

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.967 OF 2018

ORDER:

This civil revision petition is filed under Article 227 of Constitution of India challenging the order dated 10.11.2017 passed in I.A.No.3974 of 2017 in O.S.No.590 of 2008 by the Chief Judge, City Civil Court, Hyderabad, whereby, the petition filed under Order XXVI Rule 9 read with 151 of Code of Civil Procedure (for short "C.P.C.") was dismissed.

The petitioner filed petition under Order XXVI Rule 9 of C.P.C. as there is a dispute with regard to measurement of completed construction as per the agreement between the parties since the respondent filed suit for specific performance and damages etc. while alleging that the petitioner herein violated the terms and conditions of the agreement i.e. General Power of Attorney (G.P.A.) – cum – Memorandum of Understanding (M.O.U) entered into by the petitioner and respondent and failed to handover the built-up area of 1740.32 square feet. To substantiate his contention respondent examined P.W.2 and marked the report of engineer – M/s.Sigma Consultants dated 15.09.2008 and as per the report, P.W.2 measured the built-up area and on the strength of the same, it is contended that the petitioner violated the terms of G.P.A.-cum-M.O.U. and did not deliver the built-up area of 1740.32 square feet.

When the suit is filed for specific performance and damages alleging that the petitioner violated the terms and conditions of G.P.A. – cum – M.O.U. and failed to deliver built-up area of 1740.32 square feet, it is for the respondent to establish that the petitioner

violated terms and conditions of G.P.A. – cum – M.O.U. by adducing satisfactory evidence. To substantiate his contention, he examined P.W.2 after examining the petitioner herein as D.W.1, and the evidence of P.W.2 is clear that he did not take measurements of balcony and staircase. Therefore, this piece of evidence is suffice to decide the real dispute between the petitioner and respondent and the evidence of P.W.2 is helpful to the petitioner and not to the respondent. Therefore, when the respondent failed to discharge initial onus, the question of shifting onus to the petitioner does not arise. Therefore, question of appointment of Advocate Commissioner to establish the case of the petitioner herein also does not arise in the peculiar facts and circumstances of the case in view of the evidence adduced by the respondent herein. Hence, I find no need to appoint Advocate Commissioner for deciding the controversy between the parties as there is sufficient evidence on record to establish the case of the petitioner herein. Consequently, the civil revision petition is liable to be dismissed.

In the result, the civil revision petition is dismissed. No costs. However, the trial Court is directed to decide the suit independently with reference to initial onus of proof and discharge of burden and shifting of burden, which are basic principles for appreciation of evidence on record and decide the matter in accordance with law.

Consequently, miscellaneous applications pending if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

12.03.2018
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