Case Citation: (2026) ibclaw.in 5919 HC

Order QR

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
24.06.2026	28.09.2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

CS No. 46 of 2018

G.Sreevidhya
D/o S.Gnanaskandhan,
8A, Block II, Rani Meyammai Towers,
Raja Annamalaipuram, Chennai 600 028

..Plaintiff(s)

Vs

1. M/s.Karismaa Foundations Pvt.Ltd.,
   Rep.by its Managing Director,
   Office at No.34, 4th Main Road,
   Gandhi Nagar, Adyar, Chennai 600 020.

2. Rakesh P.Sheth,
   Managing Director,
   M/s Karismaa Foundations Pvt.Ltd,
   Residing at 1C, 'Aura', I Main Road,
   Shastri Nagar, Adyar, Chennai 600 020.

3. Roshini P.Sheth
4. Premsai Chandur

..Defendant(s)

PRAYER:- Civil Suit filed under Order VII, Rule 1 of CPC r/w Order IV Rule 1 of O.S. Rules to pass a judgment and decree as against the defendant for the following reliefs:-

a) Directing the defendants herein to jointly and severally pay the plaintiff a sum of Rs.1,10,24,520,54/- together with interest at the rate of 15% p.a from 14.07.2023 till date of actual payment;

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a)a) Directing the defendants to jointly and severally pay to the plaintiffs the sum of Rs.50,00,000/- (Rupees Fifty Lacs Crore) as damages, being the loss of profit suffered by the plaintiff on account of the plaintiff's inability to use the amounts due to the plaintiff from the defendants in the plaintiff's business, mental agony and stress.

b) Direct the defendants to pay the plaintiff the cost of the suit.

c)To pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(Paragraphs 23 to 41 amended as per order dated 05.10.2023 in A.No.3800 of 2023 and extended as per order dated 07.11.2023.)

For Plaintiff(s):	Mr.R.Parthasarathy Senior Counsel Assisted by Mr.Surya Narayanan Ms.Darsini Priya G.P.
For Defendant(s):	Mr.Nithyaesh Natraj for D1 & D2 Mr.Vaibhav R Venkatesh for D3 Assisted by Mr.C.S.Vikram Krishna for DD1 to 3 Mr.C.Ramesh for D4

JUDGMENT

The above Civil Suit has been filed seeking the defendants to jointly and severally pay the plaintiff a sum of Rs.1,10,24,520.54/- together with interest at the rate of 15% p.a. from 14.07.2023 till date of actual payment and to pay a

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sum of Rs.50,00,000/- as the damages towards the loss of profit suffered by the Plaintiff along with the costs of the suit.

2. The facts giving arise to the present Suit is that the plaintiff had entered into a Construction Agreement dated 10.11.2014 with the first defendant, which is a construction Company, represented by its Managing Director, the second defendant. The third defendant is the wife of the second defendant and the fourth defendant is the father-in-law of the second defendant. Pursuant to the Construction Agreement, the plaintiff had paid a sum of Rs. 1,50,00,000/- as an advance in favour of the defendants in order to build a residential building to the Plaintiff. Subsequently, the said idea of construction was dropped by the plaintiff as early as on December 2014. Consequently, the defendants were called upon to return the advance amount of Rs.1,50,00,000/- to the plaintiff. After the repeated requests made by the Plaintiff, the defendants managed to pay back only a sum of Rs.15,00,000/- *vide* three cheques. On 30.06.2015, the second defendant had issued a cheque for a sum of Rs.1,35,00,000/- and the same was dishonoured by the bankers of the defendant. Thereafter, the cheques issued by the defendants on various dates were repeatedly dishonoured. Eventually, the plaintiff approached the NCLT seeking to admit the first defendant into Corporate Insolvency Resolution Process (CIRP) with respect to the due amounts, which came to be dismissed vide order dated 23.07.2018.

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3. The plaintiff filed for an Appeal in the NCLAT against the aforesaid order dated 23.07.2018. The NCLAT *inter alia* upheld that the Plaintiff is the financial creditor and the money disbursed by the plaintiff had transformed into the "financial debt" and had had directed the NCLT to admit the Plaintiff's petition. Thereafter, the Original Application filed by the plaintiff came to be admitted by the NCLT. During the pendency of the said proceedings, the first defendant entered into two Memorandums of Compromise dated 14.09.2019 with the plaintiff. Under the Memorandums of Compromise, a sum of Rs1.25 Crore was arrived at as the full and final settlement amount. Under another Memorandum of Compromise the interest payable till date was settled at Rs. 45,00,000/-. The NCLT recorded the terms of the Memorandum of Compromise dated 14.09.2019, pursuant to which the petition filed by the plaintiff came to be withdrawn and dismissed by order dated 16.09.2019. However, the defendants ultimately paid only a sum of Rs.55,00,000/- towards the amount due, by way of two demand drafts. That apart, a final payment of Rs.45,00,000/- towards the interest upto 14.09.2019 was also settled. The cheque issued by the defendants towards the balance sum of Rs.70,00,000/- was once again dishonoured. Consequently, the plaintiff repeatedly called upon the defendants to pay the outstanding amount of Rs.70,00,000/- together with interest at the rate of 15% per annum, aggregating to Rs. 1,10,24,520.54/-. As the defendants failed to discharge the said liability, the plaintiff instituted the present suit seeking recovery of a sum of Rs. 1,10,24,520.54/- along with a

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further sum of Rs.45,00,000/- towards damages for the loss of profit allegedly suffered by the plaintiff, along with the costs of the suit.

4. The first defendant company, in its written statement, averred that it had incurred expenses to the tune of Rs.50 lakhs towards architects, structural consultants and other related professionals and was ready and willing to proceed with the construction of the property. However, according to the first defendant, it was the plaintiff who failed to hand over the property and obtain the requisite approvals for construction, both of which constituted the plaintiff's contractual obligations under the Agreement dated 10.11.2014. The first defendant further averred that the plaintiff had resorted to constant pressure, threats, coercion and criminal intimidation, through the use of goondas, with a view recovering the advance amounts paid to the defendant. As a consequence thereof, the plaintiff allegedly obtained several cheques from the first defendant as well as its Managing Director, the second defendant herein. It was further averred that, owing to the plaintiff's default in performing its obligations under the Agreement dated 10.11.2014, the first defendant had suffered substantial losses amounting to approximately Rs.2 Crores and was left in a precarious position. On the aforesaid grounds, the first defendant prayed for dismissal of the present suit.

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5. The fourth defendant had filed a written statement and an additional written statement, wherein he has denied the assertion of the Plaintiff that he is the father of the third defendant and stating that the third defendant is, in fact, his sister. He denied the allegations that he along with the other defendants, had undertaken to construct a residential building for the plaintiff, received a sum of Rs.1.50 Crores as advance and misappropriated the said amount towards the settlement of the bank loan. The fourth defendant further averred that he was not involved in the affairs of the first defendant Company, having already resigned from the Company, which was thereafter managed by the second and third defendants. He further contended that, under the Memorandum of Compromise dated 14.09.2019, any dispute arising therefrom was required to be referred to arbitration. He also averred that he was neither a party to the NCLT proceedings nor to the said Memorandum of Compromise and, therefore, could not be held liable for any outstanding dues payable to the plaintiff. On these grounds, he prayed for dismissal of the suit.

6. The first defendant further filed an additional written statement, which was adopted by the second and third defendants, pursuant to the amendment of the plaint, wherein they denied the allegations made by the plaintiff in the amended plaint and questioned the maintainability of the amended claim. It is averred that initially the plaintiff had filed the plaint for a relief of

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Rs.1,95,96,780/- inclusive of interest at the rate of 15% per annum from 14.07.2023 till the actual date of realization, whereas the amended relief at present stands at Rs.1,10,24,520.54/- and the reason attributed towards the reduction in the claim amount was the Memorandum of Compromise entered between the parties dated 14.09.2019. However, the amendment was carried on only on 24.07.2023, this being the case, the plaintiff cannot fall back on the Memorandum of compromise as the reason to establish the liability of the first defendant. It was further averred that the amended claims are not maintainable, being barred by limitation, as they arise entirely from the Memorandum of Compromise dated 14.09.2019, whereas the application for amendment was filed only on 24.07.2023, which is beyond the prescribed period of limitation. Hence, the defendants contended that the present claims are barred by limitation, constitutes an abuse of the process of law, and are liable to be dismissed *in limine*.

7. Based on the aforesaid pleadings had framed the following issues;

1. Whether the Plaintiff is entitled to the reliefs as claimed in the present suit?

2. Whether the plaintiff has violated clause 4 and 5 of the Memorandum of Compromise dated 14/09/2019?

3.Whether the amended claim made by the plaintiff for recovery of money is barred by limitation?

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4. whether the Plaintiff is entitled to get damages from the defendants, in event of plaintiff proving the damages and losses as alleged by the plaintiff?

5. Whether defendants 2 and 3 are proper/necessary parties to the present suit?

6. Whether the plaintiff is entitled to get suit costs?

7. To what other relief the plaintiff is entitled ?

8. The Plaintiff was examined as PW1 and had marked documents as Ex.P1 to Ex.P30 as the plaintiff's side evidence. The second defendant who is the Managing Director of the first defendant has been examined as DW1 and has marked the documents Ex.D1 to Ex.D9 as the defendant's side evidence.

9. Heard Mr. R.Parthasarathy learned Senior Counsel assisted by Mr.Surya Narayanan and Ms.Darsini Priya, Mr.Nityaesh Nataraj learned counsel appearing for the defendants 1 and 2 , Mr.Vaibhav R.Venkatesh learned counsel assisted by Mr. C.S.Vikram Krishna learned counsel appearing for 3rd defendant and Mr.C.Ramesh learned counsel appearing for the 4th defendant.

10. Mr.R.Parthasarathy learned Senior Counsel appearing on behalf of the plaintiff would submit that the Plaintiff had entered into a Construction Agreement with the defendants dated 10.11.2014, marked as Ex.P1, wherein the first defendant which is a Construction Company, had undertook to construct a

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Residential House. Pursuant to the said Construction Agreement the Plaintiff had paid a sum of Rs.1.50 Crores as an advance. He submits that the first defendant is a close knitted company with the second defendant as the managing director and the other defendants who are in the management. When that being so, the Plaintiff had dropped the idea of Constructing the Residential House. Consequently the Plaintiff had informed the same and called upon the defendant to repay the sum of Rs.1.50 Crores. After the repeated requests the second defendant paid only a sum of Rs.15,00,000/- by the way of three cheques drawn on different dates. When the second defendant had issued a cheque No.114930, marked as Ex.P5 towards the payment of the balance amount of Rs.1.35 Crores, the same was returned on 22.09.2015 with an endorsement "Exceeds Arrangement". Subsequently the second defendant had issued four more cheques, which are marked as Ex.P6 to Ex.P9. But, when the said cheques were presented for collection it was dishonoured with an endorsement "*Fund Insufficient*". He submits that when the plaintiff had issued a notice, the defendants issued a reply dated 19.10.2015 with false and baseless allegations as if the cheques were obtained by force. Subsequently, the defendants 2 and 3 had also issued 3 cheques, but the plaintiff was instructed not to present the cheques and defendants would replace them with pay orders or demand drafts but failed to do the same. The learned Senior Counsel submits that though the defendants on every occasion promised to repay the balance amount along with the interest never kept those promises and those promises

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were made with a dishonest intention of delaying and defeating the rights of the plaintiff.

11. He submits that the defendants 2 to 4 were the ones who induced the plaintiff to part with the money and enter into the Construction Agreement with the first defendant, therefore the defendants 2 to 4 are personally liable for the amounts to be repaid. It is submitted that subsequently, the plaintiff had lodged a complaint on 13.07.2016 against the defendants and the same was registered in Crime No.180 of 2026 (Ex.P150). Pending the investigation the bank accounts of the defendants was frozen by the investigating Agency. Consequently, the defendants 2 and 3 had filed a Criminal Original Petition in Crl.OP.No. 19618 of 2016 to de-freeze their bank accounts and this Court vide its order dated 15.09.2016 had recorded, the fact that the plaintiff had indeed paid a sum of Rs.1.5 Crores but, however ordered the de-freezing of the bank accounts. He further submits that subsequent to the Criminal Compliant filed by the Plaintiff the defendants had issued a notice dated 18.08.2026 to the plaintiff containing false and frivolous allegations.

12. The learned Senior Counsel submits that the Plaintiff had filed a petition in C.P.(IB).No.769 of 2018 in NCLT under the Section 7 of the Insolvency and Bankruptcy Code, 2016 to admit the first defendant herein into

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Corporate insolvency Resolution Process (CIRP) in respect of the dues to be payable to the Plaintiff, which came to dismissed vide its order dated 23.07.2018. The Plaintiff had preferred an Appeal before the NCLAT in Company Appeal (AT) (Insolvency) No.494 of 2018 wherein the Appellate Tribunal vide its order dated 19.03.2019, marked as Ex.P19, had set aside the NCLT order dated 23.07.2018 supra, with the further direction to the NCLT to admit the Petition filed by the plaintiff under the Section 7 of the IBC against the first defendant. The NCLAT *inter alia* had categorically upheld that the Plaintiff was a financial creditor and the money disbursed by the Plaintiff was transformed into "financial debt" under the Insolvency and Bankruptcy Code, 2016. It is submitted that the said NCLAT order attained its finality as the defendants had not preferred any challenge against the said order. The learned Senior Counsel submits that the NCLT had admitted the Plaintiff's case and pending the same, defendants had approached the plaintiff seeking to amicably settle the disputes and accepted their liability towards the plaintiff.

13. Thereafter, the plaintiff and the first defendant had entered into two Memorandums of Compromise both dated 14.09.2019, photocopy of the which is marked as Ex.P20 and Ex.P22 respectively, wherein under Ex.P20 the final and full settlement of the due amount was finalized as 1.25 Crores. Another Memorandum of Compromise (Ex.P22) dealt with the interest as on the said

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date which was arrived as Rs.45,00,000/-. Recording that the first defendant would make good the balance sum of Rs.1.25 Crores into two tranches i.e., the defendant would pay a sum of Rs.55,00,000/- on the withdrawal of the Company Petition by the Plaintiff vide two Demand Drafts dated 13.09.2019 and a sum of Rs.70,00,000/- vide a Cheque No.001114 dated 31.03.2020, the IBC proceedings were disposed off as withdrawn vide order dated 16.09.2019. It is submitted that Plaintiff had encashed the aforesaid demand drafts but when plaintiff had presented the cheque dated 31.03.2020 the same came back dishonoured on 02.04.2020 due to paucity of funds.

14. The plaintiff had filed I.A.No.936 of 2021 before NCLT which came to dismissed vide order dated 15.02.2022, and had preferred an appeal against the same in Company Appeal(AT) Insolvency No.106 of 2022 which is pending. He further submits that the defendants were liable to pay a sum of Rs.70,00,000/- along with its interest calculated at 15% p.a which stood aggregated to a sum of Rs.1,10,24,520.54/-. The learned Senior Counsel contends that in spite of the clear admission of the liability of the defendants which can be substantiated by the two Memorandums of Compromise both dated 14.09.2019, the defendants had not taken any due steps to neither repay the aforesaid said sum of Rs.1,10,24,520.54/-. The learned Senior Counsel submits that in view of the above facts, the defendants herein are jointly and

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severally liable to pay the plaintiff a sum of Rs.1,10,24,520.54/- towards the balance amount to be re-paid to the plaintiff along with its interest calculated at the rate of 15 % p.a and Rs.50,00,000/- to be paid as damages towards the loss of profit suffered by the plaintiff. Hence, the learned Senior Counsel prays this Court to order the suit as prayed for.

15. *Per Contra*, countering the aforesaid arguments, Mr.Nityaesh Nataraj learned counsel appearing on behalf of the defendants 1 & 2 and Mr. C.S.Vikram Krishna, learned counsel for the third defendant, would submits that the original Plaint was filed on 29.11.2017 based on the Construction Agreement dated 10.11.2014 (Ex.P1) and the dishonoured cheques, whereas the amended plaint was filed on 24.07.2023 from the cause of action arising out of the Memorandums of compromise dated 14.09.2019 (Ex.P20 and Ex.P22). They submit that the amended prayer is solely based on the Memorandum of Compromise and the Plaintiff in her cross examination as PW1 had herself admitted that she could not point out any other documents except the Memorandum of Compromise (Ex.P20), wherein the figure of Rs.70,00,000/- had been derived. The learned counsels contend that the cause of action to sue under the Memorandum of Compromise Ex.P20 arose on the occasion when the cheque for Rs.70,00,000/- fell due, viz., 31.03.2020 or at the latest on 29.05.2020, wherein the said cheque was dishonoured, but the

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application of amendment was filed only on 24.07.2023 which falls beyond the period of limitation of 3 years and therefore, the amendment induces a time barred claim.

16. In this regard the learned counsels further rely upon the cross examination of the plaintiff as PW1, wherein she herself had admitted that the alleged default committed by the 1st defendant as per Ex.P20 was on 31.03.2019. They further submit that plaintiff seeks to save the limitation by invoking the precedence of Hon'ble Apex Court order dated 10.01.2022 reported as ***(2022) 3 SCC 117*** in the case of ***DDA vs Tejpal***, in which exclusion is available only in the cases where the limitation period would have expired between the protected period of 15.03.2020 and 28.02.2022 due to the pandemic, but the aforesaid precedence cannot be applied to the facts of the present case as the Plaintiff's limitation period did not expire during the protected window of 15.03.2020 to 28.02.2022. It is further contended that if a party intends to seek for an exclusion of the certain time period with regard to the limitation, the same has to be specifically pleaded. However, in the present case there is no such pleading in the amended plaint and as supra, hence, the plaintiff is disentitled to avail such exemption granted by the Hon'ble Apex Court and in this regard the learned counsels have further placed reliance upon the Hon'ble Apex Court's judgement in the case of ***Shanti Conductors Private***

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Limited Vs Assam Electricity Board & Ors.

17. The learned counsels vehemently contend that the Clause 5 of the Memorandum of Compromise dated 14.09.2019 (Ex.P20) imposes the dual obligation upon the plaintiff to withdraw both the NCLT petition and the present suit. However, it is submitted that the plaintiff only withdrew the NCLT petition but not this present suit and had continued to prosecute the present suit for nearly six years even after the execution of Memorandum of Compromise, which clearly constitutes the breach of Clause 5 of the Memorandum of Compromise. In this regard, reliance is clearly placed upon the Hon'ble Apex Court judgment reported in ***(2004) 11 SCC 168*** made in the case of ***Shipping Corporation of India Ltd Vs Machado Brothers***. The learned counsels further submits that the Clause 4 of the Memorandum of Compromise provides a specific remedy in the event of default of first defendant, pursuant to which the plaintiff has exercised the said right and had instituted a fresh I.A in I.A.No.936 of 2021 before the NCLT. Therefore, it is contended that the plaintiff having chosen the contractual remedy under the Clause No.4 of the Memorandum of Compromise, is estopped from parallely invoking this Court's jurisdiction on the same cause of action, the principles of election and approbation-reprobation squarely apply to the present case. It is further contended that the Clause No.7 of the Memorandum of Compromise (Ex.P20) contains a Arbitration Clause,

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wherein any disputes arising out of Ex.P20, shall be referred to a Sole Arbitrator, hence the present dispute of the suit which arises out of the Ex.P20, should be subjected to Arbitration.

18. The learned counsel further submitted that Clause No.3 of the Memorandum of Compromise (Ex.P20) fixes the full and final settlement amount at Rs.1,25,00,000/-, which is expressly inclusive of all interest. In such circumstances, there can be no scope for any additional liability towards interest of Rs.45,00,000/- to subsist concurrently. The learned counsel vehemently contended that, if the recital in Ex.P22 that a sum of Rs.45,00,000/- was payable towards additional interest liability is to be accepted, then recital in the other Memorandum of Compromise, executed on the very same day, that the sum of Rs.1.25 Crores constituted the full and final settlement inclusive of all interest up to the date of actual payment, would be rendered futile from the very date of its execution. Hence, it was contended that the two Memorandums of Compromise, being executed on the same date and contain mutually inconsistent stipulations with regard to the interest liability. The learned counsels further contended that both documents, viz., Ex.P20 and Ex.P22, having been executed contemporaneously between the same parties in the same proceedings, must be read together as part of a single transaction and harmoniously construed. In that regard, the learned counsel contended that the

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plaintiff had already received a sum of Rs.55,00,000 + Rs.45,00,000 = Rs.1,00,00,000/- towards the composite settlement amount of Rs.1,25,00,000/-, leaving a residual principal of Rs.25,00,000/- and not Rs.70,00,000/-. It was further contended that the plaintiff cannot rely upon a document to establish his claim while simultaneously disclaiming the necessary corollary arising from the same document, resulting in the recovery of interest more than once on an overlapping principal and for an overlapping period. Accordingly, the defendants contended that the total amount due is only Rs.25,00,000/-. The learned counsel further contended that the claim for damages of Rs.50,00,000/- is unreasonable and unsupported by evidence, placing reliance upon the judgments of the Hon'ble Supreme Court reported in ***(2015) 4 SCC 136*** and ***(1969) 2 SCC 554***. In view of the above facts the learned counsels sought dismissal of the present suit.

19. Mr.C.Ramesh learned counsel appearing on behalf of the fourth defendant would contend that the defendant is not a necessary party to the suit, as he was neither involved in the day to day affairs of the first defendant company which was managed by the defendants 2 and 3. It is contended that the fourth defendant was was not aware of the alleged transfer of funds by the plaintiff or the Plaintiff dropping the idea of construction. The learned Counsel further contends that fourth defendant was already relieved from the post of

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Director of the first defendant company, with effect from the date 23/07/2016 and the necessary Form No.DIR-12 has also been filed with the Registrar of Companies. He submits that the fourth Defendant has filed an additional Written Statement contending that he was neither aware of the various proceedings initiated by the Plaintiff before the NCLT nor the fourth Defendant was also not put on notice about the said proceedings and he was not a party to the Compromise. The Plaintiff filed A.No.632 of 2024 seeking summary judgment against all the Defendants. By order dated 28.03.2024, this Court dismissed the application against Defendants 2 to 4 and allowed it against the 1st Defendant and held that Defendants 2 to 4, though the Directors of the 1st Defendant Company, were not parties in their individual capacity to any contract entered into with the Plaintiff, including the Construction Contract and both the Memorandums of Compromise, which formed the basis of the summary judgment application.

20. He further submits that though Plaintiff in her Cross Examination as PW1 admitted that fourth defendant was not a father of the third defendant as pleaded in the plaint and it was a typographical error, but has not taken any steps to rectify it. It is submitted that the plaintiff, herself further admitted that the fourth Defendant was not a signatory to the Memorandum of Compromise and had not issued any notice to the defendant. He further submits that the first

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defendant in his examination as DW-1 confirmed that the fourth Defendant as his brother-in-law, who was not involved in the day-to-day affairs of the first Defendant Company. He further asserts that the fourth Defendant had resigned from the Company and that the requisite forms were filed with the Registrar of Companies. The Ex.D10 evidences that his resignation took effect from 23.07.2016. The learned counsel contends that since the Plaintiff subsequently entered into an agreement without making the fourth Defendant a party thereto, the amended claim cannot be maintained against him. Hence, the learned counsel submits that the fourth Defendant is neither a necessary nor a proper party and in view of the above facts the suit is liable to be dismissed as against the fourth defendant with costs.

21. I have considered the arguments made by the learned counsels appearing on either side and perused the materials available on record before this Court.

22. The instant suit filed for recovery of money for a sum of Rs.1,95,96,780.60/- together with interest from the date of initiation of suit originally, was amended restricting the suit claim to a sum of Rs.1,10,24,520.54/- together with interest at the rate of 15% on from the date of amendment, apart from a further prayer for damages to the tune of Rs.50,00,000/-. The amended plaint had been called upon by the respondents as

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being bared by law of limitation and an issue to the effect had been framed apart from the entitlement of the plaintiffs and other issues. In such view of the matter, this Court is of the considered view that it would be appropriate to first answer the issue relating to limitation.

ISSUE No.3

23. It is the claim of the defendants 1 to 3 that the suit which has been initially filed based upon a construction agreement and dishonour of cheques, constituted a completely distinct cause of action, than the cause of action that had arisen for amendment of the plaint. He would submit that the cause of action to amend the plaint was a Memorandum of Compromise that was entered between the parties in the year 2019 and in that regard, the amendment that was permitted to be made in the year 2023 is hopelessly barred by law of limitation.

24. He would further submit that the cause of action for amendment of the plaint as admitted by the plaintiff in the cross-examination particularly to Question No.49 would mean that the cause of action for amendment of the suit would have to be made on or before 31.03.2022. However, the amendment which was sought to be made was made much beyond the period of limitation and in that regard, the judgment of the Hon'ble Apex Court extending the period of limitation from 15.03.2020 to 28.03.2022 would also not benefit the plaintiffs.

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25. It was the further contention that there has been no specific pleadings with regard to the exclusion of the time limit under any circumstances and in that regard also the amended plaint which arises of a distinct cause of action is barred by law of limitation.

26. A cause of action is a bundle of facts based upon which a claim is made by one party against the other. In the present case, there is no dispute that the suit had been initially laid within the period of limitation on a given set of facts. It is also not disputed that pending the suit, the plaintiff had also initiated IBC proceedings against the first defendant, wherein a Memorandum of Compromise was entered between the parties in the year 2019 and a part of the suit claim was paid and the interest on the principal to the suit claim was paid under two separate Memorandum of Compromises. A balance sum of Rs.70,00,000/- towards the principal was to be made good on or before 31.03.2020 and the same had been dishonoured by the defendants. An amendment could be permitted by the Court for determining the real questions in contraversy between the parties under the Provisions of Order VI Rule 17 CPC.

27. The *lis* between the parties arose out of an advance paid under the construction agreement by the plaintiff to the first defendant Company in which

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the defendants 2 to 4 were Directors originally. It is not disputed that the fourth defendant had resigned from the directorship from the Company in the year 2016. Thereafter, on the strength of the very same construction agreement, the plaintiff had also preferred an IBC proceedings against the first defendant, whereunder a Memorandum of Compromise had been entered between the parties, wherein there has been a compliance of the compromise that had been entered between the parties and a sum of Rs.70,00,000/- which was agreed to be paid on or before 31.03.2020 was not complied with. This would mean that the suit claim as made by the plaintiffs had been partially complied with and therefore, the amendment that was sought to be made was only with regard to the real controversy that was to be adjudicated upon by this Court and in that regard invoking the Provisions of Order VI Rule 17 of the CPC, the amendment was sought to be made and permitted by this Court. In such an event, this Court is of the considered view that the Memorandum of Understanding that had been entered between the parties upon which the suit claim had been modified in respect of recovery of money dues and payable as on the date by the applicant for amendment that too by restricting the claim in the suit cannot be a distinct and a fresh cause of action to be governed by law of limitation. Had there been an increase in the suit claim only, the issue of limitation thereupon would arise on the increased claim would be available.

28. The original suit claim was sought to be amended by reducing the suit

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claim based upon a Memorandum of Compromise which arose out of the initial cause of action namely the construction agreement leading to a reduction in the suit claim and in that regard, this Court is of the considered view that the suit claim with regard to recovery of money is not barred by limitation. However, the claim for damages that was introduced as a new prayer by way of an amendment on the initial cause of action in the considered view of the Court would be barred by the law of limitation.

29. Accordingly, this Court holds that the prayer (a) namely the relief for recovery of money as amended is within the period of limitation and prayer (b), the relief for damages is beyond the period of limitation.

ISSUE No.4:

30. In view of the findings given to Issue No.3 with regard to damages these issues need not be deliberated upon and accordingly, this issue is held against the plaintiff.

ISSUE No.5

31. It is the claim of the plaintiffs that only under the inducement of the fourth defendant, he had entered into a construction agreement with the first defendant of which the second defendant is the Managing Director and the third defendant, who is the wife of the second defendant was also in active

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participation of the transaction between the plaintiff and the first defendant. Even though, it is admitted that the second defendant had issued cheques in the year 2015 for repayment of the consideration paid by the plaintiff under the agreement, it had been claimed to have been given under threat and coercion wielded by the plaintiff. In support of the same, the defendant had not lead in any oral or documental evidences. It is the further claim of the defendants 2 to 4 that they were never signatories to the agreement between the plaintiff and the first defendant.

32. A perusal of the evidence that had been deposed by DW1, it could be noted that the second defendant has examined himself as the Managing Director of the first defendant Company and had examined himself in chief. However, to question No.28 in his cross-examination in which a question was put to him as to whether he was the Managing Director of the first defendant Company to which he had categorically answered "*no*". Further, to question No.32, drawing attention to his answer to question No.4, a question was put to the witness that he was not authorised to depose on behalf of the first defendant. His reply was that since, he was made as a party to the suit as the second defendant in the capacity of the Managing Director of the first defendant, there was no necessity for providing any authorisation for him to depose. His further cross-examination particularly to question No.41 and thereafter, he had feigned ignorance of pertinent questions. This Court is of the considered view that it is not necessary

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to dwell upon the further cross-examination for the simple reason that the second defendant who had examined himself as DW1 claiming to be the Managing Director of the Company had categorically to question No.28 had answered, he was not the Managing Director of the Company.

33. It is to be noted that the said answer to the question to the cross-examination was recorded on 04.07.2025 and in that regard, it is also pertinent to note that the chief examination was recorded on 03.07.2025. It would only mean that on 03.07.2025, when he had examined himself in chief, he was not the Managing Director of the first defendant Company and could not have examined himself on behalf of the first defendant without any authorisation whatsoever. In view that he had also admitted that there has been no authorisation given and he had deposed as he had been shown to be a Managing Director cannot at any stretch of imagination permitted to depose on behalf of the first defendant.

34. Proof affidavit filed by him is dated 30.06.2025, chief examination is on 03.07.2025 and in the cross wherein he had admitted not to be the Managing Director of the Company was made on 04.07.2025. This itself would show that the second defendant who had examined himself as DW1 as the Managing Director of the first defendant Company had not come up with clean hands and in that regard, the evidence of DW1 would have to be eschewed as the

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deposition is without any authority by the first defendant. It is also to be noted that the defendants have not let in any evidence whatsoever. The cross-examination by the fourth defendant of DW1 to absolve himself also gets eschewed in that regard. Hence, this Court hold the issue in favour of the plaintiff.

ISSUE No.2

35.The primordial contention of the defendants 1 to 4 is that under a Clause of the Memorandum of Compromise it was the obligation of the plaintiff to withdraw the proceedings both before the NCLT and before this Court and that the said condition had been violated making the plaintiff seek relief under the Memorandum of Compromise.

36. It is to be noted that the defendants had also not complied with its obligations under the Memorandum of Understanding whereby the first defendant would have to make good the payment of Rs.70,00,000/- which had been issued by a cheque dated 31.03.2019 and the said cheque had been dishonoured only because of which the amendment had been carried out restricting its claim from the original claim for the unpaid principal and interest thereon. With regard to a party who had failed to honour its obligations under the Memorandum of Understanding cannot claim that the other party had failed in its obligation and therefore, he is not entitled for a relief. Even though, there

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has been a violation on the side of the plaintiffs for not withdrawing the suit in view of the reasonings given above, the claim based upon the said issue of the defendant stands rejected.

ISSUE No.1

37. Under the Memorandum of Understanding, marked as Ex.P20 the dispute that was originally the cause of action for filing the suit was agreed to be settled by fixing the principal amount at Rs.1.25 Crores. A further Memorandum of Compromise even dated was entered between the plaintiff and the first respondents to also crystallise the interest payable at Rs.45,00,000/- on the sum of Rs.1,25,00,000/- from the date of the construction Agreement under Ex.P1 namely 10.11.2014 till date of the settlement that had been arrived between the parties. In that regard, the balance principal of Rs.70,00,000/- was made over by way of a post dated cheque which had been dishonoured. An application taken out for passing of a summary judgment in A.No.621 of 2024, this Court had directed the first defendant to deposit to the credit of the suit sum of Rs.70,00,000/-, however, with Caveat that the issue raised on merits including the limitation could be raised during the trial. The said order was taken on an appeal and the Division Bench of this Court in OSA(CAD)No.73 of 2024 dated 20.01.2025 had upheld the said direction. Even though, the said order does not conclusively hold that the defendant is liable to make the payment, it is to be noted that such a conclusion was arrived at without other

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grounds such as limitation liability of defendants 2 to 4 being touched upon in the said proceedings. In the view of the issues that had been answered *supra*, the grounds that had been raised by the applicant on the merits of the claim other than quantification of the claim have all been rejected. It is not in dispute that Ex.P20, the parties have quantified the amount payable by the first defendant at Rs.1.25 Crores and that for a sum of Rs.70,00,000/- which was not paid on the date of the Memorandum of Understanding, a post dated cheque had been issued which stood dishonoured. There has been no contention raised by the defendants particularly the first defendant that such Memorandum of Compromise had been entered was under duress coercion or in a fraudulent manner.

38. It is to be noted that the said Memorandum of Compromise had been entered pending adjudication of the first defendant as an insolvent in a IBC proceedings initiated by the plaintiff before the NCLT. In that regard, this Court finds that the defendants 1 to 3 are liable to make good the suit claim. As regards to the fourth defendant, even though, the fourth defendant was a Director when the initial cause of action arose, in view of the amendment to the plaint based upon the Memorandum of Compromise at which time the fourth defendant was not the Director in the first defendant Company, the fourth defendant is absolved of his liability.

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39. In fine, the suit stands decreed holding that the defendants 1 to 3 are jointly and severally liable to pay the plaintiff a sum of Rs.1,10,24,520.54/- together with interest at the rate of 12% p.a. on and from 14.07.2023 till the date of this order and thereafter, at the rate of 9% p.a till the date of realisation. The suit stands dismissed in respect to the claim for damages. The defendants 1 to 3 shall also pay the cost of the suit.

28-09-2026
(½)

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

GBA

List of witnesses examined on the side of the plaintiffs:

PW1- Ms.Sreevidhya G

List of documents marked on the side of the plaintiff:

ExP1	The original Construction Agreement entered into by the 1st defendant with plaintiff	10.11.2014
ExP2	The original Statement of Account of the plaintiff by Indian Overseas Bank. RA Puram Branch, Chennai	04.12.2014
ExP3	The original receipt issued by 1st defendant signed by 2nd defendant in favour of plaintiff	05.12.2014
ExP4	The original letter by first defendant to the plaintiff	10.04.2015
ExP5	The original cheque No.114930 issued by	30.06.2015

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	first defendant in favour of plaintiff with Bank Return Slip	
ExP6	The original cheque No.003326 issued by first defendant in favour of plaintiff with Bank Return Slip	31.07.2015
ExP7	The original cheque No.003327 issued by first defendant in favour of plaintiff with Bank Return Slip	31.08.2015
ExP8	The original cheque No.0003328 issued by first defendant in favour of plaintiff with Bank Return Slip	30.09.2015
ExP9	The original cheque No.003329 issued by first defendant in favour of plaintiff with Bank Return Slip	30.09.2015
ExP10	The photocopy of notice issued by the plaintiff to the defendants	01.10.2015
ExP11	The photocopy of the reply notice issued on behalf of the defendants to plaintiff's counsel. (The counsel for the defendants 1 to 3 objects on the ground that the they have to file secondary evidence affidavit for filing photocopy)	19.10.2015
ExP12	(Series) (3 Nos) are the original Cheque Nos.099639, 099640 and 099641 issued by the defendants 2 and 3 to the plaintiff respective dates.	25.07.2016, 25.08.2016 & 25.09.2016
ExP13	The printout of the print out of WhatsApp conversation between plaintiff and second defendant along with 65B affidavit.	
ExP14	The photocopy of the criminal complaint lodged by plaintiff with Commissioner of Police, Chennai.	02.05.2016.
ExP15	The photocopy of the FIR in Crime No.180 of 2016 on the file Central Crime Branch, Chennai	13.07.2016
ExP16	The original order in Crl.O.P.No.19618 of 2015 of this Hon'ble Court	15.09.2016
ExP17	The photocopy of the Legal notice issued by	18.08.2016

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	first defendant to plaintiff	
ExP18	The photocopy of the reply notice sent by plaintiff to the defendants' counsel	31.08.2016
ExP19	The photocopy of the order passed by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No.494 of 2018	19.03.2019
ExP20	Photocopy of the Memorandum of Compromise entered into between the plaintiff and the first defendant. (original is produced, compared and returned to the plaintiff's counsel) (The counsel for the defendants 1 to 3 objects on the ground that the original is not marked and affidavit of secondary evidence has not been filed.)	14.09.2019
ExP21	The photocopy of the order passed by the Hon'ble NCLT in C.P.(IB).No.769 of 2018	16.09.2019
ExP22	The photocopy of the Memorandum of Compromise entered into between the plaintiff and the first defendant in respect of interest amounts dated 14.09.2019. (original is produced, compared and returned to the plaintiff's counsel.) (The counsel for the defendants 1 to 3 objects on the ground that the original is not marked and affidavit of secondary evidence has not been filed.)	14.09.2019
ExP23	The photocopy of the cheque No.0011114 drawn on ICICI Bank Ltd issued by the first defendant in favour of the plaintiff dated 31.03.2020. (Original is produced, compared and returned to the plaintiff's counsel.)	31.03.2020
ExP24	The photocopy of the Cheque Return Memo issued by the plaintiff's Banker dated 02.04.2020. (Original is produced, compared and returned to the plaintiff's counsel.)	02.04.2020
ExP25	The photocopy of the Cheque Return Memo dated 29.05.2020 issued by the plaintiff's Banker. (Original is produced, compared and returned to the plaintiff's counsel.)	29.05.2020

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Ex.P26	The photocopy of the Legal Notice issued on behalf of the plaintiff to the first defendant along with proof of service.	06.05.2021
ExP27	The photocopy of the application bearing I.A.No.936 of 2021 filed by the plaintiff in C.P.(IC).No.769 of 2018 before the Hon'ble NCLT	13.09.2021
Ex.P28	The photocopy of the preliminary counter on maintainability filed by the first respondent in I.A.No.936 of 2021	30.12.2021
ExP29	The photocopy of the order passed by the Hon'ble NCLT in I.A.No.936 of 2021	15.02.2022
ExP30	The photocopy of the Appeal filed by the applicant before the Hon'ble NCLAT in Company Appeal (AT) Insolvency No.106 of 2022 along with proof of pendency of appeal	16.03.2022

List of witnesses examined on the side of the defendants:

DW1- Mr.Rakesh P Seth

List of documents marked on the side of the defendants:

ExD1	The photocopy of the ledger and bank pass book of State Bank of Travancore bearing Account No.67260204523 of Mr.Rakesh P Seth. (The counsel for the plaintiff has raised objection to this document as the same is irrelevant and should be marked based on admissibility, proof and relevancy).	
ExD2	The photocopy of the Construction Agreement (Original is produced, compared and returned to the defendant's counsel.)	10.11.2014
Ex.D3	The photocopy of the Invoice No.006/2014-15 (Original is produced, compared and returned to the defendant's counsel.) (The counsel for the plaintiff objects on the ground	05.10.2015

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	that the alleged original document produced before this Court is a photocopy and the photocopy cannot be marked)	
ExD4	(Series) are the photocopy of the (4 Nos.) cheques and (5 Nos) payment vouchers. (Original is produced, compared and returned to the defendant's counsel.)	
ExD5	The printout of the email communication dated 11.08.2015 along with 65B affidavit	11.08.2015
ExD6	The printout of the order passed by the Hon'ble High Court in Crl.O.P.No.18099 & 19020 of 2016 dated 20.11.2017 along with 65B affidavit	20.11.2017
ExD7	The printout of the order passed by the Hon'ble Supreme Court in SLP (Crl.) Nos(s).14-11/ 2018 dated 22.01.2018 along with 65B affidavit	22.01.2018
ExD8	The printout of the resignation form of the 3rd defendant along with 65B affidavit	
ExD9	The photocopy of the payment vouchers. (Original is produced, compared and returned to the defendant's counsel.) (The counsel for the plaintiff objects to mark the document on the ground of admissibility, relevance and proof.)	30.04.2015 & 05.05.2015

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K.KUMARESH BABU, J.

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