

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.682 OF 2018

ORDER:

This revision petition is preferred under Article 227 of Constitution of India challenging the order dated 28.12.2017 in I.A.No.1989 of 2017 in O.S.No.104 of 2012 passed by the XXVII Additional Chief Judge, City Civil Court, Secunderabad, whereby the petition filed under Order VI Rule 17 of Code of Civil Procedure (for short, hereinafter, referred to as "C.P.C.") was allowed.

The revision petitioner is the respondent No.3 in the said I.A.No.1989 of 2017. The respondent Nos.1 and 2 are the plaintiffs in the main suit and they filed the suit for specific performance initially for the primary relief of specific performance and the petitioner herein was impleaded as defendant No.3 being the mortgagee. The respondent Nos.1 and 2/plaintiffs filed a petition under Order VI Rule 17 of C.P.C. read with Section 22 of the Specific Relief Act seeking amendment of the plaint for refund of advance amount paid, but the Court while allowing the petition permitted the petitioners therein to amend the relief as mentioned in the petition, where the respondent Nos.1 and 2/plaintiffs claimed alternative relief of refund of advance amount against all the three defendants though the petitioner/defendant No.3 did not receive any amount. Therefore, at best the defendant Nos.1 and 2, vendors of the plaintiffs/respondent Nos.1 and 2 herein are liable to refund the amount as the petitioner/defendant No.3 is not liable to pay any amount. Therefore, the amendment is limited only to claim relief against the respondent Nos.3 and 4 herein/defendant Nos.1 and 2 before the trial Court in the suit.

Hence, the order passed by the Court below is modified and permitted the respondent Nos.1 and 2/plaintiffs to amend the plaint as follows:

“Relief b 1 after (b):

In case if the Hon’ble Court refuses to grant a relief for specific performance. In such an event, the **respondent Nos.1 and 2/defendant Nos.1 and 2** be directed to refund the earnest money of Rs.17,00,000/- along with interest @ 36% per annum from the date of filing the suit till the date of final payment along with compensation to be awarded for the breach of the contract by awarding damages of a sum of Rs.5,00,000/- in addition to the interest in the interest of justice.”

With the above modification, the revision petition is disposed of. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

06.02.2018

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