THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.4212 & 4213 of 2014

COMMON ORDER:

Heard Sri P.R.Prasad, learned counsel for the petitioner and Sri Vedula Srinivas, learned counsel for the respondents.

2. As common question of law and fact arises in these two Revisions and as some of the parties in both the Revision Petitions are common, they are being disposed of by this common order.

3. C.R.P.No.4212 of 2014 is filed under Section 115 CPC challenging the order dt.10-11-2014 in E.P.No.29 of 2009 in O.S.No.13 of 1999 of I Additional Chief Judge, City Civil Court, Secunderabad.

4. C.R.P.No.4213 of 2014 is filed by the petitioner challenging the order dt.10-11-2014 in E.P.No.30 of 2009 in O.S.No.14 of 1999 on the file of the same Court.

5. The respective 1st respondents had filed O.S.No.13 of 1999 and O.S.No.14 of 1999 against respondent Nos.2 to 6 and the petitioner herein for specific performance of sale-cum-construction agreement dt.22-10-1997, for mandatory injunction directing the petitioner and respondent Nos.2 to 6 to receive interest at 18% per annum on the balance sale consideration of Rs.4,75,000/- and Rs.3,75,000/- respectively from the date of delivery of possession of apartment bearing Nos.401 and 402 described in the schedule to the respective plaints, for recovery of damages of Rs.49,876/- for alleged breach of contract, for a permanent injunction restraining the petitioner and respondent

Nos.2 to 5 from alienating or leasing out the suit schedule apartment and costs.

6. By separate judgments and decrees dt.05-03-2002, the said Court declined to grant relief of specific performance and instead directed petitioner and respondent Nos.2 to 6 to refund the amount paid by the respective 1st respondents under various receipts immediately with interest at 12% per annum from the respective dates found on those receipts.

7. The respective 1st respondents initially filed E.P.No.27 of 2002 in O.S.No.13 of 1999 and E.P.No.28 of 2002 in O.S.No.14 of 1999 claiming a sum of Rs.1,56,342/- and Rs.1,17,400/- respectively from the respondent Nos.3 and 4 in C.R.P.No.4212 of 2014 and from the 5th respondent in C.R.P.No.4213 of 2014 under Order 21 Rule 64 CPC and also sought for attachment of their movable properties and for sale of the same. But it appears that the said E.Ps. were dismissed.

8. Thereafter, the respective 1st respondents filed E.P.No.29 of 2009 in O.S.No.13 of 1999 and E.P.No.30 of 2009 in O.S.No.14 of 1999 for recovery of Rs.3,85,776/- and Rs.3,73,925/- respectively against the petitioner herein to attach certain movable properties belonging to the petitioner and to sell the same for realization of the E.P. amount under Order 21 Rule 43 CPC to read with Order 21 Rules 64 and 66 CPC.

9. Respondent Nos.2 to 6 remained *ex parte* in both the E.Ps.

10. The petitioner filed a counter contending that since the matter reached finality already, nothing remains to be enquired

into by leading evidence, that the respective 1st respondents are not permitted to say that the amount under receipt to the share of the 1st respondent was not paid to him, and so the petitioner is not liable to pay the E.P. amount.

11. During enquiry, the respective 1st respondents marked Ex.A-1 which is the certified copy of the counter of the petitioner/5th J.Dr. in E.P.Nos.27 and 28 of 2002 respectively while the petitioner marked Ex.B-1, certified copy of the sale deed and Ex.B-2, deed of rectification and Ex.B-3, copy of judgment in the respective suits in both the E.Ps.

12. By separate orders dt.10-11-2014, the Court below rejected the objections of the petitioner and allowed both the E.Ps.

13. Challenging the same, C.R.P.Nos.4212 and 4213 of 2014 are filed.

C.R.P.No.4212 of 2014

14. I will first deal with C.R.P.No.4212 of 2014.

15. Learned counsel for the petitioner contended that according to E.P.No.27 of 2002 filed in O.S.No.13 of 1999, 1st respondent is claiming a sum of Rs.75,000/- allegedly paid on 22-10-1997, Rs.25,000/- allegedly paid on 15-11-1997 and Rs.65,000/- allegedly paid on 08-12-1997 by 1st respondent; the decree does not specify these amounts and merely states that the defendants should refund amounts paid by 1st respondent under various receipts with the interest at 12% per annum from

the respective dates on those receipts; only payment of Rs.75,000/- is admitted by the petitioner under Ex.A-2 but the payment of Rs.25,000/- allegedly paid under Ex.A-3 and the payment of Rs.65,000/- under Ex.A-4 are not admitted by the petitioner; and the contents of the judgment dt.05-03-2002 in O.S.No.13 of 1999 do not indicate that the Court had also accepted these payments on those dates. He contended that since payments are not proved, the petitioner is not liable to pay the said amount and in any event, directing attachment for the entire E.P. amount is not sustainable. He alleged that subsequently the petitioner had executed sale deed dt.04-04-2002 in respect of the same apartment(which was subject matter of the suit O.S.No.13 of 1999) in favour of 1st respondent in which there is a recital to the effect that the petitioner had already paid a sum of Rs.1,12,500/-; this amounts to admission by 1st respondent of receipt of all amounts payable by the petitioner and totally discharges him from any liability.

16. Learned counsel for 1st respondent refuted the said contentions and supported the order passed by the Court below. He contended that the recitals in the judgment rendered by the Court below in O.S.No.13 of 1999 established that 1st respondent had received not only the payment of Rs.75,000/- on 22-10-1997 but also payment of Rs.25,000/- on 15-11-1997 and Rs.65,000/- on

08-12-1997 and therefore in view of the decree in O.S.No.13 of 1999, 1st respondent is entitled to recover the same. He relied on OrXXI R.2 CPc and pointed out that in the absence of any certification by the executing court of the alleged payment in the manner required by the said provision, the plea of the petitioner cannot be accepted.

17. I have noted the submissions of both sides.

18. From the above contentions, it is clear that the petitioner is admitting receipt of only Rs.75,000/- from 1st respondent on 22-10-1997 disputing payment of Rs.25,000/- on 15-11-1997 and Rs.65,000/- on 08-12-1997 by 1st respondent to the respondent Nos.2 to 6 in relation to the agreement of sale-cum-construction agreement dt.22-10-1997 with respect to the subject flat. He therefore contends that he is not liable to refund any amount to 1st respondent.

19. The payment of Rs.25,000/- is said to have been made on 15-11-1997 under Ex.A-3 and the payment of Rs.65,000/- is said to have been made on 08-12-1997 under Ex.A-4.

20. In para 22 of the judgment of the Court below in O.S.No.13 of 1999, the Court below observed that the payment of Rs.25,000/- said to have been paid under Ex.A-3 must be definitely relating to some other transaction. Therefore, this indicates that the receipt of the sum of Rs.25,000/- by the J.Drs. under Ex.A-3 was not doubted by the Court below but it only opined that this payment is probably related to some other transaction.

21. It is pertinent to note that the decree granted by the Court on 05-03-2002 in O.S.No.13 of 1999 is in regard to the amounts paid by 1st respondent under various receipts to the J.Drs. and it is not confined to the amounts paid in respect of the suit agreement of sale.

22. In this view of the matter, having regard to the finding in O.SNo.13 of 1999, I am of the opinion that the J.Drs. including the petitioner are liable to pay the sum of Rs.25,000/- to 1st respondent since the Court had believed that the said sum was paid under Ex.A-3 to Jdrs.

23. Coming to the claim of 1st respondent with regard to the sum of Rs.65,000/- paid on 08-12-1997 under Ex.A-4 is concerned, in the same judgment, in paras 22 and 23, a reference is made to this payment made under Ex.A-4. In para-23, the Court refers to not only this payment under Ex.A-4 but also to another payment of Rs.65,000/- claimed to have been made by 1st respondent under a cheque. It however doubted the second payment of Rs.65,000/- only and it did not doubt the payment under Ex.A-4. Therefore, I am of the opinion that even the payment of Rs.65,000/- made under Ex.A-4 by 1st respondent to JDrs is recoverable by 1st respondent.

24. No doubt it is contended by the learned counsel for the petitioner that the sum of Rs.1,12,500/- is acknowledged in Ex.A-1 sale deed dt.04-04-2002 as having been paid by the petitioner herein to 1st respondent. The use of the word 'vendor' referring to the petitioner as having been paid a sum of Rs.1,12,500/- appears to be mistake in Ex.B-1 and it should have read that the 'vendee' i.e. 1st respondent had actually made the said payment. It appears that the plea of the petitioner is that the said payment was adjusted towards sale consideration of Rs.6,25,000/- of the apartment No.401 under the sale deed Ex.B-1 dt.04-04-2002

executed by the petitioner to 1st respondent.

25. In this regard, the provisions of Order XXI Rule 2 CPC are relevant. It provides that if any money payable under a decree is paid out of Court or is otherwise adjusted in whole or in part to the satisfaction of the decree holder, the decree holder shall certify such payment to the Court whose duty it is to execute the decree and Court should record the same accordingly. Sub Rule (3) of Rule 2 of Order 21 states that a payment which has not been certified or recorded in this manner shall not be recognized by any Court executing the decree.

26. In the present case, no doubt Ex.B-1 contains a recital that the petitioner had paid a sum of Rs.1,12,500/- to the 1st respondent. But it does not say that this payment is in relation to the liability of the petitioner under the decree in O.S.No.13 of 1999. That apart, even assuming that it is with regard to the liability to be discharged by the petitioner under the said decree, since the said payment has not been certified as provided in sub Rule (1) of Order 21 Rule 2 CPC, it cannot be recognized by the executing Court.

27. Therefore, I hold that the Court below did not commit any error in allowing E.P.No.29 of 2009 in O.S.No.13 of 1999. Hence the C.R.P.No.4212 of 2014 is liable to be dismissed.

C.R.P.No.4213 of 2014:

28. In this Revision Petition, the correctness of the order dt.10-11-2014 in E.P.No.30 of 2009 in O.S.No.14 of 1999 is questioned.

29. In this E.P., 1st respondent had claimed a sum of Rs.75,000/- paid by him under Ex.A-2 in relation to the suit agreement of sale dt.22-10-1997 and a sum of Rs.85,000/- allegedly paid by him under Ex.A-3 on 08-12-1997. As far as the payment of Rs.75,000/- under Ex.A-2 is concerned, which is not disputed by the petitioner as having been received by the J.Drs., he is liable to refund the same.

30. But it is contended by counsel for petitioner that the payment of Rs.85,000/- made under Ex.A-3 on 08-12-1997 has been discharged since there is a recital in Ex.B-1 dt.30-03-2002 executed by the petitioner and 6th respondent in favour of 1st respondent in respect of the same apartment which is subject matter of the suit O.S.14/1999.

31. Reliance is placed on clause 6 of the said sale deed wherein it is recited that a sum of Rs.87,500/- paid at the time of the suit agreement of sale dt.22-10-1997 was adjusted towards the sale consideration in respect of the apartment 402 under the sale deed Ex.B-1 dt.30-03-2002 and that there is no necessity to refund the same.

32. I am unable to agree with the said submission.

33. In the judgment dt.05-03-2002 in O.S.No.14 of 1999, the Court discussed about the payment of Rs.85,000/- under Ex.A-3 receipt made on 08-12-1997 by 1st respondent to the J.Drs. Nowhere in the judgment, the Court doubted the receipt of sum of Rs.85,000/- on 08-12-1997 under Ex.A-3 although certain other payments claimed by 1st respondent were not accepted. Therefore, the fact that 1st respondent did pay the sum of

Rs.85,000/- under Ex.A-3 on 08-12-1997 to the J.Drs. including the petitioner, cannot be doubted.

34. Coming to the recital in clause 6 of Ex.B-1, the contention of the petitioner is that there is no liability to discharge a sum of Rs.85,000/- inasmuch as it is deemed to have been adjusted towards sale consideration in respect of the same flat sold to 1st respondent by the petitioner and 6th respondent on 30-03-2002 under Ex.B-1. Clause 6 of Ex.B-1 no doubt states that 1st respondent did pay a sum of Rs.85,000/- at the time of suit agreement of sale dt.22-10-1997 which was acknowledged by the petitioner and 6th respondent and that only the balance consideration was received towards the sale of the flat under Ex.B-1 sale deed. But this adjustment also is required to be certified under Order 21 Rule 2 CPC and if it is not so certified, it cannot be recognized. Admittedly this has not been done. Therefore, it cannot be recognized by the executing Court.

35. In this view of the matter, there is no merit in this C.R.P. either and the same is also liable to be dismissed.

36. In the result, both the Civil Revision Petitions are dismissed. No costs.

37. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 14-10-2015

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