



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 22.01.2020

CORAM

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD)No.802 of 2019

and

Cr1.MP.(MD)No.4919 of 2019

S.Sanjay

... Petitioner/Petitioner/Plaintiff

Vs.

1.G.Gopalakrishnan, S/o.Gandhi,
Proprietor,
G.G.Granites,
No.588, West 4th Cross Street,
K.K.Nagar, Madurai-625 020.

2.M.Ramanathan

... Respondents/Respondents/Defendants

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decreetal order dated 10.01.2019 made in I.A.No.168 of 2016 in O.S.No.74 of 2016 on the file of I Additional District Judge, Madurai, set aside the same and allow the civil revision petition.

For Petitioner : M/s.V.Janakiramulu

For Respondents : M/s.R.M.Arunswaminathan

ORDER

This petition has been filed to quash the fair and decreetal order dated 10.01.2019 made in I.A.No.168 of 2016 in O.S.No.74 of 2016 on the file of I Additional District Judge, Madurai.

2.The petitioner herein is the plaintiff and the respondents herein are the defendants in the suit.

3.The petitioner filed a suit for a direction to direct the first defendant to pay a sum of Rs.30,92,626.75 with subsequent interest at the rate of 12% p/a to him. In that petition, the petitioner/plaintiff has filed an Interlocutory Application in I.A.No.168 of 2016 for a prayer of appointment of an Advocate



Commissioner to inspect the suit property with a help of a Chartered Civil Engineer. That petition was dismissed by the Trial Court. Against which, the petitioner/plaintiff preferred this revision petition.

4.The brief substance of the petition is as follows:-

The petitioner is a qualified Civil Engineer. The first respondent appointed the petitioner for construction of his granite company building. They entered into an agreement and the plaintiff started the construction work under the supervision of the first respondent's site Engineer one Dinesh. Till the final bill is raised, no complaint or rebuttal claim was raised by the first respondent regarding the quality of the construction. When the petitioner and his father went to the first respondent and demanded the balance amount, the first respondent raised some points with regard to the quality of the construction. After reminders were sent through S.M.S, E.Mail and a letter dated 25.12.2014. The first respondent sent a reply on 28.12.2014 and he admitted his liability upto Rs.13,00,000/-.

5.The brief substance of the counter filed by the first respondent is as follows:-

There is no dues payable by the first respondent. The petitioner has to pay more than a sum of Rs.20 lakhs to the first respondent. A licensed Engineer, who inspected the construction work has given a report on 08.12.2014 about the fair market value of the building constructed by the petitioner and as such the building value is only a sum of Rs.60,93,068/-. The petitioner has admittedly received a sum of Rs.72,45,275/-. Only the first respondent suffered damages and mental agony. A case was filed against the petitioner before the Consumer Disputes Redressal Forum and it is pending in C.C.No.19 of 2015. Already, inspection was made by a licensed Engineer and the valuation report was readily available to establish the truth. Therefore, there is no necessary to appoint an Advocate Commissioner to inspect the property with the help of Chartered Engineer. More over, the first respondent has sold the suit property to the second respondent. Now, the second respondent is in possession and enjoyment of the suit property. Since the first respondent has no right over the suit property, the petitioner is not entitled to claim inspection of property and An Advocate Commissioner could not be appointed for the purpose of gathering evidence.

6.The brief substance of the counter filed by the second respondent is as follows:-

The second respondent is the *bona fied* purchaser for value and he purchased the property vide two registered sale deeds dated 23.09.2014 and 06.09.2014 respectively. The first respondent has no right over the property. There is no contractual relationship between the petitioner and the second respondent. The suit is barred

<https://hccservices.mca.gov.in/hccservices/> of unnecessary party.



7. After hearing both sides, the learned Judge dismissed the petition. Against which, the petitioner/plaintiff preferred this revision petition.

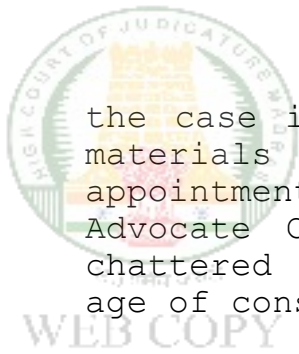
8. On the side of the petitioner/plaintiff it is stated that since the dispute between the first respondent and the petitioner/plaintiff is regarding the construction of the granite company building, this petition could not be objected by the first respondent. The first respondent sold the property to the second respondent without cancelling the agreement for construction of the building. The allegation of the first respondent, is that the petitioner/plaintiff used sub standard materials for the construction and to prove the case of the petitioner/plaintiff, appointment of an Advocate Commissioner to note down the physical features with the help of Chattered Engineer is necessary. It is further submitted that the first respondent obtained a report from an Engineer without the knowledge of the petitioner/plaintiff and also without getting any order from the Court. That inspection report is not binding upon the petitioner/plaintiff and an opportunity should be given to the petitioner/plaintiff to put forth his case.

9. On the side of the respondent, it is stated that the earlier petition was filed along with the plaint and the written statement was filed only on 25.10.2016. Only with a motive to gather evidence, the commissioner petition was filed and he prayed the revision petition to be dismissed.

10. It is seen that the dispute is regarding the payment for the construction of the building. It is seen that the respondent raised a question that sub standard materials are used for a construction and the construction was completed by another Engineer. The first respondent himself has appointed an Engineer and obtained a valuation certificate.

11. The Lower Court dismissed the petition based on two grounds. One is that since the construction of the building was completed by engaging another person, appointing an Advocate Commissioner will not yield any result. The second reason is that an advocate Commissioner cannot be appointed for the purpose of collecting evidence.

12. The petition was filed along with the plaint even before the filing of the written statement. The case of the plaintiff is for recovery of money due for him on the basis of the agreement for construction of a building. The contention of the petitioner is that he has completed the building and the case of the respondent is that he engaged some other Engineer to complete the building. It is clear that the construction is now over. But, the points to be decided in



the case is who completed the construction and the quality of the materials used for the construction. To find out these facts appointment of an Advocate Commissioner will be helpful. The Advocate Commissioner has to file a report with the help of a chartered Engineer regarding the quality of the materials and the age of construction.

13.In the above circumstances, order dated 10.01.2019 made in I.A.No.168 of 2016 in O.S.No.74 of 2016 on the file of I Additional District Judge, Madurai, is hereby set aside. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

14.The I Additional District Judge, Madurai, is directed to appoint an Advocate Commissioner to visit the suit property to note down the physical features with the help of chartered Engineer and to file a detailed report.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

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Sub Assistant Registrar(CS)

dss

To

The I Additional District Judge,
Madurai.

Copy to:

The Record Keeper, Vernacular Section, (2 Copies)
Madurai Bench of Madras High Court, Madurai.

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