



C.R.P (PD).No.2895 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.10.2021

Pronounced on : 02.11.2021

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P (PD).No.2895 of 2016

and

C.M.P.No.14654 of 2016

Arikrishna Kounder

... Petitioner

Versus

Sekar

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to allow this revision petition and to set aside the fair and decreetal order, dated 01.06.2016, by dismissing the I.A.No.23 of 2016 in O.S.No.252 of 2012, on the file of the learned Principal District Judge, Cuddalore.

For Petitioner : Mr.R.Gururaj

For Respondent : Notice served
No Appearance.

ORDER

This Civil Revision Petition is filed by the unsuccessful petitioner/plaintiff, who filed I.A.No.23 of 2016 in O.S.No.252 of 2012, on the file of the learned Principal District Judge, Cuddalore in and by which, the prayer of the petitioner made under Order XI Rule 12 of CPC., to direct



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the defendant to produce the four numbers of documents, specifically mentioned in the petition and other connected papers was refused by the Trial Court by its order dated 01.06.2016.

2.Heard Mr.R.Gururaj, learned counsel for the petitioner. The respondent did not appear before this Court.

3.The learned counsel for the petitioner would submit that the above suit is filed for specific performance, for a direction to the respondent/ defendant to receive the balance sale consideration of Rs.35 Lakhs and execute the sale deed in respect of the schedule mentioned property in favour of the plaintiff or in the alternative to return the part consideration paid by the plaintiff with interest thereon.

4.The defendant filed a written statement and resisted the suit.

5.The Trial Court commenced the trial in the above suit, the plaintiff examined himself as PW.1 and when the matter was posted for further evidence of plaintiff, the plaintiff filed the present application in

I.A.No.23 of 2016, stating that as a matter of fact, in respect of the balance



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sale consideration payable, the defendant had entrusted two blank cheques with his Advocate, one Mr.Subramanian and he had misused the cheques and filed a complaint under Section 138 of Negotiable Instruments Act, 1881. Therefore, the defendant has also filed a complaint against the said Advocate with the Bar Council of Tamil Nadu. Stating that the copy of the complaint, copy of the counter, if any to the complaint, copy of the petition filed by the respondent herein before the Bar Council of Tamil Nadu, copy of the counter filed by the said Subramanian before the Bar Council of Tamil Nadu, and such other papers connected with the enquiry are in the custody of the defendant, the present application for discovery is filed.

6.The said application was resisted by the respondent, by filing counter. The respondent countered that he had engaged Mr.Subramanian, to defend another case filed by one Palani and he has given two blank cheques to the Advocate, in connection to that suit and it has not nothing to do with the balance sale consideration.

7.Considering the rival submissions, the learned Principal District Judge, Cuddalore had dismissed the application on the ground that these documents can be obtained by the plaintiff by summoning to the said



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Advocate as witness and directing him to produce the said documents. The Trial Court also pointed out that the application has been filed at a very belated stage.

8.In this regard, it is useful to extract the Order XI Rule 12 of the CPC., hereunder:

“Application for discovery of documents: Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit:

Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs. ”

9.It may be seen that the purpose of Order XI Rule 12 of CPC., is



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to discover firstly whether the other party of the suit, is in possession of the documents and if so, for directing him to produce the documents and if such documents, which is vital and necessary for disposal of the suit, direct the party to produce the documents. If the party failed to produce the documents, which are in his possession, adverse inference has to be drawn against him. It is clear from the above Rule itself, that the Trial Court is granted discretion to consider whether such discovery is necessary or not and to pass orders. In such circumstances, the Trial Court has come to the conclusion that primarily on the ground that it is not absolutely necessary to make a discovery as to whether the documents are in possession of the defendant in the suit, because, the documents are otherwise available to the plaintiff by suitably summoning the same and marking it, if they are relevant to the case.

10. Under these circumstances, there is no infirmity in the order passed by the Trial Court and accordingly, this Civil Revision Petition is without any merits and as such, is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.



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D.BHARATHA CHAKRAVARTHY. J.,

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11.Considering the suit is of the year 2012, the Trial Court is requested to disposed off the same, as expeditiously as possible, in any event, within a period of three months, from the date of receipt of a copy of this order.

02.11.2021

Index : yes/no
Internet :yes/no
Speaking/Non-Speaking order

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To
The VII-Additional Sessions Court, Chennai.

Pre- Delivery Order in
C.R.P (PD).No.2895 of 2016
and
C.M.P.No.14654 of 2016



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