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**A.Nos.4827 to 4829 of 2013
in
CS.No.167 of 2007**

RESERVED ON : 14.09.2023

PRONOUNCED ON : 11.12.2023

A.A.NAKKIRAN, J.

COMMON ORDER

1. A.No.4827 of 2013 has been filed by the applicant, to direct the respondent/defendant to furnish proof of records and render accounts for the amounts collected mentioned in the affidavit.

A.No.4828 of 2013 has been filed by the applicant, to permit the applicant to pay the electricity bills directly.

A.No.4829 of 2013 has been filed by the applicant, to permit the applicant to deposit the amounts for the bills raised by the respondent/defendant.

2. The case of the Applicant, as stated in the common affidavit filed by the applicant, is as follows:-

The applicant approached the respondent/defendant for the sale of the apartment bearing Door No.2, second floor, measuring about 1812 sq.ft now named as Schofield Place at No.5, Ranjith Road, Kotturpuram, Chennai 600 085. Since the applicant evinced keen interest to purchase the said property, the respondent gave the copies of the parent



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documents relating to the same. Thereafter the draft agreement of sale was approved by both the parties. An agreement was entered into between them on 05.02.2004, wherein, he contracted to purchase the schedule mentioned apartment measuring about 1,8,12 sq.ft together with 1/4 undivided share in the land described in suit schedule property from the respondent/defendant for a sum of Rs.42,00,000/- out of which, a sum of Rs.38,00,000/- has been paid and acknowledged. The applicant is ready and willing to perform the agreement, whereas the respondent/defendant has refused to execute the instrument of sale deed. On 15.01.2007, the respondent/defendant wrote a letter demanding to return the money instead of registering the sale deed which leads to the breach of the terms of the agreement. The applicant fulfilled all the conditions entered in the agreement of sale including the last payment of Rs.5,00,000/- on 25.11.2006, but the respondent / defendant has not executed the sale deed in favour of the applicant.. Therefore, he has filed this specific performance suit and the same is numbered as C.S.No.167 of 2007 along with an application for injunction namely O.A.No.233 of 2007. She further submitted that the expenses towards maintenance, electrical, lift repairs, tank cleaning, etc., are shared by the occupants of the said 4 flats. The respondent/defendant collected money from the applicant at different intervals on different dates on various charges as



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stated above. The respondent/defendant never gives proper accounts on a piece of paper for the monies collected every time and never bothered to issue proper bills for the same. The applicant used to travel frequently to visit his children who are staying abroad and hence the respondent has collected monies even in the absence of the applicant. Therefore, huge sums are being collected from her without proper bills. She further submitted that PW1 chief was over on 16.03.2011 and Exs.P1 to P6 were marked and the matter was posted for cross examination of PW1. When the case came up before the Additional Master IV on 30.03.2011, the same was adjourned to 05.04.2012 since there was no cross or appearance of the defendant. On 07.04.2011, the respondent/defendant represented that another C.S.No.744/2013 and O.P.No.564/1998 are pending before this court. Though the applicant is aged about 74 years, the suit cannot be taken up since the connected matters are pending. The matter was adjourned to 18.04.2013 for verification and thereafter the case has not been listed. The respondent/defendant has collected monies on adhoc basis and not furnished any accounts for the same. Since there is separate electricity card for consumption of electricity in my flat and the same is in the name of the respondent, he prays to pass order to pay the electricity bills by the applicant directly to the Tamil Nadu Electricity Board. He need to furnish all the records of expenditure to his



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children residing abroad. But the respondent/defendant has not furnished any explanation for collecting the amounts as stated above. Hence the applicant has filed these applications seeking the reliefs, as stated above.

3. In the common counter filed by E. Raghava Rao, it is stated as under:-

The applicant has filed the above suit for specific performance of the suit sale agreement. The sale agreement entered into between the parties on 05.02.2004 fixing the total sale consideration at Rs.42,00,000/- with three months time for completion of the contract. As on 01.05.2004, a sum of Rs.10,00,000/- has to be paid for balance sale consideration, however, she continued to be in possession in the said property without paying the full sale consideration. She obtained an injunction order restraining the respondent from alienating the suit property. The directions sought for in this applications are outside the scope of the suit. The applicant neither issued any notice nor made any demand for the details she sought for. The respondent had constructed 4 residential flats out of which, one occupied by him and two flats are occupied by his tenants and the one flat occupied by the applicant. The applicant is paying $\frac{1}{4}$ share in the maintenance charges and the respondent had borne $\frac{3}{4}$ share for maintaining EB charges, salary for the security, diesel expenses for generator, cleaning overhead tank, sump, lift



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maintenance, Corporation tax, repairs in the common areas, etc., The applicant has made payment for the past 10 years. The respondent had paid the bills even when the applicant is not available continuously in the flat for some months. Later he got it reimbursed. Since the electricity connection of the applicant's flat also stands in the name of the respondent, he is paying the charges even for the consumption made by the applicant. The applicant had left her flat on 25.09.2013 and till 12.11.2013 she has not returned. He further submitted that If she has any problem in making the payments, she can inform the respondent and he is ready to cooperate with her. The applicant cannot deny her share of the common expenses since she is also occupying the flat. The details of the incurred expenses are furnished by the respondent but now she is making false averments only for the purpose of filing the affidavit. Since the applicant had left the flat by 25.09.2013, the respondent is yet to get the maintenance charges from her.

4. Heard both sides.

5. Perusal of the records would reveal that both the suits are pending in respect of title of the suit property, It is also seen that the sister of the defendant had obtained injunction order against the defendant. The applicant is still in possession of one of the flats of the said suit property even though she is not



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residing there in person since 25.09.2013. In other words, the applicant ought to pay her respective share for the charges incurred by the respondent in maintaining the suit property, since she has occupied one of the flats in the suit property.

6. This court is of the considered opinion that no prejudice would be caused to the respondent if the application in A.No.4829 of 2013 is allowed and it only facilitate to narrow / thin the dispute at the time of trial. The receipt of the



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amount towards maintenance charges by the respondent is also not disputed vigorously. Rendition of account also not created or extinguish any right of the parties to decide the suit. The possession of the one portion of the suit property is also not disputed by the applicant. Therefore, it is the duty of the applicant to pay the minimum electricity charges as long as she is in possession/occupation of the property and also the expenses incurred by the respondent seems to be common expenses for the maintenance of the suit property. It is made clear that the applicant cannot claim any refund of such payment towards the electricity charges deposit in future.

7. In view of the above discussion, A.No.4828 of 2013 is dismissed and A.Nos.4827 & 4829 of 2013 are allowed. No costs.

8. Post the main suits before this court on 21.12.2023.

11.12.2023

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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Pre-Delivery Common Order in
A.Nos.4827 to 4829 of 2013



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