

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No.6175 OF 2010

Date: 10.08.2017

Between:

Smt. Sushma S. Buthada, W/o Shyam Sunder Bhutada,
Aged about 35 years, Occu: Cooperative bank Employee,
R/o H.No.1-4-335/5, Plot No.58, East Satyanagar Colony,
Near Maruthinagar, Kothapet, Hyderabad

.....Petitioner/
petitioner

and

M/s LIC Housing Finance Limited, Area Office 304, 305,
III Floor, Maithrivanam, HUDA Complex, Ameerpet,
Hyderabad, rep.by its Asst.Manager Mr. C.Venugopal
and others.

.....Respondents/
respondents



The Court made the following:

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ORDER:

M/s. L.I.C. Housing Finance Limited instituted O.S.No.1848 of 2006 on the file of VIII Additional Senior Civil Judge, Ranga Reddy Distriact at L.B.Nagar, Hyderabad, praying to cancel the sale deed No.6170/2004 and to pass judgment and decree in favour of the plaintiff and against the defendants 1 to 5 jointly and severally for the suit amount of 6,89,596/-.

2. Sri H.Mallesha, who was working as Assistant Manager of the plaintiff Corporation, was examined as P.W.1 on behalf of the plaintiff. In the cross-examination on behalf of 5th defendant, P.W.1 admitted that Corporation is ready to close the case if 6,50,000/- is paid by the defendant no.5. He has also admitted that Corporation received letter offering to pay the money by the defendant no.5. Taking note of the deposition of P.W.1, defendant no.5 filed I.A.No.2351 of 2009 under Order XII Rule 6 read with Section 151 of Civil Procedure Code (CPC) to decree the suit for a sum of 6,50,000/- towards full and final settlement of the suit claim and permit the petitioner to pay sum of 4,80,000/- to the credit of the suit. The said plea of the petitioner/defendant No.5 is opposed by the plaintiff. Trial Court dismissed the plea holding that the issue of plaintiff's claim against the registration of document in favour of 5th defendant by the 4th defendant and the claim of plaintiff for recovery of money requires consideration in the suit and no relief as sought for can be granted.

2. Heard learned counsel for petitioner and learned counsel for respondent-Corporation.

3. Learned counsel for petitioner contends that in view of deposition of P.W.1 on behalf of plaintiff accepting that they are willing for resolution of the dispute on payment of full and final amount claimed by the Corporation, the application was filed under Order XII Rule 6 of the CPC and the trial Court ought to have considered the application in terms of the provision contained therein and the dismissal of I.A., by the trial Court was erroneous. By placing reliance on the provision of Order XII Rule 6 of CPC, learned counsel submits that as there is clear admission on behalf of the plaintiff, trial Court ought to have passed judgment based on the said admission and the acceptance of defendant No.5 to pay the entire amount demanded by them.

4. Learned counsel representing respondent-Corporation do not dispute the factum of deposition given by P.W.1 with reference to the resolution of dispute, but contends that 5th defendant is no way concerned with the property and that the loan was granted to the 4th defendant. Defendant No.4 being borrower, liability is on him to pay entire amount and even before liability is discharged, he could not have sold the property to the 5th defendant and, therefore, the sale transaction is null and void and, therefore, the offer made by the 5th defendant cannot be accepted. He, therefore, supports the view taken by the trial Court.

5. As noted above, suit is instituted praying for declaration against all defendants including the 5th defendant. Plaintiff was aware of the sale transaction that took place between the

4th defendant and the 5th defendant selling the suit schedule property to petitioner. As loan amount was quantified at 6,89,596/-, by the time suit was instituted, the prayer sought was to direct the defendants 1 to 5 jointly and severally to pay the entire amount. In paragraph-11 of the plaint also declaration given by the plaintiff was, defendants 1 to 5 are jointly and severally liable to pay the loan amount and in paragraph-12, it was declared that all the defendants are liable to pay the entire amount. The issue on which plaintiff is agitating is that borrower did not repay the loan advanced and sold the property even before the debt was cleared. Therefore, the crux of the issue is delay in repayment of the amount borrowed. On the very same issue, on a specific question posed on behalf of 5th defendant, P.W.1 has categorically admitted that if defendant no.5 is ready to pay amount of 6,50,000/- the issue can be resolved.

6. Having regard to the deposition of P.W.1, the trial Court ought to have considered the scope of provision in Order XII Rule 6 of CPC before passing orders in the interlocutory application. There is no discussion in the order of trial Court on the claim of defendant no.5 with reference to the provision in Order XII Rule 6 of CPC vis-à-vis the declaration given by the plaintiff in the plaint and the deposition of P.W.1. To that extent the order of trial Court is not sustainable. Matter requires consideration afresh by the trial Court with reference to the prayer sought in the interlocutory application vis-à-vis the pleadings and the depositions on record. The order under revision is set aside and the matter is remanded to the trial Court for consideration of the prayer in I.A.No.2351 of 2009 in O.S.No.1848 of 2006, as well as consideration of the suit

expeditiously. Contentions of the plaintiff with reference to their claims in the suit are preserved. As the suit is of the year 2006, the trial Court shall also explore the possibility of resolution of the dispute by conciliation.

Miscellaneous petitions, if any, pending in this revision petition shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

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