



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the Twenty First day of December Two Thousand and Twenty Two

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PRESENT

The Hon`ble Mrs.Justice N.MALA

CMP(MD) No.11109 of 2022
in
A.S(MD)No.168 of 2014

MURUGESAN,

... PETITIONER/APPELLANT

Vs

HABEEB RAHMAN,

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to amend prayer in the plaint in the suit O.S.No.1 of 2013 on the file of Learned Principal District Judge, Ramanathapuram, for incorporation of relief(ஆஆ) for refund of advance sale consideration and more fully described in the schedule hereunder.
SCHEDULE OF AMENDMENT

Amend the plaint in S.No.5 in the relief column after relief (ஆ) by incorporating the following as new relief:

“(ஆஆ) வாதி செலுத்திய கிரைய முன்பணத்தொகையான ரூ.6,10,000 (ஆறு லட்சத்தி பத்தாயிரம் ரூபாய்)யை பிரதிவாதி அதற்கான வட்டியுடன் வாதிக்கு செலுத்த உத்தரவுவிடவும்”.

PRAYER IN AS(MD)No.168 of 2014:

Pleased to set aside the judgment and decree dated 11.08.2014 made in O.S.No. 1 of 2013 on the file of Principal District Judge, Ramanathapuram, allow this appeal suit.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S S.SRINIVASA RAGHAVAN, Advocate for the petitioner and of MR.D.SENTHIL, Advocate on behalf of the Respondent, the court made the following order:-

This application is filed to amend the plaint in O.S.No.1 of 2013 on the file of the Principal District Judge, Ramanathapuram, for incorporation of the relief for refund of advance sale consideration.

2. The suit for specific performance filed by the petitioner/appealant was dismissed by the Trial Court on 11.08.2014.



Aggrieved by the same, the petitioner/appellant has filed a petition before this Court. Pending appeal, the petitioner/appellant has filed an application seeking alternate relief of refund of advance sale consideration of Rs.6,10,000/- paid by the petitioner/appellant to the respondent.

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3. According to the learned counsel for the appellant, Section 22 (b) of the Specific Relief Act provides that an amendment seeking any relief which the plaintiff is entitled to can be sought for at any stage of the proceeding. The learned counsel for the appellant further relied on the judgment in the case of **Gajendran Vs Sivanandi and others** reported in **2021 CTC 637**.

4. The learned counsel for the respondent filed a counter, wherein, it is stated that the petition cannot be allowed as the application for amendment is made beyond three years from the date of refusal of performance and therefore barred by limitation.

5. I have considered the submission of both counsels and I have gone through the petition and counter affidavit.

6. This Court in the case of **Gajendran Vs Sivanandi and others** reported in **2021 CTC 637** considered the very same issue and held that under Section 22 of the Specific Relief Act, the person may in an appropriate case ask for refund of any earnest money or deposit paid, in case his claim for specific performance is refused. It was further held that Section 22 of the Specific Relief Act gives discretion to the Court to allow the plaintiff to amend the plaint for refund of advance amount at any stage of the proceedings. The learned Single Judge after referring to Sub-clause 2 of Section 22 of the Specific Relief Act held that when the amendment is sought to include alternative prayer of refund of advance amount, the same is permissible and the Court shall also allow such prayer. It is pertinent to refer to the judgment of the Hon'ble Supreme Court in C.A.No.5909 of 2022 in **Life Insurance Corporation of India Vs Sanjeev Builders Private Limited and others**, dated 01.09.2022. The Hon'ble Supreme Court in the context of amendment of pleading in a specific performance suit for enhancing the quantum of compensation claimed in the suit, discussed the provisions of Sections 21 and 22 of the Specific Relief Act and at Paragraph 58 held as follows:

"58. Section 22 has a non-obstante provision which overrides the CPC. A plaintiff who claims specific performance of a contract for the transfer of immovable property, may in an appropriate case ask for possession, partition and separate possession of the property, in addition to specific performance. The plaintiff may also claim any other relief including the refund of earnest money or deposit paid, in case the claim for specific performance is refused. Corresponding to the provisions of



sub-section (5) of Section 21, sub-section (2) of Section 22 stipulates that such relief cannot be granted by the court unless it has been specifically claimed. However, the proviso requires that the court shall at any stage of the proceedings allow the plaintiff to amend the plaint to claim such relief where it has not been originally claimed on such terms which may appear just."

7. It is seen that the defendants had not disputed the receipt of Rs.6,10,000/- as advance money from the plaintiff. The defendant in his written statement has not only admitted the receipt of the advance amount of Rs.6,10,000/- but has also stated that if directed by the Court he is prepared to return the advance amount received by him. It is therefore seen that absolutely no prejudice would be caused to the defendant if the amendment is allowed. Under such circumstances, following the judgments referred to and the facts of the present case, I am inclined to allow the application for amendment of plaint. Accordingly, the petition is allowed.

sd/-

21/12/2022

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/01/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

THE PRINCIPAL DISTRICT JUDGE,
RAMANATHAPURAM.

COPY TO

THE SECTION OFFICER
VERNACULAR RECORDS,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER

IN

CMP(MD) No.11109 of 2022
in

A.S(MD)No.168 of 2014

Date :21/12/2022

PKP/BUC/SAR /02.01.2023/2P/3C