IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	**09.06.2026**
Pronounced on	**01.07.2026**

CORAM

THE HON'BLE MR JUSTICE P. VELMURUGAN

AND

THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

Apeal(CAD) No. 3 of 2026
AND
C.M.P No. 1058 of 2026

Vishranti Homes P Ltd
Represented by its Managing Director
M.R.Rajkmar
39, K.B.Dasan Road,
Teynampet,
Chennai 600 018

..Appellant(s)

Vs

1.Kalpataru Infrastructure Development Co. Pvt
Ltd Represented by its General Manager
M.Ganesan
77, Pottipatti Plaza,
Nungambakkam.
Chennai 600 034
2.M.R.Rajkumar Reddy
Swarup Heritage,
No.D3 and D4,
1 and 3,
Second Street,
Kasthuri Estate, Poes Garden,
Chennai 600 086

3.M.R.Varija
Swarup Heritage,
No.D3 and D4,
1 and 3,
Second Street,
Kasthuri Estate, Poes Garden,
Chennai 600 086
Muthiah President, (Died)

4.Alagapan Muthaiyah President
Jayant Tech Park Owners Association,
No.41, Mount Poonamallee Road,
Nandambakkam, Chennai 6000 89

..Respondent(s)

APPEAL(CAD) No. 3 of 2026

Prayer: The Appeal (CAD) is filed under Section 13(1-A) of the Commercial Courts Act, 2015 r/w Section 96 of CPC, to set aside the Judgement and Decree Dated 18.07.2025 passed by the learned Judge in COS.No.1433/2022 on the file of the Additional commercial Court at Egmore, Chennai.

For Petitioner(s):	Mr.A.K.Sriram, Senior Advocate for Mr.N.Ravi Kiran
For Respondent(s):	Mr.S.Saibarath of M/s.J.Sagar Associates for R1 Mr.C.Vidhushan for R4 No Appearance for R2 and R3

Judgment

(Judgment of the Court was delivered by K.Govindarajan Thilakavadi J.)

The appellant is the 1st defendant and the 1st respondent is the plaintiff in the Commercial Suit in C.O.S.No.1433/2022. The respondents 2 & 3 are the defendants 2 & 3 in the above suit.

2.According to the Appellant, the Appellant is the promoter and developer of the commercial complex known as "Jayant Tech Park" situated at Nandambakkam, Chennai. On 31.05.2006, the 1st Respondent, Kalpataru Infrastructure Development Co. Pvt. Ltd., entered into an agreement with the Appellant and invested a sum of Rs.17,50,00,000/- (Rupees Seventeen Crore Fifty Lakh only). Under the said arrangement, the entire third floor admeasuring 48,639.66 sq.ft., together with 16.6% undivided share in the land and appurtenant car parks, was earmarked and allotted to the 1st Respondent for valuable consideration. By virtue of such allotment, the 1st Respondent became a member of the Jayant Tech Park Owners Association - 4th Respondent and became bound by its registered bye-laws. It is stated that Clause 13(c) of the bye-laws of the Respondent No. 4 Association mandatorily stipulates that every member shall pay common area maintenance (herein after referred to

'CAM') CAM charges at Rs. 51- per sq.ft. per month. Clause 13(d) stipulates that a penalty of Rs. 50/- per day is leviable for default, and Clause 17(b) provides that any concession or modification requires a three-fourths majority resolution of the General Body or the Executive Committee. Acting as owner and member, the 1st Respondent addressed letters to the 4th Respondent Association on 24.12.2009 (Ex. P3) and 10.03.2010 (Ex.P4), acknowledging the Association's demands and offering to pay only 25% of the CAM charges as an interim measure. The then President of the Association acknowledged one such communication on 02.11.2009.

3.Admittedly, no resolution of the General Body or the Executive Committee was passed approving such arrangement. Under an Agreement dated 29.09.2011 (Ex. P8), wherein the 1st Respondent was the Assignor, the Respondent Nos. 2 and 3 were the Assignees, and the Appellant was the confirming party, the 1st Respondent agreed to cause execution of a Builder's Agreement and registration of a Sale Deed in respect of the allotted area in favour of Respondent Nos. 2 and 3, upon receipt of Rs.17,50,00,000/- (Rupees Seventeen Crore Fifty Lakh only) from the Appellant and Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs only) as nomination fees from Respondent Nos. 2 and 3. In pursuance thereof, the Appellant paid a sum of Rs.12,50,00,000/-

(Rupees Twelve Crores Fifty Lakhs only) by RTGS on 29.09.2011. Thereafter, a sum of Rs.1,00,00,000/- (Rupees One Crore only) was paid by cheque dated 02.11.2011 bearing No. 191744 and another sum of Rs.2,00,00,000/- (Rupees Two Crores only) by cheque dated 23.11.2011 bearing No. 193988, both drawn on Indian Overseas Bank, Thiruvanmiyur Branch, aggregating to Rs.15,50,00,000/- (Rupees Fifteen Crores Fifty Lakhs only). In respect of the balance amount of Rs.2,00,00,000/- (Rupees Two Crores only), the Appellant paid a sum of Rs.1,31,71,000/- (Rupees One Crore Thirty-One Lakhs Seventy-One Thousand only) on 26.12.2011 by cheque and withheld Rs.68,29,000/- (Rupees Sixty-Eight Lakhs Twenty-Nine Thousand only) towards full CAM arrears payable to the Respondent No. 4Association, as the Association insisted on clearance of 100% dues as a pre-condition of continued access and services and threatened restriction thereof. Prior thereto, the Appellant had issued letters dated 28.11.2009 (Ex. P6) and 07.12.2011 (Ex. P7) calling upon the 1st Respondent to resolve the CAM issue with the Respondent No. 4 Association and obtain a no-objection certificate. As no response was forthcoming, the Appellant issued a further letter dated 26.12.2011 (Ex. P10) stating that the acknowledgment by the President of the Association was not recognised by the Association, that a tripartite meeting was convened but not attended by the 1st Respondent, and that the Association insisted on full settlement of CAM dues.

It was further stated that the Appellant was compelled to settle the CAM charges on behalf of the 1st Respondent. Accordingly, Rs.68,29,000/- (Rupees Sixty-Eight Lakhs Twenty-Nine Thousand only) paid towards CAM charges was adjusted, and Rs.1,31,71,000/- (Rupees One Crore Thirty-One Lakh and Seventy-One Thousand only) was remitted to the Respondent No.1 as full and final settlement of the balance under the Agreement dated 29.09.2011. The 1st Respondent thereafter filed a suit claiming a sum of Rs.74,43,927/- (Rupees Seventy-Four Lakhs Forty-Three Thousand Nine Hundred and Twenty-Seven only), contending that it was liable to pay only 25% of the CAM charges and disputing the adjustment of Rs.68,29,000/-(Rupees Sixty-Eight Lakhs Twenty-Nine Thousand only) made by the Appellant. In the written statement of the Appellant, the Appellant contended that the 1st Respondent, being an allottee and member of the Association, was bound to pay 100% of the CAM charges in terms of the bye-laws, and that the alleged 25% arrangement was only an informal acknowledgment by the then President and not supported by any General Body or Executive Committee resolution. It was further pleaded that the Appellant, in order to protect the property and ensure continued access and services, was constrained to discharge the full CAM dues and was entitled to adjust the amount so paid against the settlement amount payable to the 1st Respondent. The 4th Respondent Association, also stated that the bye-laws do not permit the Executive Committee or any of its members to waive maintenance charges for any particular member, and that the balance 75% of the CAM charges had not been waived and remained payable by the 1st Respondent. The 4th Respondent has acknowledged the receipt of the balance CAM charges of Rs. 68,29,000/- (Rupees Sixty-Eight Lakh Twenty-Nine Thousand only) from the Appellant, in its written statement.

4. The Additional Commercial Court, Egmore, decreed the suit by an order dated 18.07.2025 and directed the Appellant to pay Rs.68,29,000/- Rupees Sixty-Eight Lakhs Twenty-Nine Thousand only) together with simple interest at 6% per annum from 12.01.2012 till the date of decree and at 9% per annum thereafter till realisation, while dismissing the suit as against Defendants Nos. 2 to 4.

5.Aggrieved by the said judgment, the Appellant has preferred the present Appeal.

6.The learned counsel for the appellant would contend that the judgment and decree dated 18.07.2025 are contrary to the pleadings, evidence on record and the registered bye-laws governing the Respondent No. 4 Association. The findings on CAM liability and adjustment/set-off suffer from errors of law apparent on the face of the record and are liable to be set aside. Common area maintenance (CAM) charges were not an amount "bound by law". The Court failed to appreciate that CAM liability flows from the registered bye-laws of 4th Respondent Association which bind every owner/member, squarely attracting Section 69 of the Indian Contract Act,1872. Clauses 13(c) and 13(d) of the bye-laws mandate payment of 100%CAM charges at Rs.5/- per sq.ft.per month, and that any concession or modification can be granted only by a valid resolution of the General Body or Executive Committee under Clause 17. No such resolution authorising payment of only 25% was ever produced. Therefore, the finding of the learned Judge that the 1st Respondent was liable to pay only 25% of the CAM charges is perverse and directly contrary to the mandatory bye-laws and the 1st Respondent's own admissions. An informal or temporary acknowledgment by the then President of the Association, acting without authority, is ultra vires to the bye-laws and cannot override binding legal obligations arising under the registered bye-laws. A dispute raised in the teeth of binding bye-laws and clear admissions cannot be treated as bona fide so as to defeat reimbursement and adjustment otherwise available under Section 69 of the Contract Act. Under Clause 13(c)of the bye-laws, CAM charges are payable by the owner and are not contingent upon occupation, tenancy or physical possession. The finding to the contrary is legally unsustainable. The learned Judge erred in rejecting the Appellant's claim under Section 69 of the Indian Contract Act, 1872 solely on the ground of the bona fide existence of the dispute, without determining whether the 1st Respondent was legally bound to discharge the said liability.

7.The learned counsel further contended that the learned Judge failed to appreciate that the Appellant cleared the CAM arrears under compulsion upon repeated threats by 4th Respondent Association to restrict access and amenities. The payment was not voluntary or officious but made bona fide to protect the property and give effect to the settlement. The Impugned Judgment results in grave miscarriage of justice by enabling the 1st Respondent, a defaulting member bound by bye-laws, to recover an amount which the Appellant was compelled to pay on its behalf.

8.He would further submit that the learned counsel further submits that where a person was interested in the payment of money because without such payment he could not obtain possession of the property purchased by him and this amount which he paid was bound by law to be paid by another person and the words "bound by law to pay" in Section 69 of the Contract Act do not exclude those obligations of law which arise i*nter partes* whether by contract or tort, and are not confined only to those public duties which are imposed by statue or by general law. They extend to any obligation which is an effective bond in law. The amount paid by the 1st defendant is the amount the plaintiff was bound by law to pay under the by-laws. Therefore, the plaintiff is not entitled to be reimbursed by the appellant/1st defendant. To support his contention, he has relied upon the judgment in ***Thirumal Subbu Chettiar Vs. Sri Mathi Rajammal*** reported in ***1973 MAD LW 631.***

9.On the other hand, the learned counsel appearing for the respondent/plaintiff would submit that the plaintiff was not the owner of the earmarked portion and he had informed the association that he would pay only 25% of the maintenance charges. This was also agreed by the 4th defendant who is the president in-charge of the Association. While so, the 1st defendant without any authority deducted Rs.68,29,000/- towards purported arrears of maintenance charges for the portion which was held by the plaintiff as security for repayment of the amounts advanced to the 1st defendant. The plaintiff is not liable to pay any amount to the Association towards maintenance charges and hence the 1st defendant ought not to have deducted from the amount payable to the plaintiff. The learned counsel further contended that there is no pleadings in the written statement in respect of the alleged bye-laws, such a question cannot considered in this appeal. He would further submit that, therefore, in the absence of the necessary pleadings and appropriate issue, the appellant cannot be permitted to canvas the same in this appeal. He would further contend that the appellant is not entitled to deduct the same from the amount which he is liable to pay to the 1st respondent and pay the amount to the 4th respondent without any prior consent of the 1st respondent. His further contention is that, when a counter claim or a plea of set off is claimed by the defendant, the same has to be levied with Court fee. He would further submit that Sections 69 and 70 of the Act would not apply to cases where person who makes payment, makes it for himself and not for other person against whom his claim for reimbursement was made. To support his contention, he has relied upon the judgment in the cases of :

1.Anathula Sudhakar Vs. Buchi Reddy and Ors.,

reported in ***(2008) 4 SCC 594***

2.Cofex Exports Ltd Vs. Canara Bank

reported in ***1997 (43) DRJ (DJ)***

3.Raja Bhupendra Narain Singha Bahadur Vs. Maharaj Bahadur Singh

reported in ***(1952) 1 SCC 436***

4.Rajesh Kumar Vs. Anand Kumar and Ors.,

reported in ***2024 SCC Online 981***

5.Veeraraghava Iyer and Ors., Vs. K.Lakshmana Iyer and Ors.

reported in ***(1913) 25 MLJ 248***

6.Ram Tuhul Singh Vs. Biseswar Lall Sahoo and Ors.,

reported in ***(1875) L.R 2 LA 131***

7.Janki Prasad Singh Vs. Baldeo Prasad and Ors.,

reported in ***ILR 30 ALL 167***

8.State of West Bengal VB.K.Mondal and Sons

reported in ***Air 1962 SC 779***

10.Heard on both sides and records perused.

11.The specific contention of the learned counsel for the appellant is that, the CAM liability flows from the registered bye-laws of the 4th respondent Association which bind every owner/member, squarely attracting 69 of the Indian Contract Act, 1872. Under Clause 13 (c) and 13 (d) of the bye-laws mandate payment of 100% CAM charges at Rs.5/- per square ft., per month, and that any concession or modification can be granted only by a valid resolution of the general body or executive committee under Clause 17. No such resolution authorising payment of only 25% was ever produced by the 1st respondent.

Section 69 of the Indian Contract Act, 1872 provides;

" A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other."

"Section 69 of the Indian Contract Act, 1872 (ICA) is an important provision that deals with the reimbursement of a person who pays a debt owed by another person, provided that the payor has an interest in the payment.

This section falls under the category of quasi-contracts, which are legal obligations imposed by law in the absence of an agreement between parties. The primary objective of Section 69 is to prevent unjust enrichment — that is, to ensure that no person benefits unfairly at the expense of another.

Sections 68 to 72 of the Indian Contract Act cover such obligations that arise not from express agreement but to prevent unjust enrichment. Section 69 is one such provision, ensuring that if a person pays money to discharge another's debt to protect his own interest, he can recover that money.

Therefore, for Section 69 to apply, three conditions must be satisfied.

1. *the person making the payment must have an interest in making the payment.*
2. *The other person must be legally bound to pay the amount.*
3. *The payment must have been made to protect the payer's interest."*

12.The crucial question is whether the 1st respondent, who holds the portion of the property is legally bound to pay the maintenance charges. According to the 1st respondent, as per the understanding between the appellant and the 1st respondent that towards consideration for the 1st respondent making the advance payment, the appellant would earmark certain portion of the fully constructed commercial space in Jayant tech Park in favour of the 1st respondent. An agreement dated 31.05.2006 came to be entered between the 1st respondent and the appellant whereby it was agreed that the 1st respondent would advance a total sum of Rs.18,04,38,810/- to the appellant over a period of time. In terms of the agreement an extent of 48,639.66 sq. ft., of the built up area to be constructed on the third floor of the Jayant Tech Park along with car parks was earmarked by the appellant along with undivided share in the land corresponding to the earmarked built up area. The portion earmarked in favour of the 1st respondent was part of the appellant's entitlement under the joint development agreement with the owner. Under the said agreement, the appellant had assured the 1st respondent that it will on or before 31.08.2007 identify purchasers to purchase the portion at a price not below Rs.4,000/- per sq. ft., of the built up area and the payments of the amounts advanced. Another builder agreement dated 31.05.2006 was entered into between the parties wherein the amount of Rs.18,04,38,810/- to be paid by the 1st respondent to the appellant was treated as consideration for purchase of a portion of Jayant Tech Park by the 1st respondent. However, the said builder agreement was never acted upon by the parties. The 1st respondent paid the appellant the amounts as per the agreement dated 31.05.2006 except a sum of Rs.54,38,810/-. Hence, the 1st respondent had paid a total sum of Rs.17,50,00,00/- to the appellant before 30.04.2007. The appellant was unable to identify any purchaser for the portion earmarked in the name of the 1st respondent in terms of the agreement dated 31.05.2006. Hence, the appellant handed over the earmarked portion of the Jayant Tech to the 1st respondent to be held as security for the payments advanced. The appellant continued to be the owner of the portion handed over to the 1st respondent. As the 1st respondent was not the owner of the aforesaid earmarked portion, he refused to pay the maintenance charges. However, subsequently, based on the discussions with the appellant, the 1st respondent informed the Association that it would pay only 25% of the monthly maintenance amount. While so, without any authority the appellant has deducted Rs.68,29,000/- to the 4th respondent Association towards purported arrears of maintenance charges from the amount payable to the 1st respondent.

13.If the appellant as developer remains the owner and in possession of the earmarked portion, the primary liability to pay maintenance ordinarily remains with the appellant. In such a case the 1st respondent is not "bound by law" to pay the maintenance, and Section 69 cannot be invoked against the 1st respondent merely because the appellant paid the charges. However, if the 1st respondent has taken possession of the secured portion, derives benefit from it, or is treated by law or contract as the person liable for maintenance, then it may be regarded as legally bound to pay. In that event, if the appellant pays the maintenance to protect his own interest in the property, the appellant may seek reimbursement under Section 69 of the Act. Therefore, the only issue to be determined in the present case is as to whether the 1st respondent / plaintiff is bound to pay the maintenance charges.

14.Under Clause 13 (c) of the bye-laws, CAM charges are payable by the owner and it is not contingent upon occupation, or physical possession. Admittedly, the 1st respondent is a member of the 4th Respondent Association.

While so, under the bye-laws the 1st Respondent is liable to pay 100% of the CAM charges to the 4th Respondent Association.

15.Further, any concession or modification can be granted only by a valid resolution of the General Body or Executive committee under Clause 17 of the bye-law. No such resolution authorising payment of only 25% was produced on the side of the 1st respondent.

16.The President of an Association does not possess the inherent individual power to alter any financial dues or grant discounts. Accepting only 25% of the maintenance charges without a formal board resolution or General Body Meeting approval, is an ultra vires Act. Therefore, the acknowledgment made by the then President of the 4th Respondent Association, acting without any authority is unsustainable and cannot over ride the binding legal obligations arising under the registered bye-laws. Once the appellant has discharged a legally enforceable obligation of the 1st respondent under the registered bye-laws, the appellant is entitled in law to adjust the amount against the balance payable. Further, the 4th Respondent Association also submitted that the bye-laws do not permit the Executive Committee or any of its members to waive maintenance charges for any particular member, and that the balance 75% of the CAM charges had not been waived and remained payable by the 1st respondent. The judgments relied upon by the learned counsel for the 1st respondent are not applicable for the facts and circumstances of the case.

17.It is the contention of the appellant that a sum of Rs.68,29,000/- was paid by the appellant to the 4th Respondent Association, as the Association insisted on clearance of 100% dues as a pre-condition of continued access and services and threatened restriction thereof. Further, the appellant through various correspondence established the fact that the 4th Respondent Association insisted on payment of the full CAM arrears and threatened to restrict access and services until such payment was made and the same was also brought to the notice of the 1st respondent.

18.The 1st respondent would claim that he was holding the earmarked portion only as security for the amount advanced by it, but in the letter dated 24.12.2009 by the 1st respondent in favour of the Association, it had stated that the entire 3rd floor owned by it. In fact, the appellant has brought to the notice of the 1st respondent through letters dated 06.11.2011, 28.11.2011 and 07.12.2011 that the 4th respondent Association is demanding for maintenance charges, which had to be paid by the 1st respondent, for which there was no response from the 1st respondent. Though the 1st respondent would contend that the ownership of earmarked portion was transferred to the appellant and respondents 2 & 3, it is the contention of the appellant that they were unable to take possession of the property for effecting necessary modifications as the Association did not permit the workers to enter the premises until and unless the dues to the association are fully paid, and therefore, left with no alternative, the appellant had paid a sum of Rs.68,29,000/- to the association and deducted the same from the money outstanding to the 1st respondent.

19.Therefore, in order to protect the property and ensure continued access and services, the appellant was constrained to discharge the full CAM dues and entitled to adjust the amount so paid against the settlement amount payable to the 1st Respondent. The 4th Respondent Association has also acknowledged the receipt of the balance CAM charges of Rs.68,29,000/- from the appellant in its written statement.

20.While so, the Additional Commercial Court, Egmore by its judgement dated 18.07.2025 erred in decreeing the suit and directing the appellant to pay Rs.68,29,000/- with interest at the rate of 6% per annum from 12.01.2012 till the date of decree and at 9% per annum thereafter till realisation found to be perverse. Hence, the judgment and decree dated 18.07.2025 is liable to be set aside.

21.In the result, this Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(P.V.,J.) (K.G.T.,J.)
01-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

VSN

To
1.Kalpataru Infrastructure Development Co. Pvt LtdRepresented by its General Manager
M.Ganesan
77, Pottipatti Plaza,
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Chennai 600 034
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P.VELMURUGAN J.
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Pre-delivery Judgment in
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