IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12..12..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CIVIL REVISION PETITION (PD) NO.3925 OF 2019
AND
C.M.P.NO.25933 OF 2019

M/s.Saswatha Building Promoters Kovai Pvt Ltd.,
A Private Limited Company,
Rep. by its Director J.Arun,
Registered Office : 229, Trichy Road,
Ondipudur, Coimbatore 641 016. ... Petitioner

-Versus-

Mrs.Sakunthala ... Respondent

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 05.08.2019 made in I.A.No.1 of 2019 in O.S.No.368 of 2015 by the learned IV Additional District and Sessions Judge, Coimbatore.

For Petitioner : Mr.R.Nagasundram

ORDER

This civil revision petition is directed against the order of the learned IV Additional District Judge, Coimbatore, allowing the application filed by the respondent/defendant seeking to receive certain documents on file for the purpose of letting in evidence on behalf of the defendant.

2. The petitioner/plaintiff filed the suit in O.S.No.368 of 2015 for recovery of money against the respondent/defendant. The petitioner is the promoter and the respondent is the landlord. According to the petitioner, the respondent and himself entered into a joint development agreement for promoting residential apartments. According to the petitioner/plaintiff, as per the joint development agreement, the developer and the landlord are liable to pay service tax service in proportionate to their shares. The petitioner/plaintiff had discharged their tax liability, but, the respondent/defendant failed to pay the service taxes. The respondent/defendant denied their liability. Hence, the suit. The respondent/defendant filed her written

statement inter alia contending that as per the Finance Act, liability to pay the service tax is only on the promoter and the Ministry of Finance had issued various circulars in this regard and the defendant need not pay service tax.

3. Subsequent to the filing of the written statement, the respondent/defendant filed an application under Order VIII, Rule 1(A)(3) of CPC seeking to condone the delay in producing the circulars issued by the Ministry of Finance so as to mark the same in evidence. That application was vehemently opposed by the petitioner/plaintiff. The documents which are sought to be marked in evidence do not fulfill the ingredients of Section 37 and 57(7) of the Evidence Act and therefore, for the lack of necessary ingredients, the same shall not be permitted to be marked in evidence. The trial court on considering the available materials, allowed the application and held that the documents could be received on file subject to the proof and relevancy and admissibility at the time of trial. Challenging the same, the petitioner/plaintiff is before this court with this civil revision petition.

4. I have heard the learned counsel for the petitioner and perused the records carefully.

5. It is the definite case of the respondent/defendant that under the Finance Act and as per the circulars issued by the Central Government, the liability to pay the service tax is on the promote and not on the landlord and in order to establish the said fact, she sought to mark those circulars on her side.

6. The learned counsel appearing for the petitioner would contend that petitioner/plaintiff never disputed the admissibility of the circulars which are sought to be marked in evidence, but, they disputes only mode and method of proof of the documents which are circulars issued by the Department of Income Tax. According to the learned counsel, the witness through whom the documents are sought to be marked was not a party to the joint development agreement and as such those circulars cannot be marked through him. In support of his contention, the learned counsel for the petitioner place reliance heavily upon the judgement in the case of R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P. Temple [Appeal (Civil) No.10585 of 1996] dated 08.10.2003].

7. From a carefully perusal of the impugned order and the other available materials, it could be seen that what is sought to be marked in evidence on the side of the defendant are only circulars issued by the Ministry of Finance, Government of India. They are public documents and therefore, there is a presumption attached to them under Section 37 of The Evidence

Act. The court below placing reliance upon the judgement of the Hon'ble Supreme Court in Bipin Shantilal Panchal v. State of Gujarat, AIR 2001 SC 1158 received the documents in question subject to the proof and relevance and admissibility of the same at the time of trial. If at all, the petitioner/plaintiff has got any doubt regarding the mode of proof and relevancy of the document, it is always open to them to raise objection before the court below at the time of trial and he cannot object to receive the documents on file. The court below after having considered the legal position on the subject has rightly allowed the application and received the document, however, subject to the proof and relevancy in which this court does not find any irregularity or illegality warranting interference.

In the result, this Civil Revision Petition is dismissed accordingly. However, considering the fact that the suit is pending since 2015 and the evidence on the side of the plaintiff is over, the court below is directed to proceed with the trial and dispose of the suit within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The IV Additional District and Sessions Judge, Coimbatore.

+1cc to Mr.R.Nagasundram, Advocate, S.R.No.103614

Civil Revision Petition
No.3925 of 2019

EV(CO)
CS/20/02/2020