HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE K. LAKSHMAN

CIVIL REVISION PETITION NO.2800 OF 2019

O R D E R:
(Per Sri Justice M.S.Ramachandra Rao)

1. This Revision is filed by the petitioner challenging rejection of the Memo COS (SR) No.3791 of 2019 in COS No.1 of 2017 on 12.09.2019 by the Judge, Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad.

2. The petitioner herein is the 1st defendant in the said suit.

3. The said suit was filed by the 1st respondent against the petitioner and the 2nd respondent for the relief of specific performance of an agreement of sale dt.24.10.2008 allegedly novated pursuant to minutes of meeting dt.08.11.2014 in respect of the subject property, or in the alternative for refund of Rs.2,58,40,000/- to the 1st respondent which was the advance sale consideration paid by the 1st respondent to the petitioner with interest at 12% per annum.

4. Written statement was filed by the petitioner opposing the suit claim.

5. After issues were framed, trial commenced and during the evidence of P.W.1, certain documents were marked by P.W.1, a witness for the 1st respondent.

6. After the documents were marked, a Memo was filed by the petitioner raising certain objections and requesting the Court to record objections. The said objections raised in the Memo are as under:

(i) The suit agreement of sale dated 24.10.2008 is insufficiently stamped and a separate application is filed for impounding the document and this Hon'ble Court cannot postpone the enquiry relating to deficit stamp duty as per panchals case reported in A.I.R. 2001 S.C at Page No.1158 nor, can this Hon'ble Court ignore the issue relating to deficit stamp duty as per 2016 (2) A.L.T. at Page No.557.

(ii) The recitals in the receipts dated 15.10.2008 and 24.10.2008 and 14.11.2008 regarding payment of sale consideration are false as per Proviso (1) to Section 92 of the Indian Evidence Act, 1872 and have not been proved by the Plaintiff as per Section 106 of the Indian Evidence Act, 1872.

(iii) The Plaintiff has failed to produce its books of accounts and Income tax returns to corroborate and substantiate the payment of sale consideration amount under the receipts dated 15.10.2008 and 24.10.2008 and 14.11.2008.

(iv) The receipts dated 15.10.2008 and 24.10.2008 and 14.11.2008 do not pertain to the suit agreement dated 24.10.2008.

(v) The Plaintiff has failed to produce any documents for proving his source of income in respect of the amounts covered under the receipts dated 15.10.2008 and 24.10.2008 and 14.11.2008 and therefore, the amounts covered under the said receipts constitute benami amounts under Section 2(26) of the Prohibition of Benami Property Transactions Act, 1988 (as amended with retrospective effect vide Act No. 43 / 2016).

7. It was mentioned in the last para of the Memo that *the petitioner was not inviting an order from the Court on the Memo* and is only requesting the Court to record the said objections for marking of

documents quoting the judgment of the Supreme Court reported in AIR 2001 SC 1158.

8. By order dt.12.9.2019,the Court below rejected the said Memo stating that in order to make objection regarding the documents, the party is at liberty to object by mentioning his objections at the time of marking of the documents and the learned counsel for the said party/petitioner can argue his objections during final hearing of the suit and the Court cannot pass any orders basing on the Memo since the 1st respondent/plaintiff, against whom the Memo is filed, has no opportunity to file a counter. It observed that it cannot record the objection at this stage since the petitioner has opportunity to canvass his objections at the appropriate stage or at the time of final hearing of the suit and no orders including the order recording objection can be passed on the Memo filed by the petitioner.

9. Assailing the same, this CRP is filed.

10. The learned counsel for the petitioner contends that the Court below ought to have recorded the objections since the petitioner is not inviting an order from the Court on the Memo.

11. We are of the opinion that CPC does not contemplate merely recording the Memo raising objections in marking of documents by a party and if the petitioner is keen to persist with the objections mentioned in the Memo, he must raise the said objections at the relevant stage and invite an order from the Court at that stage.

12. Therefore, we see no error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

13. Accordingly, the Civil Revision Petition fails and is dismissed. No costs. Pending miscellaneous petitions, if any, shall also stand dismissed.

M.S.RAMACHANDRA RAO, J

K.LAKSHMAN, J

Date: 06-01-2020
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