



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2019

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THE HON'BLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) No.2862 of 2018

and

C.M.P (MD) .No.12402 of 2018

Meenakshi Sundaram

... Petitioner/Petitioner/Plaintiff

-Vs-

Ganesan

...Respondent/Respondent/Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 14.11.2018 passed in I.A.No.750 of 2018 in O.S.No.81 of 2017 on the file of the District Munsif Court, Sivagangai.

For Petitioner : Mr.R.R.Kannan

For Respondent :K.P.Ramesh

O R D E R

This Civil Revision Petition has been filed against the fair and decreetal order dated 14.11.2018 passed in I.A.No.750 of 2018 in O.S.No.81 of 2017 on the file of the District Munsif Court, Sivagangai.

2.The learned counsel for the petitioner would submit that the petitioner as plaintiff filed a suit in O.S.No.81 of 2017 for recovery of an amount of Rs.86,000/-. It is stated by the petitioner that an agreement came to be executed between the petitioner and the respondent on 07.02.2014 in order to complete the left out works by the respondent by way of paying Rs.10,00,000/-. The respondent herein has failed to complete the work and thereby, the petitioner had spent Rs.30,000/- for completing the 1x1 tiles in the ground floor of the building. Since the respondent has failed to exercise the work, the petitioner has spent a sum of Rs.30,000/- in order to complete the work. Apart from that, the respondent has received Rs.50,000/- as cash and Rs.6,000/- by signing in a letter pad. Hence, the respondent owes an amount of Rs.86,000/- to the petitioner. Since the respondent has failed to settle the amount, the petitioner has

filed the above suit for recovery of Rs.86,000/-.

3. Pending suit, the petitioner has filed an interlocutory application in I.A.No.750 of 2018 in O.S.No.81 of 2017 for appointment of Advocate Commissioner to note down the physical features of the ground floor of the petitioner's building. After perusing the oral and documentary evidence, the learned trial Judge dismissed the I.A on the ground that the Advocate Commissioner cannot be appointed for collecting the evidence to the parties. Against the said order, the petitioner is before this Court.

4. A perusal of record shows that the petition arose out of the contract which was executed between the petitioner and the respondent dated 07.02.2014 to find out whether 1x1 tiles has been fixed in the ground of the petitioner's building or not by appointment of Advocate Commissioner. The learned trial Judge has observed that the agreement was entered into between the parties on 07.07.2014. Since after a lapse of 4-1/2 years, the suit in O.S.No.81 of 2017 was filed on 28.04.2017. The learned trial Judge has also observed that if really the petitioner is affected by the respondent, he could have filed an application for appointment of Advocate Commissioner on the date of filing of the suit itself. Nearly 1-1/2 years later, I.A.No.750 of 2018 was listed. Now, the Advocate Commissioner cannot ascertain the real value of the tiles which was laid a four years ago, where I do not find any infirmity.

5. In view of the above, this Court does not find any valid reason to interfere with the order passed by the learned District Munsif, Sivagangai in I.A.No.750 of 2018 in O.S.No.81 of 2017 and hence, this petition is liable to be dismissed. Accordingly, this Civil Revision Petition is dismissed. No Costs. However, considering the request made by the learned counsel for the petitioner for early disposal of the suit and also considering the facts and circumstances of the case, the learned District Munsif, Sivagangai, without adverting to the findings of this Court, is directed to dispose the suit in O.S.No.81 of 2017 on its own merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)



To
The Principal District Munsif
Sivagangai

+1 CC to M/s.R.R.KANNAN, Advocate (SR-70531[F] dated 21/06/2019)

+2 CC to M/s.K.P.RAMESH, Advocate (SR-70888[F] dated 24/06/2019)

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C.R.P. (MD) No.2862 of 2018

and

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20.06.2019

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