

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.4396 of 2011

and

M.P.No.1 of 2011

M/s.Rajkumar Construction Limited,
Rep. by its Managing Director,
Mr.C.S.S.Rajah,
No.7, Dhamodharan Street,
Kilpauk, Chennai 600 010.

.. Petitioner

Vs.

K.Dorai Samy

..Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the Fair and Final Orders dated 06.07.2011 made in I.A.No.287 of 2011 in CRF.No.1286 of 2011, on the file of the learned District Munsif, Tiruppur.

For Petitioner : Mr.N.S.Sivakumar

For Respondent : Mr.M.Parthasarathy

ORDER

The petitioner has filed this Civil Revision Petition to set aside the Fair and Final Order dated 06.07.2011 made in I.A.No.287 of 2011 in CRF No.1286 of 2011 on the file of the Court of District Munsif, Tiruppur.

2.The case of the revision petitioner is that the petitioner's construction viz. M/s.Rajkumar Construction Limited, represented by its Managing Director entered into an agreement of sale with the respondent herein on 28.10.2008. The respondent herein is the owner of the suit property agreed to sell the suit property for a total sale consideration of Rs.5,75,00,000/- and the petitioner herein paid an advance amount of Rs.2,55,00,000/- to the respondent herein on the date of sale agreement.

3.The further case of the revision petitioner is that he was put in possession of the suit property on the date of sale agreement itself. Since the respondent herein failed to cancel the earlier 7 sale deeds executed by his predecessor-in-title, the revision petitioner filed a suit for permanent injunction against the respondent herein from alienating the suit property and restraining the respondent herein from

interfering with the peaceful possession and enjoyment of the revision petitioner over the suit property.

4. Along with the plaint, the petitioner herein filed I.A.No.287 of 2011 under Order 2, Rule 2(3) CPC seeking to grant leave to file a suit for the lesser relief of permanent injunction with liberty to file a suit for the efficacious relief of specific performance at a later stage.

5. In the said application, notice was ordered to the respondent herein and he filed counter affidavit to the Order 2, Rule 2 application. It is contented by the respondent herein that he was always ready and willing to perform his part of contract within the time stipulated in the sale agreement. But the revision petitioner only is dragging on the matter. It is further contented that the revision petitioner ought to have filed a suit for specific performance of the contract if at all he is affected. The application filed under Order 2 Rule 2 is not maintainable and the same is liable to be dismissed.

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6. The trial Court after considering the legal issue involved in the above case, was pleased to dismiss the above application by holding that when the plaintiff / revision petitioner is having a clear cause of

action for seeking remedy available under the Specific Relief Act, which is a substantial law, the leave sought for by the revision petitioner cannot be granted.

7.I heard Mr.N.S.Sivakumar, learned counsel appearing for the petitioner and Mr.M.Parthasarathy, learned counsel appearing for the respondent and perused the entire records.

8.This Court has given its anxious consideration to the order passed by the trial Court. The main question to be decided in this civil revision petition is whether the revision petitioner is entitled to get leave of the trial Court to file a suit for permanent injunction against the respondent herein with a liberty to file a separate suit for specific performance and other reliefs at latter point of time.

9.In this regard this Court has carefully perused the order of the trial Court. The learned District Munsif after elaborate discussion regarding the entitlement of the revision petitioner to obtain leave under Order 2 Rule 2 of CPC and ultimately held that there is a clear bar under Section 41(h) of Specific Relief Act, wherein it is stated that an injunction cannot be granted when equally efficacious remedy can

be obtained under the substantial law. Therefore the trial Court held that in the present case the revision petitioner has a clear cause of action to file a suit for specific performance of a contract or for the alternative relief of refund of advance amount paid by him. In the considered opinion of this Court, does not call for any interference.

10. At this juncture it is useful to extract Section 41(h) of the Specific Relief Act, hereunder:

“(a) to (g)

(h) When equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust”.

11. Further it is also useful to refer Order 2 Rule 2(3) of CPC hereunder for the purpose of easy understanding of the case:

“3. **Omission to sue for one of several reliefs:** A

person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave to the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted”.

12.A combined reading of the above said provisions clearly says that the petitioner herein is having a remedy under the substantial law namely Specific Relief Act. The petition filed under Order 2, Rule 2(3) of CPC by the revision petitioner is only a procedural law and the same has to be read in consonance with the substantial law under which the plaintiff is seeking a remedy. It is a settled principal of law that the substantial law will prevail over the procedural law. Therefore the learned trial Judge has rightly held that the revision petitioner ought to have filed a suit for specific performance by invoking the provision contained under the substantial law. In this regard it is useful to rely upon the judgment of this Court referred by the learned counsel for the respondent:

1. In the case of T.S.M. Chelliah and another -Vs- Rev. Dr.Gnanavasakam and another reported in 1997 (1) CTC 724 wherein it was held that "When the petitioners seek the relief on the basis of the suit agreement, it is for them to establish the same and to file a suit for specific performance instead of the suit for bare injunction. As pointed out by the learned Senior Counsel for the respondents, the other side of the picture has also to be considered. What would happen if the suit is decreed? While decreeing the suit, there cannot be a decree for a restricted period and ultimately this would lead to the petitioners' possession and enjoyment without paying

the sale consideration. Hence I am of the opinion that there is no need to interfere with the finding of the lower Appellate Court. Hence, the civil revision petition is dismissed."

2. In the case of K.S.Balasubramaniam -Vs- S.Munuswamy reported in 2000 (2) CTC 417 wherein it was held that "Suit by purchaser based on an agreement to sell property for grant of permanent prohibitory injunction restraining defendant from alienating suit property. Plaintiff pleaded that he was ready and willing to purchase suit property but defendant was evading execution of sale deed and that defendant was attempting to sell suit property to third party. Section 41(h) Specific Relief Act provides that injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust. Suit for specific performance is an equally efficacious remedy in case of breach of obligation in an agreement to sell. Plaintiff has not made out prima facie case in view of bar created under Section 41(h) as suit itself is not maintainable. Order of lower appellate Court holding that no injunction could be granted is correct".

13. From the reading of the above judgments it is quite clear that the plaintiff/petitioner cannot maintain the suit for permanent injunction against the respondent herein when an efficacious remedy is available to him under the Specific Relief Act. This Court comes to the conclusion that the order does not suffer from any material irregularity

or infirmity and the same is liable to be confirmed.

14. In view of the foregoing reasons, I do not find any merit in this Civil Revision Petition and the order of the learned District Munsif is legally and factually correct and the same does not require any interference by this Court.

15. In the result, this Civil Revision Petition is dismissed, by confirming the order passed in I.A.No.287 of 2011 in CRF.No.1286 of 2011, dated 06.07.2011, on the file of the learned District Munsif Court at Tiruppur. No costs. Consequently, connected miscellaneous petition is closed.

23.12.2016

Note: Issue order copy on 05.12.2017
vs

Index: Yes
Internet: Yes

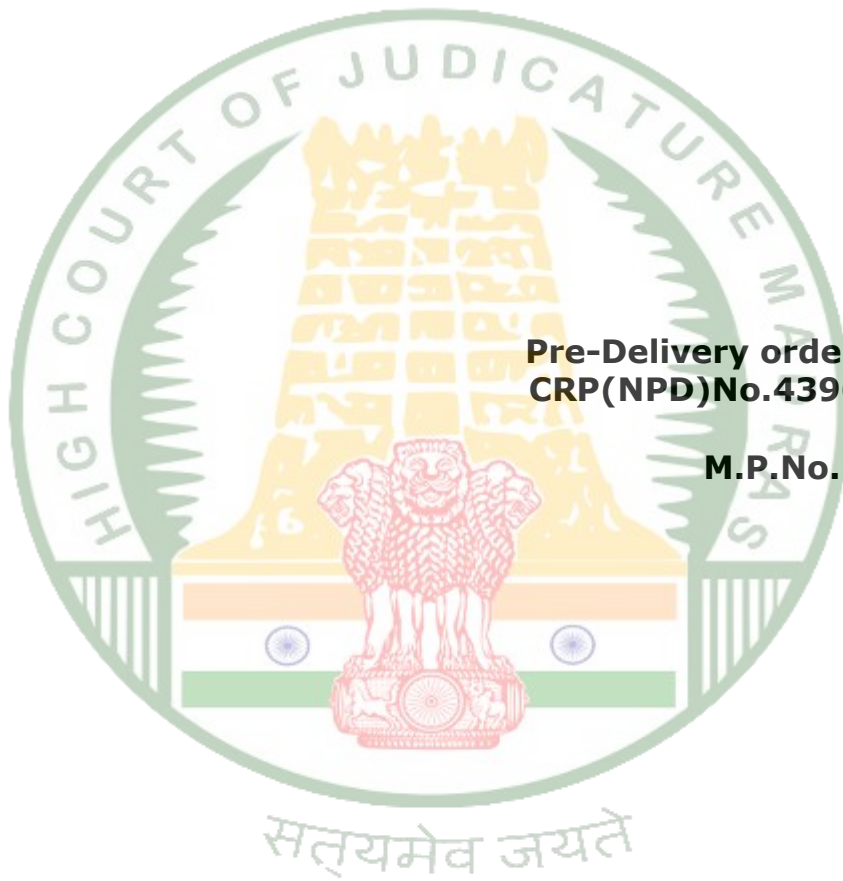
To

The District Munsif Court,
Tiruppur.

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M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
CRP(NPD)No.4396 of 2011
and
M.P.No.1 of 2011**

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