving an amount of Rs.20,48,497/- towards full and final settlement and that as the defendants made abnormal delay in payment of installments, the plaintiff got issued legal notice on 18.04.2014 calling them to pay Rs.20,48,497/- being the due including service tax, corpus tax and interest on late payments, which the defendants have received but did not pay the dues. Hence, this suit.

3. The defendants filed written statement denying the allegations made against them in the plaint mainly contending that the plaintiff inserted the period of four months in written agreement instead of nine months which is noticed by the defendants and informed the same vide letter dt.09.05.2013, which was acknowledged by the representative of plaintiff viz. Venkat Reddy and that the plaintiff suppressed the amounts paid by the 2nd defendant on 24.09.2013, 17.09.2013, 31.10.2013 and 18.11.2013 totaling Rs.9.75 lakhs and that they did not receive any legal notice and that there was lot of correspondence between the parties, which was suppressed by the plaintiff and that they have to pay only Rs.3,30,000/- to the plaintiff and that the said amount is ready with the financier and they are waiting for physical possession of the villa and that the plaintiff did not file any statement showing that how he arrived the dues at

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Rs.20,48,497/- and that the plaintiff failed to encash the amounts retained by the financier and that in view of suppressed e-mail transactions between the plaintiff and the defendants, the defendants need not pay service tax and that the plaintiff had to hand over the villa on or before 01.09.2013 but he failed to do the same so far due to which, they lost Rs.3,00,000/- so far towards rents on the said villa and hence they filed CC No.137 of 2014 before the District Consumer forum on 31.05.2014 and that as a counter-blast to it, the plaintiff filed this suit and that as the plaintiff misused the cheques, housing loan was delayed though sanctioned and that the plaintiff got an amount of Rs.9,75,000/- through banker's cheque dt.09.06.2014 paid by Sri Bhaskar / head of the family of the defendants. Stating thus, it is requested that due to the tactics and suppression of facts by the plaintiff, the defendants faced mental agony and they have to pay only Rs.3,30,000/- to the plaintiff but not the suit amount and hence, the suit is liable to be dismissed.

4. Upon hearing, this Court framed the following issues for trial :

- (1) Whether the claim of the plaintiff for recovery of Rs.20,48,497/- is true, valid and correct ?
- (2) Whether the defendant is entitled to deny his liability on the deficiency of service pleaded against the plaintiff ?
- (3) Whether the plaintiff is entitled for suit claim amount as prayed for ?
- (4) Whether the statement of account showing the suit claim amount of the plaintiff is true and binding ?
- (5) To what relief ?

5. In support of their claim, the plaintiff got examined their legal officer Sri L.Ramacharyulu as PW-1 and exhibited documents under Ex.A.1 to Ex.A.5 being officer copy of booking form dt.16.11.2013, legal

notice, authorization to PW-1, certified copy of firm registration and certified copy of sale deed.

(a) On behalf of the defendants, the 1st defendant got herself examined as DW-1 and also examined their family head Sri Angadi Bhaskar as DW-2 and exhibited documents under Ex.B.1 to Ex.B.22 being copy of agreement of sale dt.25.02.2013, letter dt.09.05.2013, copy of e-mail sent by the 2nd defendant, copy of notice dt.12.03.2014, reply dt.10.04.2014, rejoinder dt.21.04.2014, certified copy of order in CC No.137 of 2014 on the file of the Consumer forum, RR District, dt.24.07.2015, copy of notice of payments of Rs.9,75,000/-, dt.09.06.2014, copy of reply to the legal notice dt.26.05.2014, 2 postal receipts, 2 postal acknowledgment cards, email conversations dt.28.12.2013, 29.12.2013, 10.12.2014, 15.01.2014, 05.02.2014, 08.02.2014, 09.02.2014, bank statement of 2nd defendant, Mahila Bank passbook, loan sanction letter by LIC Housing Finance dt.25.09.2013 and possession handed over letter by the plaintiff dt.10.12.2016.

6. Heard.

7. **Issue Nos.1 to 4 :**

(a) The evidence of PW-1 is that having paid Rs.25,95,000/- till date, the defendants have to further pay an amount of Rs.20,48,497/- to the plaintiff company towards full and final settlement of cost of the villa. Further, though the villa is ready and its possession is to be handed over to the defendants. Since the defendants did not clear the dues, the possession was not handed over and a notice was served upon the defendants calling for the payment and take possession of the villa but in vain.

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(b) The sale deed dt.16.11.2013, which is a part of Ex.A.1, executed by the plaintiff company in favour of the plaintiff shows that the plot No.46 admeasuring 125 sq.yards with semi-finished construction was sold to the defendant for a consideration of Rs.15,60,000/- : The said amount was acknowledged by the plaintiff for Rs.12,48,000/- vide cheque No.043645 dt.08.11.2013 and Rs.3,12,000/- vide cheque No.024420 dt.26.06.2013.

(c) Agreement of construction dt.16.11.2013 between same parties for construction of a deluxe bungalow as per the specifications for an amount of Rs.23,40,000/- only. An amount of Rs.10,35,000/- has been acknowledged by the builder fixing the liability on the defendants to an extent of Rs.13,05,000/- to be paid in three installments as under :

- (i) Rs.6,50,000/- on 16.11.2013.
- (ii) Rs.5,00,000/- on completion of flooring, windows, bathroom tiles and 1st coat of paint.
- (iii) Rs.2,00,000/- on completion.

(d) Clause 4 of the agreement stipulates payment of simple interest @ 1.5% per month on all delayed payments of installments. Clause 5 stipulates that if the construction is completed before the scheduled date, the entire balance of payment shall become due on schedule date of completion and the buyer shall be liable to pay the amount within 15 days of the receipt of information. The date column is left blank at clause No.10 for completion of the construction. However, a grace period of six months has been provided for completion of the construction. Clause No.20 casts liability on the buyer for payment of Sales Tax, VAT, Service Tax or any other similar levy that may become liable in respect of the construction of the house under agreement.

(e) On perusal of the said document, it is crystal clear that the defendant in the capacity of the buyer has paid the entire amount under the sale deed and Rs.10,35,000/- only as on the date of agreement of construction and is due to a tune of Rs.13,05,000/- only as on the date of transaction. The office copy of legal notice dt.28.04.2014, issued under Ex.A.2 by the plaintiff company shows that the defendant has to further pay Rs.20,48,497/- to the plaintiff. When the due is to a tune of Rs.13,05,000/- as on the date of agreement, according to the own documents of the plaintiff, it is quite fishy how the plaintiff arrived at Rs.20,48,487/- due by the defendants.

(f) Be that as it may, the evidence of DW-1 & DW-2 shows that they have paid the entire amount and only Rs.3,30,000/- is due to the plaintiff and that too, the said amount was retained by the financier for want of occupancy certificate and after the direction of the State Consumer Forum, in the month of November, 2016, the said amount of Rs.3,30,000/- was also handed over by the financier after giving possession letter / Ex.B22 after completion of the villa on 10.12.2016. ✓

(g) The evidence of DW-1 and DW-2 shows that they have filed complaint in the Court vide CC No.137 of 2014 dt.31.05.2014 for redressal since the plaintiff did not hand over the possession in-time and they were constrained to pay the interest for the loan amount. Further, an amount of Rs.9,75,000/- was also paid to the plaintiff through a bankers cheque dt.09.06.2014 even after filing of the suit. Ex.B.7 is the order copy of the District Consumer Redressal Forum, Ranga Reddy, wherein the plaintiff is directed to hand over the villa and receive Rs.3,30,000/-, which is the net due as on the date of the

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order. Ex.B.22 is the letter of possession issued by the plaintiff acknowledging Rs.3,30,000/- payment.

(h) From the documents exhibited on behalf of the defendants, it is crystal clear that, the plaintiff did not hand over possession of the house until the order of the District Consumer Redressal Forum, Ranga Reddy and in receipt of the final payment keeping the oral and documentary evidence of the defendant aside, PW-1 during his cross-examination stated that he was not aware that the defendants paid a sum of Rs.35,70,000/- as pleaded in their written statement. He admitted that, they did not issue any rejoinder for the written statement. He also admitted that the delivery date of the villa is 01.09.2013. Likewise, PW-1 admitted all the documents exhibited by the defendant.

(I) Therefore, all the admissions of PW-1 during his cross-examination goes to show that they are at fault by not rendering the possession within the given time and as a counter-blast to the case filed by the defendants in District Consumer Redressal Forum, Ranga Reddy, the plaintiff filed the present suit. Hence, it is crystal clear that the plaintiff did not approach the Court with clean hands and miserably failed to prove its case. On the other hand, the defendants not only proved their case but also admitted that, they are liable to pay Service Tax, VAT and Sales Tax if the receipts are produced. ✓

(j) In view of the above discussion, it is clear that the claim of the plaintiff for recovery of Rs.20,48,497/- from the defendant is not correct and also not binding on the defendants as there is no calculation shown by the plaintiff to reach such a figure and hence, the

same is not binding on the defendants and they are not liable to pay the said amount because of the deficiency of service on the part of the plaintiff in handing over the villa in time. Therefore, viewing from all the angles, the suit deserves to be dismissed.

8. In the result, the suit is dismissed and no order as to the costs.

Typed to my dictation by the Stenographer, corrected and pronounced by me, in the open court on this the 25th day of July, 2018.

Sd/-
I ADDL. CHIEF JUDGE,
CITY CIVIL COURT, SECUNDERABAD.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

FOR PLAINTIFF/S:

PW.1: L.Ramacharyulu.

FOR DEFENDANT/S:

DW-1: A.Vijayalakshmi.
DW.2: Angadi Bhaskar.

DOCUMENTS MARKED

FOR PLAINTIFF/S :

Ex.A-1: Office copy of booking form dt.16.11.2013.
Ex.A-2: Legal notice.
Ex.A-3: Authorization.
Ex.A-4: Certified copy of firm registration.
Ex.A-5: Certified copy of sale deed.

FOR DEFENDANT/S:

Ex.B.1: Copy of agreement of sale dt.25.02.2013, executed by the plaintiff in favour of the defendant in respect of suit property.
Ex.B.2: Letter dt.09.05.2013.
Ex.B.3: Copy of mail dt.29.12.2013 sent by 2nd defendant.
Ex.B.4: Copy of notice dt.12.03.2014.
Ex.B.5: Reply dt.10.04.2014.
Ex.B.6: Rejoinder dt.21.04.2014.
Ex.B.7: Certified copy of order in CC No.137 of 2014 on the file of the Consumer Forum, RR District, dt.24.07.2015.
Ex.B.8: Copy of notice of payment of Rs.9,75,000/- dt.09.06.2014.
Ex.B.9: Copy of reply to the legal notice dt.26.05.2014.
Ex.B.10: Postal receipts 2, dt.29.04.2014.
Ex.B.11: Postal acknowledgment cards 2 dt.31.05.2014.
Ex.B.12: E-mail conversation dt.28.12.2013.
Ex.B.13: E-mail conversation dt.29.12.2013.
Ex.B.14: E-mail conversation dt.10.12.2014.
Ex.B.15: E-mail conversation dt.15.01.2014.
Ex.B.16: E-mail conversation dt.05.02.2014.
Ex.B.17: E-mail conversation dt.08.02.2014.
Ex.B.18: E-mail conversation dt.09.02.2014.

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- Ex.B.19: Axis Bank statement of defendnat No.2 paid amounts by clearing.
Ex.B.20: Mahila Bank passbook.
Ex.B.21: Loan sanction letter by LIC Housing Finance dt.25.09.2013.
Ex.B.22: Possession handed over letter by the plaintiff dt.10.12.2016.

Sd/-
I ADDITIONAL CHIEF JUDGE,
CITY CIVIL COURT, SECUNDERABAD.

