



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.08.2021
(Reserved on 23.03.2021)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)Nos.1088 and 600 of 2020
and

CMP(MD)Nos.7063 and 3898 of 2020

Manju Shree ... Petitioner in both CRPs

vs.

Bhagavathi Raj ... Respondent in both CRPs

Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order made in I.A.Nos.97 and 98 of 2020 and 51 of 2020 in O.S.No.115 of 2016 by the Additional District Court (Fast Track Court), Palani, dated 19.11.2020 and 17.03.2020.

For Petitioner : Mr.D.Venkatesh
For Respondent : Mr.R.Subramanian

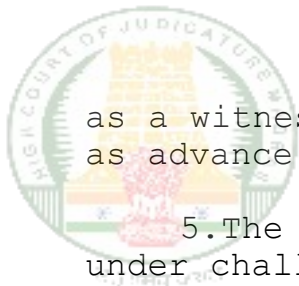
COMMON ORDER

Having suffered dismissal of the petitions filed in I.A.Nos.97 and 98 and 51/2020 in O.S.No.115/2016, the defendant in the suit/the applicant in all the applications have challenged the dismissal order in these two revision petitions. As the issue involved is common, this common order is passed.

2.Admittedly, the suit is filed for specific performance by the respondent herein who is the plaintiff in the suit. The parties are described as per the nomenclature as used in the civil suit for the purpose of better clarification.

3.The case of the plaintiff is that there was a sale agreement to purchase the property of the defendant and advance of Rs.5 Lakhs was paid at the time of registration of the sale agreement. The case of the defendant is that she did not receive a sum of Rs.5 Lakhs by cash and instead, the plaintiff executed a promissory note for Rs.8 Lakhs towards security of the advance amount payable.

4.The trial court has held that the application filed (a)to re-open the case and (b)to examine the Technician in the Sub Registrar office along with production of CCTV footage are highly belated and those applications have been filed with an intention to drag on the proceedings and it does not merit acceptance. Subsequent application has also been filed to summon the Sub Registrar and to examine him



as a witness in order to prove that a sum of Rs.5 lakhs was not paid as advance. This application has also been dismissed.

5.The justifiability or otherwise of the order of dismissal is under challenge in these two revision petitions.

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6.The reason that operated in the mind of the trial court for dismissal are,

- 1)the defendant has not issued reply to pre-suit notice
- 2)the applications filed seeking production of CCTV footage and examination of the Sub Registrar are highly belated.

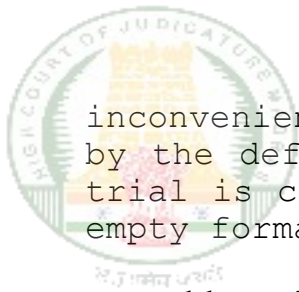
7.No doubt, there is a delay in filing those applications before the trial Court. When the delay is immaterial/when the delay must be condoned/when the delay should not be condoned/when the delay should be condoned with costs are matters to be considered which would depend upon the point sought to be established by filing those applications.

8.Establishment of the truth by obtaining proper proof of relevant facts is the object of the trial. The context in which the application is filed, the purpose for which the application is filed and the relevancy of the factor that is sought to be established are critical factors for the consideration of the court.

9.So far as this case is concerned, it is pointed out that the plaintiff/PW1 has categorically admitted that the advance amount was paid before the Sub Registrar during the execution of sale agreement. This is the context in which the CCTV footage is sought to be produced/Sub Registrar to be examined are sought by the defendant.

10.The suit itself is for the relief of specific performance based upon the registered sale agreement. The responsibility on the part of the defendant to act in accordance with the judgment is based upon the fact that whether the essential terms and conditions of the agreement have been performed by both the plaintiff and by the defendant. If really the plaintiff has paid part of sale consideration towards advance, then the further liability on the part of the defendant to execute the sale deed would arise. If really part of the sale consideration in the name of advance is not paid by the plaintiff, then the plaintiff has no right to ask the defendant to execute the sale deed. It is a settled position of law that no title can pass validly without the passing of consideration. In other words, passing of consideration is a determining factor in determining the rights and liabilities of the parties. Certainly, either the production of CCTV footage and/or the examination of Sub Registrar would offer unfailing evidence with regard to passing of consideration especially when it is admitted by the plaintiff that passing of consideration was in the presence of the Sub Registrar.

<https://hccservicescourts.gov.in/services/> have ordered payment of cost in order to offset the



inconvenience caused to the plaintiff on account of the delay caused by the defendant. The establishment of truth is justice for which trial is conducted and courts are functioning. It is not for a mere empty formality.

11. Under such circumstances, the impugned fair and decrretal orders passed in I.A.Nos.97 and 98 of 2020 and 51 of 2020 in O.S.No.115 of 2016 by the Additional District Court (Fast Track Court), Palani, dated 19.11.2020 and 17.03.2020, are set aside and both the Civil Revision Petitions are allowed. All the I.As are allowed with modification permitting production of CCTV footage along with examination of the Sub Registrar subject to the condition that the defendant pays a cost of Rs.10,000/- to the plaintiff. Trial shall be taken on priority basis having regard to the long pendency. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

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/ /2021

Sub Assistant Registrar(CS)

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To

The Additional District Judge
(Fast Track Court),
Palani.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-25141[F] dated 04/08/2021)

CRP(MD)Nos.1088 and 600 of 2020

DATED : 03.08.2021

MGJ(10.08.2021) 3P 3C