

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2016

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.244 of 2015

and

M.P.No.1 of 2015

1.M.R.Thirugnanasambandam
2.Rajammal
3.Parimalam
4.Yasodha

.. Petitioners

Vs

1.VGP Housing Private Limited,
A Company represented by its Chairman
V.G.Santhosam.

2.V.G.Santhosam,
son of Gnanathiraviam
Chairman, V.G.P. Housing Private Limited.

3.V.G.Selvaraj
son of Gnanathiraviam
Vice Chairman/Director,
V.G.P. Housing Private Limited.

4.V.G.Ravidas,
son of V.G.Panneerdas
Director, V.G.P. Housing Private Limited.

5.V.G.P.Rajadas,
son of V.G.Panneerdas
Director, V.G.P. Housing Private Limited.

6.V.G.P.Babudas,
son of V.G.Panneerdas
Chairman, V.G.P. Housing Private Limited.

Having Office at
V.G.P. Square
No.6, Dharmaraja Koil Road,
Saidapet Post, Chennai - 15.

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 01.07.2013 made in I.A.No.563 of 2012 in I.A.No.384 of 2010 in O.S.No.126 of 2009 on the file of the Sub Court, Perundurai.

For Petitioners	: Mr.M.Guruprasad
For Respondents	: Mr.T.M.Hariharan (For R1 to R5)
	No appearance (For R6)

ORDER

The Civil Revision Petition is filed against the order dated 01.07.2013 made in I.A.No.563 of 2012 in I.A.No.384 of 2010 in O.S.No.126 of 2009 on the file of the Sub Court, Perundurai.

2.The respondents as plaintiffs filed a suit for specific performance. The petitioners as defendants filed a written statement and contested the suit by denying the execution of the sale agreement. when the matter was posted for trial on 09.04.2010, on that day the Director of the respondent Company has not appeared as he was on world tour. Hence the suit was dismissed for

default. Against which, the counsel on record on behalf of the respondent Company filed I.A.No.384 of 2010 and the same was also dismissed for default on 24.08.2010. Against which, the Manager of the respondent Company filed I.A.No.563 of 2012 to restore I.A.No.384 of 2010 which was allowed on payment of cost of Rs.5,000/-. Against which, the present Civil Revision Petition has been preferred.

3.The learned counsel for the petitioners submitted that the Manager of the Company is not a competent person to file an affidavit. He further submitted that he is not a Director, no Power of Attorney has been executed in his favour and no resolution has been passed authorising the Manager of the Company to file an affidavit on behalf of the Company. That factum was not considered by the Trial Court. Hence, he prayed for setting aside the order passed by the Trial Court.

4.Resisting the same, the learned counsel for the respondents 1 to 5 submitted that there is no bar for filing an affidavit by the counsel on record on behalf of the client and on the instructions of the client. He would also relied upon the decision reported in ***2007 (3) CTC 231 (T.M.Bedi vs. Vijayeswari Textiles Limited, with its registered Corporate Office at NO.1088, Avinashi Road, Coimbatore-18 and another)***. He further submitted that

affidavit pertaining to I.A.No.563 of 2012 has been sworn by the Manager of the Company who has well acquaintance with the particulars of the case. The Trial Court has considered all the aspects in proper perspective and came to the correct conclusion. Hence, he prayed for dismissal of the Civil Revision Petition.

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

6.The respondents as plaintiffs filed a suit for specific performance on the basis of the sale agreement dated 24.04.2000. The petitioners herein as defendants filed a written statement and contested the suit. When the matter was posted for trial on 09.04.2010, the Director of the respondent Company has not appeared before the Court as he was on world tour and hence it was dismissed for default. Thereafter the counsel on record on behalf of the respondent Company filed I.A.No.384 of 2010 for restoration, which was also dismissed for default on 24.08.2010. Then the Manager of the Company filed I.A.No.563 of 2012 for restoration of I.A.No.384 of 2010. But the main grievance of the petitioner is that the affidavit filed by the Manager in I.A.No.563 of 2012 is not a competent person to file an affidavit. But a perusal of the affidavit shows that he is the Manager of Erode Branch. Furthermore, it

is not necessary that the party alone has been entitled to file an affidavit. It is pertinent to note that as per the decision reported in **2007 (3) CTC 231 (T.M.Bedi vs. Vijayeswari Textiles Limited, with its registered Corporate Office at NO.1088, Avinashi Road, Coimbatore-18 and another)**, wherein it was held that maintainability of the petition to restore the suit dismissed for default on the ground that filing of affidavit by Advocate himself without any affidavit filed by the plaintiff, it was held that it is maintainable. In such circumstances, even though the petitioners herein has filed a detailed counter and advanced arguments, the Trial Court has considered the same in proper perspective and came to the correct conclusion that the Manager is competent to file an application. Merely because the Director has not filed any application, it will not be a reason for dismissing the application. Hence, the Trial Court has rightly allowed the application on payment of cost of Rs.5,000/-. So, I do not find any reason to interfere with the finding of the Trial Court and the same is hereby confirmed. Furthermore, the Trial Court has rightly held that opportunity must be given to the respondents to put forth their case since all the sale proceeds were paid by way of Demand Draft. Accordingly the Civil Revision Petition deserves to be dismissed.

7.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

8.At this juncture, the learned counsel for the respondents sought for early disposal of the suit. Considering the request made by the learned counsel for the respondents, the Trial Court is directed to dispose of I.A.No.384 of 2010 within a period of one month and the Trial Court is also directed to dispose of the suit in O.S.No.126 of 2009 within a period of three months from the date of receipt of a copy of this order.

04.01.2016

Index: Yes/No
Internet: Yes/No
cse

To

The Sub Court, Perundurai.

R.MALA. J.,

cse

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