



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the Eighth day of January Two Thousand Twenty

PRESENT

The Hon`ble Mr.Justice C.V.KARTHIKEYAN

C.M.P(MD) Nos.3895 and 3896 of 2019

IN

REV.APLC(MD) No.70 of 2018

M.SHANMUGAM PILLAI

... PETITIONER/ REVIEW PETITIONER
IN BOTH THE PETITIONS

Vs

P.ARUMUGAM

... RESPONDENT/ RESPONDENT
IN BOTH THE PETITIONS

PRAYER IN C.M.P(MD) No.3895 of 2019:

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to permit the petitioner TO AMEND THE PLAINT in OS.No.301 of 2003 on the file of Sub Court, Tuticorin and thus render justice.

Prayer in CMP(MD) . 3896/ 2019 :

TO RECEIVE ADDITIONAL GROUNDS annexed herewith to decide the main Review Petition in Review Application No.70 of 2018 before this Hon'ble Court and thus render justice.

PRAYER IN REV.APLC(MD) No.70 of 2018:

To review the judgment and decree dated 20.08.2013 passed in S.A.No.171 of 2010 of this Hon'ble Court.

Prayer in SA(MD) . 171/ 2010 :

Second Appeal filed under section 100 of CPC against the judgment and decree dated 02.11.2009 passed in AS. No.16 of 2008 by the Additional District Court/ Fast Track Court No.I, Thoothukudi confirming the Judgment and Decree dated 19.04.2007 in O.S.301 of 2003 by the Sub Court, Thoothukudi.

ORDER : These petitions coming on for orders upon perusing the petitions and the affidavits filed in support thereof and upon hearing the arguments of Mr.V.MEENAKSHISUNDARM, Advocate for the petitioner in both the petitions and of Mr.G.PRABHU RAJADURAI, Advocate for the respondent in both the petitions, the court made the following order:-



Reserved on : 02.01.2020
Pronounced on : 08.01.2020

C.M.P(MD) No.3895 of 2019 has been filed to amend the plaint in O.S.No.301 of 2003 on the file of the Sub Court, Tuticorin. The particulars of amendment sought are as follows:

a). Directing the defendant to execute a sale deed in respect of the schedule property after receiving the balance sale price of Rs.1,50,000/- from the plaintiff and the deliver vacant possession of the schedule property to the plaintiff and on default to proceed within court sale.

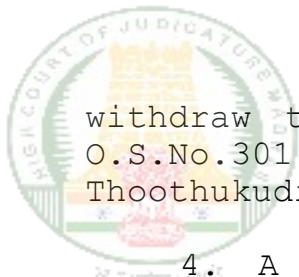
b). Awarding costs of this suit and

c). Granting such other or further reliefs as this Hon'ble Court deems fit and property and justice rendered.

d). As an alternative relief direct the defendant to refund the advance amount of Rs.2,00,000/- with 6% interest per annum from the date of the agreement till the date of realization and in default create charge upon the plaint schedule property and thus render justice.

2. C.M.P(MD) No.3896 of 2019 has been filed to receive additional grounds to decide the grounds in Review Petition in Review Application (MD) No.70 of 2018.

3. The original suit from which Second Appeal had emanated had been filed seeking the relief of specific performance of an sale agreement said to have been executed on 24.09.2000. The defendant was the appellant in the Second Appeal. The plaintiff, who sought specific performance, had originally filed O.S.No.301 of 2003, on the file of Subordinate Court, Thoothukudi. The suit had been decreed by judgment dated 19.04.2007. Subsequently, the unsuccessful defendant had filed A.S.No.16 of 2008 before the Additional District Court/Fast Track Court No.I, Thoothukudi. The learned District Judge was pleased to dismiss the appeal by judgment and decree dated 02.11.2009. Thereafter, the defendant filed the Second Appeal before this Court. By judgment dated 20.08.2013, the Second Appeal was allowed and the plaintiff was non suited. It may also not be out of place to point out that the total sale consideration as reflected in the agreement was Rs.3,50,000/-. It is stated that at the time of agreement, the plaintiff had paid an advance amount of Rs.2,00,000/-. It is also on record that the plaintiff had deposited another sum of Rs.1,50,000/- being the balance sale consideration in Court deposit to the credit of O.S.No.301 of 2003, on the file of the Subordinate Court, Thoothukudi. Though no progress had been made, in the review application, the applicant/plaintiff had also filed CMP(MD).No.3895 of 2019, seeking to amend the plaint to include the relief of refund of advance amount paid under the agreement and also CMP(MD).No.3896 of 2019 seeking to file additional grounds for permission to



withdraw the amount of Rs.1,50,000/- deposited to the credit of O.S.No.301 of 2003, on the file of the Subordinate Court, Thoothukudi.

4. A common counter affidavit has been filed in both the applications stating that applications are not maintainable as the amendment application has been filed after 16 years of filing the suit. It is stated that under proviso clause under Order 16 Rule 17 of C.P.C, no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial. It is stated that no explanation has been provided for not raising this amendment in an earlier point of time. It is also stated that the relief for return of money is expressly provided under the provisions of Specific Relief Act and such relief could be granted only if specifically prayed for.

5. It is pertinent to point out that in the application reliance has been placed under Section 22 of the Specific Relief Act and it had been stated that the restriction and the proviso clause of Order 16 Rule 17 of Civil Procedure Code is not applicable to the present case. It is therefore stated that the applications are not maintainable.

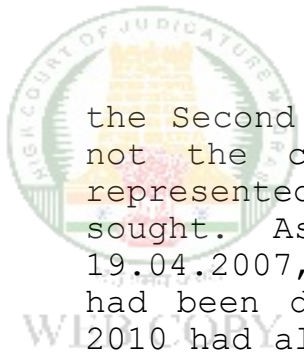
6. Heard arguments advanced by Mr.D. Nallathambi learned counsel for the petitioner and Mr.G.Prabhu Rajudurai learned counsel for the respondent.

7. The learned counsel for the petitioner stated that under the proviso clause of Section 22 of the Specific Relief Act, at any stage of the proceedings, an amendment can be permitted by the Court to include the claim for such relief. In this connection reliance was placed on an unreportable judgment in **A.No.5971 of 2013 in C.S.No.860 of 2008 dated 28.02.2014, Srikandasamy Permanent Fund Ltd., Vs. B.M. Sivanarayanan Sah**, wherein, a learned Single Judge (R.S.Ramanathan J,) had held that an amendment is possible at any stage of the case.

8. This contention is opposed by the learned counsel for the respondent who has stated that this suit had been taken up before the Hon'ble Supreme Court and only thereafter the Review Application has been filed and only then the petitioner has sought amendment of the plaint and no reasons had been given as to why the said relief had not been granted at an earlier point of time.

9. I have carefully considered the arguments advanced.

10. Admittedly, in the plaint an alternate relief has not been sought for return of the advance amount. The Court has also not granted the said relief. The matter had been agitated and even in



the Second Appeal, the Court had not granted the said relief. It is not the case of the plaintiff that he had not been properly represented. In the plaint, it is seen that the relief was not sought. As against the Judgment in O.S.No.301 of 2003 dated 19.04.2007, an Appeal in A.S.No.16 of 2008 was filed and the same had been dismissed on 02.11.2009 and thereafter, S.A(MD)No.171 of 2010 had also been filed and the same had been allowed on 20.08.2013 and thereafter, S.L.P.No.(Civil) No.36828 of 2013 has been filed, which was also dismissed on 16.12.2013.

11. It is seen that consequently, while agitating the issues, the petitioner herein had not sought for refund of the advance. Thereafter, by way of a review, he had sought the return. There is no reason given as to why these applications were not filed in an earlier point of time. The petitioner cannot take advantage of the words in provision which says that at any stage an application can be filed. Even to take those words into advantage, reasons must be given. I am not convinced with the reasons and accordingly, both the Civil Miscellaneous Petitions stands dismissed.

12. List the Review Application (MD) No.70 of 2018 for hearing on 29.01.2020 at 4.00 p.m through video conferencing.

sd/-
08/01/2020

/ TRUE COPY /

/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE ADDITIONAL DISTRICT JUDGE/
FAST TRACK COURT NO.I, THOOTHUKUDI

2 THE SUBORDINATE JUDGE, THOOTHUKUDI.

+1CC TO Mr.G.PRABHU RAJADURAI, Advocate, Sr No.629

ORDER IN
C.M.P(MD) Nos.3895 and 3896 of 2019
IN REV.APLC(MD) No.70 of 2018
Date :08/01/2020

MS/JC/SAR-1/20.01.2020/4P.4C