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 Chenani 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: Abosultely 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

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 : 25.11.2025
Time : 11.50 A.M.

Name : Mr.Rakesh P Sheth (PW 1)

PW1 Cross Examination Continuation by Mr.B.Arvind Srevatsa, the learned counsel for the Defendant.

Solemnly affirmed:

Q56: Plaint in C.S.(C.D.)632 of 2018 is shown to the witness. Is it correct to state that this suit is filed based on Ex.P1 agreement?

A: Yes.

Q57: Is it correct to state that the plaint in C.S.(C.D.)113 of 2022 is based on Ex.P1 agreement?

A: Yes.

Q58: Is it correct to state that the plaint in C.S.(C.D.)632 of 2018 is dated 26.08.2018?

A: Yes.

Q59: Is it correct to state that the plaint in C.S.(C.D) 113 of 2022 is is dated 11.09.2017?

A: Yes.

Q60: Is it correct to state that the documents filed along with the Plaint in C.S.(C.D.)113 of 2022 are all dated before 26th August 2018?

A: Yes.

Q61: I put it to you that the plaintiff in C.S.(C.D.) 113 of 2022 deliberately chose not to claim the relief in this suit in CS (C.D.) 632 of 2018 and this suit CS (C.D.) 113 of 2022 is barred under order II rule 2 of CPC.

A: I deny. As far as specific bar is concerned that is for my lawyers to answer.

Q62: According to you what is the total amount paid by the defendant to the plaintiff based on Ex.P1?

A: In accordance with Ex.P2 the approximate amount received is Rs.25,71,98,945/-.

Q63: Did the plaintiff maintain contemperanious, true and proper accounts of all payments made by the defendant to the plaintiff under Ex.P1?

A: Yes. Ex.P2 is an example of that.

Q64: Has the plaintiff produced any vouchers for payments received from the defendant under Ex.P1 in this suit?

A: No. Vouchers for payment made by the defendant will be available with them and not with me.

Q65: Is it correct to state that the plaintiff has not produced any records in these suits to show that the sub-contractors of the plaintiff for Ex.P1 were paid by the plaintiff?

A: No, it is irrelevant to these cases.

Q66: Does the plaintiff have records regarding payment to sub-contractors of the plaintiff for Ex.P1?

A: No, as per Income-Tax act we need not keep records beyond 8 years.

Q67: Did the plaintiff share any records regarding payment to sub-contractors of the plaintiff for Ex.P1 to the defendant during the relevant point of time when Ex.P1 was due to be performed by the plaintiff?

A: I do not recall, the agreement never mandated that this needs to be done.

Q68: Did you request the defendant for allotment of two apartments in the construction project?

A: No. I did not request for allotment. The defendants requested that I take the same as they were unable to make advance payments. In any case that allotment/ purchase is not the subject matter of the suit.

Q69: According to you what was the value of the two apartments?

A: I do not have the exact value, approximately Rupees 60 to 70 lakhs each.

Q70: Is it correct to state that you have not filed any document to show payment of consideration in respect of the two apartments in this suit?

A: Yes, firstly the said apartments were given towards advance payments due by the defendants. Secondly the said apartments were not the subject matter of the suit.

Q71: Has the plaintiff specified what exactly were the alleged extra works said to have been done by the plaintiff?

A: Yes.

Q72: Can you identify which document you are referring to?

A: I will revert.

Q73: Is it correct to state that the plaintiff has not produced any records in these suits to show that the alleged extra works were authorized by the defendant?

A: Witness requested to peruse Ex.P13. I deny, the notice (Ex.P13) of the defendant in para 2 of page 2 itself admits an escalation for additional works done from Rs.1450/- per sq.ft to Rs.1675/- per sq.ft.

Q74: According to the plaintiff when were the so called extra works commenced?

A: The so called extra works cannot be called so called. As the same has been admitted in your own notice. As far as commencing the work they were always an on going process during the course of construction.

Q75: Can you indicate which year, month and dates?

A: Witness requested to persue Ex.P2. Between the month of August 2009 and March 2013.

Q76: Has the plaintiff produced any contemporaneous records in this suit to show that the so called extra works were completed by the plaintiff?

A: Again we do not need to produce any document when the same has been admitted in your own notice. Nevertheless Ex.P2 has a section of additional work detailing the amounts along with its service tax.

Q77: Were you able to verify whether the plaintiff has filed any authorization letter at the time of filing C.S.(C.D)632 of 2018?

A: I have not, nevertheless as the Managing Director of the Company I am authorized to do the necessary filings.

Q78: During your cross-examination on 01.02.2024, you said that you would be able to produce the original of Ex.P1. Have you brought the original of Ex.P1 today?

A: No. But I will bring it tomorrow.

Q79: I put it to you that the plaintiff abandoned the construction project covered under Ex.P1 and the unfinished work of the plaintiff was defective as on date of abandonment.

A: The witness requested to peruse the Plaint in CS (C.D) 59 of 2018 and Ex.P13. I deny, your notice dated 07.07.2014 showed the claim of Rs.20,00,000/- under clause 6 (b) towards rectification of defects. This amount is less than 1% of the contract value well within permissible limits.

Q80: Did the plaintiff engage any sub-contractors for the performance of Ex.P1?

A: Yes, we engage labour, sub-contractors as is the industry practice.

Q81: I put it to you that the plaintiff abandoned the project site and the defendant was compelled to incurred cost for completion of project due to the breach of Ex.P1 committed by the plaintiff.

A: I deny, Ex.P2 is evidence that we completed all works which were agreed upon.

Q82: I put it to you that the defendants 1 and 2 in CS (CD) 59 of 2018 are liable to pay the plaintiff in the said suit the suit claim together with interest as prayed for, jointly and severally.

A: I deny, defendant 2 has not personally or in his personal capacity signed any document relating to this project site. And therefore there can be no liability if any which rest on defendant 2.

Q83: Is it correct to state that you have not signed Ex.P2?

A: I deny. I have in my capacity as the authorized signatory of Karismaa Foundations Pvt. Ltd. signed in the same.

Q84: Is it correct to state that the first defendant in C.S(CD) 59 of 2018 has not filed verifying affidavit and statement of truth as mandated in law?

A: I am not aware. Its for my lawyers to answer.

Q85: I put it to you that the first defendant in C.S(CD) 59 of 2018 has not filed verifying affidavit and statement of truth.

A: I am not aware. Its for my lawyers to answer.

Q86: Is it correct to state that the plaintiff in C.S.(CD) 113 of 2022 has not filed verifying affidavit and statement of truth?

A: I am not aware. Its for my lawyers to answer.

Q87: The entire pleadings in C.S.(CD) 113 of 2022 is shown to the witness. Can you please verify and answer whether verifying affidavit and statement of truth of the plaintiff in C.S.(CD) 113 of 2022 is available in the Court records?

A: In the document shown to me it is not there. Nevertheless it is for my lawyers to answer.

Q88: Who was responsible for verifying the details and correctness of pleadings filed by the plaintiff in these suits?

A: The contents of all pleadings are the responsibility of the plaintiff as far as the legality is concerned it is for my lawyers to answer.

Q89: The plaintiff in C.S.(CD) 113 of 2022 and 632 of 2018 is a Company. Who was the person responsible in the plaintiff company for verifying the correctness of pleadings filed in these suits?

A: As Managing Director of the plaintiff company the responsibility of the correctness of the contents rests with me, once again legality will be confirmed by my lawyers.

Q90: Written Statement of D1 in CS (CD) 59 of 2018 is shown to the witness. Did you verify the written statement before signing the same?

A: Yes.

Q91: Is it correct to state that the first defendant in CS (CD) 59 of 2018 has filed written statement dated 09.08.2021 in the present suit?

A: Yes.

Q92: Is it correct to state that the first defendant has filed an additional written statement dated 11.04.2022 in CS (CD) 59 of 2018?

A: Yes.

Q93: For which suit was the written statement dated 09.08.2021 prepared according to you?

A: CS (CD) 59 of 2018.

Q94: According to you what was the total amount of mobilization advance as per Ex.P1?

A: As per Ex.P1 the total area is not mentioned. The terms of advance is mentioned in clause 18 (1) which is 10% of the contract value. Ex.P2 shows the total area as 173465 sq.ft in Rs.1450/- totals to Rs.25,15,24,250/- 10% of which is Rs.2,51,52,425/-.

Q95: Does Ex.P2 mention the amount Rs.2,51,52,425/- as mobilization advance?

A: No, that is one of our issues that advance due to us was never paid in full.

Q96: According to you was there any written agreement regarding escalation of contract price under Ex.P1 from Rs.1450/- per sq.ft to Rs.1675/- per sq.ft?

A: There are E-mails confirming the same, nevertheless your notice accepting the rate of RS.1,675/- is proof enough.

Q97: Are you aware that the defendant pointed out several defects and deviation from the specification by the plaintiff contrary to terms of Ex.P1?

A: I deny, of any such defects from specification pointed out by the defendant and their notice dated 07.07.2014 in para 6 (b) claiming a sum of Rs.20,00,000/- towards the rectification of defects which is less than 1% of the contract value much within permissible limits. Coming to deviations from Ex.P1. Yes, there are, that is the very premise of the escalation.

Time: 01.15 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

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 : 26.11.2025
Time : 11.53 A.M.

Name : Mr.Rakesh P Sheth (PW 1)

PW1 Cross Examination Continuation by Mr.B.Arvind Srevatsa, the learned counsel for the Defendant.

Solemnly affirmed:

Q98: Have you brought the original of Ex.P1 today?

A: No, We have filed secondary proof affidavit for the same and the said document has been admitted in your own admission and denial statement.

Q99: Is it correct to state that you are unable to produce the original of Ex.P1 in these suits?

A: No. Secondary proof affidavit explains it.

Q100: Where is the original of Ex.P1 as on date?

A: The second evidence affidavit will answer that.

Q101: I put it to you that your answer is evasive because you have undertaken to produce the original of Ex.P1 during the cross examination on 01.02.2024 and 25.11.2025?

A: I deny. The secondary evidence affidavit will answer that.

Q102: I put it to you that the photocopy of Ex.P1 filed by the plaintiff in C.S.(CD) 632 of 2018 and C.S.(CD) 113 of 2022 is an incomplete document and therefore you are evading in filing the original of Ex.P1.

A: I deny, the same has been filed by you in C.S.(CD) 59 of 2018 and the same has been admitted in admission and denial affidavit. All the three cases pertain to the same agreement.

Q103: Is it correct to state that the plaintiff in CS (CD) 113 of 2022 has not stated any material particulars of so called additional work in the plaint to show the basis on which the suit claim of Rs.3,40,20,008/- has been arrived at?

A: No, CS (CD) 113 of 2022 was a summary suit filed on the basis of final bill only and the amount of Rs.3,40,20,008/- was filed additionally in a separate suit based on our final statement which is Ex.P14. Witness Adds; I may be legally wrong in calling it as a summary suit that is my lawyers to answer.

Q104: Can you identify from the plaint in CS (CD) 113 of 2022, which are the paragraphs which set out the material particulars based on which the suit claim is made?

A: All the paragraphs.

Q105: Is it correct to state that memo of valuation in the plaint does not specify any material particulars on how the suit claim has been quantified?

A: Yes, because it was quantified in the plaint.

Q106: Other than Ex.P2 has the plaintiff produced any document in support of the claim regarding alleged additional work?

A: Yes, Ex.P14 which is the project value statement submitted by us to the defendant and received and acknowledged by them.

Q107: Is it correct to state that Ex.P14 does not contain any acknowledgment or signature of the defendant?

A: No, it is wrong. Both seal and sign of Indus Cityscapes constructions pvt limited and its authorized signatory is present on the first page.

Q108: Who prepared Ex.P14?

A: We prepared it as we are the contractors.

Q109: Is it correct to state that the plaintiff abandoned the project covered under Ex.P1 in March 2013?

A: No. We never abandoned the project.

Q110: According to you what was the last date on which the plaintiff was carrying out its obligations under Ex.P1 at the project site?

A: We were carrying on work till the end of 2014 at the project site.

Q111: I put it to you that the plaintiff abandoned the project covered under in Ex.P1 in March 2013 and Ex.P14 is a document which is self-serving and created as an after thought.

A: I deny.

Q112: I put it to you that the plaint in CS (CD) 113 of 2022 does not contain any material particulars in support of the suit claim and this suit is liable to be dismissed.

A: I deny.

Q113: Has the plaintiff filed any document in these suits to show that the delay in performance of the plaintiff's obligation under Ex.P1 was due to stop work notices and approval issues?

A: Ex.P2 is evidence to show that the delay in performance was due to stop work notice, approval issues and payment delays as the defendants themselves has admitted and paid delayed interest for amounts due to the plaintiff for more than a year.

Q114: Apart from Ex.P2 has the plaintiff filed any other document relating to any stop work notice or approval issues in these suits?

A: No, Documents pertaining to approval issues will only be available with the defendant nevertheless Ex.P2 is proof enough.

Q115: According to you on what date did disputes arise between the plaintiff and the defendant in respect of Ex.P1 for the first time?

A: Disputes never arose till we filed the suits. Differences existed from day one.

Q116: According to you legal notices and legal proceedings initiated by the plaintiff from 2016 were not based on disputes arising out of Ex.P1?

A: No, they were.

Q117: According to you disputes arose between the plaintiff and the defendant even in 2016 prior to filing of the Civil suits by the plaintiff?

A: Filing of civil suit is a technical issues. Notice was the start of the technical issue.

Q118: I put it to you that the plaintiff is in breach of its part of obligations under Ex.P1 by causing delay of 162 weeks.

A: I deny, Ex.P1 clause 6 clearly states that the period of 18 months is "from the date of handing over the site or the date of mobilization advance cheque whichever is later" technically that period has never commenced because we have never received the advance in full. Therefore there is no question of delay from our end.

Q119: Is it correct to state that the plaintiff had requested the defendant to make payments to the plaintiff's sub-contractor, suppliers and employees of the plaintiff towards salary?

A: I deny.

Q120: I put it to you that the plaintiff did not complete the construction and handover completed project to the defendant as per the terms of Ex.P1.

A: I deny, Ex.P2 and Ex.P14 are proof that we completed and handed over everything that was asked of us.

Q121: Who prepared Ex.P2?

A: We as contractors.

Q122: I put it to you that Ex.P2 is self-serving document created by the plaintiff and the contents of Ex.P2 are contrary to and beyond the scope of the terms of Ex.P1.

A: I deny, the very premise of the case is that the scope and the terms of Ex.P1 have been crossed. In so far as Ex.P2 is concern the exact service tax amount of Rs.8,91,318/- has to pay by the defendant whereby accepting this bill. Further Mr.Shreyans Lunawath has signed as received and accepted Ex.P2.

Q123: Is it correct to state that the plaintiff has not filed its financial statement and audit report for the financial years 2009- 2010 onwards till the date of filing of the suits in these proceedings?

A: There was no need to file the same in these proceedings. Nevertheless these are public documents accessible to any one.

Q124: Are you aware if the plaintiff's accounts reflects the amounts claimed in C.S 632 of 2018 & CS (CD) 113 of 2022 as amounts receivable from the defendant?

A: Yes.

Q125: Will you be able to produce the records relating to the accounts of the plaintiff which according to you records the suit claim as amounts receivable from the defendant?

A: No, 1. These documents are in the public domain and can be accessed by any one. 2. They have no relevance to this case as we have submitted our final bill and final statement of project which are the amounts due to us.

Q126: I put it to you that the mobilization advance under Ex.P1 was paid by the defendant to the plaintiff between 29.06.2009 and 09.11.2009 and the construction ought to have been completed on or before 09.07.2011 being 18 months as per clause 6 of Ex.P1.

A: I deny, I am not aware of the exact payment dates of the advance nevertheless the agreement in Ex.P1 clearly states the payment of advance in full which never happen till date. Further as per the same Ex.P2 the defendants delayed payment of running bills for more than one year delaying schedule of work on site due to this. The above notwithstanding the delays caused by approvals and stop work notice.

Q127: I put it to you that the plaintiff in C.S 59 of 2018 has in para 11 of the plaint specifically pleaded that the mobilization advance was paid in full between 29.06.2009 and 09.11.2009 and there is no specific denial by the first defendant in CS 59 of 2018 either in its written statement or additional written statement.

A: I deny. It is not my document.

Q128: According to you the written statement and additional written statement filed by the first defendant in CS 59 of 2018 are not your document?

A: Written statement is mine not the plaint which was referred in the previous question.

Q129: In the written statement of D1 in CS 59 of 2018 there is no specific denial by the first defendant regarding receipt of mobilization advance as specifically pleaded in para 11 of the plaint?

A: I deny, para 9 of my written statement line 2 “further as has been submitted earlier when the plaintiff committed the first breach in the payment of mobilization advance there is no question of the defendants blamed for any delay”.

Q130: I put it to you that the work carried out by the plaintiff at the project site was not in accordance with the specification of Ex.P1.

A: Yes, as I have answered before also the very premises of the case is the additional work and specification changes contrary to Ex.P1 have been done for which the additional claim exist.

Q131: Is it correct to state that the defendant has paid the plaintiff the total sum of Rs.28,97,39,518/- based on Ex.P1?

A: As per Ex.P2 total amount received by the plaintiff is Rs.25,71,98,945/- the amount you mention above is the contract value.

Q132: I put it to you that the contract value calculated at the escalated price of Rs.1675/- per sq.ft for the total area of 1,73,465 sq.ft comes to Rs.28,86,91,275/-.

A: No, it is wrong it is RS.29,05,53,875/-.

Q133: Has the plaintiff produced the tax invoices in respect of all the payments received by the plaintiff under Ex.P1 in the present proceedings?

A: No, the system followed was that every running bill was cleared only when the previous running bills, tax invoice were submitted to Indus. As far as the service tax payment for Ex.P2 the same was made directly by Indus.

Q134: I put it to you that the defendants 1 and 2 in CS 59 of 2018 are bound to pay the plaintiff a sum of Rs.10,55,760/- being payment made in excess of the rate agreed under Ex.P1.

A: I deny, firstly we are not due any money at all to the plaintiff and secondly D2 has never signed, accepted, admitted any role whatsoever in his personal capacity in this transaction under Ex.P1.

Q135: I put it to you after full receipt of mobilization advance under Ex.P1 the plaintiff taking advantage of the defendants situation of timely completion of construction, unduly coerced the defendant to an escalated price of Rs.1,675/- per sq.ft.

A: I deny, Ex.P2 is proof of non-receipt of full advance even as on 31.03.2013 which clearly shows the total advance received was Rs.2,00,01,200/- which is short of the total advance receivable by us. Further Rs.1,675/- was only the escalation of cost due to delay by the plaintiff Indus and there were further additional claims which are there in our project report which are under clause 10 of Ex.P1.

Q136: I put it to you that Ex.P1 did not provide for any price escalation clause.

A: I deny. Clause 10 last line "however suitable adjustment for price by way of addition or reduction in contract price shall be effected by the changes ordered by the owner" Further clause 11 also gave a basic price for both cement and steel above which we were entitled to claim any difference price.

Q137: According to you what was the changes allegedly ordered by the defendant based on which the escalation was made by the plaintiff.

A: The details of all additional works are detailed out in para 2 of Ex.P15. Nevertheless Indus have already admitted and accepted the rate of Rs.1,675/-.

Q138: Is it correct to state that clause 16 of Ex.P1 states that the owner shall pay no additional amount to the contractor on account of anything and that all work items are mentioned in Ex.P1 itself?

A: I deny. No contract can be read via individual clauses and must be read in whole and there are other clauses more specifically clause 10, 11, 21, 24 which clearly go contrary to clause 16.

Q139: According to you the plaintiff has signed and acted upon in agreement which contains contradictory clauses under Ex.P1?

A: I deny, this is a common industry practice.

Q140: I put it to you that the defendants 1 and 2 are liable to compensate the plaintiff at the rate of 0.25% of the contract price as per clause 8 of Ex.P1 in view of the delay caused by D1 and D2.

A: I deny, the defendant specifically D2 is not liable under any circumstances in any case there is no amount due for delay to Indus considering that the period of contract of 18 months is yet to close since we never received advance in full. Further Ex.P2 clearly shows the conduct of Indus wherein they have accepted and paid interest on delay payment to us for almost a year.

Q141: Were you aware in 2009 that the defendant was entering into Ex.P1 for construction of residential apartments to be sold to prospective home buyers?

A: Yes, only then we would have signed the construction agreement.

Q142: Were you also aware that based on Ex.P1 agreement the defendant had entered into construction agreement with prospective home buyers?

A: I would have no knowledge.

Q143: I put it to you that the plaintiff was constrained to pay compensation to home buyers in view of delay in handing over constructed apartments which is directly attributable to the breach and non-performance by defendants 1 and 2.

A: I deny, delay compensation was paid by the plaintiff to D1 for delaying payments for work done which naturally resulted in delay of work. Further D2 as said earlier has never signed, accepted or agreed anything which relates to Ex.P1.

Q144: I put it to you that the allegation that the defendant in C.S.(C.D)632 of 2018 has promised to pay an additional amount of Rs.283/- per sq.ft excluding service tax is wholly without any basis and made for the purpose of this case.

A: I deny.

Q145: Are you aware that in June 2013, the Executive Director of the Commercial Taxes Department visited the office of the plaintiff in C.S.(CD)59 of 2018?

A: I have no knowledge and has no bearing with this case.

Q146: Is it correct to state that the first defendant was required to submit Form – S to the plaintiff?

A: It is wrong.

Q147: Do you know what is Form – S?

A: Yes.

Q148: Can you explain your understanding of Form – S?

A: It is a VAT Certificate for non-deduction of VAT TDS when a party does not want VAT TDS to be deducted. In this case irrespective it was the plaintiff prerogative to deduct VAT TDS with every payment just as it did Income-Tax TDS.

Q149: Did the first defendant company issue any letter stating that it was making prompt VAT TDS payment?

A: VAT TDS is deducted and made by the payer therefore we are in no obligation to issue any such letter.

Q150: Are you saying that no such letter was issued?

A: Yes.

Time: 01.25 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