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A.S(MD)No.132 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.10.2022

CORAM :

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

A.S(MD)No.132 of 2012

and

M.P(MD)No.1 of 2012

Hamarunnisa

... Appellant / Plaintiff

-Vs-

M.K.Vijayalakshmi

.. Respondent / Defendant

PRAYER: Appeal is filed under Section 96 of the Civil Procedure Code,
against the judgement and decree dated 29.02.2012 made in O.S.No.188



WEB COPY

A.S(MD)No.132 of 2012

of 2008, on the file of the learned Additional District and Sessions Judge(Fast Track Court No.2), Tiruchirappalli.

For Appellant : Ms.J.Maria Roseline
For Respondent : Mr.N.Subramani

JUDGMENT

J.NISHA BANU,J.
and
N.ANAND VENKATESH, J.

The plaintiff in the suit has filed this appeal against the Judgment and Decree of the learned Additional District and Sessions Judge (FTC No.2), Thiruchirappali made in O.S.No.188 of 2008, dated 29.02.2012, dismissing the suit filed seeking for the relief of specific performance or for granting the alternative relief of refund of the advance amount.



A.S(MD)No.132 of 2012

WEB COPY

2. The case of the plaintiff is that she entered into an agreement of sale with the defendant on 11.04.2008 whereby the defendant agreed to sell the suit property for a total sale consideration of Rs.36,20,000/-. The further case of the plaintiff is that an initial advance of Rs.10,00,000/- was paid on the date of the agreement and subsequently, a further sum of Rs.2,00,000/- was paid on 11.07.2008. The balance sale consideration was agreed to be paid at the time of execution of sale deed. The plaintiff took a stand that she was always ready and willing to pay the balance sale consideration of Rs.24,20,000/- and the defendant was evading the receipt of the same. Hence, the plaintiff issued a telegraphic notice dated 13.10.2008 to the defendant, calling upon the defendant to execute the sale deed in her favour. The defendant sent a reply notice dated 25.10.2008, but however took a stand that the plaintiff was not having the financial wherewithal to pay the balance amount and this was also informed to the defendant and



A.S(MD)No.132 of 2012

WEB COPY

hence, the agreement itself stood cancelled orally. The defendant was also taking steps to alienate the property to third parties. In view of the same, the suit came to be filed seeking for the relief of specific performance or for granting the alternative relief of refund of the advance amount with interest.

3. The defendant filed a written statement and took a stand that the sale agreement was entered into with the plaintiff and a sum of Rs.12,00,000/- was also received by the defendant. The defendant also informed the plaintiff that they are selling the property only to clear the loan that was borrowed from Thiruchirappalli District Co-operative Bank Ltd. The defendant also took a stand that time was the essence of the contract and six months time was fixed in the agreement and the plaintiff was not able to arrange for the payment of the balance sale consideration within the time stipulated in the agreement. Ultimately, the plaintiff



A.S(MD)No.132 of 2012

WEB COPY

informed the defendant that she did not have sufficient funds to pay the balance sale consideration and accordingly, the agreement was cancelled orally. Accordingly, the defendant sought for the dismissal of the suit.

4. The Court below, on considering the pleadings, framed the following issues:

“1. தாவா சொத்தை பொறுத்து 11.04.2008ம் தேதிய கிரைய ஒப்பந்தத்தின்படி வாதிக்கு பிரதிவாதி எழுதிக் கொடுக்க கோரும் ஏற்றதை ஆற்றுகை பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா?

2.வாதிக்கு பிரதிவாதியிடமிருந்து தொகை ரூ.12,00,000/- கிடைக்கத்தக்கதா?

3.இதர பரிகாரம் என்ன?”

5. This Court carefully considered the submissions made by



A.S(MD)No.132 of 2012

WEB COPY

Ms.J.Maria Roseline, learned counsel for the appellant and Mr.N.Subramani, learned counsel for the respondent and also the oral and documentary evidence available on record. This Court also carefully went through the Judgment passed by the Court below.

6. The following points for consideration arises in this Appeal Suit:

- a) Whether time was the essence of the contract and the plaintiff failed to show her readiness and willingness within the time stipulated in the agreement ?
- b) Whether the plaintiff was able to establish her financial wherewithal to pay the balance sale consideration of Rs.24,20,000/- to show her readiness to perform her part of the contract ? and
- c) Whether the Judgment and Decree passed by the



WEB COPY

A.S(MD)No.132 of 2012

Court below requires the interference of this Court ?

7. This Court carefully went through the sale agreement dated 11.04.2008 marked as Ex.A1. It is clear from the agreement that the total sale consideration was fixed at Rs.36,20,000/- and the plaintiff had paid a sum of Rs.10,00,00/- as advance on the date of the agreement. The agreement had fixed six months for the completion of the contract and the plaintiff was expected to pay the balance sale consideration within this time and the defendant was expected to execute the sale deed in favour of the plaintiff.

8. The plaintiff paid a further advance amount of Rs.2,00,000/- on 11.07.2008 and thereby, a total amount of Rs. 12,00,000/- was paid by the plaintiff to the defendant.



A.S(MD)No.132 of 2012

WEB COPY

9. The plaintiff was expected to pay the entire balance sale consideration within a period of six months which was the time fixed under the agreement and this amount should have been paid on before 10.10.2008.

10. The plaintiff issued a notice by means of a telegram on 14.10.2008, which was marked as Ex.A4 and she also issued paper advertisement about the agreement which was marked as Ex.A5 and Ex.A6.

11. The reply notice dated 25.10.2008 issued by the defendant and which was marked as Ex.A8 made it very clear that the plaintiff did not have sufficient money to pay the balance sale consideration of Rs.24,20,000/- and hence, the defendant took a specific stand that the plaintiff did not establish the readiness to pay the balance sale consideration within the time stipulated in the agreement.



A.S(MD)No.132 of 2012

WEB COPY

12. The plaintiff, on receipt of this notice, proceeded to file the suit seeking for the relief of specific performance. Since the defendant had taken the very specific stand that the plaintiff did not have the financial wherewithal to pay the balance sale consideration, the plaintiff even at the time of filing the suit, should have shown her readiness by depositing the amount before the Court or should have established the availability of sufficient funds atleast in the course of evidence. The plaintiff was not able to establish the same, except taking a stand that she is ready and willing to perform her part of the contract. This burden on the plaintiff further enhanced after the defendant took a stand at paragraph No.6 of the written statement that the plaintiff did not have sufficient funds to pay the balance sale consideration and it was informed to the defendant pursuant to which, the agreement was cancelled. This stand taken by the defendant in the written statement was not rebutted by the plaintiff even in the course of evidence. The plaintiff, who approaches the Court seeking for the relief of specific performance



A.S(MD)No.132 of 2012

WEB COPY

is mandated under Section 16(c) of the Specific Relief Act to establish readiness and willingness to perform her part of the contract. The readiness pertains to the financial wherewithal of the plaintiff and the willingness denotes the mental state to perform her part of the contract. The relief of specific performance being a discretionary relief, cannot be granted if the plaintiff fails to establish readiness and willingness.

13. In the instant case, except for the *ipsi dixit* of the plaintiff, there is absolutely no evidence to show that the plaintiff had the financial wherewithal to pay the balance sale consideration of Rs. 24,20,000/-. The defendant was in need of the amount, since the property was mortgaged with a co-operative bank and she wanted to settle the loan and redeem the property. Hence, if the plaintiff was really serious about performing her part of the contract, she should have at least deposited the balance sale consideration at the time of filing the suit.



A.S(MD)No.132 of 2012

WEB COPY

This was not done by the plaintiff and the Court below had taken into consideration this important factor and rightly rejected the claim made by the plaintiff and granted the alternative relief of refund of advance amount with interest.

14. In view of the above, this Court holds that the plaintiff/appellant was not ready and willing to perform her part of the contract within the time stipulated in the agreement and even thereafter and hence, is not entitled for the equitable relief of specific performance. There is absolutely no ground to interfere with the Judgment and Decree passed by the Court below dismissing the suit. All the points for consideration formulated by this Court stands answered accordingly.

15. In the result, this appeal suit stands dismissed. Considering the facts and circumstances of the case, there shall be no



A.S(MD)No.132 of 2012

WEB COPY

order as to costs. Consequently, connected miscellaneous petition is closed.

[J.N.B, J.] & [N.A.V., J.]

13.10.2022

Index : Yes/No
Internet : Yes/No
PJJ

To
The Additional District and Sessions Judge,
(Fast Track Court No.2),
Tiruchirappalli.



WEB COPY



A.S(MD)No.132 of 2012



WEB COPY



A.S(MD)No.132 of 2012

**J.NISHA BANU, J
AND
N.ANAND VENKATESH, J**

PJL

Judgment made in
A.S(MD)No.132 of 2012

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