

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

W.P.No.12666 of 2018

Date: 27.09.2018

Between:

M/s.Prajay Properties Pvt. Ltd.
and Prajay Engineers Syndicate Ltd.,
having its registered office at
D.No.8-2-293/82/A, Plot No.1091A
Road No.41, Near Peddamma Temple,
Jubilee Hills, Hyderabad,
rep. by its Managing Director
Mr.D.Rohith Reddy

... Petitioner

And

The Permanent Lok Adalat for
Public Utility Services,
Kadapa,
rep. by its Chairman/Registrar
and another.

...

Respondents

Counsel for the Petitioner : Mr. N.M.Krishnaiah

Counsel for the Respondents : Mr.J.Anil Kumar for R1

Mr.P.Durga Prasad for R2

The Court made the following:

Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed by the respondent in P.L.A.C.No.18 of 2016 on the file of respondent No.1 – Lok Adalat, for issue of mandamus, to set aside Award dated 22.06.2017 passed by the said respondent.

2. We have heard Mr.N.M.Krishnaiah, learned counsel for the petitioner, Mr.J.Anil Kumar, Standing Counsel for A.P. Legal Services Authority for respondent No.1 and Mr.P.Durga Prasad, counsel for respondent No.2.

3. Respondent No.2 entered into an agreement of sale on 09.12.2013 with the petitioner, for purchase of two flats bearing Nos.503 and 802 in Tower No.6 and 7 of Prajay Mega Polis for a total sale consideration of Rs.36,09,765/- and Rs.38,51,730/- respectively. She made advance payments of Rs.7,21,953/- and Rs.7,94,149/- for the two flats respectively. It is the pleaded case of respondent No.2 that as the petitioner failed to take up construction work, she sought for refund of the advance payments and that cheques dated 10.11.2015 and 25.12.2015 issued by the petitioner, got dishonoured due to insufficient funds. Later, on receipt of notice from respondent No.2, the petitioner made payment of Rs.13,75,000/- through RTGS to respondent No.2. Respondent No.2 approached respondent No.1, which registered the complaint as

P.L.A.C.No.18 of 2016 for refund of Rs.1,63,410/- towards principal along with interest @ 24% p.a.

4. On receipt of notice from respondent No.1, the petitioner filed a counter affidavit, wherein it has objected to the jurisdiction of respondent No.1 to entertain the dispute raised by respondent No.2, raising a two fold averment, namely, (i) that the petitioner is not a public utility concern and that, therefore, respondent No.1 has no jurisdiction to adjudicate the dispute on merits and (ii) that respondent No.1 also does not have territorial jurisdiction to entertain the complaint. Respondent No.1 has rejected both these objections in the impugned order.

5. At the hearing, Mr.J.Anil Kumar, learned counsel for respondent No.1 and Mr.P.Durga Prasad, learned counsel for respondent No.2 relied upon the gazette notification dated 16.02.2016 published by the Government of India, declaring housing and real estate services as public utility services under clause (b) of Section 22A of Legal Services Authority Act, 1987. In the light of this notification, the learned counsel for the petitioner fairly conceded that the objection to the jurisdiction of respondent No.1, is not sustainable.

6. The learned counsel for the petitioner however submitted that even before his client has filed a statement on the merits of the claim

of respondent No.2, respondent No.1 has adjudicated the dispute, merely based on the counter affidavit filed by the petitioner, which was confined to raising the objections regarding jurisdiction. A perusal of the impugned order shows that respondent No.1 has observed that initially it has suggested to the petitioner to pay at least the loss amount to respondent No.2 and, accordingly, posted the case to 18.05.2017, for reporting on the said suggestion, by the petitioner. That, on 18.05.2017, both the parties reported that no mutually agreed settlement could be arrived at, that the case may be decided on merits and that, accordingly, the case was heard on merits. It is thus evident from the contents of the impugned award that instead of the petitioner requesting for time for filing statement, it has agreed for deciding the case on merits and, accordingly, its counsel made his submissions on merits. Therefore, the petitioner cannot turn round and complain that respondent No.2 has not given it an opportunity to file a statement. Nevertheless, we have heard the learned counsel for the petitioner on merits.

7. It is not in dispute that on respondent No.2 approaching the petitioner, it has executed cancellation of agreement of sale on 15.04.2015. Surprisingly, the agreement does not contain any clause for refund of the advance consideration, with or without interest. The preamble of the agreement shows that respondent No.2 has requested the petitioner to cancel the agreement of sale dated

09.12.2013 'due to the prevalent political situation'. The learned counsel for the petitioner did not dispute the fact that clause (6) (ii) of the agreement of sale dated 09.12.2013, which envisages cancellation in the event of breach of contract from the purchaser's end and which also provides for forfeiture of money to the extent of 20% of the total cost, is not attracted to the case on hand. Therefore, in the absence of any stipulation that respondent No.2 is not entitled to refund of the advance sale consideration without payment of interest, it cannot be said that award of reasonable interest on the advance sale consideration received by the petitioner, is either illegal or improper. On the contrary, the petitioner having taken advantage of utilizing the money of respondent No.2 for nearly two years, cannot make unjust enrichment by denying reasonable interest to respondent No.2. Viewed from this perspective, we do not find any illegality or impropriety in the approach of respondent No.1 in awarding interest @ 12% p.a. till the date of filing of the petition and with further interest @ 6% p.a. from the date of filing of the petition.

8. On the analysis as above, we are of the opinion that the order of respondent No.1 does not suffer from any illegality, warranting interference of this court under Article 226 of the Constitution of India.

9. The writ petition is, accordingly, dismissed.

10. As a sequel to the dismissal of the writ petition, I.A.Nos.1, 2 and 3 of 2018 are disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad,J)

Date: 27th September, 2018

msb



