IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.02.2021

Pronounced on : 17.03.2021

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.3460 of 2017
and
CMP.No.16081 of 2017

1.Syed Abdul Haleem

2.Nilofur ... Petitioners

Vs.

Rajaratinam Construction Pvt. Ltd.,
Rep. by its Managing Director,
Mr.A.Rathinam,
Having Office at
No.20, Anderson Road,
Ayanavaram, Chennai – 600 023 ...Respondent

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 16.08.2017 passed in IA.No.2464 of 2017 in OS.No.5541 of 2016 by the XII Assistant Judge, City Civil Court, Chennai

For Petitioners : Mr.L.Dhamodaran

For Respondent : Mr.K.S.Gnanasambandam
for Mr.P.Chandrasekar

O R D E R

This civil revision petition is directed as against the order dated 16.08.2017 passed in IA.No.2464 of 2017 in OS.No.5541 of 2016 by the XII Assistant Judge, City Civil Court, Chennai thereby dismissing the petition for rejection of plaint.

2. The respondent is the plaintiff and the petitioners are the defendants. The respondent filed suit for recovery of money towards the payment of service tax for the apartment constructed by the respondent for the petitioners together with interest at the rate of 18% per annum. While pending the suit, the petitioners filed petition for rejection of plaint on the ground that the suit is barred by limitation and no cause of action for the respondent to file the suit, since no privity of contract between the petitioners and the respondent herein with regards to alleged payment of service tax in question.

3. Mr.L.Dhamodaran, the learned counsel for the petitioners would submit that the petitioners had purchased a flat from the respondent's Principal M/s.Vardhaman Construction and Investments on

07.05.2008. After a period of eight years from the date of purchase, the respondent filed suit claiming service tax. Even according to the respondent, they paid service tax on 30.03.2010, whereas the suit has been laid in the year 2016. Therefore it is barred by limitation. Further, there is absolutely no cause of action for the respondent to file the present suit as against the petitioners. There is no privity of contract between the petitioners and the respondent. Admittedly, the respondent is the power of attorney of M/s.Vardhaman Construction and Investments. By the memorandum of agreement dated 07.05.2008, the petitioners entered into an agreement to purchase a flat from M/s.Vardhaman Construction and Investments represented by the respondent herein. While being so, on personal capacity, the respondent filed the present suit and as such no cause of action arose for the respondent to lay suit as against the petitioners.

3.1 He further submitted that even assuming that the respondent paid service tax for the flats promoted by them, they made payment on 30.03.2010 whereas they filed suit on 03.04.2016. Therefore, the suit is barred by limitation and directly hit under Article 54 of Limitation Act. Respondent stated that period of 12 years is available for them under Article 62 of Limitation Act to save limitation. Article 62 of the Limitation Act relates to the suit on mortgage. Whereas the present suit is available for recovery of money. Therefore, the said provision is nothing to do with the present suit and only to save limitation, they have wrongly noted the provision. Therefore, the plaint is liable to be rejected. In support of his contention, he relied upon the following judgments.

(i) ***M.Banupriya Vs. M.Lakshmi and others*** reported in ***2013 (4) CTC 175***

(ii) ***Hardesh Ores Pvt Ltd. and another Vs. Hede and Company*** reported in ***(2007) 5 MLJ 187 (SC)***

(iii) ***N.Ravindran Vs. V.Ramachandran*** reported in ***2011 (3) CTC 153***

(iv) ***The Church of Christ Charitable Trust & Educational Charitable Society, rep by its Chairman Vs. M/s.Ponniammal Educational Trust rep. by its Chairperson / Managing Trustee*** reported in ***2012(4) Supreme 289***

(v) ***K.Akbar Ali Vs. K.Umar Khan & Ors***

in ***SLP(Civil) No.31844 of 2018***

4. Per contra, Mr.K.S.Gnanasambandam, the learned counsel for the respondent submitted that M/s.Vardhaman Construction and Investments, the respondent and the petitioners have entered into a triparty agreement dated 07.05.2008, in which the said M/s.Vardhaman Construction and Investments called as vendors, the respondent called as party of the first part and the petitioners are called as party of the second part. Admittedly, the said M/s.Vardhaman Construction and Investments executed power of attorney in favour of the respondent herein to promote the property and to put up new construction on the properties as per sanctioned plan. Further they had given power to put up new construction for tax assessment and to pay such taxes and levies to the concerned corporate bodies of the Government. The respondent can collect any fees or security deposits or any other deposits from CMDA, TNEB, Corporation, Municipalities, CMWSSB which is paid by the Principal directly for and on behalf of the Principal.

4.1 He further submitted that on the strength of the power of attorney dated 06.10.2006, triparty agreement entered between them dated 07.05.2008. The petitioners also agreed to pay service tax. In fact by the letter dated 20.07.2009, the petitioners admitted their liability of Rs.2,02,800/- towards service tax for the flat purchased by them addressed to the respondent. The petitioners also stated that with regards to the service taxes from respective department or any intimation letter / service tax demand notice received by the respondent, the petitioners assured the respondent that they would make service tax balance payment of Rs.2,08,000/- Accepting the said letter, the petitioners were put in possession of a flat purchased by them. Having been admitted their liability and it was also addressed to the respondent, now the petitioners take a stand that the respondent have no locus and no cause of action to lay suit against them. The claim in the suit is nothing but service tax payable by the petitioners herein for the purchase of their flat. Admittedly, the respondent promoted the entire property and constructed flats. They only registered sale deed and they were duly authorised to collect all the tax dues from the respective flat owners. Though the respondent paid service tax on 30.03.2010, finally, it was determined only on 17.05.2013 by the final order No.7 of 2013 by the Commissioner of Central Excise Department, Chennai confirming the demand of the service tax. Therefore, the suit is filed well within the period of three years.

4.2 He further submitted that in respect of limitation is concerned, it is mixed question of law and facts. Therefore it has to be decided only by let in evidence during trial. In support of his contention, he relied upon the following judgments:

(i) ***Prem Lala Nahata and another Vs. Chandi Prasad Sikaria*** reported in ***2007 (3) CTC 101***

(ii) ***The Ootacamund Club rep. by its Secretary Vs. H.S.Mehta*** in ***CRP.PD.Nos.1020 to 1022 of 2009*** dated 01.10.2009

(iii) ***Tim Boyd, International President, C/o The Theosophical Society Vs. Kesiraju Krishna Phani and 12 others*** reported in ***2015 (5) CTC 45***

(iv) ***Vaish Aggarwal Panchayat Vs. Inder Kumar and others*** reported in ***2015 SCC Online SC 751***

(v) ***S.K.Ramasamy and another Vs. S.S.Chellakutti*** reported in ***2016 (2) MWN (Civil) 61***

(vi) ***Sarala Vasu Vs. Belair Corporation Private Limited*** reported in ***2015 (4) CTC 747***

(vii) ***Balasaria Construction (P) Ltd., Vs. Hanuman Seva Trust and others*** reported in ***(2006) 5 SCC 658***

(viii) ***Urvashiben and another Vs. Krishnakant Manuprasad Trivedi*** reported in ***2019 (2) MWN (Civil) 570***

5. Heard, Mr.L.Dhamodaran, the learned counsel for the petitioners and Mr.K.S.Gnanasambandam, the learned counsel for the respondent.

6. The respondent filed suit for recovery of money towards payment of service tax for the apartment constructed by the respondent on behalf of the petitioners, which was paid by them on 30.03.2010. At the time of booking a flat, the petitioners agreed to pay service tax. The petitioners admitted their liability to pay a sum of Rs.2,02,800/- service

tax for the flat purchased by them by the letter dated 20.07.2009. They further stated that however with regards to service tax information from the respective department or any intimation letter / service tax demand notice received by the respondent, the petitioners assured that they would make service tax balance payment of Rs.2,02,800/-. As per demand of service tax, the respondent paid a sum of Rs.1,08,36,946/- with interest of Rs.8,33,167/- towards service tax to the authorities concerned. Even then, the respondent filed an appeal as against the demand of service tax before the Commissioner of Central Excise, Chennai and by order dated 17.05.2013, demand of service tax was confirmed. Thereafter, the respondent also preferred a review before the Committee of Chief Commissioners, Chennai Zone and by order dated 04.09.2013, the Committee directed the Commissioner of Central Excise, Service Tax Commissionerate to apply before the CESTAT, Chennai. Accordingly, the Commissioner of Central Excise, Service Tax Commissionerate preferred an appeal. Therefore, the respondent paid service tax for the construction services rendered to the RC Prince Gardenia Project, in which the petitioners purchased a flat.

7. On 30.03.2010 itself by memorandum of agreement dated 07.05.2008, M/s.Vardhaman Construction and Investments represented

by the respondent herein entered into an agreement with the petitioners to purchase of an undivided share admeasuring 842.874 square feet of vacant land. The petitioners also agreed and authorised the respondent to construct a flat. In fact, the petitioners also agreed to pay all tax dues. Agreement dated 07.05.2008 further revealed that though it seems to be triparty agreement entered between M/s.Vardhaman Construction and Investments, the respondent and the petitioners, the said M/s.Vardhaman Construction and Investments represented by the respondent herein as power of attorney. Admittedly, the respondent and the petitioners have signed the agreement, the preamble portion of the said agreement is as follows:

> *This Memorandum of Agreement, executed at Chennai, this 7th day of May 2008*
>
> *by*
>
> *M/s.Vardhaman Construction & Investments, represented by its Partners (1) Mr.Mahesh Kumar Bhandari S/o Mr.P.Tarachand Bhandari, aged about 31 years, (2) Mr.Harish Kumar Bhandari S/o Mr.P.Tarachand Bhandari, aged about 36 years, (3) Mr.P.Tarachand Bhandari S/o Mr.Pratapmal Bhandari, aged about 59 years, (4) Mrs.Sayathi Devi Bhandari W/o Mr.P.Tarachand Bhandari, aged about 52 years, (5) Mrs.Rekha Bhandari W/o Mr.Mahesh Kumar Bhandari, aged about 29 years,*

(6) Mrs.Neeru Bhandari W/o Mr.Harish Kumar Bhandari, aged about 32 years, all are residing at No.29, G.N.Chetty Road, T.Nagar, Chennai - 600 017, hereinafter called the Vendors, represented by their Power Agent, M/s.Rajarathnam Constructon (PT) Ltd., represented by its Managing Director, Mr.A.Rathinam, S/o Late Mr.R.Arokiasamy, aged about 47 years, having its Office at No.20, Anderson Road, Ayanavaram, Chennai - 600 023, vide Doc.No.3439 of 2007 dated 12.04.2007, at SRO, Sembium, hereinafter called the Party of the first part.

AND

Mr.Syed Abdul Haleem S/o.Mr.Syed Jabbar, aged about 34 years, Mrs.Nilofur W/o Mr.Syed Abdul Haleem, aged about 28 years, both are residing at No.21, 5th Street, Dr.Thirumurthy Nagar, Chennai - 600 034, hereinafter called the Party of the Second Part.

8. M/s.Vardhaman Construction and Investments called as vendor, the respondent called as party of the first part and the petitioners are called as party of the second part. Accordingly, the petitioners and the respondent have decided to reduce, in writing, the terms governing this memorandum of agreement. The petitioners agreed to pay towards cost of the undivided share of the land and cost of a flat construction. The petitioner also agreed to pay covered car

parking, registration charges and necessary deposits and expenses for electricity connections, water and sewerage connections, corpus fund and property tax and service tax. Accordingly, the petitioners paid service tax to the respondent. Under these circumstances, the respondent paid service tax for the total construction of RC Prince Gardenia Project to the tune of Rs.1,09,44,249/- on 30.03.2010 as per the demand made by the authorities concerned. Though the respondent filed appeal and review before the appellate authority, the respondent paid service tax along with interest as early as 30.03.2010. In fact, as early as on 20.07.2009 itself, the petitioners by their letter dated 20.07.2009, admitted their liability to the tune of Rs.2,02,800/- and also stated that whenever the demand notice received by the respondent with regards to the service tax from the authorities concerned, the petitioners assured that they would make service tax balance payment.

9. After payment of the service tax by the respondent, they failed to make any demand from the petitioners for the tax paid by them. In fact on 20.07.2009 itself, the respondent handed over the possession of the flat purchased by the petitioners. Therefore, the respondent filed present suit for recovery of Rs.3,59,802/- towards

payment of service tax for apartment constructed by the respondent on 03.04.2016. The respondent on their personal capacity they filed the present suit. Therefore, the petitioners filed petition for rejection of plaint on the ground that the suit itself is barred by limitation and no cause of action arose for the respondent to file the present suit as against the petitioners.

10. The points for consideration are that (i) whether the suit is barred by limitation and (ii) whether the respondent has any cause of action to file the suit as against the petitioners.

11. As stated supra, as per the demand of the service tax made by the authorities concerned, the respondent paid sum of Rs.1,09,44,249/- with interest of Rs.8,33,167/- for the construction services rendered to the RC Prince Gardenia project on 30.03.2010, in which one of the flat purchased by the petitioners. Whereas the respondent filed suit only on 03.04.2016. Though the respondent filed appeal and review as against the demand of the service tax, original assessment was made and as per the assessment, the respondent paid service tax with interest. Therefore, the respondent should have filed

the suit for recovery of service tax from the petitioners within a period of three years from the date of payment made by them towards service tax. The suit is filed for recovery of money. Therefore, Article 113 of Limitation Act would apply and the same is extracted hereunder for reference:

113. Any suit for which no period of limitation is provided elsewhere in this Schedule	Three years	When the right to sue accrues

12. Accordingly, the suit is to be filed within a period of three years from the date of payment made by the plaintiff. In this regard, the learned counsel for the respondent would rely upon the judgment in the case of ***Vaish Aggarwal Panchayat Vs. Inder Kumar and others*** reported in ***2015 SCC Online SC 751***, the headnote of which is extracted hereunder:

> *A.**Civil Procedure Code, 1908 - Or.7 R.11** - Whether a plaint can be rejected on the ground that it is barred by the law of limitation - Since, question of limitation is a mixed question of fact and law - Mere ex facie reading of the plaint it could not be held that the suit was barred by time - Held, a plaint cannot be*

dismissed as barred by limitation without proper pleadings, framing of issue on limitation and taking evidence.

13. He also relied upon the judgment in the case of ***Sarala Vasu Vs. Belair Corporation Private Limited*** reported in ***2015 (4) CTC 747***, wherein it is held as follows:

9. At this juncture, it is useful to refer to the decision of the Apex Court, reported in 2006 (5) SCC 658 (Balasaria Construction (P) Ltd. Vs. Hanuman Seva Trust), wherein, in paragraph 8, it has been observed as follows:

"8. After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time. The findings recorded by the High Court touching upon the merits of the dispute are set aside but the conclusion arrived at by the High Court is affirmed. We agree with the view taken by the trial court that a plaint cannot be rejected under Order 7 Rule 11(d) of the Code of Civil Procedure."

10. A perusal of the above decision of the Supreme Court shows that a reading of the plaint must ex-facie show that the suit is barred by time/limitation, otherwise, the plaint cannot be rejected under Order 7 Rule 11 CPC. In other words, if the conclusion regarding the plea of limitation is possible and could be arrived at only upon consideration of pleadings, supported by evidence by allowing the parties to go on for trial, such an issue raised, undoubtedly, a mixed question of fact and law, cannot be considered as a ground to reject the plaint. In fact, by following the above decision of the Apex Court reported in 2006 (5) SCC 658 (Balasaria Construction (P) Ltd. Vs. Hanuman Seva Trust), I myself, held, in the case of V.P.Narayanasamy Vs.Gurusamy, reported in 2015 (1) CTC 385 = 2015 (1) LW 560 = 2015 (1) MLJ 821 = MANU/TN/2924/2014, that the issue regarding limitation requires a trial, and therefore, the same cannot be made as a ground to reject the plaint.

11. Keeping the above principles in mind, if we peruse the plaint averments, the same do not ex-facie show that the suit is barred by limitation. On the other hand, the specific and categorical contention of the plaintiff regarding the confirmation of the liability on 25.10.2008, referred to in paragraphs 5 and 7 of the plaint, shows that on the face of the reading of the plaint itself, it cannot be construed that the suit is barred by limitation.

14. He also relied upon the judgment in the case of ***Urvashiben and another Vs. Krishnakant Manuprasad Trivedi*** reported in ***2019 (2) MWN (Civil) 570***, wherein it is held as follows:

> *15. By applying the aforesaid principles in the judgments relied on by Sri Dushyant Dave, learned senior counsel appearing for the respondent, we are of the considered view that merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under O.VII R.11 of the CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. 14 (2009) 5 SCC 462 15 (2006) 5 SCC 658 C.A.@ SLP(C)Nos.23062-63/18 Even assuming that there is inordinate delay and laches on the part of the plaintiff, same cannot be a ground for rejection of plaint under O.VII R.11(d) of CPC.*

The Hon'ble Supreme court of India as well as this Court held that merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under O.VII R.11 of the CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial.

15. In the case on hand, on the letter dated 20.07.2009, the petitioners assured that whenever the notice received for demand of service tax, they would pay the balance service tax. Accordingly, as per the demand notice, the respondent paid a sum of Rs.1,08,36,946/- towards service tax and a sum of Rs.8,33,167/- as interest towards service tax on 30.03.2010.

16. Though the respondent filed appeal and review as against the assessment of service tax, the limitation starts from the date of payment i.e. on 30.03.2010. Even assuming that the respondent is entitled to claim service tax paid on behalf of the flat owners, the claim made by the respondent is barred by limitation. The basic principle that time barred claim cannot be asserted after a prescribed period of limitation.

17. The above judgments cited by the learned counsel for the

respondent held in different set of facts and circumstances and also suit for declaration and specific performance. Therefore, those judgments are not helpful to the case on hand.

18. Insofar as the cause of action is concerned, the petitioners entered into an agreement with their vendor i.e. M/s.Vardhaman Construction and Investments represented by the respondent herein. Even assuming that the agreement dated 07.05.2008 is a triparty agreement, it is not signed by vendor, the party of the first part and the party of the second part. That apart, the said M/s.Vardhaman Construction and Investments duly represented by their power of attorney i.e. the respondent herein. The present suit is filed by the respondent herein on their personal capacity and not on behalf of their Principal i.e. M/s.Vardhaman Construction and Investments. Though the respondent was given power to develop, construct and to collect all dues from the authorities concerned, they can collect only on behalf of their Principal i.e. M/s.Vardhaman Construction and Investments. In this regard, the learned counsel for the petitioners relied upon the judgment in the case of ***The Church of Christ Charitable Trust & Educational Charitable Society, rep by its Chairman Vs.***

M/s.Ponniammal Educational Trust rep. by its Chairperson / Managing Trustee reported in ***2012(4) Supreme 289,*** wherein it is held as follows:

> *9) In A.B.C. Laminart Pvt. Ltd. & Anr. vs. A.P. Agencies, Salem (1989) 2 SCC 163, this Court explained the meaning of "cause of action" as follows:*
>
> *"12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."*

10) It is useful to refer the judgment in Bloom Dekor Ltd. vs. Subhash Himatlal Desai & Ors. (1994) 6 SCC 322, wherein a three Judge Bench of this Court held as under:

"28. By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court, (Cooke v. Gill, 1873 LR 8 CP 107). In other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit." It is mandatory that in order to get relief, the plaintiff has to aver all material facts. In other words, it is necessary for the plaintiff to aver and prove in order to succeed in the suit.

Forms 47 and 48 of Appendix A of the Code

11) Mr. K. Parasaran, learned senior counsel by taking us through Form Nos. 47 and 48 of Appendix A of the Code which relate to suit for specific performance submitted that inasmuch as those forms are statutory in nature with regard to the claim filed for the relief for specific performance, the Court has to be satisfied that the plaint discloses a cause of action. In view of Order VII Rule 11(a) and 11(d), the Court has to satisfy that the plaint discloses a cause of action and does not appear to be barred by any law. The statutory forms require the date of agreement to be mentioned to reflect that it does *not appear to be barred by limitation. In addition to the same, in a suit for specific performance, there should be an agreement by the defendant or by a person duly authorized by a power of attorney executed in his favour by the owner.*

12) In the case on hand, the plaintiff-respondent to get a decree for specific performance has to prove that there is a subsisting agreement in his favour and the second defendant has the necessary authority under the power of attorney. Order VII Rule 14 mandates that the plaintiff has to produce the documents on which the cause of action is based, therefore, he has to produce the power of attorney when the plaint is presented by him and if he is not in possession of the same, he has to state as to in whose possession it is. In the case on hand, only the agreement between the plaintiff and the second defendant has been filed along with the plaint under Order VII Rule 14(1). As rightly pointed out by the learned senior counsel for the appellant, if he is not in possession of the power of attorney, it being a registered document, he should have filed a registration copy of the same. There is no such explanation even for not filing the registration copy of the power of attorney. Under Order VII Rule 14(2) instead of explaining in whose custody the power of attorney is, the plaintiff has simply stated 'Nil'. It clearly shows non-compliance of Order VII Rule 14(2).

20. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

21. In State of Rajasthan v. Basant Nahata, (2005) 12 SCC 77. this Court held: (SCC pp. 90 & 101, paras 13 & 52) "13. A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

19. He also relied upon the judgment in the case of ***K.Akbar Ali Vs. K.Umar Khan & Ors*** in ***SLP(Civil) No.31844 of 2018***, wherein it is held as follows:

> *5.It is well settled that while considering an application under Order VII Rule 11 of the CPC, the question before the Court is whether the plaint discloses any cause of action or whether the suit is barred by any law, on the face of the averments contained in the plaint itself. While considering an application under Order VII Rule 11 of the CPC the Court is not to look into the strength or weakness of the case of the plaintiff or the defence raised by the defendant.*
>
> *6.In this case, the Petitioner/Plaintiff has, as stated above, asserted that the Power of Attorney was given to Mr. Zahir Ali to maintain and administer the suit property. There is no assertion in the plaint that the Power of Attorney authorized Mr. Zahir Ali to execute any pre-emption agreement.*
>
> *11.The argument advanced by the Petitioner/Plaintiff that the plaint discloses triable issues, and therefore, should not be rejected at the initial stages is devoid of merit. The entire basis of filing of a suit is the*

pre-emption agreement dated 5.11.1998 executed by a Power of Attorney holder. To confer a right and to bind the owner, there has to be a valid Power of Attorney. In the absence of valid Power of Attorney, no right will accrue to the plaintiff.

12.It is patently clear from a meaningful reading of the plaint in its entirety that the plaintiff has no cause of action against the first defendant being the owner of the suit property, the Power of Attorney being patently invalid. The inter-se dispute between the heirs of the deceased-Defendant No.1 will not confer any right on the petitioner as his claim is based upon a pre-emption agreement executed by a power of attorney, which does not authorize the attorney to deal with the property of the said defendant.

13.The Division Bench of the High Court has done substantial justice by nipping in the bud, a suit which is ex facie not maintainable for want of cause of action against the defendants or any of them, thereby saving precious judicial time as also inconvenience and expenditure to the parties to the suit.

The Hon'ble Supreme Court of India held that a power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him.

20. In the case on hand, M/s.Vardhaman Construction and Investments had given power to the respondent herein to promote, to construct apartments. Accordingly, they constructed and handed over the respective flats to the flat owners. Therefore, whatever the payment received by him for construction put up by him only on behalf of the Principal, i.e. M/s.Vardhaman Construction and Investments. If at all any claim as against the petitioners, suit can be filed only by the said M/s.Vardhaman Construction and Investments and not by the respondent on their personal capacity. Therefore, there is no cause of action for the respondent to lay suit as against the petitioner.

21. In view of the above discussion, the order passed by the court below is perverse, illegal and liable to be set aside. Accordingly, this civil revision petition is allowed and the order dated 16.08.2017 passed in IA.No.2464 of 2017 in OS.No.5541 of 2016 is set aside and the plaint in OS.No.5541 of 2016 on the file of the XII Assistant Judge, City Civil Court, Chennai is hereby rejected. Consequently, connected

miscellaneous petition is closed. No order as to costs.

17.03.2021

Index : Yes / No
Internet : Yes / No
Speaking order /Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

The XII Assistant Judge,
City Civil Court, Chennai

CRP.PD.No.3460 of 2017

17.03.2021