

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.61 of 2014
& M.P.No.1 of 2014

S.Balaji

.. Petitioner

Vs.

M/s.The Artin Builders India (P) Ltd.,
Represented by its Managing Director,
Mr.Aravindh Muthusamy,
Off. 2A, A.S.D.Puram,
Coimbatore-641 035.

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 22.08.2013 made in I.A.No.677 of 2013 in O.S.No.698 of 2012 on the file of the IV Additional District & Sessions Court, Coimbatore.

For Petitioner : Mr.R.Kannan

For Respondent : Dr.C.Ravichandran

ORDER

The Civil Revision Petition is filed against the order dated 22.08.2013 made in I.A.No.677 of 2013 in O.S.No.698 of 2012 on the file of the IV Additional District & Sessions Court, Coimbatore.

2. The petitioner is the defendant and respondent is the plaintiff in O.S.No.698 of 2012 on the file of the IV Additional District & Sessions Court, Coimbatore. The respondent filed the said suit for recovery of money. The petitioner filed written statement on 17.06.2013 and is contesting the suit. The respondent filed I.A.No.677 of 2013 for appointment of Advocate Commissioner to note down the physical features of the building constructed with regard to additional work carried on by the respondent and to measure the same with the help of a qualified engineer and to submit his report with plan.

3. According to the respondent, at request of the petitioner, he has done additional construction and petitioner has not paid the balance amount. Hence, he filed the above suit. In the written statement, the petitioner has denied the additional construction done by the respondent. Therefore, it is necessary for appointment

of Advocate Commissioner to note down the additional construction put up by the respondent.

4. The petitioner filed counter affidavit and submitted that the petitioner did not entrust any additional work to the respondent and no additional work was done by the respondent as alleged by him. The respondent did not do any additional construction and the petitioner has paid excess amount to the respondent. The respondent cannot seek appointment of Advocate Commissioner for collecting evidence and prayed for dismissal of the application.

5. The learned Judge, considering all the averments made in the affidavit, counter affidavit and materials available on record, allowed the application on the ground that the report of the Advocate Commissioner with valuation of the additional work through a qualified engineer will assist the Court and appointment of Advocate Commissioner is necessary to reduce unnecessary oral evidence.

6. Against the said order dated 22.08.2013 made in I.A.No.677 of 2013, the present Civil Revision Petition is filed by the petitioner.

7. The learned counsel appearing for the petitioner reiterated the averments made in the counter affidavit and contentions raised in the grounds of revision. The learned counsel for the respondent reiterated the averments made in the plaint and affidavit filed in support of the application.

8. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

9. The claim of the respondent is for recovery of balance amount for additional construction done by him. The petitioner has denied that he entrusted additional work to the respondent and stated that the respondent did not do any additional work. The issue is whether the respondent has done additional construction and whether the petitioner is liable to pay cost for such construction. In view of the rival contentions raised by the learned counsel for the petitioner and respondent, it is necessary to appoint Advocate Commissioner to inspect the suit property with the help of a qualified engineer to find out whether any additional construction put up by the respondent and if so, to find out value of the said construction. If the Advocate Commissioner filed his report, it will

minimise the evidence let in by the parties and the report will also assist the Court. The learned Judge, considering all the above facts allowed the application for appointment of Advocate Commissioner to inspect the suit property. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 22.08.2013.

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

10.11.2017

Index : Yes/No
dm/kj

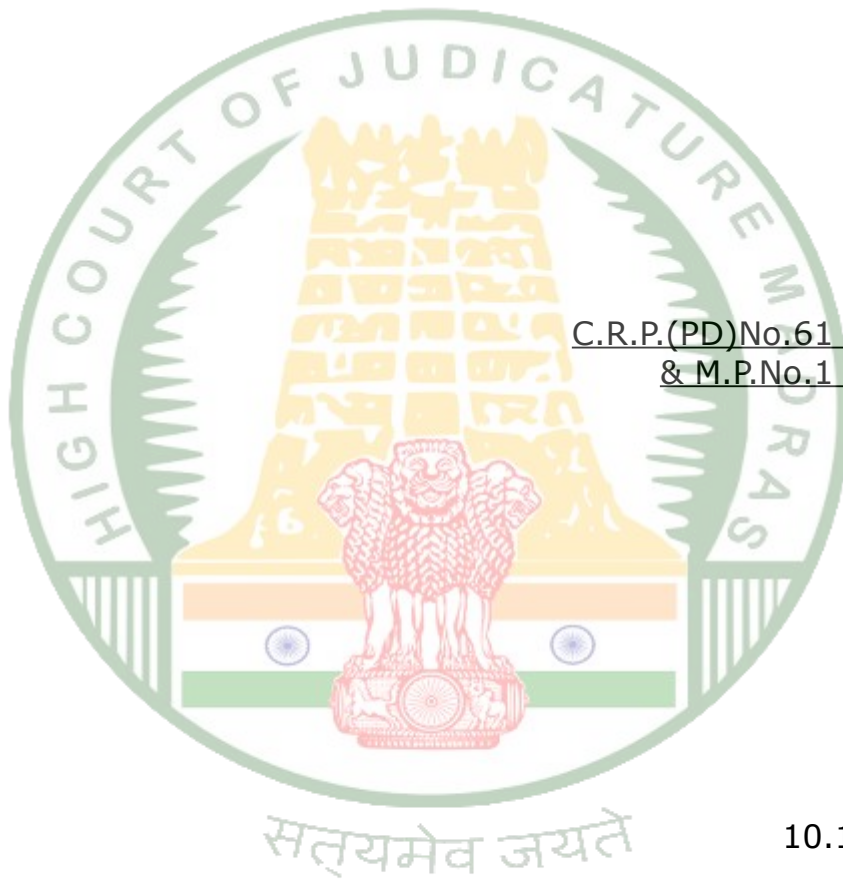
To

The IV Additional District &
Sessions Judge, Coimbatore.

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V.M.VELUMANI, J.

dm/kj



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