

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P(NPD)NO. 649 OF 2019
AND C.M.P NO.4139 OF 2019

Kannan ... Petitioner

Versus

Dr.Sridharan ... Respondent

Prayer:-

Civil Revision petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 28.11.2018 passed in I.A.No. 91 of 2018 in O.S.No. 3 of 2011 on the file of the Motor Accident Claims Tribunal/ III Additional District Judge at Kallakurichi.

For petitioner : Mr.Govind Chandrasekhar

O R D E R

This civil revision petition has been filed to set aside the order and decretal order dated 28.11.2018 passed in I.A.No. 91 of 2018 in O.S.No. 3 of 2011 on the file of the Motor Accident Claims Tribunal/ III Additional District Judge at Kallakurichi.

2. The suit in O.S.No. 3 of 2011 was dismissed on 11.04.2012, aggrieved by which, the plaintiff filed A.S.No. 528 of 2012 which was allowed on 26.09.2016. The sale consideration is deposited on 29.06.2010 in the Principal District and Sessions Court, Villupuram. E.P.No. 4 of 2017 was allowed on 11.10.2017 and accordingly, the sale deed was executed on 12.10.2017 in favour of the plaintiff. From the date of deposit till the execution of sale deed, the buyer claimed for the interest. Accordingly, I.A.No.91 of 2018 was filed and same was dismissed on 28.11.2018.

3. The petitioner herein is the plaintiff in O.S No. 3 of 2011 who has filed this application challenging the decretal order dated 28.11.2018 passed in I.A.No. 91 of 2018 in O.S.No.3

of 2011 on the file of the III Additional District Court, Kallakurichi, by relying upon the provisions in clause(6) of Section 55 of the Transfer of Property Act,1882.

4. The learned counsel for the petitioner argued that the buyer is entitled to claim interest on the amount of purchase money paid till the date of execution of the sale deed or delivery of possession whichever is earlier. By relying on the said proposition of law, he filed an application in IA.No. 91 of 2018 before the trial Court claiming interest amount for the balance of sale consideration deposited by him in O.S. No. 3 of 2011. The said petition was contested by the respondent/defendant herein and on hearing the respondent/defendant objection, the trial Court dismissed the said petition. Aggrieved against the same, the plaintiff has preferred this petition.

5. The brief facts of the case are as follows

5.1 The revision petitioner/plaintiff herein has filed a suit for specific performance against the respondent herein in O.S. No. 3 of 2011 before the III Additional District Judge, Kallakurichi. The said suit was dismissed with regard to the relief of specific performance execution of sale deed, granting the relief of alternative remedy of refund of Rs.60,00,000/- with interest from the date of the suit till the date of the decree. Against which he preferred appeal AS 528 of 2012 and got succeeded based upon that he got executed the sale deed and took possession through execution proceeding in E.P. No. 6 of 2018. Thereafter, this petitioner filed I.A.No.91 of 2018, under Section 151 of CPC claiming interest for an amount of Rs.50,00,000/- which was deposited by him at the time of filing of the suit.

5.2 The respondent/defendant raised an objection. As per the objection of the respondent that the trial Court dismissed the application concluded that the respondent directed to pay interest only for the balance sale consideration. Aggrieved against the same, the plaintiff/petitioner has preferred this revision.

6. At the time of hearing, there was no representation on the side of the respondent though his name is printed in the cause list. At the time of arguments, the learned counsel for the petitioner, in support of his contention, has relied under Section 55(6) (b) of the Transfer of Property Act which reads as follows:

"The above Sub-section of Section 55 also makes it clear that the buyer is entitled to interest on the amount of purchase money paid. Interest is payable from the date of payment of the purchase

money to the seller till the date of delivery of property to the purchaser or till the execution of the sale deed, whichever is earlier."

7. The learned counsel for the petitioner, in support of his contention, has relied on (2000) 10 SCC Cases 130 in Delhi Development Authority vs. Skipper Construction Co.(P)LTD and others, which is extracted as follows:

31. The above sub-section of Section 55 also makes it clear that the buyer is entitled to interest on the amount of purchase money paid. Interest is payable from the date of payment of the purchase money to the seller till the date of delivery of property to the purchaser or till the execution of the sale deed, whichever is earlier. Points 1 and 2 are decided accordingly in favour of the buyers.

and in 2018 SCC Online Del 8693:(2018) 250 DLT 536 in Sarawjeet Singh vs. Kusum Kumaria and others, which is extracted as follows:

5. An issue qua b) the fate of interest accrued on 5,32,50,000/- lying deposited since the year 2013, I may refer to Section 55 (6)(b) of the Transfer of the property Act:

"55(b)(a)xxxxx

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, 2[* * *] to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission."

6. Further in Delhi Development Authority vs. Skipper Construction Co.(P) Ltd. and Others (2000) 10 SCC 130 the Court held :

"29. It is plain from the above provision that, in the absence of a contract to the contrary, the buyer will have a charge on the seller's interest in the property which is the subject matter of the sale agreement insofar as the purchase money and interest on such amount are concerned, unless the buyer has

improperly declined to accept delivery. The charge is available against the seller and all persons claiming under him. This charge in favour of the buyer is the converse of the seller's charge under Section 55(4) (b). The buyer's charge under this Section is a statutory charge and differs from a contractual charge which a buyer may be entitled to claim under a separate contract.

xxxxx

31. The above sub-section of Section 55 also makes it clear that the buyer is entitled to interest on the amount of purchase money paid. Interest is payable from the date of payment of the purchase money to the seller till date of delivery of property to the purchaser or till the execution of the sale deed, whichever is earlier. Points 1 and 2 are decided accordingly in favour of the buyers."

7. In Videocon Properties Ltd. vs. Dr.Bhalchandra Laboratories and Others (2004) 3 SCC 711 the Court held:

"The buyer's charge engrafted in clause (b) of paragraph 6 of Section 55 of the Transfer of Property Act would extend and ensure to the purchase-money or earnest money paid before the title passes and property has been delivered by the purchaser to the seller, on the seller's interest in the property unless the purchaser has improperly declined to accept delivery of property or when he properly declines to accept delivery including for the interest on purchase money and costs awarded to the purchaser of a suit to compel specific performance of the contract or to obtain a decree for its rescission. The principle underlying the above provision is a trite principle of justice, equity and good conscience. The charge would last until the conveyance is executed by the seller and possession is also given to the purchaser and ceases only thereafter. The charge will not be lost by merely accepting delivery of possession alone. This charge is a statutory charge in favour of a buyer and is different from contractual charge to which the buyer may become entitled to under the terms of the contract, and in substance a converse to the charge created in favour of the seller under Section 55(4) (b) .

8. So far as payment of interest is concerned as per Section 55(6)(b) of Act specifically envisages payment of interest upon the purchase money/prime prepaid. In the instant case, balance sale consideration of Rs.50,00,000/- was deposited in the Court on 29.06.2010 by this petitioner but sale deed was executed and property was delivered to him on 06.04.2018 in E.P.No.6 of 2018. Moreover as per decree the respondent is entitled to receive balance sale amount of Rs.50,00,000/-. The accrued interest for that amount is now claimed by this petitioner, as he was always ready to perform his part of contract. He has not committed any breach of contract as per the decree. He deposited balance sale price in the year 2010 and there is no improper decline on the part of the buyer/petitioner. The ratio laid down in above referred cases support petitioner's contention case. But trial Court without appreciating the Section 55(b)(6) erroneously dismissed the petition is unsustainable one. The buyer's charge under this Section is a statutory charge. Accordingly petition is allowed and thereby petitioner is entitled to receive the interest at the rate of 6% for the amount deposited on 29.06.2010 till the date of execution of sale deed.

In the result, this civil revision petition is allowed by setting aside the decretal order dated 28.11.2018 passed in I.A.No.91 of 2018 in O.S.No. 3 of 2011 on the file of the Motor Accident Claims Tribunal/III Additional District Court, Kallakurichi. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

dsn

To

The Motor Accident Claims Tribunal/
III Additional District Judge
at Kallakurichi.

C.R.P.No. 649 of 2019
and C.M.P No.4139 of 2019

PA(CO)
PM/26/04/2022