

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.07.2018

Delivered on : 20.07.2018

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA
C.R.P.(PD).No.1704 of 2006
and M.P.No.1 of 2006

M/s.Sri Krishna Tiles & Potteries
(Madras) Private Limited
rep. by its Director,
Mrs.Radhika Santhanakrishnan
18, Krishnaswamy Avenue,
Chennai-600 004. Petitioner/ Defendant

Vs

Kumara Vijayam Flat Owners' Association,
No.99, Royapettah High Road,
Mylapore,
Chennai-600 004. Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India against the order and decree dated 30.11.2006 passed in I.A.No.4608 of 2006 in O.S.No.6651 of 2005 on the file of the learned II Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.V. Kuberan
For Respondent : No appearance

ORDER

The above Civil Revision Petition is directed against the order dated 30.11.2006 passed by the learned II Assistant Judge, City Civil Court, Chennai, dismissing I.A.No.4608 of 2006 filed by the petitioner herein to reject the plaint filed in the suit O.S.No.6651 of 2005.

2.The facts in a nutshell as narrated herein below:

(a)The respondent Association represented by its President has filed the suit O.S.No.6651 of 2005 on the file of the learned II Assistant Judge, City Civil Court, Chennai, for permanent injunction, restraining the petitioner herein, its men, agents, representatives or any other person/persons acting through or on behalf of him from using or letting out the suit property for any other purpose other than residential purpose. The suit has been laid on the basis that as per the Agreement of Project Promotion and Construction entered into by the petitioner herein and the purchaser of the flats in the complex known as Kumara Vijayam, there is a prohibition for using the flat for any other purpose than the residential purpose and that the petitioner herein in the last week of April 2002 was taking steps to convert the suit property into a pucca commercial place and the Association had sent a Circular to all the members to adhere to the conditions stipulated in Clauses 4(d) and (e) of the Promotion Agreement. The petitioner herein, who stopped the work after receiving the Circular revived the work once again in the last week of September 2005 and therefore, the respondent was constrained to institute the suit.

(b).The petitioner as defendant resisted the same by inter alia contending that the petitioner was the owner of the original building, where they were operating their Registered Office since January 1973 and even after the new complex was put up, they are continuing to have their Registered Office in the same place. The petitioner had also questioned the locus of the President to file the suit since as per the bye-law, the power to sue or be sued was only vested with the Secretary of the Association. The petitioner had also pleaded the defence of acquiescence since the respondent who was aware that the suit property was being used as the Registered Office of the petitioner right from their coming into possession of the respective flats have not questioned the same all these years and that apart, even in the Agreement of Project Promotion and Construction, it is mentioned that 40 sq. mts in the Complex would be utilized for commercial purpose in line with the Development Control Rules and therefore, an injunction against this Statutory provision was hit by Section 41 of the Specific Relief Act. The Written Statement came to be filed in January 2006.

(c).In March 2006, the petitioner herein filed the petition impinged in the present revision. The grounds on which the petitioner sought to reject the plaint are as follows:

(i)Though the plaint showed that the suit is filed on behalf of the Association by its President, a representation / endorsement in the reverse of the plaint to a return made by the Registry would indicate that the suit was filed by the President in his individual capacity. Therefore, the suit has been laid on a false representation.

(ii)Even assuming without admitting that the suit is filed by the Association only the Secretary can institute the suit and not the President as per the Bye-Law of the respondent Association and therefore, all the pleadings including the proof affidavit is liable to be rejected.

(iii)Suit is hit by Section 41(g) of the Specific Relief Act as the respondent has acquiesced in the usage of the flat by the petitioner as an Office.

(d)This petition was inter alia resisted by the respondent on the ground that:

(i)none of the contingencies for rejecting the plaint as stated in Order VII Rule 11 of the Code of Civil Procedure is present.

(ii)The President, who is also a flat owner and enjoying a common interest, can still maintain the suit as it is protected by the provisions of Order I Rule 1(a) and (b) of CPC.

(iii)Failure to obtain leave to sue in a representative capacity is merely an irregularity and not an illegality.

Therefore, they sought for a dismissal of the petition.

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3.The learned II Assistant Judge, City Civil Court, Chennai, after hearing both parties dismissed I.A.No.4608 of 2006 by his order dated 30.11.2006 stating that it is only the contents of the plaint that has to be looked into to find out whether it discloses a cause of action and the plaint in the instant case does disclose a cause of action.

4.It was also brought to my notice that this order of dismissal came to be passed by the learned II Assistant Judge, City Civil Court, Chennai, despite the petitioner bring to his notice about the Stay granted by the learned Principal Judge, City Civil Court, Chennai, in C.M.P.No.648 of 2006 in Tr.O.P.No.1520 of 2006 on 27.03.2006 and which was periodically extended and despite this order, the learned Judge has proceeded to pass orders.

5.The learned counsel originally appearing for the respondent filed a Memo stating that she has returned all the papers to the respondent along with a consent for change of vakalat and therefore, the Registry was asked to verify, if notice was served on the respondent Association and if so, to print their name or else to take notice. It is also seen that the sole respondent has been served, but has not cared to have themselves represented. The name of the respondent was printed, when the matter came up on 13.07.2018 and there was no representation. Hence, this Court proceeded to pass orders after hearing the learned counsel for the petitioner.

6.Heard the learned counsel appearing for the petitioner and perused the materials available on record.

7.Without traversing into the merits of the case but considering the fact that the learned II Assistant Judge, City Civil Court, Chennai proceeded to pass orders in I.A.No.4608 of 2006 in O.S.No.6651 of 2005, when Stay was in force, I deem it fit to set aside the order dated 30.11.2006 in I.A.No.4608 of 2006 in O.S.No.6651 of 2005 as the same is a nullity.

In the result, the order dated 30.11.2006 passed by the learned II Assistant Judge, City Civil Court, Chennai in I.A.No.4608 of 2006 in O.S.No.6651 of 2005, is set aside and the same is remitted back to the learned II Assistant Judge, City Civil Court, Chennai, to decide and pass orders in I.A.No.4608 of 2006 in O.S.No.6651 of 2005 within a period of one month from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

mps

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Sd/-

Assistant Registrar(CO)

Sub Assistant Registrar

To
The II Assistant Judge,
City Civil Court,
Chennai.

+1 CC TO M/S.RANK ASSOCIATES Advocate SR.NO. 48587

Pre-delivery order in
C.R.P.(PD).No.1704 of 2006
and M.P.No.1 of 2006

CNR(CO)
ASK(16/08/2018)



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