

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

TUESDAY, THE TWENTY SEVENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HONOURABLE SRI JUSTICE NAGESH BHEEMAPAKA

Civil Miscellaneous Appeal No. 543 of 2022

Appeal filed under Order 43 Rule 1 CPC, against the order dated 08.07.2022 made in I.A.No.128 of 2022 in O.S.No.65 of 2021 on the file of the III Additional District & Sessions Judge at Sangareddy.

Between:

G. Umashankar, S/o G. Vittalaiah, Aged about 43 years, Occ- Advocate, R/o D.No.3-16, Kismatpur Village, Gandipet Mandal, Ranga Reddy District - 500 086.

...Petitioner.

AND

1. Pokala Venkateshwar, S/o Late P. Ramachandraiah, Aged about 48 years, Occ- Business, R/o H.No.18-30/1, Zaheed Nagar, Uppal, Hyderabad - 500039, Telangana State.
2. Rukkam Anantha Rao, S/o R. Prasad Rao, Aged about 50 years, Occ- Employee (General Secretary, Toshiba Transmission and Distribution Systems (India Pvt. Ltd.) Rudraram, Patancheru Mandal, Sangareddy District, Telangana State - 502329. R/o H.No.51, Road No.3, Reddy Colony, Chandanagar, Hyderabad, Telangana State-500050.
3. Sri Rudra Projects, Represented by its Proprietor, M. Mallikarjun Reddy, S/o Venku Reddy, Aged about 40 years, Occ- Business, R/o H.No.77, Alkapuri Colony, Pupalguda Village, Gandipet Mandal, Ranga Reddy District, Telangana State.
4. The Sub-Registrar, Sub Registration Office, Sangareddy at Kashipur, Sangareddy District.

(Respondents 1, 3 and 4 are not necessary parties)

...Respondents.

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondent No.2 to refund the amount of Rs.15.00 lakhs with interest @ 24 percentage per annum from the date of agreement of sale dt.17/02/2019 to the petitioner, pending disposal of the CMA.

Counsel for the Appellant: Sri D.Ramakrishna.

Counsel for the Respondent No.2: Sri M.Rajender Reddy.

The Court made the following: **ORDER**

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA
CIVIL MISCELLANEOUS APPEAL No.543 OF 2022**

JUDGMENT: (Per Hon'ble Dr.SA,J)

This Civil Miscellaneous Appeal, under Order XLIII Rule 1 of C.P.C., is filed by the appellant/plaintiff, aggrieved by the order, dated 08.07.2022, passed in I.A.No.128 of 2022 in O.S.No.65 of 2021, by the learned III Additional District Judge at Sangareddy, whereby the subject Interlocutory Application filed by the appellant/plaintiff, under Order XXXIX Rule 10 read with Section 151 of C.P.C., seeking to direct respondent No.2/defendant No.2 to repay him the amount of Rs.15,00,000/- along with interest @ 24% per annum from the date of agreement i.e., 17.02.2019, was dismissed.

2. Heard the learned counsel for both sides and perused the record.

3. The Court below, while dismissing the subject I.A. vide the impugned order, dated 08.07.2022, was pleased to record a finding in paragraph No.5(d), which reads as follows:

"When the main suit is coming up for hearing, after filing written statement by Defendant nos.1 and 2, the present application is filed by the petitioner. Thus, prima facie, unless it is concluded that the entire amount paid by the petitioner to the respondents is Rs.1.00 crore 40 lakhs and that the contract between the parties over plot no.90 is for Rs.1.00 crore 25 lakhs, it cannot be decided that the petitioner is entitled for refund of Rs.15,00,000/- from the respondents, that too without paying any court for the said amount of Rs.15,00,000/-."

4. It is brought to the notice of this Court by the learned counsel for the appellant/plaintiff that the appellant/plaintiff is ready to pay the requisite Court fee to seek recovery/refund of Rs.15,00,000/-.

5. There is no much objection by the other side with regard to the payment of Court fee proposed by the appellant/plaintiff.

6. In view of these circumstances, the appellant/plaintiff is permitted to pay the Court fee on Rs.15,00,000/- sought to be recovered in the original Suit. It is open to the appellant/plaintiff to file an Interlocutory Application afresh seeking recovery of Rs.15,00,000/-, subject to payment of Court fee, in accordance with the procedure established under law.

7. The Civil Miscellaneous Appeal is ordered, accordingly.

Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. No order as to costs.

Sd/- M. VIJAYA BHASKAR
JOINT REGISTRAR

//TRUE COPY//

CJB

SECTION OFFICER

To,

1. The III Additional District & Sessions Judge at Sangareddy.
2. One CC to Sri D.Ramakrishnam, Advocate [OPUC]
3. One CC to Sri M.Rajender Reddy, Advocate [OPUC]
4. Two CD Copies

JCK

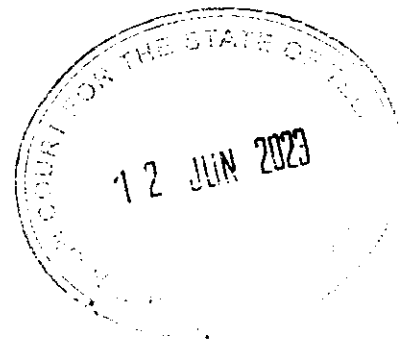


HIGH COURT

DATED:27/12/2022

ORDER

CMA.No.543 of 2022



Ordering the C.M.A. without costs.

5-0914
3/6/23

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

TUESDAY, THE TWENTY SEVENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HONOURABLE SRI JUSTICE NAGESH BHEEMAPAKA

Civil Miscellaneous Appeal No. 543 of 2022

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Between:

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1. Pokala Venkateshwar, S/o Late P. Ramachandraiah, Aged about 48 years, Occ- Business, R/o H.No.18-30/1, Zaheed Nagar, Uppal, Hyderabad - 500039, Telangana State.
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__Appeal filed under Order 43 Rule 1 CPC, against the order dated 08.07.2022 made in I.A.No.128 of 2022 in O.S.No.65 of 2021 on the file of the III Additional District & Sessions Judge at Sangareddy.

This appeal coming on for hearing upon the arguments of Sri D. Ramakrishna appearing for the appellant and of Sri M. Rajender Reddy, appearing for the respondent No.2, this Court doth order and decree as follows:

1. That the appellant/Plaintiff is permitted to pay the court fee on Rs.15,00,000/- sought to be recovered in the original suit.
2. That the appellant/plaintiff is open to file an interlocutory application fresh seeking recovery of Rs.15,00,000/- subject to payment of Court fee, in accordance with the procedure established under law.

3. That the CMA is ordered accordingly, without costs.

Sd/- M. VIJAYA BHASKAR
JOINT REGISTRAR

//TRUE COPY//



SECTION OFFICER

To,

1. The III Additional District & Sessions Judge at Sangareddy.
2. Two CD Copies

JCK



HIGH COURT

DATED:27/12/2022

DECREE

CMA.No.543 of 2022

Ordering the C.M.A. without costs.

3 - 69127
3/6/2023