

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.4680 of 2015

and

M.P.No.1 of 2015

S.Jayaraman

.. Petitioner

Vs

M/s.Ananyakrishnaa Constructions Pvt. Ltd.,
Rep. By its Managing Director Mr.Y.Gangadhar
Office at No.1225/1, Paneerselvam Salai,
K.K.Nagar, Chennai - 600 078.

.. Respondent

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 07.08.2015 made in I.A.No.9673 of 2015 in O.S.No.3229 of 2015 on the file of the IV Assistant City Civil Court, Chennai in charge of III Assistant City Civil Court, Chennai.

For Petitioner : Mr.T.S.Baskaran
For Respondent : Mr.G.V.Sridharan

ORDER

The Civil Revision Petition is filed against the order dated 07.08.2015 made in I.A.No.9673 of 2015 in O.S.No.3229 of 2015 on the file of the IV Assistant City Civil Court, Chennai in charge of III Assistant City Civil Court, Chennai.

2.Learned counsel for the petitioner submitted that the respondent as a plaintiff filed a suit in O.S.No.3229 of 2015 for mandatory injunction directing the defendant to execute the registered Power of Attorney deed/Joint Venture Agreement on the basis of the consent letter dated 21.01.2012 of the schedule property and also for permanent injunction. During the pendency of the suit, the petitioner/defendant filed an application in I.A.No.9673 of 2013 for rejection of the plaint stating that the suit is barred by law as per Order VII Rule 11(d) of CPC and under Section 14(1)(b) & (d) of Specific Relief Act. The Trial Court after considering the objection raised by the plaintiff, dismissed the application. Against which, the present Civil Revision Petition has been filed by the petitioner/defendant.

3.Learned counsel for the petitioner submitted that as per Section 14(1)(b) and (d) of Specific Relief Act the suit is barred under law. He would submit that the consent letter was executed on 21.01.2012 but subsequently that has been revoked by him on 21.08.2012 and he obtained Power of Attorney from other flat owners and filed an application before the Corporation for demolition of the building and made a joint venture. He further submitted that once he has revoked the consent letter it is not enforceable. He would also submitted that the letter dated 21.01.2012 has not contained the particulars in respect of what is the plinth area, minute details

of the joint venture and so, it is not enforceable. Hence, he prayed for setting aside the order passed by the Trial Court. To substantiate his argument, he relied upon the decision reported in **2009 (2) CTC 819 (M.Gnanasambandam and 3 others vs. M.Raja Appar and 4 others)**.

4.Resisting the same, the learned counsel for the respondent would submit that the execution of consent letter on 21.01.2012 is admitted. He further submitted that the building contains six flats, the other five flat owners have executed a joint development agreement on 21.03.2012 and also executed Power of Attorney which was filed along with the plaint. On that basis, they have given a representation to the Corporation of Chennai on 27.06.2012 for demolition and only the petitioner/defendant has given the objection letter. That factum was rightly considered by the Trial Court and merely because of this petitioner/defendant, the demolition and re-construction work yet to have taken place, the plaint could not be rejected. Hence, he prayed for dismissal of the revision petition. He further submitted that the decision relied upon by the learned counsel for the petitioner is not applicable to the facts of the present case.

5.Considered the rival submissions made by both sides and perused the typed set of papers.

6.The petitioner is the owner of LIG Flat, 56th Street at Ashok Nagar, Chennai-600 083 along with five others. It is also admitted that on 21.01.2012 the petitioner has given a consent letter for joint development of the land measuring to an extent of 6360 sq.ft. and for demolition and reconstruction/development of their apartments. Thereafter, the other flat owners entered into joint development agreement except this petitioner/defendant and on that basis they also given a letter for demolition on 27.06.2012. The petitioner has given the objection letter on 16.08.2012 and he also sent a letter to the respondent/plaintiff on 21.08.2012. It is well settled dictum of the Hon'ble Apex Court that while dealing with the application under Order VII Rule 11 of CPC, only the plaint averments and document filed along with the plaint alone can be looked into and the defence raised could not be looked into as per the dictum of the Hon'ble Apex Court reported in **2011 (3) CTC 153 (N.Ravindran vs. V.Ramachandran)**.

7.At this juncture, it is appropriate to incorporate Section 14(1)(b) and (d) of Specific Relief Act, which is as follows:

“14.Contracts not specifically enforceable:-(1)The following contracts cannot be specifically enforced, namely:-
(b) a contract which runs into such minute or

numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms;

(d) a contract the performance of which involves the performance of a continuous duty which the Court cannot supervise.”

8. But admittedly except this petitioner, the other flat owners entered into joint development agreement and also executed Power of Attorney deed in favour of the respondent/plaintiff. Now this Court has to decide whether the decision relied upon by the learned counsel for the petitioner in **2009 (2) CTC 819 (M.Gnanasambandam and 3 others vs. M.Raja Appar and 4 others)** is applicable to the facts of the present case. It is appropriate to incorporate paragraph Nos.28 and 29, wherein it was held as follows:

“28. Coming to the case on hand, it is seen from the Memorandum of Understanding extracted above, that the only issue on which there was certainty, was that each of the parties will be entitled to ¼ share in the suit schedule property. Beyond this, the MOU just contained several indeterminate factors such as - (i) identification of a builder who would provide the best bargain for the parties, (ii) negotiation with such a builder, (iii) the execution of agreements with him, and (iv) the sharing of the constructed area on mutually acceptable terms. The

MOU also contained an option for any of the parties to take money value in lieu of constructed area. Thus everything else other than the shares to which each of the parties is entitled, was left open to be discussed, sorted out and determined. Such a MOU, in my considered view, is incapable of specific enforcement.

29. An agreement, which is bereft of material details indicating the consent terms between the parties, cannot be enforced by the Court, as the Court is not competent to investigate and supply material details as to how the contract could be specifically enforced. Suppose this Court were to pass a decree as prayed for in the suit, is the Court going to find a builder for the parties to have negotiations? Will the decree contain a clause determining the constructed area that could be allotted to the builder and to the parties? Can the decree specify the constructed area to be allotted to the parties? Can the decree also contain the method of valuation of the share of constructed area, allotted to each party, so as to facilitate the payment of money value in lieu of constructed area, to a party who opts for the same in terms of the MOU?"

9. The above citation is not applicable to the facts of the present case. In the above citation, the property is owned by one Muthiah. He died intestate leaving behind his four children, viz., two sons and two daughters. They

entered into a memorandum of understanding for construction on 24.09.2015, each one entitled to $\frac{1}{4}$ share, but they have not identified the builder or mentioned the cost of construction and hence it was allowed. Here in this case, consent has been given by the petitioner on 21.01.2012 and on that basis the other flat owners entered into a joint development agreement and also executed a Power of Attorney deed. While they have given a letter for demolition of the suit property, the petitioner/defendant has given the objection letter. In such circumstances, I am of the view that the above citation is not applicable to the facts of the present case. So, on that basis this Court shall not shut the door to the plaintiff as if the suit is barred by law. Further, whether the consent letter is enforceable or whether the cancellation letter by the defendant is correct or not has to be decided only after letting oral and documentary evidence because as already stated letter dated 21.08.2012 has to be considered only at the time of trial and not in the application for rejection of the plaint. Therefore, I do not find any reason to interfere with the finding of the Trial Court. Hence, the impugned order passed by the Trial Court is hereby confirmed and the Civil Revision Petition is hereby dismissed as devoid of merits.

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

11.At this juncture, the learned counsel for the respondent sought for early disposal of the suit since the other five flat owners are suffering. The learned counsel for the petitioner also sought for three weeks time for filing written statement. Considering the request made by both sides, the Trial Court is directed to grant three weeks time to the defendant for filing written statement and the Trial Court is also directed to dispose of the suit in O.S.No.3229 of 2015 within six months from the date of receipt of a copy of this order after following the provision laid down in Civil Procedure Code.

17.12.2015

Index: Yes/No
Internet: Yes/No
cse

To

The IV Assistant City Civil Court, Chennai
in charge of III Assistant City Civil Court, Chennai.

R.MALA. J.,

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