



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(PD) (MD)No.1489 of 2021

and

C.M.P(MD) No.8249 of 2021

WEB COPY

M.Premkumar

... Petitioner

Vs.

C.Anbalagan

... Respondent

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, to call for the records relating to the Fair and Decretal Order dated 02.12.2020 made in I.A.No.107 of 2019 in O.S.No.78 of 2016 on the file of the Additional District Judge, Dindigul and set aside the same and consequently allow the present civil revision petition.

For Petitioner	: Mr.J.Anandkumar
For Respondent	: Mr.T.Cibi Chakraborty

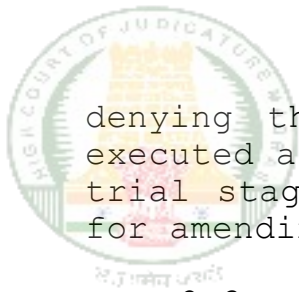
ORDER

The above civil revision petition has been filed by the defendant challenging the order passed by the learned Additional District Judge, Dindigul, in allowing the petition filed by respondent/plaintiff to amend the plaint to include the alternate relief of refund of the advance amount.

2.The facts necessary to dispose of the revision are herein below briefly narrated:-

2.1.The respondent herein had filed a suit for specific performance against the revision petitioner in respect of an agreement of sale deed dated 01.09.2014. It is the case of the plaintiff that under this agreement the petitioner herein had agreed to sell the suit property for the total sale consideration of Rs.13 lakhs out of which a sum of Rs.12 lakhs had been paid as advance retaining a balance of Rs.1 lakh, which was to be paid within a period of two years from 01.09.2014. Since the plaintiff, who was always ready and willing, was unable to get the defendant to execute the sale deed after receiving the balance sale consideration, the plaintiff has come forwarded with the suit for specific performance.

2.2.Originally the prayer that was sought for was only for specifically enforcing the agreement entered into between the parties. The defendant had filed the written statement *inter alia*



denying the agreement of sale and contending that it was only executed as a security for a loan. When the suit was pending on the trial stage, the plaintiff had come forward with this application for amending the relief.

2.3. In the counter affidavit filed by the revision petitioner, he would at the outset, deny the claim of the plaintiff. It is the case of the petitioner herein that the plaintiff / respondent has not given any reason as to why the similar application had not been filed earlier and had to wait till the suit was posted for trial.

2.4. The learned Additional District Judge, Dindigul, allowed the application by holding that an amendment of the like, could be made at any stage of the proceedings. Challenging the said order, the petitioner/defendant is before this Court.

3. Heard the learned counsel appearing on either side and perused the materials.

4. Section 22 (1) of the Specific Relief Act provides power to grant the relief of refund of earnest money. Sub Rule (2) of the Act states that the relief under Clauses (a) and (b) of Sub Section (1) can be granted only if it is specifically claimed. The proviso to this Sub Section provides that where the plaintiff has not claimed such a relief, the same can be claimed at any stage of the proceedings and he must be allowed to amend the plaint on such terms as may be just for including a claim for such relief.

5. In the light of such specific provisions in the Specific Relief Act, the order of the learned Additional District Judge, Dindigul, cannot be found fault with and accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To:-

The Additional District Judge,
Dindigul.

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+1 CC to M/s.T.CIBI CHAKRABORTHY, Advocate (SR-33979[F] dated
10/11/2021)

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