

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2017

CORAM

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

CRP(PD)No.1115 of 2017

and

C.M.P.No.5392 of 2017

R.Kumar

.. Petitioner

..Vs..

1.S.Pushpa

2.Mukund Housing Development

Represented by its Proprietrix

S.Pushpa, No.161

Medavakkam main road

Medavakkam, Chennai-100.

..Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 31.01.2017 made in I.A.No.63 of 2006 in O.S.No.804 of 2016 on the file of the XIX Additional City Civil Court, Chennai.

For Petitioner : Mr.M.Balasubramaniam

For Respondents : Mr.K.Natarajan

Caveator

ORDER

Civil Revision Petition is filed against the fair and decretal order dated 31.01.2017 made in I.A.No.63 of 2006 in O.S.No.804 of 2016 on the file of the XIX Additional City Civil Court, Chennai.

2.The case of the petitioner is as follows:

The petitioner is the plaintiff and the respondents are the defendants in O.S.No.804 of 2016 on the file of the XIX Additional City Civil Court, Chennai. The petitioner filed suit under Order 37 Rule 1 of C.P.C. for recovery of a sum of Rs.16,00,000/- together with interest at the rate of 18% on the principal amount from the date of plaint till the date of realisation of the amount. According to the petitioner, he and respondents entered into an agreement on 01.08.2014 for completion of construction of flats in plot No.314, Gokulapuram lay out. The petitioner has completed the work to the tune of Rs.33,58,852/-. The respondents paid a sum of Rs.17,50,000/- and balance amount payable is Rs.16,08,852/-. The second respondent issued a cheque for the balance sum of Rs.16,00,000/- bearing cheque No.077651, dated 05.06.2015. On presentation, the said cheque was returned with an endorsement as "insufficient funds". The respondents issued notices dated 08.06.2015 and 10.06.2015. The respondents admitted their liability to the tune of Rs.16,00,000/- and issued a cheque for the same. In

the notices, the respondents have stated that they will pay the amount, if the petitioner substantiated his claim for Rs.11,00,000/- by producing the bills and invoices for the said amount. The petitioner sent a reply notice dated 19.06.2015 denying various allegations made by the respondents and offered to produce the bills and invoices. The respondents did not inspect the documents. Their transaction is commercial transaction and the respondents have admitted their liability and second respondent issued the cheque for the said amount. In the circumstances, the petitioner prayed for decree by summary proceedings.

3. The case of the respondents is as follows:

The respondents filed I.A.No.63 of 2016 for unconditional leave to defend the suit. According to the respondents, they entered into an agreement dated 01.08.2014 with the petitioner for completion of multi storeyed building at the costs of Rs.49,01,000/- in plot No.314, Gokulapuram lay out. The petitioner did not co-operate in completion of the flats and difference of opinion arose between the parties. Agreement dated 01.08.2014 was terminated and another agreement was prepared in February 2015, wherein it was agreed by the respondents that a sum of Rs.16,00,000/- is payable by them on production of bills and invoices by the petitioner.

The respondents paid a sum of Rs.5,00,000/- by cheque. The first

respondent's husband borrowed a sum of Rs.75,000/- from the petitioner and as a security, for due repayment, first respondent's husband gave a blank cheque of second respondent signed by first respondent. First respondent's husband repaid the entire amount together with interest. The petitioner evaded returning the blank cheque given as security by the husband of the first respondent and misused the same, as though second respondent has given the cheque for payment of Rs.16,00,000/-. Admittedly, the respondents have paid Rs.5,00,000/- after February 2015 and therefore question of issuing cheque for Rs.16,00,000/- does not arise. The dispute has arisen between the parties. For the above reason, there are triable issues and therefore, the respondents must be given unconditional leave to defend the suit.

4. The petitioner filed counter affidavit in the said application and re-iterated the averments made in the plaint as referred to above.

5. Before the learned Judge, no oral evidence was let in by both the parties. The respondents marked 14 documents as Exs.P1 to P14. The petitioner did not mark any documents.

6. The learned Judge considering the averments made in the affidavit, counter affidavit and documents filed by the parties, granted unconditional leave by holding that the respondents have raised triable issues and issues raised by the respondents can be decided only after full fledged trial.

7. Against the order dated 31.01.2017 made in I.A.No.63 of 2016, the present civil revision petition is filed by the petitioner.

8. The learned counsel for the petitioner submitted that the learned Judge ought to have held that undated and unsigned xerox copy of the alleged compromise deed is sham and invalid. The respondents are relying on unilateral unsigned xerox copy of the alleged memo of compromise, while the petitioner is relying the cheque for Rs.16,00,000/- issued by the second respondent acknowledging the outstanding amount due as per the agreement, which is a commercial contract. The defence raised by the respondents are illusory, sham and practically moonshine and the learned Judge ought to have dismissed the application for leave to defend. The learned Judge erred in holding that the petitioner having misused the cheque and failed to see that the signature in the cheque was not disputed by the second respondent and the

respondents admitted their liability to the tune of Rs.11,00,000/-. The petitioner has by his reply dated 19.06.2015 offered to produce all the bills and invoices to substantiate his claim for balance amount of Rs.16,00,000/- and it is only the respondents, who fail to inspect the document. Thus, he prayed for allowing the Civil Revision Petition.

9. Per contra, the learned counsel for the respondents submitted that the petitioner did not comply with the agreement dated 01.08.2014 and did not complete the construction of flats as agreed in the said agreement. The agreement dated 01.08.2014 was terminated, a compromise was arrived at and the same was reduced into writing. As per the said compromise, a sum of Rs.16,00,000/- was arrived at as due and payable provided the petitioner should substantiate his claim by producing the bills and invoices. The respondents paid Rs.5,00,000/- by cheque, the petitioner did not produce the bills and invoices and respondents are not liable to pay any amount much less Rs.16,00,000/-. The second respondent did not issue any cheque for Rs.16,00,000/- in discharge of the amounts due to the petitioner as alleged by him. The petitioner has misused the blank cheque given by the first respondent's husband as a security for the hand loan of Rs.75,000/- taken by him from the petitioner. He did not return the blank cheque issued by the second

respondent signed by the first respondent, even though the first respondent's husband discharged the hand loan in full. Thus, he prayed for dismissal of the civil revision petition.

10. Heard both sides and perused the materials available on record.

11. The petitioner and the respondents have entered into an agreement for completion of flats in the property mentioned therein. Both the parties agreed that construction was not completed as per the agreement. According to the petitioner, the work was not completed due to non co-operation of the respondents and in view of the failure on the part of the respondents to pay the amount for the work done by him. On the other hand, the respondents contend that the petitioner committed breach of agreement and agreement was terminated. A compromise was arrived at in February 2015. The respondents agreed to pay Rs.16,00,000/- on condition that the petitioner produced bills and invoices. The respondents have paid Rs.5,00,000/-, the petitioner did not produce bills and invoices and therefore, the respondents are not liable to pay any amounts. The petitioner denies the memo of compromise put forth by the respondents. He relies on the cheque issued by the second respondent for Rs.16,00,000/- admitting the liability to pay the said

sum. On the other hand, the respondents denied having issued the cheque for Rs.16,00,000/- admitting their liability to pay their amounts. According to them, first respondent's husband gave the cheque as security for the hand loan of Rs.75,000/- taken by him from the petitioner. The petitioner evaded returning the cheque even after discharging the entire loan taken by the husband of the first respondent from him.

12. In view of these rival contentions, the claim of the petitioner can be decided only by permitting the parties to let in oral and documentary evidence to prove their respective case. According to the respondents, they are disputing their liability to pay any amounts unless the petitioner substantiates his claim by producing bills and invoices. The petitioner contends that he is ready to produce bills and invoices. Further, whether the cheque for Rs.16,00,000/- was issued by the second respondent for the claim of the petitioner and the petitioner has misused the blank cheque given by the first respondent's husband given as security for hand loan of Rs.75,000/- can be decided only by permitting the respondents to let in evidence to substantiate their claim.

13. Considering the contentions raised by the respondents in the affidavit filed in support of the application in I.A.No.63 of

2016 for unconditional leave to defend the case, it is clear that the respondents have raised triable issues in the suit. In view of the above, order of the learned Judge does not suffer any illegality or irregularity warranting interference by this Court.

14. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

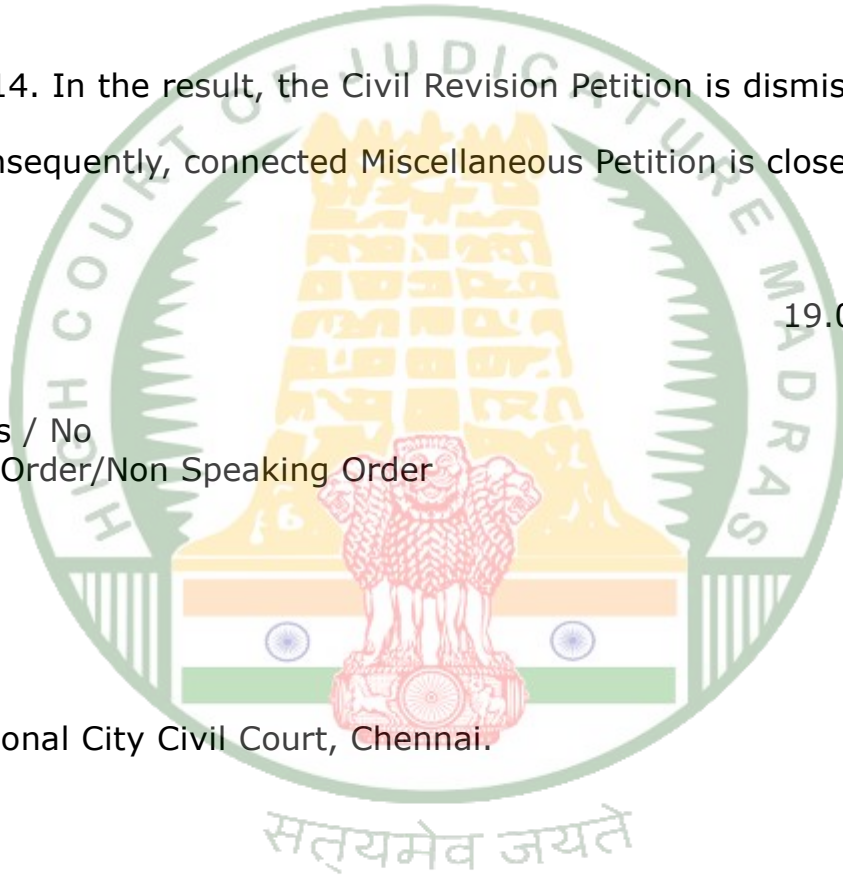
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Index :Yes / No
Speaking Order/Non Speaking Order

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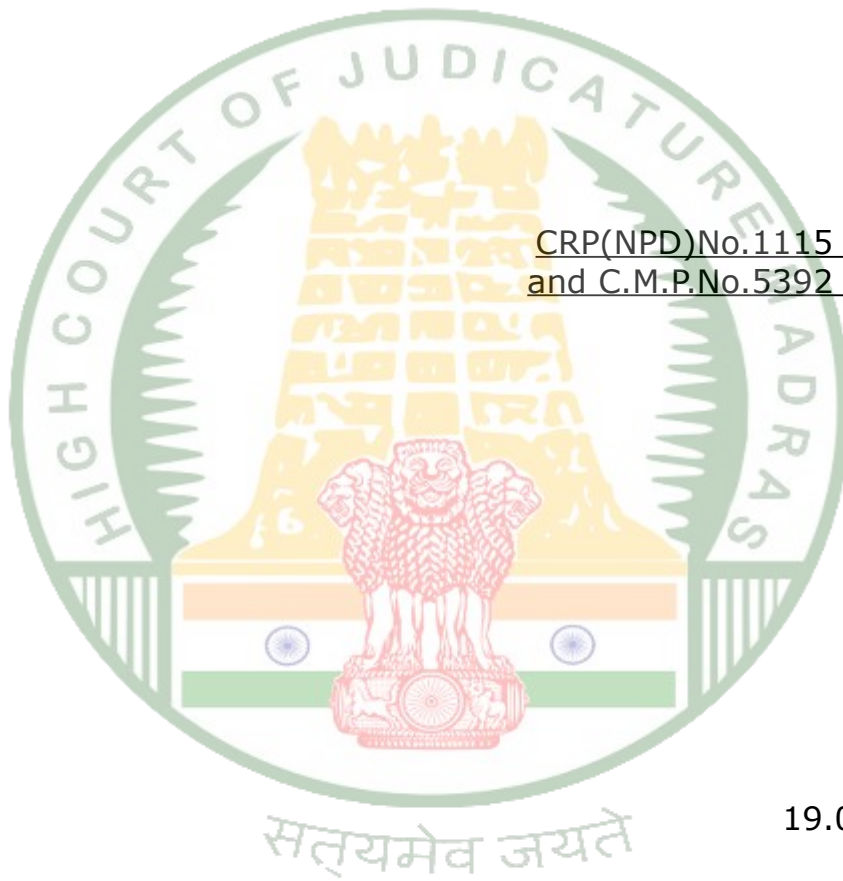
XIX Additional City Civil Court, Chennai.



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V.M.VELUMANI,J.

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