IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16..12..2019
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.3962 of 2019
and
C.M.P.No.26121 of 2019

1.M/s.Century Leathers (P) Ltd.,
Rep. by its Directors,
820, Joshi Path, Alsoat,
2168, Gurudwara Road,
Karol Bagh, New Delhi 110 005.

2.Avatar Singh
3.Harkirat Singh
4.Ripudaman Bindra
5.Simmi Singh
6.Govind Preet Bindra

... Petitioner

-Versus-

1.R.Krishnamoorthy

2.M/s.HDFC Bank Limited,
Rep. by its Manager,
D.No.2212, Gali No.64-65, J Block,
Gurudwara Road, Karol Bagh,
New Delhi 100005.

... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and Decreetal Orders order dated 12.09.2019 made in I.A.No.374 of 2018 in O.S.NO.27 of 2018 by the learned Principal Subordinate Judge, Chengalpattu.

For Petitioner : K.Doraisami, Senior Counsel for A.Muthumani Doraisami

For Respondent(s) : Mr.E.Omprakash, Senior Counsel for Mr.P.Elaya Rajkumar for R1

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ORDER

This revision petition has been filed against the order passed by the learned Principal Subordinate Judge, Chengalpattu, dismissing the application filed by the petitioners herein, under Order VII, Rule 11 of CPC, seeking to reject the plaint in O.S.No.27 of 2018 on the ground that, it does not disclose any cause of action and it is barred under Section 41(h) of the Specific Relief Act.

2. This revision petition was listed on 05.12.2019 for admission. On that date, after having heard the learned senior counsel for the petitioner and the learned senior counsel for the 1st respondent/ caveator, when this court was about to pass order dismissing the C.R.P. finding no merits in the revision, the learned counsel appearing for the petitioners submitted that petitioners would be satisfied if the court below is directed to dispose of the suit within a time frame. The learned counsel appearing for the 1st respondent / caveator would submit that application filed by the 1st respondent to call for the original memorandum of understanding (MOU) which has been lying with the 7th defendant bank's safety locker, is also pending that application also be disposed of in short time. Taking into account the submissions made on either side, this court disposed of the revision petition. The relevant portions of the order passed by this court read thus:

> "7. Considering the above submissions, without going into the merits of the case the Principal Subordinate Judge is directed to dispose the suit in O.S.No.27 of 2018 within a period of 3 months from the date of receipt of a copy of this order, on merits and in accordance with law, after full trial, and the parties are directed to co-operate with the trial. So far as the application filed by the first respondent/plaintiff to call for the original Memorandum of Understanding in I.A.No.80 of 2018 is concerned, the trial Court is directed to pass order within a period of one week from the date of receipt of a copy of this order."

3. After having received the copy of the order, the learned senior counsel for the petitioner made a mention before this court that the CRP may be disposed on merits. Therefore, this court directed the revision to be listed again before the court for "Being Mentioned". Accordingly, this revision is listed

today. When this court has posed a query to the learned counsel for the 1st respondent, he has got no serious objection for recalling the order passed earlier and for passing orders on merits afresh. Accordingly, the order passed by this court on 05.12.2019 is hereby recalled and this court pass the following order.

4. The 1st respondent herein is the plaintiff in the suit. The petitioners herein are the defendants 1 to 6, and the 2nd respondent herein is the 7th defendant (For the sake of convenience, the parties will hereinafter be referred to as per their array before the court below). The suit has been filed for permanent injunction restraining the defendants 1 to 6 , their men, agents, successors, from in any manner dealing, alienating or encumbering the suit schedule property adverse to the interest of the plaintiff as per the MOU and the letter dated 14.05.2005; and for mandatory injunction directing the defendants 1 to 6 to produce and hand over the original MOU dated 14.05.2015 now lying in the joint custody in the safety locker of the 7th defendant as and when the same is brought to the custody of the court.

5. In the plaint it has been averred that, plaintiff is a company engaged in property development and the defendants 1 to 6 who are the owners of the suit schedule property approached the plaintiff for developing and marketing the property. After deliberation and understanding, the defendants agreed to execute a deed of power of attorney in favour of the plaintiff to deal with the property on payment of specified amount and a MOU was also executed between them. It was the understanding between the parties that the memorandum of undertaking should be kept in a safety locker at the 7th defendant bank in the account to be operated by the plaintiff and the defendants jointly. At the time of entering into the MOU, the plaintiff had paid a sum of Rs.4 crores to the 1st defendant. The defendants 2 to 6 had issued a letter dated 14.05.2015 acknowledging the MOU and permitting the plaintiff to enter into the land for the purposes of inspection and cleaning the property for development. It is further averred that as per the MOU, the sale consideration was fixed at Rs.84,25,00,000/- out of which a sum of Rs.4 crores has already been paid and another sum of Rs.21 crore was agreed to be paid within 30 days from the date of singing of the memorandum of agreement. As per clause 22 of the MOU, the 1st respondent had to produce the original title deeds as and when required by the plaintiff or his nominees or bankers or financial institutions, who may be purchasing the developed plots or funding the project. But, the defendants 1 to 6 were not in a position to produce the original title deeds and they

informed the plaintiff that the original title deeds are missing and have become untraceable. In the mean while, the plaintiff had identified four prospective buyers for purchase of four portions of the property and the 1st defendant representing the 2nd respondent has also executed four sale deeds on 14.12.2015, which were duly registered and the sale considerations were also paid to the defendants. Subsequently, the defendants have failed to come forward to fulfill their obligations and wantonly sought time to frustrate the terms of the MOU. The defendants also taking steps to deal with the property with third parties. Hence, the plaintiff had no other option except to file the suit for the relief as stated supra.

6. Pending suit, the defendants filed the application under revision, seeking to reject the plaint on the ground that, the plaint does not disclose any cause of action and is barred by law. According to the defendants, the relief sought for cannot be granted as the memorandum of understanding was never honoured by the plaintiff and it was not acted upon. The plaintiff himself rescinded the same and requested the defendants 1 to 6 to absolve him from all the obligations arising out of the MOU and no consideration was paid to the defendants 1 to 6 as earnest money and possession of the suit property was never been parted with by the defendants 1 to 6. The plaintiff failed to discharge his obligations including payment of consideration within the time frame. Hence, the MOU stood cancelled as per clause 19. The plaintiff has failed to establish a cause of action for the suit. That apart the suit is not maintainable as the same is hit by section 41(h), of The Specific Relief Act. When an equally efficacious remedy is available to the plaintiff, without availing such remedy, the petitioner cannot maintain the suit for injunction.

7. The learned Subordinate Judge dismissed the application holding that the plaint disclose a cause of action and whether the MOU has been rescinded or not could only be decided after full trial of the suit. The learned Judge further held that whether the suit is barred by Section 41(h) of the Specific Relief Act cannot be decided at the threshold and the same could be decided only after full trial. Challenging the above said order, the defendants 1 to 6 are before this court with the instant revision petition.

8. I have heard the learned senior counsel for the defendants 1 to 6 and the learned senior counsel for the plaintiff / caveator and also perused the records carefully.

9. It is a well settled position of law that, while exercising power under Order VII, Rule 11 of CPC, the averments in the plaint have to be read as a whole and the averments in the plaint only germane to decide the application. The stand taken by the defendants in the written statement or the averments made in an application filed under Order VII, Rule 11 of CPC, is wholly immaterial at this stage. If the averments made in the plaint ex facie disclose a cause of action then the plaint cannot be rejected. It is also settled law that the cause of action is a bundle of facts which has to be gathered based on the averments made in the plaint in total by taking those averments to be correct.

10. According to the plaintiff , the defendants 1 to 6 had entered into a MOU for developing the property and the plaintiff had complied with his part of contractual obligations, but the defendants 1 to 6 have failed to comply with their obligations, instead, they have started dealing with the third parties. Hence, the plaintiff had no other option except to file the suit for permanent injunction restraining the defendants 1 to 6 from in any manner dealing, alienating or encumbering the suit schedule property in adverse to the interest of the plaintiff and for mandatory injunction directing the defendants 1 to 6 to produce and hand over custody of the original MOU dated 14.05.2015 now lying in the joint custody in the safety locker of the 7th defendant.

11. On the contrary, alleging that the plaintiff had failed to honour the MOU, and the MOU was not acted upon, and the plaintiff himself wanted to rescind the MOU and requested the defendants to absolve him from all the obligations arising out of the said memorandum of agreement. Since the plaintiff had failed to discharge his part of obligations within the time frame, the MOU stood cancelled.

12. The suit is for permanent injunction and for mandatory injunction based on the MOU. In the plaint, it has been alleged that the defendants 1 to 6 have been dealing with the property with third parties in violation of the terms and conditions of the MOU and therefore, plaintiff had no other option except to file a suit for permanent injunction restraining the defendants 1 to 6 from dealing with the property with third parties and for mandatory injunction calling for the MOU lying with the 7th defendant bank. Now, the contention of the defendants 1 to 6 is that MOU has been rescinded by the plaintiff himself and the MOU itself stood cancelled as per Clause 19 of MOU, and no cause of action arises for filing the suit. According to the defendants 1 to 6, even assuming that they have failed to

perform their part of obligation, the plaintiff can only sought for a larger relief for specific performance of contract (MOU) and the plaintiff can not maintain a suit for injunction, which is barred under Section 41(h) of the Specific Relief Act.

13. Whether the MOU has been rescinded by the plaintiff or the MOU stood cancelled by the conduct of the plaintiff is a disputed question of fact which can be decided only after trial based on evidence, both oral and documentary. Now based on the stand of the defendants in the written statement in the application, the plaint cannot be rejected under Order VII Rule 11 CPC.

14. According to the plaintiff, since the defendants have taken steps to deal with the property with third parties in violation of the terms and conditions of the MOU, the plaintiff had file the suit for injunction restraining the defendants from dealing with the property with third parties and mandatory injunction for production of the MOU from the 7th defendant bank. In such circumstances, it cannot be said that the suit is barred under section 41(h) of the Specific Relief Act. A careful reading of plaint, it clearly disclose a cause of action, and suit does not appear to be barred under law. On considering all these factual and legal aspects, the court below has rightly dismissed the application, and there is no illegality or irregularity warranting interference by this court. Thus, the order passed by the court deserves only to be confirmed.

15. However, considering the facts and circumstances of the case, the court below is directed to dispose of the interlocutory application in I.A.No.80 of 2018 on merits and in accordance with law, after giving opportunities to both parties, within a period of two weeks from the date of receipt of a copy of this order and dispose of the suit within a period of three months thereafter.

In the result, this Civil Revision Petition is dismissed with the above directions. No costs. Consequently, connected CMP is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Principal Subordinate Judge, Chengalpattu.

+1cc to A.Muthumani Doraisami, Advocate sr.104578

Civil Revision Petition
No.3962 of 2019

nr 10/01/2020