IN THE COURT OF THE XXVII ADDITIONAL CHIEF JUDGE, CITY CIVIL COURT: SECUNDERABAD.

Present: Sri.K. Sreenivasa Rao,
XXVII Addl.,Chief Judge,
City Civil Court, Secunderabad.

Dated: This the 14th day of July, 2017.

OS.NO.122 OF 2012

Between:
M/s. Mehta and Modi Homes,
a partnership firm having their registered office at
5-4-187/3 & 4,
II floor, Soham Mansion,
M.G. Road, Secunderabad,
Rep., by its Parnter Soham Modi, S/o. Stish Modi,
aged 40 years. ...Plaintiff.

A N D

Smt. A. Susheela, W/o. A. Sudhakar,
aged 50 years, R/o. 304, Mahalakshmi towers,
Shivbbagh, Ameerpet,
Hyderabad. ...Defendant.

This suit is coming on this day before me for final hearing in the presence of C. Bala Gopal, Advocate for the plaintiff, and Sri. Ch. Lakshmi Narayana, Advocate for defendant, and having stood over till this day for consideration, this court delivered the following :

J U D G M E N T

1. This suit is filed for recovery of amount of Rs.12,14,531/- with interest.

2. According to the plaintiff, the defendant approached the plaintiff for purchase of a bungalow bearing No. 228, in Venture for a total sale consideration of Rs.46 lakhs excluding VAT, service tax, registration charges, charges for additions and alterations, maintenance charges, interest on delayed payment etc., Subsequently, the defendant has issued a cheque bearing No.827455, for Rs.7,88,000/- drawn on Andhra Bank, Sultan Bazar, Hyderabad towards balance sale consideration.

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3. On presentation of the above said cheque the same was dishonoured due to insufficient funds. The plaintiff filed a case under NI Act in the court of the XI Additional Chief Metropolitan Magistrate at Secunderabad,U/Sec. 138 of NI Act. Subsequently, the defendant came forward for a compromise and approached the plaintiff and after several rounds of negotiation, a compromise was reached between the plaintiff and defendant. In pursuance of the said compromise, the defendant issued a letter dt., 08.07.2009 agreeing to pay a sum of Rs.13,53,586/- towards full and final settlement of the balance sale consideration including charges like VAT, service tax, stamp duty, registration charges and charges for additions and alternations, maintenance charges and interest on delayed payment etc., and issued four post dated cheques towards the said balance sale consideration and other charges.

4. The plaintiff presented the first and second cheques and they were cleared. But third and fourth cheques were not presented on its due dates at the request of the defendant. Subsequently at the request of defendant, the third and fourth cheques bearing No.827458 dt. 20.09.2009 for Rs. 3,23,586/- and cheque No.827459 dt. 29.09.2009 fpr Rs.5,05,000/- drawn on Andhra bank, Sultan Bazar, Hyderabad were presented for collection but the same were dishonoured. The plaintiff informed about the dishonor of cheques and the defendant promised to pay the amounts covered under the said cheques within a couple of days, but the defendant failed to keep up her promise. The plaintiff filed a complaint U/Sec. 138 of NI Act in CC.No.87/2011 on the file of XII Special Metropolitan Magistrate court,

Secunderabad, and the same was dismissed vide order dt. 19.04.2012 against the said order plaintiff preferred appeal No.380/2012 and the same is pending before VII Metropolitan & Sessions Judge, Nampally, Hyderabad.

5. The defendant is due an amount of Rs.8,28,586/- towards the principal amount and an amount of Rs.3,85,945/- towards the interest charges payable for delayed payments, aggregating to Rs.12,14,531/-.

6. Written statement was filed stating that the defendant purchased bungalow bearing No. 228 in Silver Oak Venture in 318 sq.yards on 28.11.2006 for construction of 2098 sq.feet for total sale consideration of Rs.48 lakhs under payment of quarterly installment scheme. Rs. 25,000/- was paid towards booking on 10.10.2006. The plaintiff has deviated from the agreed terms in many aspects.

7. The defendant demanded the plaintiff to furnish the copy of sanction of HUDA which was not furnished and as such the same could be to obtain by the defendant with great difficulty and came to know that there are deviation to the sanction plan in the actual construction of bungalows. The same was brought to the notice of the plaintiff but did not turn up. It is known fact that in view of GO.MS.No. 86 dt.03.03.2006 the same shall not be regularized at future point of time even on payment of penal charges. The defendant had demanded for constructing the same as per the sanction plan by rectifying the registered sale deed at the cost of plaintiff as the same was due to their utter negligence and intentional default having full knowledge of

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GO.Ms.No.86. Further defendant had made arrangements to seek loan from Andhra Bank, sultan Bazar, Hyderabad and informed the fact to the plaintiff and instructing him to collect the balance payments from the bank and the plaintiff has agreed to the same and issued a letter to this effect to Andhra Bank and accordingly the original documents were submitted for simple mortgaging with bank and payments thus received. At the time of sale deed registration during January 2007, the plaintiff had requested defendant to issue undated cheque bearing No. 827455 drawn on Andhra Bank, Sultan Bazar, Hyderabad, for Rs.7,88,000/- to be given in their firm name with a covering letter for security purpose and captioning the same on the reverse side of the cheques. Defendant had endorsed on the reverse side of each cheque "the cheque for bungalow No.228, security cheque not to be presented in the bank".

8. It is not disputed that the payments were not given vide separate negotiable instruments by defendant and only an amount of Rs.6,95,000/- has to be paid within seven days of completing the construction by me.

9. The plaintiff demanded to pay the balance due of Rs.7,88,000/- by way of letter. The same was replied pending left out work by the plaintiff. On 29.06.2009, the defendant entrusted the matter to the Advocate as conciliator/arbitrator to do all needful acts in that behalf. Basing on the same a settlement was derived and concluded on 08.07.2009 duly signed by both the parties. As the bank final installment has to be received the same was mentioned as if the entire construction was completed and undertaken to withdrawn the

earlier section 138 case No.216/2009 on the file of XI Additional Chief Metropolitan Magistrate, Secunderabad. Thereafter also as the building work could not be commenced defendant again stopped the payment and the same also is not withdrawn. As the same was not complied the second cheque payment was withhold and only after withdrawal of the case the pay order was released and the returned cheque was taken back by defendant on the undertaking to furnish the entire balance works of the building vide letter dt. 17.09.2009. Keeping the final installment cheque to the presented for collection on 09.10.2009 with undertaking to complete and finish the works in the mean while. Quite contrary to the same, the cheques were presented on 06.10.2009 and that too without starting the balance works having received more than Rs.5.25 lakhs in July and September 2009 and got issued the legal notice U/Sec.138 of NI Act on 27.10.2009. Left no other alternative defendant was forced to reply on 03.12.2009 as conciliation failed the arbitration procedure should be followed as per the contract and the construction agreement was cancelled by defendant with an advise not to recourse to the contract entered into by the parties as well as arbitration and conciliation Act 1996. From 03.12.2009 the agreement had been terminated by defendant and the same is not in force. If at all any grievance by the plaintiff the registered construction agreement shall be challenged before the court from that date. The suit also barred by limitation as the plaintiff failed to complete the work under 03.11.2008 agreement and could not complete till date despite lapse of more than six years,

10. A rejoinder was sent by the plaintiff on

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22.12.2009 on all false and baseless allegations. As per the agreed terms dt. 17.09.2009 these cheques shall be presented on 09.10.2009 and not on 06.10.2009 and as such, the same is contrary to the agreed terms under conciliation settlement. New CC.No.87/2011 (old CC.No.815/2010) was dismissed on 04.2012 by the learned XII Special Magistrate at Secunderabad and criminal appeal was filed and the same was also dismissed on 25.06.2013 by VII Metropolitan & Sessions Judge, Nampally, Hyderabad stating that the building was not completed and kept ready for occupation and as such the same is not legally enforcable debt. All the original/certified copy of the documents are filed before the court and the defendant undertake either to call for records or take back and file at the time of trial.

11. Basing on the pleadings of both sides, the following issues are settled for trial :

1. Whether the claim of plaintiff for recovery of Rs.12,14,531/- is true and valid and correct ?

2. Whether the defendant is entitled to deny his liability on the deficiency of service pleaded agianst the plaintiff ?

3. Whether the plaintiff is entitled for suit claim amount as prayed for ?

4. To what relief ?

12. On behalf of the plaintiff PW.1 and 2 were examined and Exs.A1 to A9 were marked. On behalf of the defendant, DW.1 was examined and Exs.B1 to B11 were marked.

13. Heard the arguments. Written arguments are filed by the plaintiff and defendant.

14. **ISSUE NOS. 1 & 3:**

PW.1 is the Legal Officer of the plaintiff company. It is the case of the plaintiff, that the defendant approached plaintiff for

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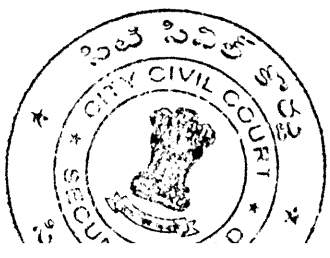
purchase of bungalow for Rs.46 lakhs excluding VAT, service tax, registration charges, charges for additions and alternations, maintenance charges, interest on delayed payment etc., Subsequently, the defendant has issued a cheque bearing No.827455, for Rs.7,88,000/- drawn on Andhra Bank, Sultan Bazar, Hyderabad towards balance sale consideration.

15. The cheques issued by the plaintiff are dishonoured due to insufficient funds for which CC.No.87/2011 was filed U/Sec. 138 of NI Act. Prior to that LAC.No. 269/2009 U/Sec. 138 of NI Act, in the criminal case was filed. In Ex.B10 judgment in criminal appeal the trial court judgment was confirmed. However, it is settled law that, criminal court judgment is not binding upon the civil court. It is mentioned in the written arguments by the plaintiff that their appeal is pending in the Hon'ble High Court. It is said by PW.1 that while the two cheques are honoured the rest of the two cheques are dishonoured. According to PW.1, the defendant is due of Rs.8,28,586/- towards principle amount and Rs.3,85,945/- towards interest, total Rs.12,14,531/-.

16. PW.2 is the employee of the plaintiff who looks after the accounts and he spoke that Rs. 17,26,876/- is due by the defendant till further period.

17. DW.1 (defendant) stated that they are not liable to pay amount to the plaintiff in the chief examination. However, DW.1 admitted in the cross examination that she has issued cheque for Rs.7,88,000/- and it was dishonoured, for which Sec. 138 of NI Act case was filed. She admitted that she gave four cheques aggregating to Rs.13,53,586/- and among them first two cheques are honored and



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other two cheques are disnonoured. She categorically admitted that the present suit relates to two dishonoured cheques. She ultimately admitted that she is willing to pay the balance a[illegible] (claimed amount) in the suit and take the possession of the prop[illegible]

18. Ex.A2 is office copy of booking form, Ex.A4 is certified copy of agreement of construction execution by plaintiff in favour of defendant. Ex.B8 is statement of account.

19. These importation admissions prove the suit claim conclusively irrespective of the fact that criminal court acquitted of the defendant/accused in Ex.B9 judgment in CC.No.87/2011 and Ex.B10 judgment in criminal appeal. Further DW.1 admitted that the cost of the villa is Rs.46 lakhs. She further admitted that he agreed to pay Rs.13,53,586/-towards full and final settlement of the cost of the villa including charges like VAT, service tax, stamp duty, registration charges, charges for additional alternations etc.,

20. The defendant contended that the reasons for non payment of amount to the plaintiff is deviations in the construction. However, DW.1 categorically stated that she cannot give the details of deviations from sanctioned plan. Importantly DW.1 further admitted in the letter dt. 08.07.2009 (Ex.A9) that the construction of bungalow is fully completed in all aspects and they shall not raise any objections on this count hereafter. Therefore although a hue and cry was raised regarding the alleged deviations, the admissions of DW.1 in the cross examination closed the door of alleged deviations.

21. The next contention of the defendant, is that the matter should be adjudicated by the arbitrator under the provisions of

Arbitration and Conciliation Act, 1996, through both the parties by mutual consent if at all accepted by both parties for speedy and effective relief. On 29.06.2009 the defendant entrusted the matter to the advocate and a settlement was arrived on 08.07.2009 duly signed by both the parties and it was agreed to withdraw 138 of NI Act case. Later it was failed. Much argument was advanced regarding arbitration by the defendant, in the written arguments.

22. Here, the learned defendant's counsel cited the following judgments;

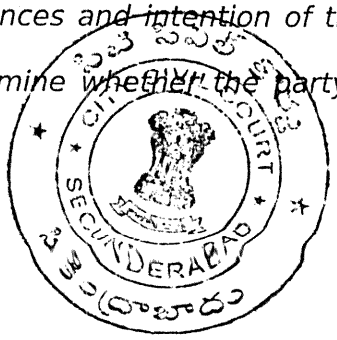
1. In **Tulasi Viswa Karma Home Pvt. Ltd., Vs. Vayunandan Estates Pvt. Ltd.,** on 29.06.2005 (2005 (5) ALD 392, 2005 (4) ALT 512, 2006 (1) ARBLR 445 AP) wherein it was held that " it is evident that irrespective of the value of the suit that a party intends to file U/Sec.9 of the Act, it is to be presented in the Principal court of civil jurisdiction in the District. In that way, it is only the Principal District Judge's court or the court of Chief Judge, City Civil Court, Hyderabad, that is conferred with the jurisdiction. apart from describing the word "court", as the one of "Principal Civil Court of original jurisdiction", the definition further proceeds to exclude the court, which is of a grade inferior to such Principal Civil Court. The learned Principal Junior Civil Judge, before whom the suit was pending proceeded as though his court answers the description of the "court" as defined U/Sec. 2(e). From an analysis of Section 2(e) of the Act, it is evident that except the court of Principal District Judge no other court can entertain the suits or O.Ps. U/Sec 9 of the Act".

2. In **F.A.& CAO/WST/SC. South Central Railways,**

Secunderabad and others Vs. M/s. Chem Equipments & Coolers, Hyderabad (2007) 2 ArbLR 466 (2006) 4 ALT 61), it was held that *"however, the issue is in the nature of jurisdiction. In the normal course as postulated U/Order 14 Rule 2 CPC, issues have to be answered. However, sub-rule (2) of Rule 2 of Order 14 of CPC, which is in the nature of exception to the general rule, envisages that the court can decide an issue as a preliminary issue under the conditions mentioned in clauses (a) and (b) and sub-rule (2) of Rule 2 of Order 14. Perhaps, the present case falls under clause (a) of the said sub rule (2) of Rule 2 of Order 14. Therefore, when actually the trial of the suit is in progress, it is rather too late for the petitioners/defendants to make the present application. In fact, they ought to have filed an application U/Order 14 Rule 2 to have the issue of jurisdiction a preliminary issue. Since that is not done we do not find any irre y or illegality in the order impugned in this revision and the same able to be dismissed.*

Accordingly the Civi vision Petition is dismissed, However, it is open for the petitioners/defendants to approach the court as law provides, other than the procedure prescribed U/Sec. 8 of the Act."

3. In **(Rashtriya Ispat Nigam Limited & Anr Vs. M/s. Verma Transport Company)** of (Hon'ble Supreme court, January 2016 Law library) *it is held that "the right to have the dispute settled by arbitration has been conferred by agreement of parties and that right should not be deprived of by technical pleas the court must go into the circumstances and intention of the party in the step taken the court must examine whether the party has abandoned his right under the*



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agreement. In the light of these principles and looking to the substance of the application dated 04.01.1985, we cannot form an opinion that the defendants have abandoned their right to have the suit stayed and took a step in the suit to file the written statement. Waiver of a right on the part of a defendant to the lis must be gathered from the fact situation obtaining in each case. In the instant case, the court had already passed an ad-interim exparte injunction. The appellants were bound to respond to the notice issued by the court. While doing so, they raised a specific plea of bar of the suit in view of the existence of an arbitration agreement. Having regard to the provisions of the Act, they had, thus, shown their unequivocal intention to question the maintainability of the suit on the aforementioned ground."

23. However it is seen in the present case that the arbitration clause has tried to be implemented, but ultimately it is fizzled out.

24. The next contention of the defendant is that the court has no jurisdiction, to try this matter. It is true that the property covered by this suit is situated at Cherlapally within the jurisdiction of Ranga Reddy District court. However, the present suit is not for possession of property, it is a mere suit for recovery of amount. The plaintiff's registered office is in Secunderabad. The cheques are issued within the limits of Secunderabad jurisdiction. In this connection, the learned defendants counsel cited in **Harshad Chiman Lal Modi Vs. DLF Universal Ltd., and another (2005) 7 SCC 791**) in which it is held that " now, Sections 15 to 20 of the code contain details provisions relating to jurisdiction of courts. They regulate forum for institution of

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suits. They deal with the matters of domestic concern and provide for the multitude of suits which can be brought in different courts. Section 15 requires the suitor to institute a suit in the court of the lowest grade competent to try it. Section 16 enacts that the suits for recovery of immovable property, or for partition of immovable property, or for foreclosure, sale or redemption of mortgage property, or for determination of any other right or personal obedience of the defendant. The proviso is based on well known maxim "equity acts in personam, recognized by Chancery courts in England. Equity courts had jurisdiction to entertain certain suits respecting immovable properties situated abroad through personal obedience of the defendant. The principle on which the maxim was based was that courts could grant relief in suits respecting immovable property situated abroad by enforcing their judgments by process in personam, i.e., by arrest of defendant or by attachment of his property." But it is seen that this court has jurisdiction to try the matter.

25. The next contention is that the suit is barred by limitation. While the cause of action continues and Ex.A6 legal notice is dt. 27.10.2009 and Ex.A9 letter is dt. 08.07.2009. While so, ~~though~~ the suit being filed on 02.06.2012 is within limitation. Due to the above mentioned discussion, issues No.1 and 3 are held in favour of the plaintiff.

26. **ISSUE NO.2:**

In view of the discussion for issues 1 and 3 it is clear that the defendant cannot deny the liability. Therefore this issue is held against the defendant.

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Instead of ... 828586/- have to be typed.

27.

ISSUE NO.4:

In the result, the suit is decreed with costs for a sum Rs.12,14,531/- with subsequent interest on the principal sum Rs.3,85,945/- @ 12% per annum from the date of filing of the suit till the date of decree and thereafter @6% per annum till realization.

Dictated to Personal Assistant, transcribed and typed by her, corrected and pronounced by me in the Open Court on this the 14th day of July, 2017.

XXVII Addl. Chief Judge,
City Civil Court,Secunderabad.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Plaintiff.

PW.1: L. Ramacharyulu.

PW.2: Y. Amarlingeswar Rao.

For Defendant.

DW.1: Smt. A. Susheela.

Documents marked for the plaintiff.

Ex.A1 Authorization letter.

Ex.A2: Office copy of booking form.

Ex.A3: certified copy of sale deed executed by plaintiff in favour of defendant.

Ex.A4: certified copy of agreement of construction execution by plaintiff in favour of defendant.

Ex.A5: certified copy of registration firm.

Ex.A6: office copy of legal notice.

Ex.A7: Authorization dt. 18.03.2016.

Ex.A8: Certificate of chartered accountant.

Ex.A9: letter dt. 08.07.2007.

Documents marked for Defendant.

Ex.B1: Plan.

Ex.B2: letter dt. 17.09.2009.

Ex.B3: legal notice by plaintiff dt. 02.04.2009.

Ex.B4: reply notice, dt. 23.04.2009.

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Ex.B5: legal notice dt. 27.10.2009.

Ex.B6: reply notice, dt. 03.12.2009.

Ex.B7: re-joinder notice by plaintiff, dt. 22.12.2009.

Ex.B8: statement of account g loan) from An dt. 14.11.2012.

Ex.B9: certified copy of judgme C.No.87/2011 c f XII Magistrate, dt. 19.04.2012.

Ex.B10: certified copy of judgm criminal appeal, 2013.

Ex.B11: Reply notice, dt./ 03.05

XXVII Addl udge,
City Civil Cour derabad.

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P.C. SUPERINTENDENT

IN THE COURT OF THE I ADDL CHIEF JUDGE: C.C.C. SEC'BAD
CENTRAL PHOTO COPY SECTION
PCA.No. 461/17
Presented on 18/7/17
C.F. Called on 22/9/17
Charges Deposited on 3/10 Rs. 32
Receipt No.
Made Ready on 5/10/17
Copy Delivered on 25-10-17

P.C. Superintendent

CITY CIVIL COURT SECUNDERABAD

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DECREE IN ORIGINAL SUIT

IN THE COURT OF THE XXVII ADDL.,CHIEF JUDGE, CITY CIVIL COURT, SECUNDERABAD.

Dated: This the 14th day of July, 2017

Present: Sri.K.Sreenivasa Rao
XXVII Addl., Chief Judge,

O.S.No. 122 of 2012

Between:

M/s.Mehta & Modi Homes, rep by its Managing Partner, Sri Soham Modi S/o.Satish Modi, aged 38 yrs, occ:Business, Regd Office 5-4-187/3 & 4, Soham Mansion, M.G.Road, Secunderabad. ... Plaintiff

A N D

Smt. A.Susheela W/o.Sudhakar, aged 58 yrs, occ:House wife, R/o.304, Maha Lakshmi Towers, Shivbagh, Ameerpet, Hyderabad.
...Defendant.

Claim: This suit filed by the plaintiff against the defendant to pass judgment and decree for recovery of a sum of Rs.12,14,531/- together with future interest at 18% p.a from the date of filing of the present suit till the date of realization and costs of the suit.

Valuation: This suit is valued at Rs.12,14,531/- and paid the court fee of Rs.14,626/- Under Section 20 of A.P.C.F and S.V.Act.

Suit presented on: 02-06-2012
Suit numbered on: 06-07-2012

This suit is coming on this day before me for final disposal in the presence of Sri.C.Bala Gopal, Advocate for plaintiff and of Sri CH.Lakshmi Narayana, Advocate for defendant, and this Court doth order and decree as follows:

1. That the suit be and is hereby decreed for a sum of Rs.12,14,531/- with subsequent interest on the principal sum Rs.3,85,945/- @ 12% per annum from the date of filing of the suit till the date of decree and thereafter @ 6% per annum till realization.

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2. That the defendant is do pay to the plaintiff a sum of Rs.63,021/- towards costs of the appeal.

Given under my hand seal of this Court on this the 14th day of July, 2017.

XXVII Addl., Chief Judge,
City Civil Court, Secunderabad.

MEMO OF COSTS

	For Plaintiff	For Defendant.
1.Stamp on suit	14,626-00	
2.Stamp on Vakalat	2-00	2-00
3.Process fee	100-00	
4.Advocate fee(Sr)	38,635-00	
(Jr)	9,658-00	
5.Misc., Charges.	----------	
Total:	63,021-00	2-00

C. Balagopal

XXVII Addl., Chief Judge,
City Civil Court, Secunderabad.

IN THE COURT OF THE I ADDL CHIEF JUDGE: C.C.C. SEC'BAD
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CERTIFIED TO BE TRUE PHOTO COPY

P.C. SUPERINTENDENT

P.C. Superintendent

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