



C.R.P. (PD) Nos. 883 and 855 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order <u>02.11.2021</u>	Date of Pronouncing Order 29.11.2021
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CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD)Nos.883 and 855 of 2021
and
CMP.Nos.7058 and 7243 of 2021

Mahalakshmi

...Petitioner in both CRP's

Versus

1. V.Viji@ Vijaya

2. The Union of India,
Rep. by its Chief Secretary,
Government of Union Territory of Puducherry, Willingness
Goubert Avenue,
Puducherry 605 001.

3. The Sub-Registrar,
Registration Department,
Saram Revenue Complex,
Sakthi Nagar,
Saram,
Puducherry – 605 013.

...Respondent in both CRP's

PRAYER in C.R.P.No.855 of 2021: Civil Revision Petition is filed under
Article 227 of the Constitution of India, to strike off impugned plaint filed in



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O.S.No.133 of 2020 on the file of the Learned III Additional District and Sessions Judge, at Puducherry.

PRAYER in C.R.P.No.883 of 2021: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the impugned order dated 27.11.2020 passed in I.A.No.535 of 2020 in I.A.No.490 of 2020 in O.S.No.133 of 2020 on the file of the Learned III Additional District Judge, at Puducherry.

In both C.R.P's:

For Petitioner	: Mrs. Hemasampath Senior Advocate for M/s.E.Anbarasan
For Respondent	: Mr.V.Raghavachari for M/S.D.Ravichandar for R1 Mr.G.D.Jearany Government Advocate for R2 to R3

COMMON ORDER

Since the points involved in these Civil Revision Petitions are one and the same, they are disposed of by this common order.

2. Civil Revision Petition No.883 of 2021 is filed challenging the order



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dated 27.11.2020 passed in I.A.No.535 of 2020 in I.A.No.490 of 2020 in O.S.No.133 of 2020 and Civil Revision Petition No.855 of 2021 is filed to strike off impugned plaint filed in O.S.No.133 of 2020, on the file of the learned III Additional District Judge, at Puducherry.

3. The first respondent/plaintiff filed suit in O.S.No.133 of 2020 for the relief of specific performance of contract against the petitioner/1st defendant. She also filed I.A.No.490 of 2020 under Order XXXIX Rule 1 & 2 r/w. Section 151 of Civil Procedure Code for interim injunction restraining the petitioner from alienating or encumbering the suit property and restraining the 3rd respondent from registering any documents pertaining to the suit property. In this Interlocutory Application, 1st respondent filed I.A.No.535 of 2020 under Section 16(c) of the Specific Relief Act r/w Section 151 Civil Procedure Code with the prayer directing the 1st respondent to deposit the entire balance sale consideration of a sum of Rs.3,00,00,000/- within three days before the Court for registration of sale deed. This petition was contested by the 1st respondent. The learned III Additional District Judge, Puducherry on considering the rival submissions, agreement between the parties, directed the 1st respondent to deposit a sum of Rs.1,70,00,000/- towards part of sale consideration. Challenging this order of the learned III Additional District Judge, Puducherry,



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instead of directing the first respondent to deposit a sum Rs.3,00,00,000/-,

directing the 1st respondent to deposit only a sum of Rs.1,70,00,000/-, Civil Revision Petition No.883 of 2021 is filed. As already stated Civil Revision Petition No.855 of 2021 was filed to strike off the plaint in O.S.No.133 of 2020.

4. The learned senior counsel for the petitioner submitted that suit was filed for specific performance. The plaintiff should always be ready and willing to perform his/her part of contract, which is a pre-condition for granting decree for specific performance. In the case before hand though the petitioner was ready to execute the sale deed in favour of 1st respondent after the receipt of the balance sale consideration of a sum of Rs.3,00,00,000/-, 1st respondent has not come forward to pay the balance sale consideration and complete sale transaction. 1st respondent has no means to pay the balance sale consideration. Without sufficient means to pay the sale consideration, she entered into a sale agreement with the petitioner and harassing the petitioner. She is not prepared to pay the balance sale consideration in the Court and complete the sale transaction. A sum of Rs.1,70,00,000/- ordered to be deposited by the Court, was not deposited by the 1st respondent in time. Even now, the petitioner is prepared to execute the sale deed in favour of the 1st respondent, provided she pays the balance sale consideration. But that offer was not accepted by the 1st



respondent. It shows that 1st respondent has no means to complete the sale transaction and she is not ready and willing to perform her part of the contract.

1st respondent is not entitled to any relief. The learned III Additional District Judge, at Puducherry without considering the case of the petitioner and on wrong reasoning that there is also an agreement for construction of flat in the sale agreement, ordered the 1st respondent to deposit only a sum of Rs.1,70,00,000/-. The learned III Additional District Judge, at Puducherry ought to have directed the 1st respondent to deposit Rs.3,00,00,000/- towards balance sale consideration. Thus, the learned senior counsel for the petitioner prayed for setting aside the order of the learned III Additional District Judge, at Puducherry and for direction to 1st respondent to deposit a sum of Rs.3,00,00,000/- towards balance sale consideration.

5. In support of her submissions learned senior counsel for the petitioner relied on the judgments reported in **(2005) 7 SCC 534 (Aniglase Yohannan Vs. Ramlatha and others)** and **2019 0 Supreme (Del) 1068 (Om Prakash Aggarwal Vs. Raj Kumar Mittal)** for the proposition that the plaintiff should perform his/her part of the contract and should always ready and willing to perform essential terms of the contract, failing which the decree for specific performance cannot be granted. The judgment reported in **AIR 1971 Del 98**



(Battoo Mal Vs. Rameshwar Nath & Another) is relied for the proposition that

parties can make reasonable arrangements of relaxation of contractual terms between them.

6. In response, the learned counsel for the 1st respondent submitted that as per the terms of agreement, 1st respondent is liable to pay only a sum of Rs.2,00,00,000/- prior to execution of sale deed. Only after the execution of sale deed the balance sum of Rs.1,30,00,000/- to be paid to the petitioner. For payment of a sum of Rs.1,30,00,000/-, certain provisions are made by giving post dated cheques and executing an agreement for allotting one flat. It is not correct to state that the 1st respondent has to pay the entire sale consideration of a sum of Rs.3,00,00,000/- before the execution of the sale deed. 1st respondent has means to pay the balance sale consideration. She has taken steps to get financial assistance from the REPCO Home Finance Ltd., Pondicherry. Her efforts to get financial assistance from the Bank was obstructed by the petitioner. It was the petitioner who was not ready and willing to perform her part of the contract. As directed by the Court, 1st respondent deposited a part of balance sale consideration of a sum of Rs.1,70,00,000/-. This petition is misconceived and cannot be maintained under Section 16 (c) of Specific Relief Act. It is not as if that the property cannot be sold before payment of whole of



the purchase money. Section 55(4) (b) of Transfer of Property Act deals with a situation where there is transfer of ownership of the property to the buyer before payment of the whole of purchase money. Petitioner can claim a sum of Rs.1,30,00,000/- only after execution of sale deed. Petitioner is bound by the terms of contract. Petition filed under section 16 (c) is not maintainable either on facts or in law. The readiness and willingness of the party to be decided on the basis of evidence. These Civil Revision Petitions cannot be maintained under Article 227 of Constitution of India. Therefore, he prayed for dismissal of both the Civil Revision Petitions. He relied on the following judgments for the proposition that when the case is involved with mixed question of facts and law, it cannot be disposed at the threshold, without giving opportunities to the parties to lead evidences:

1). [2012 (2) LW 193], (K.Ponnammal and Ors, Vs. V.Thayanban and Ors.)

"Court shall exercise powers most sparingly and only in appropriate cases in order to keep subordinate Courts within bounds of their authority."

2). [2011 (2) LW 45], (V.Krishnamoorthy Vs. Balakrishnan



and Ors.)

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"Parties shall not invoke jurisdiction of High Court, when alternative remedy is available to them".

3). [2009 (5) LW 631], (St. Mary's Matriculation Boys Higher Secondary School Vs. Rajeev Bai and Ors.)

*"20. On a careful consideration of respective contentions and in the light of the detailed discussions and because of the fact that the averments of the plaint in the present suit on hand proceeds on some purported cause of action which requires an in-depth determination by the trial Court, are a mixed question of fact and law to be established by means of oral and documentary evidence (since the parties have taken a divergent stand), besides raising contentions legal and factual issues in the considered opinion of this Court and therefore this Court, on the basis of Equity, Fair play, as an Equitable remedy and even as per law, without going into the merits of the matter directs the trial Court Viz., IV Assistant City Civil Court, Chennai to dispose of the main suit.
.... "*

7. Considered the rival submissions and perused the records



8. It is necessary to know the case of the 1st respondent from the plaintiff's averments. Petitioner is owner of the suit property. There is no dispute in this.

Petitioner and the 1st respondent entered into a sale agreement on 26.02.2020 to sell the suit property for a sum of Rs.2,90,32,000/- at Rs.9,500/- per Sq. ft., A sum of Rs.20,00,000/- was paid as advance on 26.02.2020. Subsequently petitioner also received a sum of Rs.10,00,000/- as additional advance on 05.03.2020 from the 1st respondent. These are all admitted facts. It appears that the 1st respondent was making certain arrangements with REPCO Home Finance Limited Puducherry for financial assistance for paying the balance sale consideration. In this regard there is exchange of letters between the petitioner, Bank and 1st respondent. Then, there was re-negotiations of the price and the sale price was enhanced from Rs.9,500 to Rs.11,000/- per Sq. ft., Total sale consideration was fixed at a sum of Rs.3,30,00,000/-. A deed of agreement dated 17.07.2020 was executed between the petitioner and 1st respondent. As per this deed of agreement, 1st respondent has to pay a sum of Rs.2,00,00,000/- including a sum of Rs.30,00,000/- already paid as advance and the sale has to be completed within 45 days from the date of execution of Deed of Agreement dated 17.07.2020. Balance sale consideration of a sum of Rs.1,30,00,000/- to be paid in installments within 14 months from the date of execution of sale deed. As a security for the balance sale consideration, certain conditions had



been incorporated in the said deed of agreement dated 17.07.2020. Since, petitioner has not come forward to perform her part of contract as per deed of agreement dated 17.07.2020, the suit was filed in O.S.NO.133 of 2020.

9. It is evident from the plaint averments that there are 2 agreements i.e., agreement dated 26.02.2020 and the agreement dated 17.07.2020 executed between the petitioner and the 1st respondent in connection with the suit property. Petitioner did not dispute these two agreements. Now we are concerned about the latest agreement i.e. the agreement dated 17.07.2020. Perusal of this agreement shows

(i) the execution of two unregistered sale agreements on 26.02.2020 fixing the rate at Rs.5,000/- per sq. ft. and another fixing the rate at Rs.9,500/- per sq.ft

(ii) After re-negotiation the rate of the suit property was fixed at Rs.11,000/- per sq. ft. for total consideration of a sum of Rs.3,30,00,000/-. Receipt of Rs.30,00,000/- by the petitioner is admitted and accepted to be adjusted in the sale consideration.

As per Clause No.6 of the agreement, 1st respondent agreed to pay Rs.1,70,00,000/- at the time of execution of sale deed. Already a sum of



Rs.30,00,000/- was paid as advance towards part sale consideration.

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(iii) The balance sale consideration of Rs.1,30,00,000/- was agreed to be paid by the 1st respondent to the petitioner within 14 months from the execution of sale deed. The sale deed has to be executed within 45 days from the date of execution of agreement dated 17.07.2020.

(iv) As a security for balance sale consideration of Rs. 1,30,00,000/-, 1st respondent agreed to issue four post dated cheques for 32,50,000/- each.

(v) There is also an agreement to pay a nominal interest of Rs.5,00,000/- for this balance sale consideration which is to be paid in four parts at Rs.1,25,000/- each.

(vi) It is stipulated that if 1st respondent fails to pay the balance sale consideration, the sale in favour of 1st respondent shall be deemed null and void and sale deed will not have any legal validity.

(vii) As an additional security/guarantee for the balance sale consideration of Rs.1,30,00,000/- both the parties agreed that an agreement for allotment of one flat on the 5th floor of the building to an extent of 1,500 sq. ft. which is proposed to be constructed in the suit property, shall be executed in favour of the petitioner by the 1st respondent immediately after the completion of sale. It is further covenanted that once a balance sale consideration is paid, this agreement to be endorsed cancelled and returned.



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10. The aforesaid terms of the sale agreement shows that the 1st respondent is liable to pay the balance sale consideration of a sum of Rs.1,30,00,000/- after execution of sale deed in her favour by the petitioner and not before that. A feeble attempt was made by the learned counsel for the petitioner to deny the terms of agreement as not enforceable, against law and unconscionable. At the moment we cannot go into merits of the terms of agreement dated 17.07.2020. Petitioner may entertain some doubts;

- i) As to the duration of 14 months stipulated for completing the payment.
- ii). What is the guarantee that the post dated cheques would be honoured.
- iii) What is the guarantee that 1st respondent would construct five floors in the suit property and offer one flat to the petitioner as an additional security for the payment of Rs.1,30,00,000/-. These are all genuine doubts to be clarified in the trial by the respondent.

11. With regard to the maintainability of the petition under Section 16 (c) of Specific Relief Act, Section 16 (c) of Specific Relief Act reads as follows:

“Section 16 — Personal bars to relief

***Specific performance of a contract cannot be enforced in
favour of a person :-***



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(a) ...

(b)

(c) *who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.*

Explanation.—For the purposes of clause (c),

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must prove the performance of, or readiness and willingness to perform, the contract according to its true construction.”

Section 16 (c) of Specific Relief Act deals with proof of readiness and willingness of plaintiff to perform essential terms of the contract which are required to be performed by him. Explanation to Section 16 (c) (i) says that it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court. The proof of readiness and willingness of the plaintiff to perform his part of contract has to be proved by producing oral and documentary evidence. It is a matter to be decided on the basis of evidence produced. Through this provision plaintiff



cannot be compelled to deposit the sale consideration except on the directions of the Court.

12. Admittedly, there is an agreement dated 17.07.2020 governing the terms of contract between parties. This Court at this stage does not want to go deep into the merits of this agreement. The fact remains that the execution of deed of agreement dated 17.07.2020 is not disputed by the petitioner. As per the terms of this agreement 1st respondent is liable to pay the balance sale consideration of a sum of Rs.1,30,00,000/- only after the execution of sale deed and within a period of 14 months from the date of execution of sale deed in four installments. Thus, this Court finds no reason to interfere with the order of the learned III Additional District Judge, at Puducherry directing the 1st respondent to deposit a sum of Rs.1,70,00,000/-. With regard to the striking of the plaint, this Court finds absolutely there is no material and grounds to strike off the plaint. Civil Revision Petition No.855 of 2021 filed for striking of plaint is misconceived and not based on any legal grounds and liable to be dismissed. Thus, this Court confirms the order passed in I.A.No.535 of 2020 in I.A.No.490 of 2020 in O.S.No.133 of 2020 and dismisses the Civil Revision Petition No.883 of 2021. Civil Revision Petition No.855 of 2021, filed to strike off impugned plaint filed in O.S.No.133 of 2020, is also dismissed.



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29.11.2021

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Index: Yes/ No
Speaking Order / Non-Speaking Order

To

1. The III Additional District Judge,
District Judge,
Puducherry.
2. The Union of India,
Rep. by its Chief Secretary,
Government of Union Territory of Puducherry, Willingness
Goubert Avenue,
Puducherry 605 001.
3. The Sub-Registrar,
Registration Department,
Saram Revenue Complex,
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G.CHANDRASEKHARAN, J.,

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Pre-delivery order in
C.R.P.(PD)Nos.883 and 855 of 2021

Dated: 29.11.2021