

**IN THE COURT OF THE LXXXIII ADDITIONAL CITY CIVIL
AND SESSIONS JUDGE AT BENGALURU CITY [CCH-84]**

:Present:

Ravindra Hegde,
M.A., LL.M.,
LXXXIII Addl. City Civil & Sessions Judge,
Bengaluru

Dated on this 4th day of March 2023

COM.OS.No.1298/2022

PLAINTIFF: Sobha Projects & Trade Private Ltd.,
A company registered under
Companies Act 1956,
No.23/1, Sonnenahalli village,
Brooke Field, Mahadevapura post,
Bengaluru-560048.
Represented by its
General Manager – Accounts
Mr.Aravinda Hegde.

[By Sri.K.S.H, Advocate]

/v e r s u s/

DEFENDANTS: 1. Mr.G.R.Nataraj H.U.F
11th KM Off. Kanakapura Road,
Doddakallasandra,
JP Nagar 9th Phase,
Bengaluru-560062.
Represented by its Karta
Mr.G.R.Natraj.

Mr. G.R.Nataraj,
Father name not known
aged about 61 years,
R/at 11th KM off. Kanakapura Road
Doddakallasandra,
J.P.Nagar 9th Phase,

Bengaluru-560062.

Pride & Expert Properties(Pvt) Ltd.,
Pride Hulkul, 901, 9th Floor,
#116, Lalbagh Road,
Bengaluru-560027.

Tanvi Asset Holdings LLP,
11th KM Off. Kanakapura Road,
Doddakallasandra,
JP Nagar 9th Phase,
Bengaluru-560062.

**(D.1 & D.2 by Sri.P.L, Advocate,
D.3 by Sri.G.S, Advocate,
D.4 by Sri.V.M.I, Advocate)**

ORDER ON I.A. No.I

This application under Order XII Rule 6 of CPC is filed by the defendant No.4, praying to pass judgment by dismissing the present suit against defendant No.4.

2. In the affidavit in support of the application, it is stated that the plaintiff has filed this suit for recovery of Rs.95,26,028/- with interest from the defendants. It is stated that as per the email dated 5/8/2020 and 19/8/2020 produced by the plaintiff in document No.10 plaintiff itself has admitted that the agreement is signed between defendant No.1 and plaintiff and it is the responsibility of the defendant No.1 to clear the dues. It is stated that legal notice produced as document No.11 is issued only to the 1st defendant and not to 4th defendant, which show that suit is liable to be dismissed as against defendant No.4. It is also stated that

defendant No.4 LLP was a facilitator for the project and has carried out only its duty on behalf of the 1st defendant and it is its agent in terms of facilitation agreement dated 19/5/2012 and under the irrevocable General Power of Attorney. It is stated that defendant No.4 cannot be saddled with the debts or liabilities of the principal by virtue of the provisions of Section 226 and 230 of the Indian Contract Act and Section 2 of the Power of Attorney Act. It is stated that it is not the case of the plaintiff that the 4th defendant had no authority to act on behalf of the 1st defendant or that it exceeded its authority by joining in the execution of the work orders by the 3rd defendant on behalf of the 1st defendant. The 4th defendant is indemnified under law against the consequences for all the acts done by it in exercise of the authority conferred upon it by the 1st defendant. It is stated that 4th defendant done its due diligence on the plaintiff and after defendants No.1 and 2 were satisfied with the credentials of the plaintiff, the plaintiff has issued the work order and 1st defendant and its coparceners are fully responsible and liable for remuneration payable to service providers such as the plaintiff and defendants No.3 and 4. It is stated that the work order were issued in the name of defendant No.1 and even as per the tripartite agreement dated 19/5/2012 service providers, suppliers, vendors for the project were to be identified and appointed by the 3rd defendant on behalf of and at the cost of the 1st defendant. It is stated that 4th defendant has been roped in as a party

defendant solely to harass it and to put pressure. It is stated that if the suit is not dismissed against defendant No.4 by allowing the application, 4th defendant will suffer injury. On all these grounds the application is prayed to be allowed and suit is prayed to be dismissed.

3. Objection is filed by the plaintiff stating that the application is wholly false, frivolous and vexatious. It is stated that for the purpose of deciding the application under Order XII rule 6 of CPC the plaint averments are to be seen. It is stated that the 2nd defendant is signatory for all the contracts entered between plaintiff and defendants and hence 4th defendant is a necessary party. It is stated that defendant No.1 represented by defendant No.4 have approached the plaintiff and stated that the defendant No.1 is the owner and has engaged defendants No.3 and 4 for construction of multi-storied residential apartment complex and upon negotiation, defendant collectively engaged the service of the plaintiff. It is stated that defendant No.4 as a party in the suit is very important to establish the case. It is stated that the application cannot be entertained at this preliminary stage as defendant No.4 is necessary party and the case is to be decided on merits and for such decision, 4th defendant is necessary. It is also stated that the issuing of legal notice is not mandatory for filing the suit. It is stated that the 4th defendant is Power of Attorney Holder and based on the same he carried out the entire work which also included the services taken from the plaintiff. It is stated that the

facilitation agreement clearly binds the defendant No.4 which is an irrevocable agreement made between defendant No.1 and defendant No.4 for the purpose of the project where the defendants are jointly and severally liable to the plaintiff. It is stated that the agreement cannot be terminated by the defendant No.1 till the settlement of the accounts. It is stated that as per the said agreement, entire responsibility is on the defendant No.4 along with defendant No.1 with respect to the said project and its implementation. It is stated that elder son of defendant No.2 and defendant No.4 are partners and defendant No.4 will be liable for all the conducts of the defendants. It is stated that the defendant No.4 is jointly and severally liable for the acts carried out by the defendants and defendant No.4 cannot claim defense that he has not entered into contract with the plaintiff exclusively. It is stated that the defendants were part of one single project and the plaintiff's services were engaged for the same project. Therefore, in default of payment, plaintiff has to reach all the defendants who approached him at first instance and engaged his services. It is stated that the identification by defendant No.4 has to be against defendant No.1 to defendants No.3 and therefore defendant No.4 cannot exclude himself from the suit. It is stated that the application is filed with malafide intention and is liable to be dismissed.

4. Now the points that arise for my consideration are:

1. Whether the judgment is to be passed by dismissing the suit as against defendant No.4 under Order XII rule 6 of CPC as prayed in I.A.No.I?

2. What order?

5. Heard both counsels. Perused records.

6. My answer to the above points are :

Point No.1 : In the negative.

Point No.2 : As per final order for the following:

REASONS

7. Point No.1: Present suit is filed by the plaintiff for recovery of Rs.95,26,028/- with interest from the defendants jointly and severally. The defendants No.1 to 4 have appeared and have all filed written statement. Defendant No.4 has filed present application under Order XII rule 6 of CPC praying to pass judgment of dismissal of the suit against defendant No.4. In the affidavit the defendant No.4 has stated that the 4th defendant is only facilitator and is Power of Attorney Holder and the act of the defendant No.4 is as agent of the 1st defendant and agent is not liable to the plaintiff and as such the suit against defendant No.4 is to be dismissed as is not maintainable as per law. Defendant No.4 also contends that in the email dated 5/8/2020 and 19/8/2020 the plaintiff itself has admitted that the agreement is signed by 1st defendant and plaintiff and responsibility to clear the plaintiff's due is on the 1st defendant. Therefore, defendant No.4 contends that the plaintiff has admitted that the liability is that the defendant No.1 and on the basis of this admission

in the email the suit is to be dismissed by passing judgment under Order XII rule 6 of CPC as against defendant No.4. Defendant No.4 also contends that before filing suit, plaintiff has not given notice to defendant No.4, but has given notice only to defendant No.1 which also shows that the claim against defendant No.4 is not sustainable. Plaintiff in the objection has stated that the contract and agreement are entered by defendants No.3 and 4 on behalf of the 1st defendant and the defendant No.4 is the signatory to all the contract and these defendants No.3 and 4 have engaged the services of plaintiff for the project. As such, defendant No.4 is also a necessary party and the suit cannot be dismissed under Order XII Rule 6 of CPC against defendant No.4.

8. On looking to the plaint averments, plaintiff has stated that defendant No.1 represented by defendants No.2 to 4 approached the plaintiff for construction of multi-storied residential apartment complex and upon negotiation, defendants have collectively engaged the service of plaintiff for supply and installation of plumbing and sanitary work. Plaintiff has also stated that the work order dated 22/2/2014 and also 7/4/2014 are all signed by defendants No.3 and 4 as GPA holders of the 1st defendant. On the basis of this work order which are given by defendants No.3 and 4 on behalf of the 1st defendant, the plaintiff is said to have executed the work, in respect of which, suit claim amount is said to be outstanding. Plaintiff is seeking decree for recovery of the amount and contending that the defendants are jointly and

severally liable to pay this suit claim amount with interest. Plaintiff has produced several documents. Copy of work order dated 22/2/2014 and 7/4/2014 which are produced as document No.2 and 3, are the basis on which plaintiff is entrusted the work by defendants, contain signature of defendants No.3 and 4 with their seal as GPA holder of the 1st defendant HUF. On the basis of these work orders, plaintiff is said to have carried out the work and in that transaction the suit claim amount is said to be due to the plaintiff.

9. These documents, prima facie, show that defendants No.3 and 4 are actively involved in execution of the work from the beginning and they had engaged the services of the plaintiff and had issued work order on behalf of the 1st defendant as its GPA holder. Several emails that are exchanged between the parties are produced by the plaintiff. Among them, defendant No.4 relies on two emails vide dated 19/8/2020 and 5/8/2020 in which, plaintiff is said to have stated that the agreement is signed between G.R.Nataraj - 1st defendant and Sobha Projects and Trade Private Limited i.e. plaintiff and also that the agreement have been executed between the defendant No.1 and the plaintiff and the team of the plaintiff has opined that the responsibility for the due is with the owner i.e. defendant No.1 as per the contract documentation. These emails are the basis for the contention of 4th defendant to seek dismissal of the suit against it, on the ground that these are the admissions of the plaintiff that liability is of the defendant No.1 to pay the amount due to the

plaintiff. However, only on the basis of these two emails, it cannot be held at this stage that there is clear admission by plaintiff in favour of defendant no.4, stating that they are not responsible to pay the amount or that they are not answerable to the plaintiff inspite of being the signatory to both the Work orders produced as document No.2 and 3. In the email sent by defendant No.1 to the plaintiff on 3/8/2020 which is also part of the emails produced by plaintiff, 1st defendant had contended that the HUF has no role to play in the construction, marketing or sale of the unit and either Tanvi – defendant No.4 or pride i.e. defendant No.3 has signed the purchase order and the defendant No.1 is unaware of the details and if any amount is payable it is payable by Chetan or defendants No.3 and 4 and the plaintiff may take up their claim with them. Therefore in this email, defendant No.1 has stated that these defendants No.3 and 4 and one Mr. Chetan have to satisfy the claim and for this email, the email dated 5/8/2020 was sent by the plaintiff stating that responsibility would lie with the owner i.e. the 1st defendant. When these emails are considered together, at this stage it cannot be said that they are the clear and unambiguous admission which entitle 4th defendant to seek dismissal of suit without participating in the trial.

10. Admittedly, Work orders which are the basis for the work done by the plaintiff are signed by the defendants No.3 and 4. Though defendant No.4 has stated that it is only an agent, it is stated that irrevocable power of attorney was

given to defendant no.4. Generally such irrevocable power of attorney would be coupled with interest and the agent cannot simply escape from liability under Section 226 and 230 of the Indian Contract Act. Therefore, only on the basis of these two emails and Section 226 and 230 of the Indian Contract Act and that before filing of the suit notice was not given to defendant No.4, suit cannot be dismissed against defendant No.4 under Order XII rule 6 of CPC without going for trial.

11. Plaintiff has contended that as defendants No.3 and 4 are signatory to both Work orders, they are necessary and proper parties. The learned counsel for plaintiff has contended that as the application is not under Order 1 Rule 10(2) of CPC, said point need not be considered in this application. However, if defendants No.3 and 4 could be considered as a necessary or proper parties, even if there are any admission as contended by defendant No.4 in the pleading and document of the plaintiff, court cannot pass judgment of dismissal of the suit against defendant No.4 under Order XII rule 6 of CPC. Dismissal of the suit by passing a judgment under order XII rule 6 of CPC include even other aspects like necessary parties to the suit and maintainability of the suit etc. Therefore, only because application is filed under Order XII rule 6 of CPC provisions of Order 1 Rule 10 and the concept of necessary and proper party, cannot be ignored by the court.

12. Learned counsel for defendant No.4 has referred to a decision of Hon'ble Supreme Court reported in **(2010) 4**

SCC 753 (Karam Kapahi and others v. Lal Chand Public Charitable Trust and another) in which it is held that the object of order 12 Rule 6 is to give plaintiff a right to speedy judgment – A party on admission of the other party, can press for judgment, as a matter of legal right, however court always retains its discretion in matter of pronouncing judgment. In another decision of Hon'ble High Court of Delhi reported in **Laws (DLH) 2008-8-273 (Sushil Bhardwaj v. Ved Parkash Shastri)** the Hon'ble High Court has held that Order 12 Rule 6 CPC is flexible enough to enable the court to dismiss the suit if the situation so warrants and it is not only for decreeing the claim of the plaintiff against the defendant and it is also for dismissing the suit.

13. The learned counsel has also relied on the judgment of **Hon'ble Supreme Court dated 8/8/2000 in Uttam Singh Dugal and Company Limited v. United Bank of India and others** in which the Hon'ble supreme Court has held that the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim and it enables a party to obtain speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled and court should not unduly narrow down the meaning of this rule as the object is to enable a party to obtain speedy judgment. On the basis of these decisions it is argued that on the basis of the admission found in pleading and the documents produced by the plaintiff, suit against defendant No.4 is to be dismissed under Order 12 Rule 6 of

CPC to prevent the defendant No.4 from undergoing a prolonged litigation. Learned counsel has also relied on the decision of Hon'ble Supreme Court reported in **LAWS (SC) 2008-11-62 (Prem Nath Motors Limited v. Anurag Mittal)**., In this decision, it is held that an agent is not liable for the acts of a disclosed principal, subject to contract to the contrary, under Section 230 of the Contract Act. It is also held that by virtue of Section 230 the agent could not be sued when the principal had been disclosed.

14. Whether the defendant No.4 is only an agent and is not having any responsibility and is not answerable to the plaintiff as contended by defendant No.4 etc is to be decided in the suit. Only on the principle that the agent is not responsible for his acts, defendant No.4 cannot seek dismissal of the suit. No doubt, Judgment on admission can be sought at any stage of the suit, but the admission should be clear and unambiguous. It is the defendants No.3 and 4 who have engaged the services of the plaintiff, though as Power of Attorney Holder of defendant No.1 and plaintiff has honoured the work order and is said to have executed the work and is making claim against the defendants. Defendant no.1 in his written statement has contended that he is not liable for making payment. In such a suit, at this stage without going for trial, the suit cannot be dismissed against defendant No.4 under Order 12 Rule 6 of CPC as prayed.

15. On looking to the entire facts and provisions of CPC , application filed by the defendant No.4 is devoid of merits.

This application appears to have been filed only to drag on the proceedings or to take a chance and such application deserves to be dismissed with costs. Accordingly **point No.1 is answered in the negative.**

16. POINT No.2 : For the discussion made on above point, following order is passed:

ORDER

**I.A.No.I filed under Order XII Rule 6 of
CPC by defendant No.4 is dismissed with cost
of Rs.5,000/-.**

*[Dictated to the Judgment Writer; transcript thereof corrected,
signed and then pronounced by me, in the Open Court on this
the 4th day of March 2023]*

**[Ravindra Hegde]
LXXXIII Additional City Civil Judge.
BENGALURU.**
