

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2016

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Civil Revision Petition (PD) Nos.2245 & 2246 of 2012
and M.P.No.1 of 2012

S.Sivan

... Petitioner in
both petitions

Vs.

M/s.Vamini Promoters,
Rep. By its Managing Partner
And Authorised Signatory S.Dayanand
Door No.118, SKS Buildings,
Perundurai Road,
Erode - 638 011.

... Respondent in
both petitions

Revisions filed under Article 227 of Constitution of India against
the order dated 21.2.2012 in I.A.Nos.31 & 32 of 2012 in O.S.No.680
of 2009 on the file of the I Additional District Munsif Court, Erode.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.G.Dhanasekaran

COMMON ORDER

C.R.P.No.2245 of 2012 is directed against the order dated
21.2.2012 passed in I.A.No.31 of 2012 in O.S.No.680 of 2009.

C.R.P.No.2246 of 2012 is directed against the order dated 21.2.2012 passed in I.A.No.32 of 2012 in O.S.No.680 of 2009 on the file of I Additional District Munsif Court, Erode, whereby the trial Court allowed both petitions.

2. Both the revision petitions are taken up together and disposed of by this common order. The revision petitioner is defendant and the respondent is plaintiff in the suit.

3. The plaintiff filed the suit for recovery of a sum of Rs.81,767.78 within interest at the rate of 12% per annum from the date of the suit till the date of realisation. Resisting the suit, the defendant filed the written statement.

4. Pending suit, the Manager of the plaintiff has filed petition being I.A.No.31 of 2012 to permit him to appear and plead on behalf of the plaintiff as power of attorney. He has also filed I.A.No.32 of 2012 to receive the documents.

5. Resisting I.A.No.31 of 2012, the defendant filed counter stating that Mr.Balasubramanian is not entitled to describe himself as

power of attorney of the plaintiff in the cause title without the petition being allowed and proper amendments made. It is stated that the affidavit and petition ought to have been filed by Mr. Dayanand, as the petition under Order 3, Rule 1 and 2 is still pending. Resisting I.A.No.32 of 2012, the defendant filed counter contending that the reason for not filing the document can be spoken out only by Mr. Dayanand and not the deponent of the affidavit. The reason for non-submission of the documents at an early date has not been properly explained.

6. Upon considering the rival submission, the trial Court allowed both the petitions. Aggrieved over the same, the defendant has filed the present revision petitions.

7. I heard Mr. M. Guruprasad, learned counsel for the petitioner/defendant and Mr. G. Dhanasekaran, learned counsel for the respondent/plaintiff. I have also perused the materials available on record.

8. Learned counsel for the petitioner/defendant submits that the trial Court failed to note that the supporting affidavit does not contain

the details as to when Mr.Balasubramanian was appointed as Manager and whether he has any acquaintance with the transactions between the defendant and plaintiff. He further submits that since the transaction took place in the year 2006, which is in the exclusive knowledge of plaintiff, the power agent who intends to represent his principal has to act only on his behalf alone and he cannot depose anything, which he had no knowledge. Insofar as I.A.No.32 of 2012 to receive additional documents is concerned, the learned counsel for the revision petitioner would contend that no acceptable reason has been given in the affidavit for belatedly marking those documents. Since the petition seeking to appoint Mr.Balasubramanian as power of attorney of the plaintiff is pending, he cannot file petition to receive the documents. He would further submit that the trial Court has not considered all the aspects and in a routine manner allowed both the petitions.

9. Learned counsel for the respondent/plaintiff submits that the order of the Court below, which is challenged, is well considered one and no interference is warranted.

10. The plaintiff-M/s.Vaminee Promoters, represented by its

Managing Partner and Authorised Signatory Mr.S.Dayanand, a registered partnership firm doing its construction business in and around Erode and other places, have filed the suit for recovery of money alleging that the defendant approached the plaintiff and desired to appoint them as housing project promoter for the house site in S.No.62/1B, Thindal Village, Erode Taluk and entered into a construction agreement.

11. In the plaint, the plaintiff alleged that they had completed the construction of house and handed over possession to the defendant and arrived at a final cost of Rs.5,68,203/-. The plaintiff realised a sum of Rs.4,97,036/- from the defendant and the balance sum of Rs.60,167/- is due to the plaintiff, for which, the plaintiff and defendant entered into an agreement dated 17.10.2006 and the defendant agreed to pay the said sum with interest at 24% per annum within three months. Despite repeated demands, the defendant failed to repay the said amount. As on 14.10.2009, there remains a balance of Rs.81,767.18 due to the plaintiff from the defendant.

12. When the suit is ripe for trial, one Mr.Balasubramanian has filed petitions seeking to appoint him as power of attorney of the

plaintiff and also to receive certain documents.

13. As stated above, the plaintiff is a promoter, represented by its Managing Director/Authorised Signatory. Mr.Balasubramanian, who filed the petition to permit him to appear and plead on behalf of the plaintiff as power of attorney, is the Manager of the plaintiff.

14. Looking at the plaint filed by the plaintiff, it could be seen that the plaintiff has been described as M/s.Vaminee Promoters, represented by its Managing Partner and Authorised Signatory. Though the plaintiff has not filed any power of attorney allegedly executed by them in favour of Mr.Balasubramanian along with the typed set of papers in these revision petitions, in the order under revision, the trial Court stated that it had perused the power of attorney and the same is registered one. From the order under revision, I find that only after perusing the deed of power of attorney, the trial Court allowed the petition.

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15. Really the objection raised by the defendant does not arise since the principal is not the Managing Partner, but only the promoter. Therefore, the trial Court has rightly allowed the petition seeking to

permit Mr.Balasubramanian to appear and plead on behalf of the plaintiff as power of attorney.

16. Insofar as petition seeking to condone the delay in filing the documents and to receive the same is concerned, the plaintiff pleaded that due to unavoidable circumstances, the documents were not filed at the time of filing the plaint. In order to bring out the truth and to facilitate the Court to render justice, it has become necessary to receive the documents filed along with the petition.

17. Qua I.A.No.32 of 2012, the main objection raised by the defendant is that since the recognition of Mr.Balasubramanian as power agent of the plaintiff is not at all maintainable, petition seeking to receive the documents need not be ordered.

18. Admittedly, the defendant has failed to prove the prejudice to be caused to him, if the documents are received in evidence. On the other hand, the trial Court in its order observed that no prejudice would be caused to the defendant, if the documents are received.

19. Order VII, Rule 14 of the Code of Civil Procedure, 1908

provides where the document is not produced at the time of filing of the plaint, the same cannot be received in evidence without leave of the Court.

20. It is pertinent to note that in the affidavit filed in support of the petition, the plaintiff has set out reason for not producing the documents earlier when the suit was originally filed and the trial Court has also accepted the reason. The said approach of the trial Court is reasonable and no interference is required.

21. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, M.P.No.1 of 2012 is closed.

19.12.2016

Note: Issue order copy on 21.02.2018
vs

Index : Yes/No
Internet : Yes/No

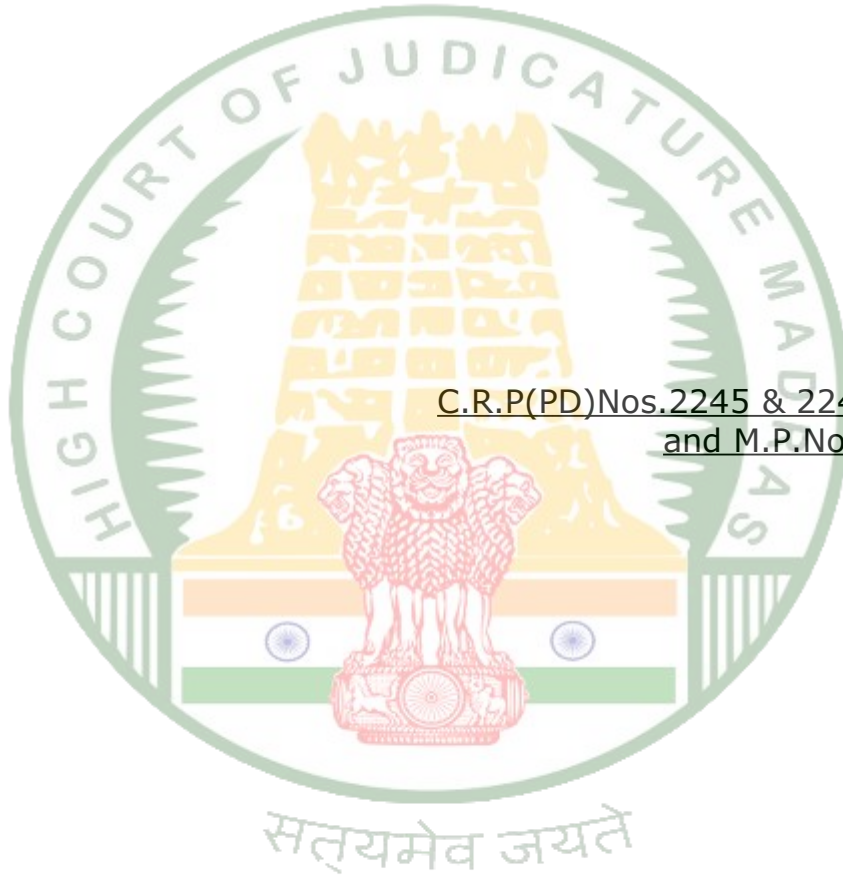
To

The I Additional District Munsif,
Erode.

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M.V.MURALIDARAN,J.

VS



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and M.P.No.1 of 2012

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