

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2015

CORAM

THE HONOURABLE **Mr. JUSTICE K.KALYANASUNDARAM**

CRP.(PD).No.1192 of 2015

and

M.P.No.1 of 2015

Hema Ramanathan

.. Petitioner

Vs.

Kalpana

.. Respondent

PRAYER: This Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order of the Principal District Court, Dharmapuri, dated 17.12.2014 in I.A.No.239 of 2014 in O.S.No.2 of 2011.

For Petitioner : M/s.P.Valliappan

ORDER

This Civil Revision Petition is directed against the order passed by the Principal District Judge, Dharmapuri in I.A.No.239 of 2014 in O.S.No.2 of 2011.

2. The defendants in O.S.No.2 of 2011 on the file of the Principal District Judge, Dharmapuri, is the petitioner in this revision. The

respondent had instituted the suit against the petitioner for specific performance of the sale agreement dated 09.12.2010. The defendant/petitioner has admitted the execution of the sale agreement, but resisting it contending that the plaintiff did not come forward to execute the sale deed within the stipulated time. After examination of witnesses by the plaintiff, the petitioner filed an application in I.A.No.239 of 2014 under Order 16 Rule 1 (2) and under Section 151 of C.P.C. to issue sub-poena to the Inspector of Police, land grabbing cell, Dharmapuri to examine as witness. He further alleged that the plaintiff/respondent had given the complaint to the police for return of advance amount and to prove the fact, the examination of the Inspector of Police is necessary. The application was opposed by the respondent, the trial court dismissed the application, aggrieved over the same, the present revision is filed.

3. Mr.P.Valliyappan, learned counsel for the petitioner submitted that the petitioner is the defendant in the suit filed for specific performance and to prove the case of the defendant, the Inspector of Police has to be examined as the witness on the side of the defendant. The learned counsel further submitted that though the petitioner has admitted the execution of the agreement, the plaintiff before filing the

suit wanted to get back the money and she was not ready and willing to perform her obligations under agreement..

4. It is seen that the petitioner has admitted the execution of the agreement and receipt of the advance amount. It is settled law that the burden of proof is on the plaintiff to prove the readiness and willingness in the suit for specific performance. It is further seen that in CRP.No.514 of 2014 , this Court has issued direction for the disposal of the suit within a period of two months. The trial court dismissed the application holding that the application was filed to prolong the litigation. In view of the facts and circumstances of the case, I do not find any illegality or irregularity in the order impugned in the revision.

5. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

27.03.2015

kkd
Index : Yes/No
Internet : Yes/No
To
The Rent Controller,
Puducherry.

K.KALYANASUNDARAM,J.,

kkd

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