

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

Civil Revision Petition (PD) No.4032 of 2017

and

C.M.P.No.18864 of 2017

S.Subramanian

.... Petitioner

..Vs..

1.Divisional Engineer (Highways)
Construction and Maintenance Division,
Opp.to National Hotel,
Omalur Road,
Salem.

2.Superintending Engineer (Highways)
Construction and Maintenance Circle,
Steel Plant Road,
Salem-636 302.

3.Chief Engineer (Highways),
Construction and Maintenance Wing,
Chepauk, Chennai - 5.

4.Divisional Engineer (Highways),
Quality Control and Quality Assurance,
Salem.

5.Assistant Divisional Engineer (Highways),
Quality Control and Quality Assurance,
Court Complex, Yercaud Road,
Salem.

6.Chief Engineer (Highways),
Quality Control and Research Wing,
HRS Complex, Guindy, Chennai - 32.

7. District Collector,
Salem District Salem

8. The Secretary to Government,
Highways & Minor Ports Department,
Fort st.George,
Chennai - 9.

... Respondents

Prayer: This Civil Revision Petition has been filed under Article 227 of Constitution of India, against the order and decretal order dated 23.01.2017 passed in I.A.No.351 of 2016 in I.A.No.183 of 2015 in O.S.No.493 of 2012 on the file of I Addl.Subordinate Judge, Salem.

For petitioner : Mr.R.Neelakandan
For Respondents : Mr.T.Jayaramaraj,
Govt.Advocate (CS)

ORDER

Challenging the order and decretal order dated 23.01.2017 passed in I.A.No.351 of 2016 in I.A.No.183 of 2015 in O.S.No.493 of 2012 on the file of I Addl.Subordinate Judge, Salem, the present Civil Revision Petition has been filed.

2. According to the Revision Petitioner, the petitioner as Plaintiff filed a suit in O.S.No.493 of 2012 claiming a sum of Rs.5,97,894/- towards money claim preferred on three heads in the Plaint as against the respondents. The petitioner/Plaintiff also preferred I.A.No.183 of 2015 in O.S.No.493 of 2012, for appointment of Engineer or Expert Court Commissioner to seek the work executed and to seek that gravel and sand were not allowed to be used and in respect of the specification changed, he has claimed Rs.2,42,216/-. The aforesaid application was closed by the learned District and Sessions Judge, Salem, on 09.06.2016 by observing as under:-

"Despite several opportunities, the petitioner did not clarify court doubt. During trial, this I.A., is pending. Prayer in the petition is not sustainable in law."

3. The Petitioner/Plaintiff filed another application in I.A.No.351 of 2016 in I.A.No.183 of 2015 in O.S.No.493 of 2012 seeking to reopen I.A.No.183 of 2015. Counter has also been filed by the respondents in the said I.A. The learned I Additional Subordinate Judge, Salem, after considering the submission of both the parties, dismissed the said application in I.A.No.351 of 2016 by order dated 23.01.2017. Challenging the same, the present Civil Revision Petitioner has been filed.

4. The learned counsel for the Revision Petitioner would submit that the earlier petition for appointment of Advocate Commissioner was not dismissed on merits, except saying that the same was not sustainable in law and that the petitioner did not clarify.

5. Per contra, the learned counsel for the respondents/defendants would submit that the aforesaid Petition was filed by the Petitioner/plaintiff at the stage of Part-heard of suit and further the said application seeking appointment of Advocate Commissioner for the purpose sought for is not at all maintainable either in law or on facts. He further submits that the order passed by the trial Court is a well considered order and the same has been passed after considering the facts and circumstances of the case and therefore, the present Civil Revision Petition deserves to be dismissed.

6. I have considered the submissions made by counsel for the parties and perused the materials on record.

7. On a perusal of the order dated 9.6.2016 passed in I.A.No.183 of 2015, it is seen that the Court below has made an endorsement by stating that the petitioner did not clarify the Court doubt, despite several opportunities and therefore, the petition is not sustainable in law.

8. According to the Revision Petitioner, due to inadvertent circumstances, the petitioner has not clarified the court and therefore, filed I.A.No.351 of 2016 seeking to re-open the proceedings and I.A.No.183 of 2015.

9. While taking into consideration the above facts and circumstances of the case, this court deems it fit to give one more opportunity to the Revision Petitioner/Plaintiff to clarify the defects pointed by the Court in respect of I.A.No.183 of 2015. Hence, the order passed in I.A.No.351 of 2016 dated 23.01.2017 is set aside and accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

08.11.2017

nvi

To

The I Addl.Subordinate Judge, Salem.

WEB COPY

D.KRISHNAKUMAR,J.,

nvi



Civil Revision Petition (PD) No.4032 of 2017 and
C.M.P.No.18864 of 2017

WEB COPY

08.11.2017