

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2016

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.3744 of 2013

1.R.Nallamuthu
2.Rajammal
3.Parimalam

.. 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 03.04.2013 made in C.M.A.No.62 of 2012 on the file of the I Additional District Court, Erode reversing the order dated 08.07.2011 made in I.A.No.430 of 2010 in O.S.No.127 of 2009 on the file of the Sub Court, Perundurai.

For Petitioner	: 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 03.04.2013 made in C.M.A.No.62 of 2012 on the file of the I Additional District Court, Erode reversing the order dated 08.07.2011 made in I.A.No.430 of 2010 in O.S.No.127 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 the 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.430 of 2010. The Trial Court after hearing both sides has dismissed the application by holding that the counsel has no locus standi to file an affidavit. Against which, the respondents/plaintiffs preferred C.M.A.No.62 of 2012, in which the First Appellate Court applying the ratio decendi 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)**, has allowed the Civil Miscellaneous Appeal. Against which, the present Civil Revision Petition has been preferred.

3.The learned counsel for the petitioners submitted that the counsel on record is not a competent person to file an application to restore the suit. 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 submitted that the First Appellate has rightly considered 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)** and allowed the appeal. 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 which was dismissed for default for non-appearance of the Director of the respondent Company on 09.04.2010. The counsel on record on behalf of the respondent Company filed an application for restoration. But the Trial Court has dismissed the same. Against which, the respondent Company preferred C.M.A.No.62 of 2012. The First Appellate Court has considered 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 the client may instruct the counsel to seek adjournment for various reasons and if on such occasion counsel is unable to appear, the suit may be dismissed for default or defendant may be set exparte. In such cases party should not suffer on account of such default. Advocate may in such cases file affidavit setting out factual aspects. In specific, Rule 13 of Bar Council Rules does not altogether bar Advocate on record from filing affidavit in interest of client. Furthermore, the Court has discretionary power to cross examine the witness at instance of either party and he has to produce best evidence to prove contents of affidavit. So, this factum has been rightly considered by the First Appellate Court and allowed

the Civil Miscellaneous Appeal. In such circumstances, I do not find any reason to interfere with the finding of the First Appellate Court and the same is hereby confirmed. 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 the suit in O.S.No.127 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

- 1.The I Additional District Judge, Erode.
- 2.The Sub Judge, Perundurai.

R.MALA. J.,

cse

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