

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**CRP(PD).No.358 of 2018
and CMP.No.1881 of 2018

1.P.Chiinarao
2.P.Niranjana Kumar
3.P.Vijayalakshmi
4.Penupatruni Bharati Devi .. Petitioners

Vs

A.R.Srikanth .. Respondent

PRAYER

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order passed in IA.No.669 of 2015 in OS.No.217 of 2010 dated 30.10.2017 on the file of the learned Principal Subordinate Judge, Chengalpet

For Petitioners : Mr.Haja Nazirudeen,
Senior Counsel for
Mr.R.Tholgappian

ORDER

The respondent has filed a suit for specific performance in OS.No.217 of 2010 on the file of the Principal District Court, Chengalpet on the basis of alleged sale agreement dated 10.07.2004. In the aforesaid suit, the first revision petitioner / first defendant has filed written statement on 17.12.2016 and the defendants 2 to 4 / revision

petitioners 2 to 4 have filed written statement in the year 2015. The revision petitioner has denied averments in the plaint filed by the respondent. The revision petitioners have filed an application in IA.No.669 of 2015 under Order 7 Rule 11 of the Civil Procedure Code. In the aforesaid application, the revision petitioners have raised plea under Section 16 (b) of the Specific Relief Act, prayer for specific performance cannot be enforced. Secondly, the respondent has not satisfied, under Form-48 Appendix-A of the Specific Relief Act. Therefore, the relief as prayed for in the suit is barred under Section 16 (c) of the Specific Relief Act. Thirdly, the respondent / plaintiff had chosen to make only conditional offer for payment of necessary consideration only upon execution of the sale deed or at the time of execution of sale deed. There is a violation of essential terms of conditions, the property in the schedule property in the alleged sale agreement, is an agricultural land. The respondent / plaintiff being Non Resident of India, is a specific bar, under provisions of the Foreign Exchange Management Act and Regulations in force. On the aforesaid grounds, the petitioners filed the instant application to reject the plaint. The respondent filed counter statement by disputing entire allegations, by stating that the aforesaid grounds raised by the petitioners / defendants can be raised at the time

of trial in the said suit. The petitioner has not satisfied the requirements under Order 7 Rule 11 (d) of the Civil Procedure Code to reject the plaint, insofar as, Section 23 of the Contract Act and on the basis of the provision of Foreign Exchange Management Act and regulations has been denied in his statement. By considering the aforesaid contentions of the petitioners as well as the respondent, the trial court dismissed the said application. Hence, the revision petitioners have preferred the Civil Revision Petition before this Court.

2. The learned counsel for the petitioners would submit that on perusal of the averments in the plaint and the documents shows that the respondent has breached the essential terms of the contract. Therefore, the relief of specific performance is barred under Section 16 (b) of the Specific Relief Act, insofar as the readiness and willingness is concerned, the respondent has not complied the requirements under Order 6 Rule 3 read with Form 48 of Appendix A of the Specific Relief Act is mandatory as well as in the decision of the Hon'ble Supreme Court, in the case of Church of Christ Charitable Trust and Educational Charitable society represented by its Chairman Vs. Ponniammal Educational Trust represented by its Chairperson / Managing Trustee reported in (2012) 8

SCC 706 and also raised suppression of Act and alteration of sale agreement in the schedule for raising performance of contract and also relied upon the evidence of PW1, in the proof affidavit filed by the petitioners would disclose the plaintiff and defendants were residing in USA on 10.07.2007. Under Transfer of Property Act, 1882, the contract is enforceable under Section 23 of the Contract Act and the same is prohibited and forbidden under Foreign Exchange Management (Acquisition & Transfer of Immovable Property) Regulations, 2000, there is a bar under the regulations, the said suit filed by the respondent is not maintainable.

3. The learned counsel for the petitioner relied upon the decision of Hon'ble Supreme Court in the case of Saleem Bhai and Others Vs. State of Maharashtra and Others reported in (2003) 1 SCC 557, wherein in paragraph 9, it has been held as follows.

“9. A perusal of Order 7 Rule 11 of the Civil Procedure Code makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can

exercise the power under Order 7 Rule 11 CPC at any stage of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPS cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.”

4. Yet another decision relied upon by the petitioners in the case of ITC Limited Vs. The Debts Recovery Appellate Tribunal and

Others reported in 1997 (3) CTC 746 (SC), wherein in paragraph 16, it has been held as follows.

“16.The principles regarding the payment of amounts covered by Bank guarantees or irrevocable Letters of Credit and fairly well settled. They have been discussed in detail in several cases and there is an exhaustive discussion of the principles in UP.Cooperative Federation Ltd Vs. Singh Consultants & Engineers JT 1987 (4) SC 406 : 1988 (1) SCC 174. Reference was also made by the learned counsel before us to the judgment of the Calcutta High Court in United Commercial Bank vs. Hanuman synthetics Ltd. AIR 1985 Cal.96 (to which one of us, suhas C.Sen J. was a party. It will be noticed that the above cases do say that the Bank has to honour the Bank guarantees of Letter of Credit subject of course to the cases of two exceptions where there was fraud or irretrievable injury. In the present case, the contention for the

Bank is based on fraud or misrepresentation by the appellant. That is stated to be the cause of action in the plaint.”

5. In the case of Mrs.Shoba Viswanatha Vs. D.P.Kingsley reported in 1996 (1) CTC 620, wherein this Court has held that relief of specific performance is discretionary and court has to take into consideration statutory rights of Reserve Bank of India and enforcement of contract against provisions of law will amount to enforcement of illegal contract. On the present case on hand, the respondent has disputed the allegations of the averments in the written statement filed by the revision petitioner. Now the respondent has filed proof affidavit and evidence has been commenced. When it is specifically denied in the reply statement that the respondent is a Non Resident of India at the time of execution of sale agreement, it can be decided at the time of trial. In the case of Church of Christ Charitable Trust and Educational Charitable society represented by its Chairman Vs. Ponniammal Educational Trust represented by its Chairperson / Managing Trustee reported in (2012) 8 SCC 706, it has been stated that the documents on which cause of action, based is not produced, on this ground rejection of

plaint for non-disclosure of cause of action. In the case of suit of specific performance of agreement of sale of property, where cause of action was based on registered deed of power of attorney, the document must be produced and if they have not produced, the plaint can be rejected under Order 7 Rule 11 (a) of the Civil Procedure Code, for non disclosure in cause of action, against the sale agreement. Therefore, there is no force on the contention of the petitioner.

6. In the decision of the Hon'ble Supreme Court in the case of P.V.Guru Raj Reddy represented by GPA Laxmi Narayan Reddy and another Vs. P.Neerandha Reddy and others reported in (2015) 8 SCC 331, wherein it has been held as that while exercising power under Order 7 Rule 11 of CPC only the averments in plaint have to be read as a whole and stand of defendants in written statement or in application for rejection of plaint is wholly immaterial at that stage and plaint can be rejected only if the averments made therein ex facie do not disclose a cause of action or on a reading thereof, the suit appears to be barred under any law. The said fact is disputed by the respondent in his counter statement filed in the aforesaid IA, there is a disputed fact and can be decided at the time of trial in the suit, after marking of documents. The

other contentions of the petitioner, Form 48 Appendix A of the Civil Procedure Code read with Section 16(c) of the Specific Relief Act has not satisfied to prove that the plaintiff is ready and willing to perform his part of obligation. The said fact has to be decided at the time of trial in the suit. The specific case of the petitioners is that under Foreign Exchange Management (Acquisition & Transfer of Immovable Property) Regulations, 2000. Since the schedule property is classified as agricultural land as per the revenue records, there is a specific bar under Foreign Exchange Management (Acquisition & Transfer of Immovable Property) Regulations, 2000. The respondent has specifically denied in his counter statement by stating that the master plan approved by the DTCP, it is classified as urbanisable use zone. Hence, this contention of the petitioner can be decided at the time of trial by marking of the documents and evidence adduced by the parties.

7. In the light of the above, the contentions raised by the petitioner are mixed question of fact and law and the same can be decided at the time of trial in the suit. Further, the suit is of the year 2010. PW1 has filed proof affidavit and the grounds raised by the petitioners can very well be agitated before the court below. Therefore,

the order of court below is sustained. There is no error or illegality in the order passed by the court below.

8. Hence, the Civil Revision Petition fails and the Civil Revision Petition stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

20.03.2018

Speaking/Non-Speaking order
Index :Yes/No
Internet:Yes/No
lok



WEB COPY

To

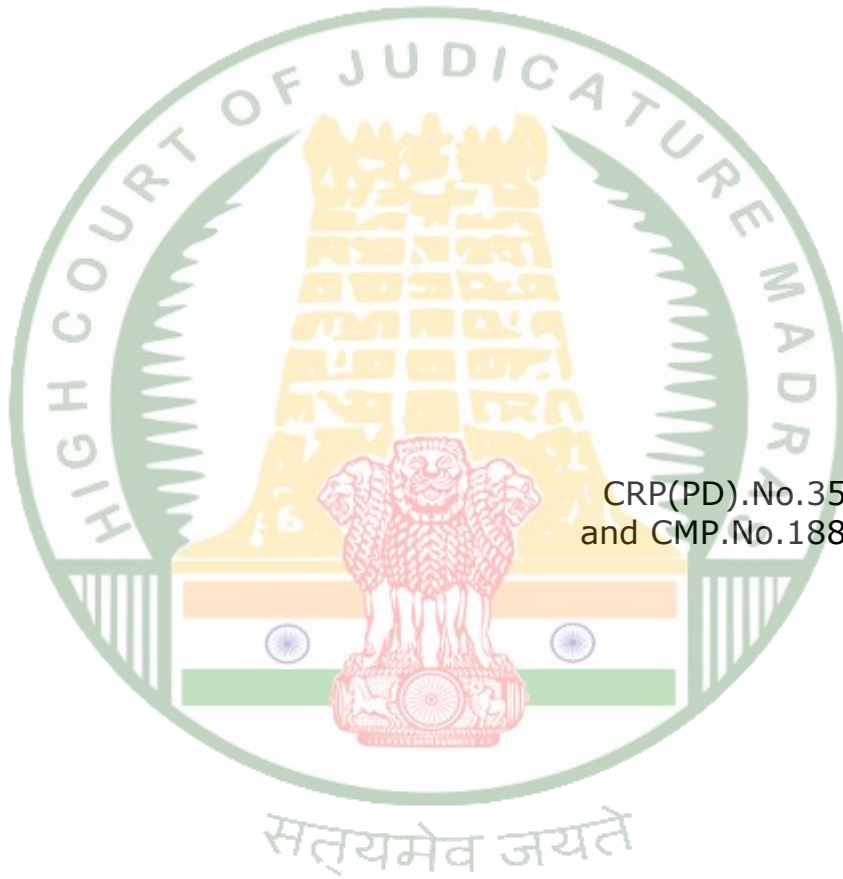
The learned Principal Subordinate Judge,
Chengalpet



WEB COPY

D. KRISHNAKUMAR J.,

lok



CRP(PD).No.358 of 2018
and CMP.No.1881 of 2018

WEB COPY

20.03.2018