

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Tuesday, the Tenth day of December Two Thousand Nineteen

PRESENT

THE HON`BLE MR JUSTICE N. KIRUBAKARAN

AND

THE HON`BLE MR JUSTICE P. VELMURUGAN

CMP No.13214 of 2018

IN OSA.265/2017

G. SUNIL PANICKAR

[PETITIONER]

Vs

1 G.N. GOMATHY

[RESPONDENTS]

2 M. VIJAYA

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to permit me to amend the prayer in Suit C.S. No 286 of 2013 to add the following after plaint paragraph 17

" 17 (a) The plaintiff by way of abundant caution and without prejudice to his right to claim the relief of specific performance, seeks for refund of the advance amount of Rs.20,00,000/- together with interest at 24% p.a in the alternative should this Hon'ble court not grant the relief of specific performance of the agreement of sale dated 4.3.2010. The plaintiff states that the advance amount of RS 20,00,000/- was paid as early as 4.3.2010 as acknowledged in the sale agreement and the plaintiff has waited all these years to develop the suit property believing that the respondents would adhere to the agreement terms. It is an admitted fact that the transaction is a commercial transaction and the plaintiff is entitled to refund of the advance amount together with interest at 24% p.a from the date of payment of advance to the respondents on 4.3.2010 till date of payment in full. The plaintiff's seeking alternate relief of refund of advance with interest without prejudice to his right to claim specific performance. The plaintiff is entitled to a charge on the suit schedule property till payment of the advance amount of Rs.20,00,000/- together with interest at 24% p.a..

After prayer paragraph 19(a)

'or in the alternative direct the respondents to jointly and severally pay the plaintiff the sum of Rs.20,00,000/- together with interest at 24% p.a. From 4.3.2010 till date of realization with a charge on the Schedule property for due realisation in full'

(iii) this Court should not be pleased to pass such further or other orders in the circumstances of the case?.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.M.VIDYA, Advocate for the petitioner and of MRS.RATHNA THARA, Advocate for the Respondent the court made the following order:-

(Order of the Court was made by N.KIRUBAKARAN, J.)

This petition is filed to permit the petitioner to amend the prayer in suit C.S.No.286 of 2013 by adding paragraph '17 a)' and the terms after prayer paragraph '19(a)' respectively after plaint paragraph 17 and 19(a) as mentioned in the judge's summons.

2. Heard M/s.M.Vidya, appearing for the petitioner and Mrs.Rathna Thara appearing for the respondents.

3. Even though the learned counsel for the respondents would oppose inclusion of paragraphs after 17 and 19(a) by way of amendment, a perusal of the paragraphs proposed to be amended is only with regard to the alternate prayer of refund of Rs.20,00,000/- along with interest at 24% per annum. Merely because the appellant would state that the transaction is a commercial transaction, it would not become commercial transaction unless the party pleading commercial transaction proves the same. In view of the same, the said objection of the learned counsel for the respondents is rejected. The petition for amendment is ordered as prayed for.

14. Paragraphs 17 a) and 19(a) as mentioned in the judge's summons are directed to be incorporated in the plaint. Registry to carry out consequential amendments in the plaint accordingly.

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10/12/2019

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High Court, Madras - 600 104.

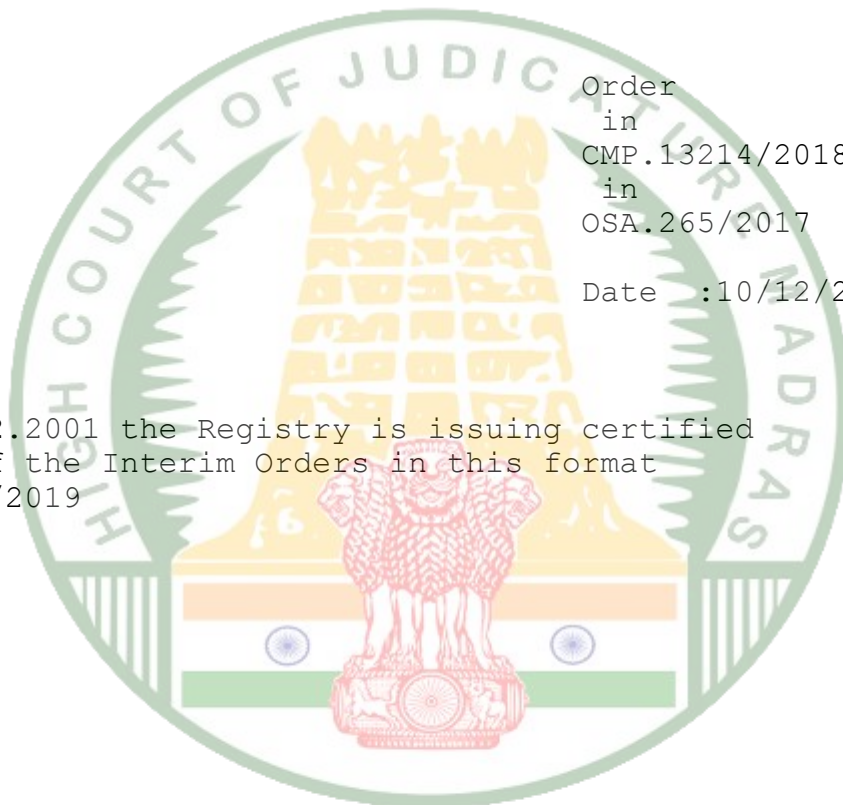
TO

1 THE SUB ASSISTANT REGISTRAR
ORIGINAL SIDE, HIGH COURT, CHENNAI 104.

2 THE SECTION OFFICER,
RECORDS SECTION, ORIGINAL SIDE,
HIGH COURT, CHENNAI 104.

3 THE RECORD KEEPER,
ORIGINAL SIDE (RECORDS), HIGH COURT, CHENNAI.

C.C. to M/S.M.VIDYA Advocate on payment of necessary charges



Order
in
CMP.13214/2018
in
OSA.265/2017

Date :10/12/2019

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