

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.04.2018

Pronounced on : 27.06.2018
CORAMTHE HON'BLE MR. JUSTICE **P.VELMURUGAN**CRP.(PD).Nos. 3664 & 3803 of 2017 and
CMP.Nos. 17582 & 17718 of 2017

Besser Concrete Systems Ltd.,
No.1/208, Kaliamman Koil Street,
Kelambakkam,
Kancheepuram District - 603 103.

... Petitioner in
both CRPs.

Vs.

Accord Finance & Properties (Pvt.) Ltd.,
Represented by its Director,
Mr.Ramesh Nahar,
Old No.51, New No.111,
G.N.Chetty Road, T.Nagar,
Chennai - 600 017

... Respondent
in both CRPs.

Prayer : Civil Revision Petitions filed Under Article 227 of Constitution of India, to set aside the Fair & Decretal order dated 16.08.2017 in I.A.No.465 of 2017 and I.A.No.768 of 2017 in O.S.No.119 of 2016 on the file of the Principal District Court, Kancheepuram at Chengalpet.

For Petitioner
in both C.R.Ps.: Mr.M.S.Krishnan, SC
for Mr.S.Zohn
for M/s. Fox Mandal Asso.For respondents
in both C.R.Ps.

: Mr.R.Thiagarajan

COMMON ORDER

These Civil Revision Petitions have been filed against the Common Order dated 16.08.2017, made in I.A.No.465 of 2017 and I.A.No. 768 of 2017 in O.S.No.119 of 2016 on the file of the Principal District Court, Kancheepuram at Chengalpet.

2. The revision petitioner in both CRPs, has filed a civil suit for the enforcement of a contract. The said suit was originally filed on the file of the High Court of Madras based on the sale agreement. Though it appears to be a suit for specific performance, the said suit is not simplicitor for the enforcement of a contract. In the said suit, a number of reliefs have been sought for as against the defendant. Since the subject matter of the suit falls in Kelambakkam Village, which falls outside the jurisdiction of this Court, the leave which was originally granted was sought to be revoked by the respondent by filing appeal challenging the order of the learned Single Judge, who has held in favour of the petitioner that if the relief of possession is given up, the suit can be maintained in the original side of the High Court, Madras. C.R.P.No.3803 of 2017 is directed as against the amendment of the plaint and C.R.P.No.3664 of 2017 is directed as against the rejection of the plaint.

3. The respondent/plaintiff has filed a suit in O.S.No.119 of 2016 on the file of the District Munsiff Court at Chengalpattu against the revision petitioner/defendant to vacate and deliver the vacant possession of the suit schedule property. In the said suit, the revision petitioner/defendant has filed an application in I.A.No.465 of 2017 in O.S.No.119 of 2016 to reject the plaint on the ground that the respondent/plaintiff has not correctly valued the suit property and has not paid the proper court fee. Therefore, he filed this application under Order VII Rule 11(b) & (c) of C.P.C. read with Section 151 of C.P.C. The respondent/plaintiff has also filed an application in I.A.No.768 of 2017 in O.S.No.119 of 2016 to amend the prayer in the plaint. Both the applications were taken up by the trial Court and by common order dated 16.08.2017, the trial Court rejected the petition filed by the revision petitioner/defendant and allowed the petition filed by the respondent/plaintiff. Against which, the revision petitioner/defendant filed the two revision petitions in C.R.P.No.3803 of 2017 as against the order passed in I.A.No.768 of 2017 and C.R.P.No.3664 of 2017 as against the order passed in I.A.No.465 of 2017.

4. The learned counsel appearing for the revision petitioner would submit that the respondent/plaintiff has not valued the suit property correctly

and has not paid proper Court fee and the trial Court without considering the above facts, mechanically dismissed the petition filed by the revision petitioner/defendant and allowed the petition filed by the respondent/plaintiff. In support of his contention, the learned counsel for the revision petitioner has reliance on the judgment reported in **"(2017) 2 MLJ - Chandrasekaran Vs. Thagattur Anna Chatram and another"**.

5. The learned counsel for the respondent/plaintiff would submit that as per the agreement, the plaintiff has valued the suit property correctly and paid the proper Court fee. Hence the contention raised by the learned counsel for the revision petitioner is not acceptable. It is the main contention of the respondent/ plaintiff that he has filed the suit based on the lease agreement and valued the suit property and paid the Court fee. Hence the above judgment referred to by the learned counsel for the revision petitioner is not applicable to the case on the hand.

6. Heard the submissions made on either side and perused the records.

7. On a perusal of records, it is seen that the respondent filed a suit in O.S.No.119 of 2016 against the revision petitioner before the District Munsif Court, Chengalpattu for recovery of possession and valued the suit under Section 43(2) of Tamilnadu Court Fees and Suit Valuation Act 1956 and paid the Court fee. It is the settled proposition of law that in any application filed under Order VII Rule 11(b) & (c) of C.P.C. read with Section 151 of C.P.C, to reject the plaint, the trial Court has to see the averments made in the plaint and also documents produced with the plaint. At the same time, the defence taken by the defendant and the documents produced by the defendant need not be looked into. Further in this case, the revision petitioner/defendant filed the application for rejecting the plaint under Order VII Rule 11(b) & (c) of C.P.C. read with Section 151 of C.P.C. It is pertinent to extract the Order VII Rule 11(b) & (c) of C.P.C. as follows :-

"11. Rejection of plaint :- The plaint shall be rejected in the following cases :-

- (a) Where it does not disclose a cause of action;*
- (b) Where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;*

(c) Where the relief claimed is property valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court."

8. On a reading of the above said provisions, it is clear that the trial Court can give a direction to the plaintiff to correct the valuation and to pay the Court fee or to pay the stamp duty within a stipulated time and if the plaintiff failed to comply with the order of the Court within a stipulated time, the Court can reject the plaint. In this case, no such direction was issued by the trial Court. Therefore, the petitioner cannot file the application to reject the plaint under Order VII Rule 11(b) & (c) of C.P.C. read with Section 151 of C.P.C. Therefore, there is no reason to interfere with the order passed by the trial Court in I.A.No.465 of 2017 and the civil revision petition in C.R.P.No.3664 of 2017 is liable to be dismissed.

9. Further, the application filed by the respondent/plaintiff in I.A.No.768 of 2017 to amend the plaint was allowed by the trial Court by observing that no prejudice would be caused to the revision petitioner/defendant, if the plaint is amended. It is also observed that in case the plaint

is amended, due opportunity would be given to the revision petitioner/defendant for filing his additional written statement. In these circumstances, there is no illegality or irregularity in the order passed by the trial Court, and there is no reason to interfere with the order passed by the trial Court. Accordingly, the civil revision petition in C.R.P.No.3803 of 2017 is also liable to be dismissed.

10. In the result, both the civil revision petitions are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

27.06.2018

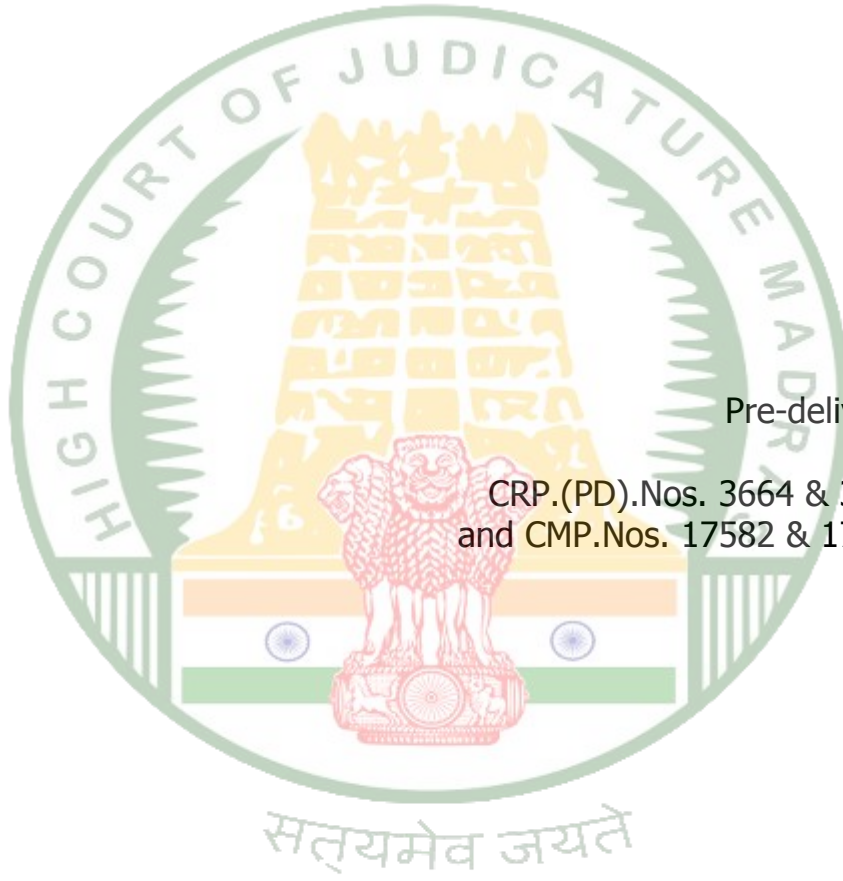
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Speaking order/Non-speaking order
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To

1. The Presiding Officer,
Principal District Court,
Kancheepuram at Chengalpet

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P.VELMURUGAN, J.,
rts



Pre-delivery Order in

CRP.(PD).Nos. 3664 & 3803 of 2017
and CMP.Nos. 17582 & 17718 of 2017

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