

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2021

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.R.P.(NPD)No.3941 of 2018
and
CMP No.21840 of 2018

P.R.Palanisamy Petitioner

Vs

S.Vasanthan Respondent

Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the fair and decreetal order dated 14.08.2018 passed in E.P.No.3 of 2017 in O.S No.74 of 2011 on the file of I Additional District Court, Coimbatore and allow the same.

For Petitioner : Mr.P.Saravana Sowmiyan

For Respondent : Mr.R.Veeramani

ORDER

Challenging the fair and decreetal order passed in E.P.No.3 of 2017 in O.S.No.74 of 2011 on the file of I Additional District Court, Coimbatore, the defendant filed the the above revision.

2. The plaintiff filed a suit for Specific Performance and the suit was decreed and the defendant was directed to pay a sum of Rs.2,00,000/-(Rupees two lakhs only) towards sale consideration with 12% interest and also to pay proportionate cost. The plaintiff filed an Execution Petition in E.P.No.3 of 2017 for execution of the cost of Rs.3,73,870/-(Rupees three lakhs seventy three thousand eight hundred seventy only) and the same was allowed by order dated 14.08.2018. Aggrieved by the order, the defendant has filed the above revision.

3. Learned counsel appearing for the revision petitioner submits that at the time of passing original decree, the trial Court had not incorporated the proportionate cost and no cost memo was filed within ten days from the date of decree in terms of Rule 96 of Civil Rules of Practice. Subsequently, a petition in I.A.No.259 of 2016 was filed to condone the delay in filing the Cost Memo and there was no objection from the other side and the petition was allowed on 02.06.2016 and subsequently, the decree was amended.

4. The main contention of the revision petitioner/defendant is that after filing of the condonation of delay petition, the respondent/plaintiff should have filed an application to amend the decree in terms of Section 152 of Civil Rules

of Practice. However, no such petition was filed. Subsequent to the filing of delay condonation petition, cost was incorporated and an amended decree was passed and based on the amended decree, Execution Petition was filed.

5. While hearing the Execution Petition, the revision petitioner/defendant made strong objection stating that the trial Court has awarded only proportionate cost, wherein, in the present case, suit was filed claiming a sum of Rs.40,00,000/- The trial court, without any petition for amendment of decree, directly accepted the cost memo and incorporated the entire cost of Rs.3,73,870/- and awarded. The trial Court has not taken into consideration all these aspects though the revision petitioner/defendant raised an objection at the time of arguing the Execution Petition. Hence, the order passed by the Executing Court is liable to be set aside.

6. Per contra, learned counsel for the respondent/plaintiff submits that he admits the fact that there was a delay in filing the Cost Memo and the same was supposed to have been filed within 10 days from the date of decree in terms of Rule 96 of Civil Rules of Practice. Therefore, the plaintiff filed a petition in I.A. No. 259 of 2016 to condone the delay in filing the Cost Memo and there was

no objection and on that basis only, the trial court incorporated the cost after preparing the statement of cost by the concerned officer and the revision petitioner is entitled to inspect and take a copy of cost statement and in such case, if anything was found incorrect, he was supposed to have raised objection at that time itself, but he has not made any objection. After statement of cost prepared by the concerned officer of the Court and even subsequent to the filing of the Execution Petition, no objection was made and at the time of final hearing, they cannot make any objection. The trial Court considered all the points and rightly rejected the petition and if at all there is any grievance, they should have moved appropriate Court for amending the decree which has not been done and the trial court has rightly allowed the Execution Petition and there is no need for interference.

7. Heard both sides and perused the materials available on record.

8. The trial Court passed a decree in O.S.No.74 of 2011 and the suit was decreed with proportionate cost. Thereafter, the plaintiff filed an Execution Petition.

9. According to the plaintiff, in the suit, there was a sale consideration for a sum of Rs.40,00,000/-. Out of the sale consideration, a sum of Rs.2,00,000/- was paid as advance. Since the defendant failed to execute the sale deed, the plaintiff filed a suit in O.S.No.74 of 2011. However, after considering both the parties, the trial court rejected to grant the relief sought for by the plaintiff.

10. On the other hand, though there was no alternative relief sought for, the trial Court ordered refund of the advance amount of Rs.2,00,000./- with proportionate cost along with charge over property until the refund of the advance amount. The plaintiff was supposed to file a cost memo under Section 96 of Civil Procedure Code within 10 days of passing of decree, but, she failed to file a cost memo, however, she has filed a petition in I.A.No.259 of 2016 to condone the delay in filing the cost memo. In the said petition, there was no objection and accordingly the petition was allowed. Subsequent to the filing of cost memo, cost was incorporated.

11. An argument was put forth that the trial court should not have incorporated the cost without amending the decree and therefore, Section 152 of

Civil Procedure Code was referred. It would be appropriate to extract Section 152 of Civil Procedure Code, 1908 hereunder:-

“ 152. Amendment of judgments, decrees or orders:-

Clerical or arithmetical mistake in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.”

12. On a perusal of Section 152 of Civil Procedure Code, 1908 would show that the Court can amend the clerical or arithmetical mistake in judgments or decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of it own or on the application of any of the parties.

13. In the present case, due to non-filing of the Cost Memo, the cost was not incorporated and a petition for condoning the delay was filed. An argument was made that subsequent to the filing of petition for condoning the delay in filing the Cost Memo, an application should have been made to amend the decree under Section 152 of Civil Procedure Code. Further, on perusal of

Section 152 of Civil Procedure Code shows that the Court, on its own motion, can correct the decree. Accordingly, the trial Court corrected the decree, on own motion, after the condonation of delay in filing the cost memo.

14. It is seen from the records that the plaintiff filed a petition I.A.No.256 of 2016 on 07.03.2016 to condone the delay in filing the cost memo, as the plaintiff had failed to file the said cost memo within ten days from the date of passing of decree as per Rule 96 of Civil Rules of Practice. The defendant was also issued notice, however, the defendant did not raise any objection regarding the delay in filing of cost memo. Therefore, the cost memo was allowed and the defendant was directed to pay the cost of Rs.3,73,870/-.

15. Apart from failing to contest the delay condonation petition, the revision petitioner/defendant did not inspect and take a copy of cost statement and in such case, if anything was found incorrect, he was supposed to have raised objection at that time itself regarding the quantum of cost arrived at, but he has not made any objection.

16. Having failed to register his objection at an appropriate time, the revision petitioner/defendant has challenged the same at the Execution Proceedings. The Court below, after hearing both the parties, rejected the challenge of the revision petitioner and also observed that the same cannot be challenged in the Execution Proceedings.

17. I am also of the opinion that the revision petitioner/defendant would have inspected the cost statement at appropriate time before the Court below before incorporation of the same in the decree. However, the revision petitioner has not made any effort to make inspection, take copies and thereafter to make his objection under Rule 96 of Civil Rules of Practice. Thus, this Court is of the view that the revision petitioner has lost his opportunity to make his objection at appropriate time and the same cannot be raised at the execution proceedings.

18. In view of the above, this Court is of the firm view that the revision petitioner cannot make any objection with regard to incorporation of the cost in the decree awarded by the trial Court at the execution proceedings. Therefore, I do not find any irregularity or illegality in the order passed by the trial Court in

E.P.No.3 of 2017 in O.S.No.74 of 2011. Hence, the Civil Revision Petition deserves to be dismissed. Accordingly, the same is dismissed.

19. After pronouncing the order, learned counsel for the revision petitioner/defendant prays that liberty may be granted to work out his remedy.

20. I do not make any observation with regard to grant of liberty, but, he can work out his legal remedy in accordance with law.

No costs. Consequently, connected miscellaneous petition is closed.

18.02.2021

Index: Yes/No

Speaking order/Non-speaking order

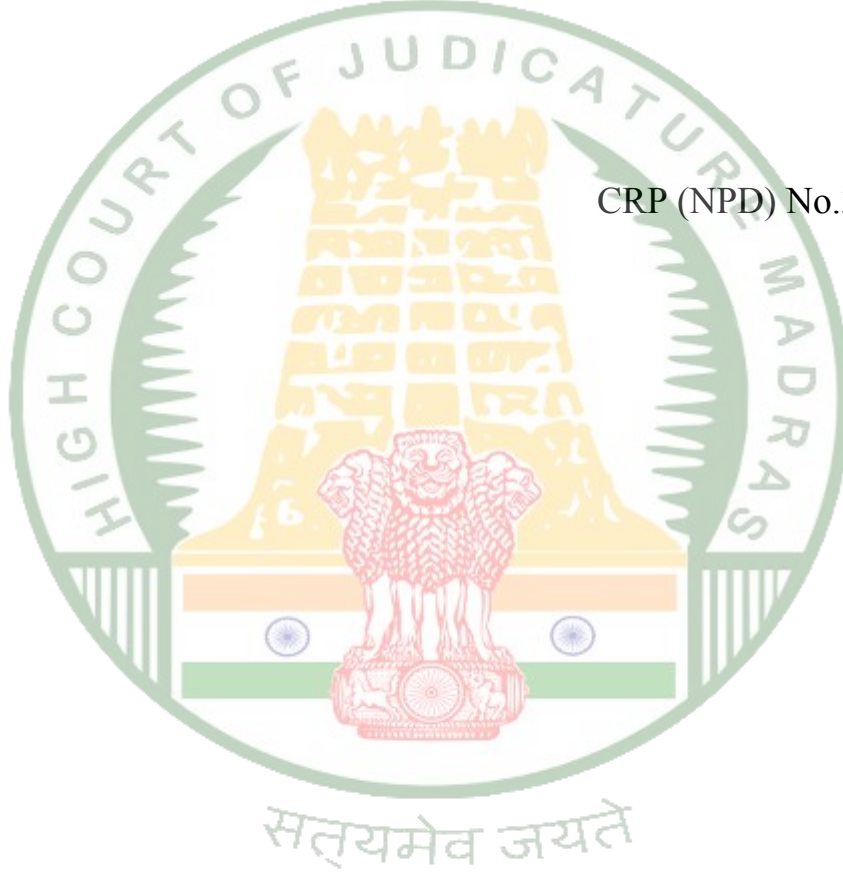
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To

The Additional District Court,
Coimbatore

KRISHNAN RAMASAMY,J.

sr



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