

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.4635 of 2015
and M.P.No.1 of 2015

1.S.Vasanthamani
2.D.Vanitha
3.S.Mohankumar

.. Petitioners

Vs.

K.Suseela

.. Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 16.10.2015 in I.A.No.1703 of 2015 in O.S.No.139 of 2012 on the file of the I Additional District and Sessions Court, Tiruppur.

For Petitioners : Mr.V.Anandhamurthy

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 16.10.2015 in I.A.No.1703 of 2015 in O.S.No.139 of 2012 on the file of the I Additional District and Sessions Court, Tiruppur.

2.The respondent herein as a plaintiff filed a suit in O.S.No.139 of 2012 for specific performance on the basis of the sale agreement dated 03.09.2012. The defendants agreed to sell the suit property for a total sum of Rs.30,00,000/-. The plaintiff, her husband and her daughter had paid a total sum of Rs.15,00,000/- as advance to the defendants on various dates. In para-7 of the plaint, it was stated that the plaintiff has paid a sum of Rs.1,00,000/- as advance by way of cheque No.884176, dated 23.12.2010, drawn on SBI, Thennampalayam Branch, Tiruppur. On the same day, the plaintiff's husband paid a sum of Rs.1,00,000/- as advance by way of cheque No.700682 dated 23.12.2010. The plaintiff's daughter paid Rs.3,00,000/- by way of cheque No.371207, dated 23.12.2010. She had paid another sum of Rs.1,00,000/- by way of cheque No.371208 dated 23.12.2010 drawn on Syndicate Bank, Tiruppur to the defendants. In total, the plaintiff's family had paid a sum of Rs.15,00,000/- as advance to the defendants.

3.The defendants filed a written statement stating that the plaintiff never paid a sum of Rs.1,00,000/- as advance by way of cheque No.884176 dated 23.12.2010. Both sides evidence has been

over and when the matter was posted for arguments, the revision petitioners/defendants filed an application in I.A.No.1614 of 2015 for reopen the defendants side evidence and filed I.A.No.1703 of 2015 under Order 16 Rule 1(2) read with Section 151 C.P.C., for summoning the witness viz., the Bank Manager, Syndicate Bank, Tiruppur. The trial Court, after hearing both sides, allowed the application for reopen the case, but dismissed the application in respect of summoning the witness, against the dismissal order, the present revision has been preferred by the defendants.

4.Learned counsel for the revision petitioners/defendants submits that the plaintiff/respondent filed a Bank statement and the revision petitioners have also filed a Bank statement, which shows that the amount of Rs.1,00,000/- pertains to cheque No.371208 and the cheque No.884176 has not been credited into their account. Hence, summoning of Bank Manager is necessary to clarify the same. But the trial Court has not considered the aspect. Therefore, he prayed for allowing the revision.

5.At the time of admission, argument of the learned counsel for the revision petitioner is heard in length.

6. On perusal of the typed set of papers, it reveals that the respondent herein as a plaintiff filed a suit for specific performance on the basis of the sale agreement dated 03.09.2012. Since the defendants did not perform their part of contract, after issuance of notice, suit has been filed. The revision petitioners/defendants have filed a written statement and contesting the same. Both sides evidence has been over and when the suit was posted for arguments, the defendants have come forward with the applications for reopen and issue summons to the Bank Manager to prove that cheque No.884176, dated 23.12.2010 drawn on State Bank of India, Thennampalayam Branch, Tiruppur has been issued to the defendants.

7. According to the revision petitioners/defendants, the respondent/plaintiff has filed a bank statement, in which, issuance of cheque and date of cheque were not mentioned. The revision petitioners have also filed the bank statement, which shows that the said amount was not credited into their account. In such circumstances, there is no necessity for summoning the Bank Manager, Syndicate Bank, Tiruppur. Because it is not the case that the statement of account furnished by the plaintiff contains the

cheque and the cheque amount has been debited. But both the statement of accounts would show the correct entry. Under such circumstances, examination of Bank Manager is no way helpful to the defendants for adjudication of the matter. It shows the speculative nature of the revision petitioners/defendants to drag on the proceedings. So the impugned order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The civil revision petition deserves to be dismissed and it is hereby dismissed.

8. In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

18.12.2015

Index: Yes/No

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To

I Additional District and Sessions Court, Tiruppur.

R.MALA,J.

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