



C.R.P.No.1446 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 28.04.2023

Pronounced On : 21.12.2023

CORAM

THE HONOURABLE DR.JUSTICE D.NAGARJUN

C.R.P.No.1446 of 2023

D.Iyyappan ... Petitioner / Plaintiff

Vs

A.Gomathi Nayagi ... Respondent/Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order passed in Unnumbered O.S.S.R.No.3020 of 2021 dated 16th August 2022 by the Hon'ble Subordinate Judge, Alandur.

For Petitioner : Mr.S.N.Narasimalu

ORDER

This Civil Revision Petition is filed questioning the rejection of plaint in O.S.SR.No. 3020 of 2021 by the learned Subordinate Judge, Alandur.



C.R.P.No.1446 of 2023

WEB COPY 2. The facts in brief which led the petitioner to file this Revision are that the petitioner has filed a suit under Order 37 Rule 1 of C.P.C., against the respondent alleging that the respondent approached the petitioner on 11.10.2015 and promised the petitioner that he will secure house to the petitioner under Tamil Nadu Housing Board Scheme at Semencherri and for the said purpose, the petitioner has paid Rs.6,50,000/- to the respondent.

3. The petitioner later came to know that the allotment of the houses under the Tamil Nadu Housing Board Scheme was already over, thereby, the petitioner demanded the respondent to return the money. The respondent has given the petitioner two cheques (a Cheques bearing No.371459 for Rs.3,00,000/- on 10.07.2018 and another Cheque bearing No.371460 for Rs.3,50,000/- on 12.07.2018). Both the cheques were presented by the petitioner on the advise of the respondent and the same were returned dishonored on 17.03.2021. The petitioner issued legal notice to the respondent through Advocate on 23.03.2021 and the same was acknowledged and a reply notice was issued on 28.03.2021 with false allegations. Therefore, the petitioner has filed a suit in O.S.SR.No. 3020 of 2021 under Order 37 Rule 1 of C.P.C.



4. Learned Subordinate Judge, Alandur, by way of impugned order dated 16.08.2022 has rejected the plaint holding that the petitioner has paid money to the defendant for unlawful purpose of getting the allotment of Housing Board houses by-passing the rules and thereby under Section 23 of the Indian Contract Act, the petitioner cannot seek for recovery of money.

5. As seen from the copy of the plaint, the cause of action arose for the plaintiffs to file the suit not only when the petitioner has allegedly paid money to the respondent, but also when cheques were given by the respondent in favour of the petitioner were dishonored. If at all the petitioner has filed a suit only on the ground that the petitioner has advanced money for getting the Housing Board houses allotted by-passing the rules, then there is certain rce in the conclusion of the learned Subordinate Judge, Alandur. However, the petitioner has filed this case basing on the cause of action of dishonour of cheques as well.

6. Further it appears that the petitioner was heard prior to passing of impugned orders of rejecting plaint. The petitioner should have given an opportunity to make submissions on the questions raised by the Court in respect of the maintainability of the suit and on hearing the petitioner, the



C.R.P.No.1446 of 2023

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Court should have passed an appropriate speaking orders. On that ground itself this matter can be sent back to the Trial Court.

7. In the result, the Civil Revision Petition is allowed. The orders dated 16.08.2022 passed by the Subordinate Judge, Alandur in O.S.SR.No. 3020 of 2021 are hereby set aside. Registry is directed to return the original case records to petitioner if any, on proper acknowledgment after substituting the same with photo copies. The petitioner is at liberty to file copy of the plaint before the learned Subordinate Judge, within three weeks from the date of receipt of copy of this order. On such re-submission of the plaint, learned Subordinate Judge is directed to receive the same and dispose of the same in accordance with law keeping in view of law laid down in ***Selvaraj vs. Koodankulam Nuclear Power Plant India Limited represented through its Project Director*** reported in (2021) 5 MLJ 467. There shall be no order as to costs.

21.12.2023

Speaking (or) Non Speaking Order

Index : Yes/ No

Internet : Yes

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C.R.P.No.1446 of 2023

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To
The Subordinate Judge,
Alandur.



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C.R.P.No.1446 of 2023

Dr.D.NAGARJUN, J.,

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C.R.P.No.1446 of 2023

21.12.2023