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**THE HONOURABLE MR JUSTICE M.S.RAMACHANDRA RAO**

**C.R.P.No.2409 of 2014**

**ORDER**

This Revision is filed challenging the order dt. 21.07.2014 in E.P.No.14 of 2011 in O.S.No.100 of 2010 of the I Additional Junior Civil Judge, Eluru.

2. The petitioners herein are defendants in O.S.No.100 of 2010. The said suit was filed before the Principal Junior Civil Judge, Eluru, for perpetual injunction. The matter underwent a compromise before the Lok Adalat and an award dt. 27.03.2010 was passed by the Lok Adalat. According to the terms of the settlement, the respondent had to vacate the plaint schedule shop and handover the keys to the petitioners to enable reconstruction and handing over of new premises by the petitioners to the respondent.

3. In the said award, Clause (2) directed that the petitioners, after handing over the shop by the respondent, have to construct a new shopping complex in the place where the plaint schedule property was located on or before 30.08.2010 and provide in the ground floor, a shop of size 10' width X 20' length to respondent. It was

further stated that if the petitioners do not do so, they shall pay a sum of Rs.1,00,000/- for every month to the respondent till the new shop is provided to him (Clause 6).

4. Since this was not complied with, E.P.No.14 of 2011 under Order 21 Rule 32 C.P.C., was filed to arrest the petitioners for non-compliance with the terms of the above award.

5. Counter affidavit was filed by the first petitioner opposing the same. It was alleged therein that the shop proposed to be handed over to the respondent in the newly constructed shopping complex was completed by the petitioners prior to 15.08.2010 and the said shop is towards northern boundary on the ground floor as directed in the award and therefore, they have complied with the terms of the award. They also contended that they issued a notice to the respondent to come and occupy the shop in the ground floor and the respondent did not turn up.

6. The second petitioner adopted the counter of the first petitioner. The respondent examined himself as P.W.1 and marked Exs.P1 to P14. The petitioners examined R.Ws.1 and 2 and marked Exs.R1 to R7.

7. In the Court below, an advocate commissioner was

also appointed to ascertain whether the shop offered by the petitioners to the respondent was in the ground floor as mentioned in the award passed by the Lok Adalat or not. He submitted a report stating that the shop, which was offered by the petitioners to the respondent, is not on the ground floor and it is in a semi-cellar.

8. Learned counsel for the petitioners argued that the shop which was offered is attached to the ground floor and therefore, it is to be construed as the shop in the ground floor and it cannot be called as a semi-cellar.

9. This contention was rejected by the Court below in the impugned order dt. 21.07.2014 holding that merely because a shop is attached to the ground floor, it cannot be said to be in the ground floor because sometimes shops can also be constructed underground. It held that the petitioners admitted before the Lok Adalat that they would offer the ground floor; so they are expected to offer the same to the respondent; and that during cross-examination, R.W.1 admitted that by deviating the municipal approved plan, he has constructed a semi-cellar and is now calling the shop located therein as the ground floor on the ground that it is touching the ground.

The contention raised by the petitioners that they

were not bound to offer a shop to the respondent as per the municipal approved plan, was also rejected. It also held that the petitioners have not paid Rs.1,00,000/- per month to the respondent for not handing over the said shop to him as agreed by them in Clause (6) of the award and therefore, they have violated it. The Court below therefore directed issuance of the arrest warrant against the petitioners for non-compliance of the award.

10. Challenging the same, this revision is filed.

11. Heard Sri Venkateswarlu Sanisetty, learned counsel for the petitioners and Sri Yellabandi Ramatirtha, learned counsel for the respondent. Previously, Sri M. Subba Reddy, learned counsel also addressed arguments in the matter on 16.06.2015, 07.07.2015 etc.

12. The main contention of the petitioners was that the shop which had offered to the respondent was in the ground floor and therefore, they had complied with the terms of the award. Learned counsel for the petitioners had passed on a photograph of the shop offered to the respondent. It indicates that the shop offered to the respondent is not on the ground floor and it is actually in a semi-cellar. Having agreed to offer a shop in the ground floor to respondent, it is not open to the petitioners to

unilaterally alter this term and offer a shop in the semi cellar to the respondent and violate the terms of the award of the Lok Adalat. It is also not open to the petitioners to contend that the respondent should take whatever the shop offered to him even if the shop offered is constructed in deviation of the municipal plan.

13. There was also an offer during the course of arguments by the counsel for the petitioners to have a shop constructed in a hall located in the ground floor. This was not accepted by the counsel for the respondent for the reason that such construction would not be in conformity with the municipal sanctioned plan and also because the term (Clause (6) of award) where-under the petitioners offered to pay a sum of Rs.1,00,000/- every month beyond 30.08.2010 if the shop in ground floor was not given to respondent, had not been complied by them till date.

14. It is most unfortunate that the petitioners, having voluntarily agreed to the terms of the compromise before the Lok Adalat, have deliberately and willfully violated the same without any justifiable cause. Therefore, I do not find any merit in the Civil Revision Petition and it is accordingly dismissed with costs.

15. Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand dismissed.

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**M.S.RAMACHANDRA RAO, J**

18<sup>th</sup> August, 2015

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