

BEFORE THE ADDITIONAL MASTER I,
HIGH COURT, MADRAS

C.S.(Com.Div) 632 of 2018

Date : 08.08.2022

Time : 12.13 P.M.

Name : Mr.Rakesh P Sheth (PW 1)

Age : 47 Years

Father's Name : Mr.Premkumar Sheth

Office Address : No.340, 1st South Main Road, Kapaleeswarar
Nagar, Neelankarai, Chennai – 600 115.

PW1 examined in cheif by Mr.V.Akash, Learned Counsel for the
Plaintiff.

Solemnly affirmed:

I am the Managing Director of the Plaintiff herein. I am filing my
proof affidavit and additional proof affidavit in C.S.59 of 2018 stating
the facts of this case and the same may be treated as part and parcel of
my examination-in-chief. The following documents may be marked as
exhibits.

Ex.P1 is the photocopy of the agreement dated 24.08.2009(separate
affidavit is filed)(marked subject to proof and relevancy).

Ex.P2 is the original Pre-Final bill dated 31.03.2013.

Ex.P3 is the printout of E-mail stating that Service tax paid by defendant
dated 28.09.2013(Sec.65 filed).

Ex.P4 is the photocopy of the winding up notice sent by plaintiff dated
27.07.2016(separate affidavit is filed)(marked subject to proof and
relevancy).

Ex.P5 is the photocopy of the Company Petition No.361 if 2016 filed by

the plaintiff dated 20.09.2016(separate affidavit is filed)(marked subject to proof and relevancy).

Ex.P6 is the photocopy of the letter regards winding up cases transferred from Madras High Court to NCLT Chennai dated 28.03.2017(separate affidavit is filed)(marked subject to proof and relevancy).

Ex.P7 is the photocopy of the order in TCP/97/(IB)/2017 passed by NCLT Chennai dated 06.07.2017(separate affidavit is filed)(marked subject to proof and relevancy).

Ex.P8 is the photocopy of the order in Company Appeal (AT)(Insolvency) No.315 of 2017 passed by NCLAT Delhi dated 04.01.2018(separate affidavit is filed)(marked subject to proof and relevancy).

Ex.P9 is the photocopy of the Form-5 filed by plaintiff before NCLT Chennai dated 22.02.2018(separate affidavit is filed)(marked subject to proof and relevancy).

Ex.P10 is the photocopy of the reply filed by defendant in CP/355/(IB)/CB/2018 dated 26.04.2018(separate affidavit is filed)(marked subject to proof and relevancy).

Ex.P11 is the photocopy of the order in CP/355/(IB)/CB/2018 passed by NCLT Chennai dated 09.07.2018(separate affidavit is filed)(marked subject to proof and relevancy).

Ex.P12 is the photocopy of the turnkey lump sum contract entered into between the plaintiff and the 1st defendant company dated 24.08.2008(separate affidavit is filed)(marked subject to proof and relevancy).

Ex.P13 is the photocopy of the lawyers notice sent by the plaintiff to the defendant dated 07.07.2014(separate affidavit is filed)(marked subject to

proof and relevancy).

Ex.P14 is the original of the final project value statement submitted by the defendant to the plaintiff dated 12.09.2014.

Ex.P15 is the photocopy of the reply notice sent by the defendant to the plaintiff dated 06.10.2014.

Ex.P16 is the photocopy of the reply notice sent by the plaintiff dated 25.03.2015(separate affidavit is filed)(marked subject to proof and relevancy).

Therefore, it is prayed, that, this Hon'ble Court may be pleased to pass a judgment and decree as prayed for in the plaint with cost and further relief may be granted as this Hon'ble Court may deem fit in the facts and circumstances of the present case and thus render justice.

Time: 12.45 P.M.

Taken down in open Court, read over and explained to the witness and the same is admitted by the witness to be correct and signed before me.

ADDITIONAL MASTER – I

**BEFORE THE ADDITIONAL MASTER I,
HIGH COURT, MADRAS**

C.S.(Com.Div) 632 of 2018
&
C.S.59 of 2018
&
C.S.(Comm Div) 113 of 2022

Date : 21.02.2023
Time :02.40 P.M.

Name : Mr.Rakesh P Sheth (PW 1)

Age : 47 Years

Father's Name : Mr.Premkumar Sheth

Office Address : No.340, 1st South Main Road, Kapaleeswarar
Nagar, Neelankarai, Chennai – 600 115.

PW1 examined in cheif by Mr.Anirudh, Learned Counsel for the
Plaintiff.

Solemnly affirmed:

I am the Managing Director of the Plaintiff herein. I am filing my
proof affidavit in C.S.(Comm Div) No.113 of 2022 stating the facts of
this case and the same may be treated as part and parcel of my
examination-in-chief.

Time: 02.43 P.M.

Taken down in open Court, read over and explained to the witness
and the same is admitted by the witness to be correct and signed before
me.

ADDITIONAL MASTER – I

BEFORE THE ADDITIONAL MASTER I,
HIGH COURT, MADRAS

C.S.(Com.Div) 632 of 2018
&
C.S.59 of 2018
&
C.S.(Comm Div) 113 of 2022

Date : 01.02.2024
Time : 03.45 P.M.

Name : Mr.Rakesh P Sheth (PW 1)

PW1 Cross Examination by Mr.Vikram, the learned counsel for the Defendant.

Solemnly affirmed:

Q1: Who prepared the Proof Affidavit?

A: My lawyer prepared the Proof Affidavit.

Q2: Have you filed any Authorization Letter to file the present suit before this Hon'ble Court and to depose on behalf of the Plaintiff?

A: I will have to verify.

Q3: Did you go through the pleadings and documents in C.S.59, 632 of 2018 & C.S.113 of 2022 before filing your Proof Affidavit?

A: Yes.

Q4: Can you tell this Hon'ble Court whether the contents of your Proof Affidavit and additional Proof Affidavits are based on your personal knowledge or information?

A: Personal Knowledge.

Q5: Is it correct to state that defendants 2 and 3 have not filed Written Statements in C.S.No.59 of 2018?

A: I have to verify.

Q6: Can you please see the pleading available in the Court Records in C.S.59 of 2018 and answer the previous question?

A: D2 and D3 not filed the Written Statements.

Q7: Ex.P1 is shown to the witness. Where is the original of Ex.P1?

A: I have to verify.

Q8: I put it to you that the copy Ex.P1 is incomplete and some of the pages at the end are missing?

A: I have to verify but to my knowledge it is not incomplete.

Q9: Is it correct to state that any agreement should contain Signatures of Parties and witnessed by Attesting Witnesses for the document to be tendered in evidence?

A: This document was not prepared by us. It is a legal question. My lawyer will answer.

Q10: Do you know about this requirement?

A: It is not necessary for me to know.

Q11: When can you produce the original of Ex.P1?

A: I have to verify and produce it on Monday.

Time: 04.10 P.M.

Taken down in open Court, read over and explained to the witness and the same is admitted by the witness to be correct and signed before me.

ADDITIONAL MASTER - I

BEFORE THE ADDITIONAL MASTER I,
HIGH COURT, MADRAS

C.S.(Com.Div) 632 of 2018
&
C.S.59 of 2018
&
C.S.(Comm Div) 113 of 2022

Date : 02.02.2024
Time : 11.05 A.M.

Name : Mr.Rakesh P Sheth (PW 1)

PW1 Cross Examination by Mr.Vikram, the learned counsel for the Defendant.

Solemnly affirmed:

Q12: Can you produce the original of Ex.P1 today?

A: No. As we have already submitted the Original in another matter and the same is with the NCLT.

Q13: Have you produced any material to show that the original of Ex.P1 has been filed in NCLT as stated by you?

A: No. Witness Adds: My lawyer can verify.

Q14: A document is shown to the witness. Can you identify this document?

A: Yes. It is the very same agreement as Ex.P1. The agreement dated 24.08.2009 (Plaint Document No.1 in C.S.59 OF 2018) is marked as Ex.P17.

Q15: I put it to you that Ex.P17 is the original of Ex.P1 available with the defendant?

A: I do not know.

Q16: I put it to you that Pg.No.16 of Ex.P17 is not found in Ex.P1 filed by you?

A: It is not found. Witness Adds: My lawyer can verify. Witness further adds: It is not the same document as the signature of the defendant varies in both.

Q17: Is the signature found in the right side of Ex.P17 yours?

A: I cannot confirm my signature. Witness Adds: The document shown and Ex.P1 are different. Therefore I cannot confirm whether the signature on the document produced is mine.

Q18: I put it to you that the signatures found on the right side of Ex.P17 are your signatures?

A: I cannot confirm.

Q19: Have you filed the Written Statement in C.S.59 of 2018?

A: As a representative of first defendant, I filed a written statement.

Q20: Written Statement in C.S.59 of 2018 is shown to the witness. In this written statement has the first defendant denied the signatures contained in Ex.P17?

A: No. Witness Adds: Because the Ex.P17 has now been produced in which the signature of the plaintiff varies from Ex.P1.

Q21: Statement of Admission and Denial of the first defendant in C.S.59 of 2018 is shown to the witness. Have you stated anywhere denying the signatures contained in Ex.P17?

A: No. Witness Adds: Because the document here referred is Ex.P1.

Q22: I put it to you that Ex.P1 referred to in your Statement of Admission and Denial relates to Ex.P17?

A: I cannot confirm. Witness Adds: Since the signatures of the plaintiff in C.S.59 of 2018 varies in both the documents.

Q23: Are you seriously suggesting that Ex.P17 and Ex.P1 are not one and the same?

A: Yes on the face of it, they are not.

Q24: Ex.P1 is shown to the witness. Is it correct to state that you have filed two suits C.S.632 of 2018 and C.S.113 of 2022 based on Ex.P1?

A: Yes.

Q25: I put it to you that Ex.P1 agreement, the plaintiff Karismaa Foundations Pvt. Ltd is not a party?

A: Yes. Witness Adds: As subsequently the proprietary concern entered into a Slump Sale Agreement with the private limited company a fact which was informed and communicated to the defendants of the two suits and based on which the contract went forward and subsequent payments made to the private limited company.

Q26: Have you filed the Slump Sale Agreement referred to by you in your previous answer?

A: I cannot confirm. My lawyer can verify.

Q27: I put it to you that neither the Slump Sale Agreement that you have referred to nor any alleged communication in this regard said to have been made by you has been filed by you before this Court?

A: I deny.

Q28: Can you please identify the Slump Sale Agreement and the Communications referred to?

A: Ex.P2 which is the copy of the pre-final bill has the company 's name as Karishma Foundations Pvt.Ltd.

Q29: Is it correct to state that you are unable to identify the Slump Sale Agreement and the Communications referred to by you in the Proof Affidavits you have filed in the three suits?

A: I have no knowledge on the Slump Sale Agreement and Communications I have already identified.

Q30: I put it to you that your answer to Q.No.25 referred to communication to the defendant about the Slump Sale Agreement and subsequent answers given by you have no correlation / nexus to the Slump Sale Agreement and the alleged communication regarding the Slump Sale Agreement?

A: I deny.

Q31: Ex.P1 is shown to the witness. Please see clause 6 of Ex.P1. I put it to you that the plaintiff has committed breach of Ex.P1 and has not performed its part of the obligations as agreed between the parties under Clause 6?

A: I deny.

Q32: Is it correct to state that apart from Ex.P1 agreement there were other transactions both, financial and business-wise between you and the defendant?

A: Yes. Witness Adds: Those transactions have no bearing on this

case.

Q33: Were you maintaining separate accounts for Karishma Foundations the proprietary concern and Karishma Foundations Pvt Ltd between the period January 2009 to December 2016?

A: Yes. Witness Adds: Since the take over was by virtue of a Slum Sale Agreement Karishma Foundations the proprietary concern ceased to exist post that.

Q34: Is it correct to state that you had purchased two apartments from the defendant company at concessional rate?

A: Yes, I had purchased two apartments but the same was done at Market Rate.

Q35: I put it to you that as per Clause 6 of Ex.P1 the project contemplated in Ex.P1 should have been completed by you on or before 09.07.2011 but you have not done so and you have committed breach of your obligations under Ex.P1?

A: I deny.

Q36: Was there any written extension of Ex.P1 in the manner contemplated under Ex.P1?

A: No. Witness Adds: Clause 6 of Ex.P1 clearly states that the period of 18 months starts from the date of handover of site or from the date of handover of cheques whichever is later. The full mobilization of payment was never made. Therefore this clause does not apply.

Q37: I put it to you that the mobilization advance has been received by you between 29.06.2009 and 09.11.2009 and after adjusting consideration payable by you for the two apartments, which was done as per your instructions?

A: I deny. Witness Adds: I gave no such instructions nor was the consideration for the flats adjusted in full. In fact it was the defendants who requested for this arrangement as they had paucity of funds.

Q38: Have you filed any record before this Hon'ble Court to show that you have demanded mobilization advance from the defendant?

A: No. Witness Adds: Because Ex.P1 clause 18 sub clause 1 clearly states 10% advance will be paid.

Q39: Was there any change to the terms of Ex.P1 in writing?

A: Yes. Witness Adds: Not just the terms the very design of the building changed which in effect itself made this agreement null.

Q40: I put it to you that much after Ex.P1 you had demanded an escalation in contract price from Rs.1,450/- per sq.ft to Rs.1675/- per sq. ft.?

A: Yes. Witness Adds: When the drawing itself changed. A lumpsum contract cannot be based on a drawing design which has been modified.

Q41: Have you filed any document before this Court in support of your statement that there was a change in the drawing?

A: I have to verify. Witness Adds: Ex.P13 Reply Notice has the admission of escalation from Rs.1450 /- to Rs.1675/-.

Time: 12.10 P.M.

Taken down in open Court, read over and explained to the witness and the same is admitted by the witness to be correct and signed before me.

ADDITIONAL MASTER – I

**BEFORE THE ADDITIONAL MASTER I,
HIGH COURT, MADRAS**

C.S.(Com.Div) 632 of 2018
&
C.S.59 of 2018
&
C.S.(Comm Div) 113 of 2022

Date : 24.11.2025

Time : 02.45 P.M.

Name : Mr.Rakesh P Sheth (PW 1)

PW1 Cross Examination Continuation by Mr.Vikkiram Raj, the learned counsel for the Defendant.

Solemnly affirmed:

Q42: Have you filed any document to show that you are carrying on business under the name and style of Karismaa Foundations Pvt. Ltd.?

A: Case is filed against the company shows there is a company under the name and style of Karismaa Foundations Pvt. Ltd.

Q43: Again I am asking you that have you filed any document to show that you are carrying on business under the name and style of Karismaa Foundations Pvt. Ltd.?

A: The fact that I am the second defendant representing as a Director shows that I am operating a Company in the name and style of Karismaa Foundations Pvt. Ltd.

Q44: Is it correct to state that the plaintiff has entered into a Turn-key contract with the defendant on 24.08.2009 for construction of around 1,73,465 sq.ft at the site called Indus Amber and that the plaintiff is bound by the terms of Ex.P1?

A: No. The agreement in question was entered by Karismaa Foundations, a proprietary concern and not Karismaa Foundations Pvt. Ltd.

Q45: Is it correct to state that the proprietary concern has now turned into the above company?

A: Yes. Via a slum sale agreement the business of the proprietary was taken over by the private limited company.

Q46: Have you filed the Slum Sale Agreement before this Hon'ble Court?

A: I will verify.

Q47: Ex.P1 is shown to the witness. What was the agreed contract price for construction of the site at Indus Amber as per Ex.P1?

A: As per Ex.P1 the contract price was Rs.1450/- per sq.ft it was subsequently revised.

Q48: Have you filed any document to show that the contract price was revised?

A: Yes. The exact document I verify and show tomorrow.

Q49: I put it to you that the work carried on by the plaintiff company in the above project site was not in accordance with the specifications of the agreement Ex.P1. What do you say?

A: Absolutely Yes. It is the very premise of our case.

Q50: I put it to you that the clause 6 of Ex.P1 clearly states that time is the essence of the contract and that the project shall be ready for handover with in a period of 18 months from the date of handing over of the site or from the date of mobilization of advance whichever is later. What do you say?

A: Yes. Technically the 18 months period is valid even today considering that the advance agreed was never paid.

Q51: I put it to you that the entire mobilization advance was paid by the defendant between June and November 2009.

A: No.

Q52: Has the plaintiff filed its financial statement along with the audit reports for the financial year 2013 – 2014?

A: Yes.

Q53: All the plaintiff documents are shown to the witness. Can you verify and show the document?

A: Documents have been filed with the income-tax department.. The question was whether I have filed it not where I have filed it.

Q54: I put it to you that the defendant has complied with all the mandatory requirements under Ex.P1 and has not breached any terms under Ex.P1. What do you say?

A: Your statement is wrong. Ex.P2 clearly shows breach by the virtue of the defendant accepting and paying interest for delayed payment.

Q55: I put it to you that Ex.P2 is created for the purpose of this case.

A: Wrong. Ex.P2 has been signed and accepted by the defendant company in specific by Mr.Shreyans Lunawath.

Time: 03.05 P.M

Taken down in open Court, read over and the same is admitted by the witness to be correct and signed before me.

ADDITIONAL MASTER – I