

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

C.M.S.A.No.15 of 2021
and
C.M.P.Nos.1264 & 1267 of 2021

Dhanaas Property Developers,
Represented by its Proprietrix
Mrs.V.Manimuthu,
200/1, Dhanalayaa, K.P.R. Layout,
6th Cross, Singanallur,
Coimbatore - 641 005.

...Appellant/Respondent

Vs

Vrikshaa Vassees Welfare Association,
Society registered under
Tamil Nadu Societies Registration Act,
Represented by its President,
Mr.K.A.Thangavelu,
Site No.4, 'Vrikshaa', Sri Ramdev Garden,
Pattanam, Coimbatore - 641 016.

...Respondent/Complainant

Appeal filed under Section 58 of the Real Estate (Regulation and Development) Act, 2016 read with Section 100 of CPC against the order passed by the Tamil Nadu Real Estate Appellate Tribunal dated 09.11.2020 in Appeal No.44 of 2020 in Application No.92 of 2020 confirming the order passed by the Tamil Nadu Real Estate Regulatory Authority in C.No.326 of 2019 dated 09.01.2020.

For Appellant: Mr.Ramesh Srinivasan

For Respondent/
Caveator: Mr.Karthik Sundaram

JUDGMENT
(Delivered by T.S.Sivagnanam,J)

We have heard Mr.Ramesh Srinivasan, learned counsel for the appellant and Mr.Karthik Sundaram, learned counsel for the respondent.

2. This appeal has been filed under Section 58 of the Real Estate (Regulation and Development) Act, 2016 read with Section 100 of Civil Procedure Code (CPC).

3. The appellant is the promoter of villa type houses together with amenities. The purchasers, who found themselves into a welfare association, had several grievances against the appellant on not having fulfilled the terms and conditions of the agreement between the parties and other related matters. Though there are other litigations pending between the parties, the present issue arose based on a complaint lodged by the respondent before the Tamil Nadu Real Estate Regulation Authority (TNRERA). The Authority, by the order dated 09.01.2020, issued various directions which are contained in paragraph 26 of the order of TNRERA. Aggrieved by the same, the appellant-developer filed an appeal before the Tribunal.

4. Before the Tribunal, the appellant sought to place on record certain letters said to have been signed by the purchasers/occupants of the villas, stating that they do not require the swimming pool facility, which, admittedly, was one of the facilities offered by the appellant when the villas were marketed and sold. The Tribunal examined the issue in all perspectives including as to whether the miscellaneous application filed by the appellant should be entertained and the additional documents can be permitted. The miscellaneous application in M.A.No.92 of 2020 was filed by the appellant under Order 41 Rule 27(b) of CPC. The Tribunal examined the entire aspect and more particularly the stand taken by the respondent-association that it is a concocted document and even assuming that certain people have signed, the tenants, as occupants of the villas, can in no way act as owners/ purchasers of the villas. The Tribunal examined the same and concluded that most of the people, who gave letters, are tenants. Admittedly, a tenant cannot give up the right of an owner. That apart, the Tribunal has also elaborately considered the appeal filed by the appellant before us on the merits of the matter and rejected the appeal as well as the miscellaneous application by the impugned order.

5. Mr.Ramesh Srinivasan, learned counsel for the appellant has elaborately set out the factual matrix and pointed that among several of the features which had to be completed, most of them have been completed/ complied with by the appellant and with regard to the swimming pool, 90% of the work is over and the multi purpose hall and gymnasium are under construction and the action initiated by the respondent-association is motivated and there are couple of people, whom the appellant have named, who are behind the scene.

6. Mr.Karthik Sundaram, learned counsel for the respondent submitted that the factual matrix has not been rightly placed before the Court and the appellant is guilty of not complying with what was agreed to, when the villas were marketed and sold to the purchasers. Further, the alleged letters from the tenants were never produced before the original authority and the prayer sought for by the appellant before the Tribunal to admit the additional documents was rightly rejected.

7. Firstly, the jurisdiction exercised by this Court in this appeal is under Section 100 of the CPC. Therefore, all that we are required to see is whether any substantial question of law arises for consideration. The appellant has raised the following substantial questions of law:

"a) Whether the Appellate Authority failed to see that there is a substantial cause' as mandated under Order 41 Rule 27(b) of the CPC with regard to additional documents that were sought to be produced before the Appellate Authority in relation to 'Non-consent' of the owners for construction of swimming pool?

b) Whether the finding of the appellate authority that the swimming pool was agreed to under the construction agreement is an error resulting in miscarriage of justice thereby warranting interference?

c) Whether the Authorities below were failed to see the statutory requirement under Section 14(2) of the RERA in relation to the alterations in the project with the consent of the owners which in this case was done by the appellant in relation to the swimming pool?

d) Whether the appellate authority was right in observing that the declaration in relation to swimming pool was by tenants without any supporting record in this regard?

e) Whether the respondent a non-owner of any plot/villa is an aggrieved person u/s.31 of Tamil Nadu Real Estate Act to file complaint against the appellant?"

8. The sheet anchor of the arguments of Mr.Ramesh Srinivasan, learned counsel for the appellant is by contending that the Tribunal failed to see that there is a substantial cause as mandated under Order 41 Rule 27(1)(b) of CPC with regard to reception of additional documents, which was sought to be produced before the Appellate Authority. As noted above, the

miscellaneous application was filed by the appellant before the Appellate Tribunal under Order 41 Rule 27(1)(b) of CPC. It states that parties to an appeal shall not be entitled to produce additional evidences, whether oral or documentary, in the Appellate Court. Therefore, there is a clear embargo on the party to seek for production of additional evidences at the appellate stage. However, there are few exceptions which are carved out under Clause (b) of Order 41 Rule 27(1). The said clause states that if the Appellate Court requires any documents to be produced or any witnesses to be examined to enable it to pronounce judgment or for any substantial cause, the documents can be allowed to be produced.

9. In the impugned order, the Appellate Tribunal has examined this aspect and has pointed out that the documents, which are alleged to be consent letters agreeing for dropping the proposal to construct the swimming pool, have been signed by the tenants. This aspect was noted by the Appellate Tribunal as being one of the grounds for rejecting the miscellaneous application. It cannot be disputed by the appellant that a tenant or a occupant cannot give any concession on the rights which are vested with the owner. Therefore, the application filed for reception of additional documents under the said clause was thoroughly misconceived. Furthermore, the Tribunal noted that this was never the case of the appellant before the Original Authority.

10. After we have elaborately considered the matter and carefully perused the order passed by the Appellate Tribunal, we find there is no question of law arising for consideration in this appeal, much less the substantial questions of law. Furthermore, the questions which have been framed by the appellant are not substantial questions of law, but they are all questions of facts, which have been examined by the Appellate Tribunal and held against the appellant. Therefore, we find no valid ground to entertain this appeal.

11. Accordingly, the Civil Miscellaneous Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

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Sub Assistant Registrar

hvk

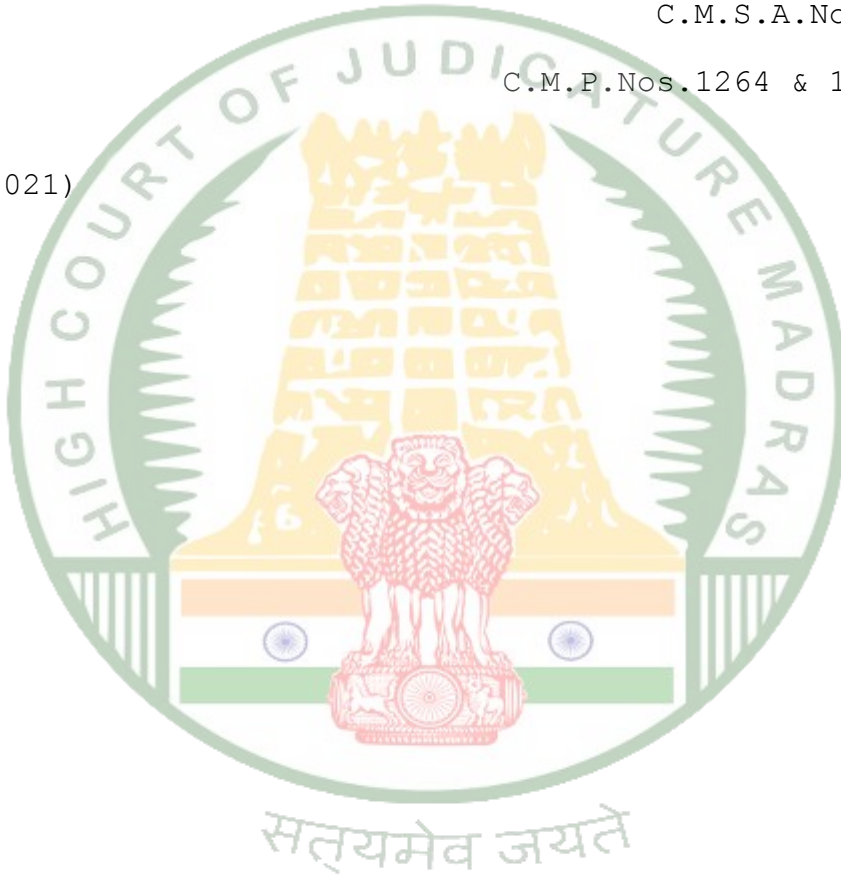
To

1.TamilNadu Real Estate Appellate Tribunal
(TNREAT)
Tamil Nadu, Puducherry, Andaman & Nicobar Island
Chennai-8.

+lcc to Mr.A.Thiyagarajan, Advocate, S.R.No.6493
+lcc to Mr.Karthik Sundaram, Advocate, S.R.No.5944

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and
C.M.P.Nos.1264 & 1267 of 2021

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CB(17/04/2021)



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