

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 6070 of 2016

ORDER:

1) Aggrieved by the order dated 03.11.2016 passed in I.A.No.77 of 2016 in O.S.No.4 of 2016 on the file of the XI Additional District Judge, Piler, wherein an application filed by the petitioners/ defendants for rejection of the plaint was rejected, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2) The respondent/ plaintiff filed O.S.No.4 of 2016 seeking a direction to the defendants to refund the suit amount of Rs.54,18,466/- with further interest @24%p.a. on Rs.30,00,000/- from the date of the contract till the date of realisation. The averments in the plaint are to the effect that the plaintiff agreed to purchase the suit schedule property by believing the words of the defendants and after due negotiations fixed the price at Rs.75,60,000/- and on 12.11.2012 he is said to have paid an amount of Rs.19,00,000/- as advance. An agreement of sale came to be executed by the defendants in favour of the plaintiff stipulating certain terms and conditions. The balance sale consideration was agreed to be paid on or before 31.03.2013.

3) The averments in the plaint also show that the plaintiff is said to have paid Rs.11,00,000/- on 25.03.2013 which was endorsed on the rear side of the agreement of sale and extended

time for the purpose of registration till 15.05.2013. Since the defendants did not execute the sale deed by receiving balance sale consideration, a suit came to be filed for refund of the advance amount. Pending the said suit, the defendants filed I.A.No.77 of 2016 for rejection of the plaint on the ground that though the suit is filed by the plaintiff claiming refund of Rs.30.00 lakhs but no notice was issued prior to institution of the said suit claiming refund of the amount with interest. It is further stated that nowhere in the notice or in the reply notice which were issued by the plaintiff, he choose to rescind the suit contract before initiation of the suit as such it is urged that entertaining the suit by the trial Court is illegal and improper.

4) A counter came to be filed on behalf of the respondent/plaintiff denying the averments made in the affidavit filed in support of the petition. It has been specifically urged in the counter that out of five notices, in three reply notices dated 13.05.2013, 12.06.2013 and 09.05.2016 the plaintiff clearly demanded refund of the suit amount. Hence, it is urged that there is no illegality committed by the plaintiff in filing the suit. It is further stated in the counter that Section 22 (1) (b) of Specific Relief Act is meant for refund of any earnest money or deposit paid. Clause (2) of the Specific Relief Act provided that where the plaintiff has not claimed any relief for refund of the earnest money in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief. It is further stated

that sofar the defendants have not filed any written statement and only with a view to cause delay, gain time and plead for delay in filing the written statement, the present petition came to be filed.

5) After considering the rival submissions made, the trial Court rejected the request. Challenging the same, the present Civil Revision Petition is filed.

6) Reiterating the arguments which were advanced before the trial Court, learned counsel for the petitioners mainly submits that the finding of the trial Court that unless oral evidence is adduced and trial is held, it is not possible to come to conclusion with regard to rejection of the plaint is totally ill founded. Since the findings of the trial Court are contrary to the scope of Order VII Rule 11 of C.P.C. learned counsel for the petitioners pleads interference of this Court. The other ground urged by the learned counsel for the petitioners is that no notice was given to them by the plaintiff seeking refund of the amount prior to the institution of the suit.

7) It is not in dispute that there was an agreement of sale dated 12.11.2012 executed by the defendants in favour of the plaintiff after receiving some amount out of the total sale consideration. Since the defendants failed to perform their part of contract, the above suit came to be filed for refund of the suit amount. Along with the suit, the plaintiff filed document Nos.3 to 7, which are exchange of notices between the parties.

8) The material placed before the Court would show that on 13.05.2013 a notice came to be issued by the defendants demanding the plaintiff to perform his part of contract. The plaintiff got issued a reply directing the defendants to measure, locate the schedule property and show the extent mentioned in the agreement of sale dated 12.11.2012 and if that is done the plaintiff is ready and willing to perform his part of contract. It is also stated in the said reply that as the schedule property is dotted land and if there is no possibility for registration, the plaintiff shall call upon the defendants to return the advance amount with interest at 24%p.a. Without complying the same, the defendants got issued another notice on 04.05.2016 calling upon the plaintiff to come to the office of Sub-Registrar on 31.05.2016 and pay the balance amount. On 09.05.2016 the plaintiff got issued a reply to the said notice. In the said notice it is stated that there were mediations in the presence of elders and thereafter both the plaintiff and defendants went to M.R.O. Office and Sub-Registrar Office, where the officials have stated that the schedule property is classified as DKT and it is prohibited from entering into any sort of transactions. Accordingly the same was informed to the elders and the elders directed the defendants to refund the advance amount with interest to the plaintiff within three days from 06.05.2016, but without doing so on 09.05.2016 the defendants got issued another notice. As such, the plaintiff advised the defendants not to lay any false claims against the plaintiff and also refund the advance amount of Rs.30,00,000/-

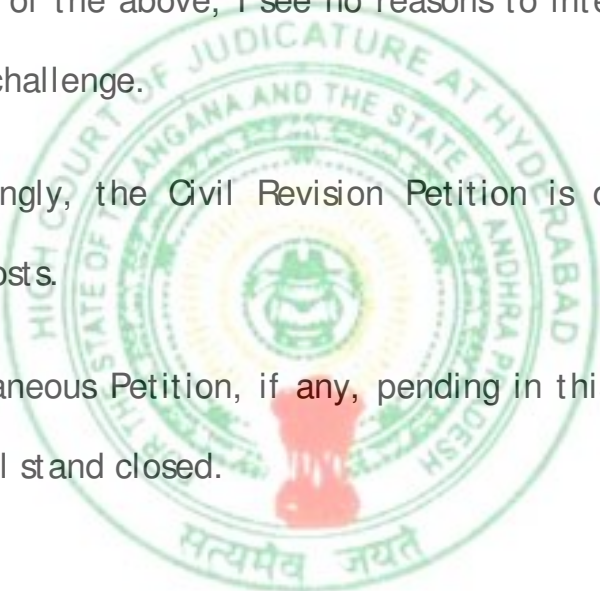
together with interest. Since the defendants failed to pay the advance amount, the plaintiff filed the above suit.

9) It is to be noted that till date no written statement is filed. The grievance of the petitioners is that no notice was given to the defendants demanding the refund of the amount before filing the suit. In my view the same appears to be incorrect for the reason that out of five notices referred to above, in three reply notices there is a specific plea for refund of the amount.

10) In view of the above, I see no reasons to interfere with the order under challenge.

11) Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

12) Miscellaneous Petition, if any, pending in this Civil Revision Petition, shall stand closed.



JUSTICE C. PRAVEEN KUMAR

03.01.2017
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