

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.991 of 2015

&

C.M.A No.40 of 2016

Date:22.08.2016

Between:

M/s.Mega City Builders,
Rep by its Partner M. Mallikarjuna Reddy,
S/o.C. Koti Reddy,
8-2-290/82/J111/550/302,
Vamshi Valley, View Residency,
Jubilee Hills, Hyderabad and also at 1-12-21,
501, Vamsee Residency, Domalaguda,
Hyderabad.

... Appellant.

AND

S.L. Sawhney

...Respondent.

The Court made the following :



THE HON'BLE SRI JUSTICE S. RAVI KUMAR

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&

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JUDGMENT:

These two appeals arise from the same E.P.No.2/2014 but in respect of different orders and both sides argued these appeals together.

2. CMA.No.991/2015 is preferred against order dated 13-11-2015 in E.P.No.2/2014 in C.D.No.1520/1998 on the file XXV Additional Chief Judge, City Civil Court at Hyderabad.

3. CMA No.40/2016 is preferred against order dated 08-12-2015 in E.P.No.2/2014 in C.D.No.1520/1998 on the file of XXV Additional Chief Judge, City Civil Court, Hyderabad.

4. Appellant in both the appeals is Judgment Debtor and respondent in both the appeals is Decree Holder. They are hereinafter referred to in the same nomenclature.

5. This case has a long history and the trial Court has extracted all the facts in detail. I would only just touch them in brief:-

DHr was a tenant in respect of portion of property in D.No.1-2-412/5, Valmiki Nagar, Domalaguda, Hyderabad. JDr entered into a Development Agreement as per terms of which, DHr agreed to vacate the portion in his occupation on the condition that JDr shall sell a three bed room flat on South East Corner of first floor of the proposed complex in an extent of 1294 square feet with car parking to DHR. As the JDr did not fulfill his obligation, DHr raised a dispute before District Consumer Forum-II, Hyderabad in C.D.No.1520/1998 and

that was contested. District Consumer Forum, Hyderabad allowed the case filed by the DHr and directed the JDr to execute and register conveyance deed and also directed to deliver possession on the condition that DHr shall deposit Rs.2,00,000/- with necessary registration expenses. The Consumer Forum also granted compensation at the rate of Rs.5,500/- per month from 05-05-1999 till date of delivery together with costs of Rs.1,000/-. JDr filed appeal before A.P. State Consumer Reddressal Commission (hereinafter referred to as State Commission) questioning order of the District Consumer Forum and said appeal was dismissed confirming the orders of the District Forum. Thereafter, JDr preferred revision and the same was dismissed at admission stage. DHr filed application under Section 27 of the Consumer Protection Act before the District Forum and the same was allowed in part by imposing fine of Rs.5,000/- on the JDr, which was challenged before the State Commission and the State Commission, while setting aside the order of the District Forum, convicted the JDr with an imprisonment of two years in default of execution of sale deed, within one month and when JDr filed a Writ Petition before this Court and this Court, while setting aside the order of the two years imprisonment, directed the JDr to deposit Rs.13,00,000/- in full and final settlement of all claims, giving liberty to the DHr to withdraw the said amount. DHr challenged the order of this Court passed in W.P.No.278/2003 before Supreme Court in Civil Appeal No.1578/2005. Hon'ble Supreme Court, while setting aside the order of this Court passed in the Writ permitted DHr to invoke Section 25 of the Consumer Protection Act. Thereafter, DHr filed E.P.No.6/2006 before the District Consumer Forum, Hyderabad which was disposed of directing the DHr and the JDr to get the value

of the flat ascertained with the help of engineers. DHr challenged the order of the District Forum in E.P.No.6/2006 before State Commission and the State Commission, while allowing the case, directed JDr to execute the sale deed on payment of Rs.2,00,000/- with compensation of Rs.5,500/- per month from 05-05-1999 till date of delivery of possession. Then the DHr filed a petition in E.P.No.6/2006 in the District Forum and the District Forum directed the DHr to file a petition for transfer of order from the forum to appropriate Civil Court as it felt that forum has no power to grant such order. Then DHr challenged that direction before State Commission and the State Commission, while setting aside the direction of the Consumer Forum, directed the Forum to take necessary steps to get the sale deed registered. Aggrieved by that order, JDr filed Writ Petition before this Court and this Court granted interim suspension on the condition that the JDr shall not deal with the property and shall not part with the possession and shall pay arrears on or before 24-11-2008. The Writ Petition was allowed holding that the order of the District Forum for registration of sale deed and recovery of possession became unenforceable in view of the Amendment to Section 25 of the Consumer Protection Act and that the DHr can recover the money by following procedure under Section 25 (3) of Consumer Protection Act. Questioning the said order, DHr preferred Special Leave to Appeal (Civil) No.20082/2013 to the Hon'ble Supreme Court and the Supreme Court, while granting leave, passed an order granting stay of the orders passed by the High Court giving it open to the DHr to seek execution of the order of the District Consumer Forum-II, dated 17-08-2000 in the District Court. Pursuant to the said order of the Hon'ble Supreme Court, DHr filed

E.P.No.2/2014 and the Executing Court, on a consideration of objections raised by the JDr, allowed the E.P., by order dated 13-11-2015. After passing orders in E.P.No.2/2014, the Executing Court accepted the draft sale deed filed by the decree holder and forwarded it to Sub-Registrar for Registration by order dated 08-12-2015 and the order dated 13-11-2015 & 08-12-2015 are challenged in these two appeals.

6. Both side advocates submitted arguments at length supporting contentions of their respective parties, but there is no need to refer all those aspects suffice to answer the main objections on which these two impugned orders are challenged.

7. First and foremost objection of the Advocate for JDr is that the E.P.No.2/2014 is barred by limitation and liable to be dismissed inlimine.

8. The other objection of the Advocate for JDr is that Court below has no jurisdiction to entertain Execution Petition as it is not vested with the power of taking the petition on file directly. According to Advocate for JDr, the Court below cannot assume jurisdiction without transfer of the decree from the concerned Consumer Forum. The other objection of the Advocate for JDr is that Consumer Forum has no jurisdiction to pass such decree.

9. Advocate for DHr replied to those objections and contended that E.P.No.2/2014 is only a continuation of E.P.No.06/2006, therefore the objection with regard to limitation is not tenable.

10. Advocate for DHr submitted that E.P., is filed in pursuance of the direction of the Hon'ble Supreme Court given in order dated 25-11-2013 in S.L.P.No.20082/2013, therefore the objection of JDr that the Court has no jurisdiction without transfer of the decree is not tenable. He submitted that Hon'ble Supreme Court granted liberty to the DHr to file Execution Petition before the District Court by taking the facts of the case and the age of the DHr into consideration. He further submitted that the objection of the JDr with regard to correctness of the order of the District Forum is not tenable as that order has become final.

11. Now the point that would arise for my consideration in these appeals is whether orders of the Court below are legal, proper and correct?

12. **Point:**-The first and foremost objection of the JDr is that E.P., filed before Court below is barred by limitation. According to Advocate for JDr, the date of decree is 17-08-2000, but E.P. is filed on 20-01-2014, which is beyond the period of 12 years, therefore the E.P., is hopelessly barred by time. As already referred to above, this case has a long history and every order was challenged and matter was carried up to Supreme Court. As rightly pointed out by Advocate for DHr, E.P.No.06/2006 was filed for execution of order dated 17-08-2000 and orders passed in that E.P., was challenged in various Forums and finally the orders in W.P., was challenged before the Hon'ble Supreme Court, where leave was granted to the DHr on 25-11-2013 to execute order dated 17-08-2000 in the District Court. So this E.P.No.2/2014 has to be treated as continuation of E.P.No.6/2006 and further this Execution Petition is filed as per the

leave granted by the Supreme Court through order dated 25-11-2013, therefore objection as to limitation is not tenable. From the record, it is clear that *lis* was commenced in the year 1995 and till now finality is not reached and every order is challenged by either party in one Court or the other, so the objection with regard to period of limitation is not correct in view of the permission accorded by Supreme Court on 25-11-2013. The very same objection was raised before the Executing Court and the learned Presiding Officer elaborately considered this objection and rightly negated the same and I do not find any wrong in the order of the Court below.

13. The next objection of the JDr is that the Court below cannot assume jurisdiction without transfer of decree from concerned Court or Forum. Advocate for JDr submitted that Section 25 of the Consumer Protection Act is akin to Section 39 CPC and transfer to Civil Court is necessary. Reply of Advocate for DHr for this objection is that as the Supreme Court granted leave to DHr to execute the Consumer Forum order by filing Execution Petition in the District Court, this objection is not tenable. As answer to this, Advocate for DHr submitted that the DHr cannot deviate from the procedure and order of Supreme Court has to be implemented as per procedure and as the decree is not transferred from the District Forum to Executing Court, it cannot take cognizance. This objection was also taken before Court below and the learned Presiding Officer has answered this objection and rightly negated it in view of the orders of the Hon'ble Supreme Court dated 25-11-2013, which permitted DHr to execute decree before the District Court and the order of the Supreme Court is very clear, whereunder leave was granted to the petitioner to file Execution Petition before the District Court to enforce order dated

17-08-2000 of the Consumer Forum, therefore objection of JDr is not at all tenable.

14. The other objection of JDr is that Consumer Forum has no power to pass such order, but this objection cannot be entertained as order of the Consumer Forum was already challenged and the same has become final and even Supreme Court permitted DHr to execute that order, in view of that, any objection as to the correctness of the order of the District Forum cannot be entertained. Further, power of the Executing Court is only to execute the order and cannot go beyond the decree or order, therefore objection of JDr is not tenable.

15. The next objection of JDr is in respect of order dated 08-12-2015. According to Advocate for JDr, draft sale deed copy is not supplied to JDr, therefore sending draft sale deed without hearing the objection of JDr is not correct and therefore, order of the Executing Court dated 08-12-2015 is not legal.

16. Advocate for JDr further submitted that DHr has not followed the procedure under Order 21 Rule 34 CPC and therefore order of the Executing Court dated 08-12-2015 is liable to be set aside.

17. As already referred to above, JDr is questioning every order passed in favour of DHr and if really he has got any objection with regard to recitals in the sale deed copy, he would have at least filed those objections in this CMA, because the CMA is filed only after receipt of copy of draft sale deed, so that this Court can examine whether those objections are tenable or not. As per the procedure, after objections of the JDr are overruled, the next step that has to be followed by Executing Court is to send the draft sale deed for

registration as the JDr has not come forward for execution of such document.

18. On a scrutiny of the material, I do not find any wrong in the findings of the Court below and it rightly negated the citations of JDr and forwarded draft sale deed for registration.

19. For these reasons, I am of the view that both the appeals are devoid of merits and liable to be dismissed.

20. Accordingly, both the appeals are dismissed and as a sequel, miscellaneous petitions, if any pending in these appeals, shall stand dismissed. No costs.

Date:22.08.2016
mrb

JUSTICE S. RAVI KUMAR

