

IN THE COURT OF DISTRICT MUNSIF AT AMBATTUR.

PRESENT: TMT. FANNY RAJAN, B.A., B.L.(Hons.),
DISTRICT MUNSIF, AMBATTUR.

Friday, the 4th day of April 2025.

INTERLOCUTORY APPLICATION NO.2 OF 2022

IN

ORIGINAL SUIT NO.197 OF 2020
CNR.No.TNTR22 – 000248 – 2020

P.N.Ravi

....Petitioner/Defendant

Versus

Mr.N.Sekar

....Respondent/Plaintiff

This petition having come on 22.01.2025 before me for final hearing in the presence of M/s.S.Logeshwar, M.Sushma and V.Alamelu, learned counsels for the Petitioner/Defendant and M/s.Golden Law Associates, A.Vijaykannan, V.Jawahar, D.Lenin Prakash and P.Selvakumar, learned counsels for the Respondent, upon hearing the arguments made by the learned counsel for the petitioner and the respondent and on perusal of the records, this Petition having stood over for consideration till this day, this Court delivers the following:

ORDER

1. This petition has been filed under Order 37 Rule 3(5) of CPC to grant unconditional leave to the Petitioner/Defendant to defend the suit.

CONCISE STATEMENT OF THE PETITIONERS AS PER THE AFFIDAVIT:

2. The Petitioner has averred that the suit is filed by the Plaintiff to be tried summarily. He already filed a complaint against the respondent in 2019 seeking for compensation amount for defects in the building and the same is pending before the Hon'ble Consumer Redressal Forum in CC No. 04/2020. He paid Rs.50,000/- as advance by cash and Rs.22,20,000/- as part payment by Cheque. On 21.10.2016 the remaining Rs.9,79,800/- was paid by Cheque at time of sale to the Respondent. Mrs.S.Devaki is the said to be the owner of the property.

3. He took possession of the flat in December 2016 and within January 2017 crack started to appear in the main beam, there were leaks and the building was not strong. The said damage was informed to the Respondent and he promised to rectify. Despite his efforts, the respondent could not rectify the damages. While signing the agreement, the Respondent agreed to hand over possession with all basic necessities. However, he failed to allocate car parking, drainage connection, Rain Water sewage facility, steps to open terrace tank. He is unable to use one of his bathrooms due to leak in the car parking. Due to deficient service and poor construction, he suffered mental agony.

4. Under such circumstances, there is no question of payment of balance. The petition to appoint advocate commissioner in CMP No.14 of 2020 was filed in the CC No.04 of 2020 and pending. A complaint to the Executive Engineer, Chennai corporation Zone 7 is given. The respondent for grave violation has to pay

compensation of Rs.10,00,000/- and he did not approach with clean hands. There is no material to try this suit summarily. He has a good case on merits and substantial defence. Hence, if petition is not allowed he would be put to irreparable loss and hardship. He has a prima facie case and balance of convenience. Hence, this petition for unconditional leave to defend.

CONCISE STATEMENT OF THE RESPONDENTS AS PER THE COUNTER

AFFIDAVIT:

5. The Respondent denied the allegations and stated that there are valid material documents for an efficacious remedy against the petitioner herein based on the promissory note. This frivolous petition filed by the petitioner is liable to be dismissed on the sole ground that the petitioner herein has not denied the execution of the promissory note dated 09.11.2016 and further payment dated 10.03.2017 and 23.10.2017.

6. Evidence of the party is required only if the petitioner herein produce the Consumer Redressal forum, at Thiruvallur in C.C. No.4 of 2020 which is on a different issue and the outcome of the alleged proceeding will not bind this suit. The defendant has agreed to pay the first part a sum of Rs.22,20,200/- towards the construction cost and sale consideration of sum of Rs.9,79,800/-, i.e. total Rs.32,00,000/- excluding registration charges. It is not denied. The petitioner herein has not furnished the details of Cheque and relevant documents. On 21.10.2016 i.e., on the date of sale deed, the defendant has paid a sum of Rs.29,90,000/-. The

registration charges of Rs.78,750/- and miscellaneous expenses of Rs.11,250/- was paid by him from the amount given by the defendant on 21.10.2016.

7. The defendant has agreed to pay the balance amount and executed a promissory deed dated 09.11.2016 for the sum of Rs.2,00,000/- and promised to pay within a period of 2 months. But in vain. Subsequently after repeated demand on 10.03.2017, the defendant has paid a sum of Rs.50,000/- and on 22.10.2017, the defendant have paid a further sum of Rs.1,00,000/-. The defendant has made endorsement for the same. Though several demands to pay the balance sum of Rs.50,000/-, he failed. Hence, this suit. The alleged proceeding pending before the Consumer Redressal forum, at Thiruvallur in C.C. No.4 of 200 cannot be decided in this suit for recovery of money. Hence, the petition has to be dismissed.

8. **POINT FOR DETERMINATION:** Whether the Petition to grant unconditional leave to defend has to be allowed or not?

DISCUSSION AND FINDINGS:

9. This Court has heard the oral submissions of both counsels and perused the documents on record. No oral or documentary evidence has been let in by both parties.

10. This court takes judicial note of the law down by the Hon'ble Supreme Court in *IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd., 2017 (1) SCC 568.*, wherein it has been held where the defense that has been raised by the defendant is of sterling in character, it is a case for unconditional leave. If the defense that has been raised by

the defendant is moonshine or absolutely improbable, then the defendant is not entitled to leave at all. If the defense raised falls between these two categories, then discretion is granted to the court to grant leave on condition.

11. In the instant case, this court finds that the procedure contemplated under Order XXXVII Rule (3) regarding notice of appearance and Rule (4) summons for judgments have not been complied with. This Petition for leave to defend has been filed prior to the summons for judgment. The summons for judgment has been filed after this petition was numbered and returned. Thus, when both the parties have failed to comply with the mandate for summary procedure, this court is of the considered view that the Respondent/Plaintiff is not keen on proceeding with this suit in a summary manner.

12. This Court finds that the main contention of the Respondent is that the promissory note has been filed and execution is not denied. Hence, irrespective of the consumer complaint, the respondent is entitled to a judgment under summary trial. On the other hand, the main contention of the Petitioner is that the Respondent being the builder had handed over a defective flat. This suit is a counter blast to the complaint in CC No.4 of 2020 before the Hon'ble Consumer Redressal Forum. With his written arguments, the learned counsel for the Petitioner has also filed the Order copy in the said complaint dated 19.10.2022.

13. The Respondent has also acknowledged about the consumer complaint and the pendency of the same in his plaint. In fact even as per the Respondent, the suit is filed

after the notice in the consumer complaint CMP. This court finds that there is no clarity from the Respondent regarding any appeal or stay against the order dated 19.10.2022 in CC No.4 of 2020 before the Hon'ble District Consumer Disputes Redressal Forum, Thiruvallur. In the said order, it is clear that there are clear observations substantiating the averments of the Petitioner regarding the defect in the flat and construction.

14. In fact as per the said Order, the Respondent herein has been ordered to allot a car parking, build Rain Water Sewage facility and stairs for over head tank in 8 weeks, repair the building defects. Also a sum of Rs.1,00,000/- towards deficiency in service and Rs.10,000/- towards cost has been ordered. Thus it is evidenced that though the Petitioner had not denied the execution, he also has some valid claim against the Respondent regarding the payment liability.

15. This court finds that it is true that the Petitioner herein has neither denied the execution or signature in the Promissory Note dated 09.11.2016 and the amount payable as per the said note. The details of the liability of the Petitioner and Respondent against each other can be elicited only if the Petitioner and Respondent herein are given an opportunity to present their case, there will be a clarity regarding the legal liability of the Petitioner to the Respondent herein and whether the Petitioner herein is entitled to any set off against the Respondent.

16. Apart from that as already indicated in the discussions hereinabove, it is clear that there is a prima facie defence available to the Petitioner herein. As there appears

to be a prima facie ground for a defence regarding liability and set off, the nature of relationship between the parties and the allegations raised, this court finds that there is no specific pressing circumstance to demand the Petitioner to deposit any amount as condition. However, considering the fact that the suit is of the year 2020, a condition shall be imposed for the filing of the written statement on or before 04.06.2025 and that the Petitioner shall co-operate with the trial. In light of the above reasons, this court is inclined to partly allow this petition in the interest of justice and grant conditional leave to the Petitioner to defend the suit.

17. Considering the nature of relationship and rival claims against each other, this court finds that the parties shall bear their own costs.

18. **RESULT:**

In the result, this Petition is partly allowed and a conditional leave is granted to the Petitioner to defend the suit in OS No.197/2020 on the condition that the Petitioner herein shall file his written statement on or before 04.06.2025 and shall co-operate with the trial. No costs.

Typed directly by me in the desktop, corrected and pronounced by me in the open Court on this the 4th day of April 2025.

DISTRICT MUNSIF,
AMBATTUR.

PETITIONER AND RESPONDENTS SIDE WITNESSES AND EXHIBITS: NIL.

DISTRICT MUNSIF,
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