



WEB COPY

CRP (NPD)No.239.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P. (NPD)No.2392 of 2019
and C.M.P.No.15607 of 2019

K.Sagunthala

... Petitioner

Vs.

P.Poongothai

... Respondent

Prayer: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the fair and decretal order dated 30.04.2019 in I.A.No.1306 of 2017 in O.S.No.47 of 2003 on the file of the III Additional District and Sessions Court, Coimbatore.

For Petitioner : Mr. C.R.Prasanan

For Respondent : No appearance

ORDER

The matter was posted on 02.08.2023, 04.08.2023 and 17.08.2023. On all those dates, there has been no representation for the respondent.



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2. This revision arises against an order passed in I.A.No.1306 of 2017 in O.S.No.47 of 2003, dated 30.04.2019 by the III Additional District and Sessions Court, Coimbatore.

3. The civil revision petitioner is the plaintiff and the respondent is the defendant. A suit for specific performance of an agreement of sale was filed on 07.10.1999. The said suit was taken up in O.S.No.1399 of 1999 on the file of the learned Subordinate Judge at Coimbatore and it was decreed on 05.11.2003. Against the said judgment and decree, an appeal was preferred in A.S.No.706 of 2005. The said appeal came to be allowed by this Court on 11.07.2011. The appeal in A.S.No.706 of 2005 was preferred only as against Clause 2 and 3 of the decree. Thereafter, an execution petition was filed in E.P.No.17 of 2012 in O.S.No.47 of 2003 seeking for a direction to the respondent to execute the sale deed or in default requesting the Court to execute the sale deed.

4. In the meantime, it came to the knowledge of the plaintiff that the suit schedule mentioned property had been a subject matter of the proceedings under SARFAESI. A sale had taken place in the year 2015 and sale certificate was registered on 25.03.2015. The Court auction purchaser in the SARFAESI sale also took possession of the property through an order dated 01.11.2018 under Section 14 of the

SARFAESI Act.

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5. An application was filed by the defendant in I.A.No.1306 of 2017 seeking for the relief of rescinding the contract dated 22.05.1996 for the grounds stated in the affidavit. The trial Court took up the application and came to a conclusion that the contract ought to be rescinded and allowed the application in part. However, it did not refund Rs.4,50,000/-, which was the amount paid by the civil revision petitioner to the respondent towards purchase of the property.

6. Heard Mr.C.R.Prasanan, the learned counsel for the petitioner. Mr.Raghavan, the learned counsel who has entered appearance for the respondent, did not appear before me. I have carefully gone through the records.

7. A perusal of the order of the trial Court shows that the learned trial Judge had directed the parties to recover a sum of Rs.4,50,000/- by way of a separate suit. The contract having been rescinded under Section 28 of the Specific Relief Act, the question of filing a separate suit does not arise. This is by virtue of the provisions under Section 28(4) of the Specific Relief Act. The trial Court had the power to direct the refund of the amount under Section 28(2)(b) of the Specific Relief Act. Instead of doing so, the trial Court had directed the parties to file a separate suit without taking note of the fact of Section 28(4) of the Specific Relief Act.



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8. Under the Specific Relief Act, 1877, there was a provision for rescission. If the circumstances mentioned in that provision were satisfied, a party could bring out a separate suit for rescission. When Specific Relief Act, 1963 was enacted, it substituted Section 35(c) of 1877 Act and empowered the Court to grant the relief in the original suit itself. The idea being prevention of multiplicity of proceedings. This is clear from Section 28(4) of the Specific Relief Act. Section 28(2)(b) of the Act specifically states that the Court has power, if the justice of the case so requires, to refund the earnest money or any deposit made in connection with the agreement. The Court having come to the conclusion that the contract should be rescinded, ought to have invoked Section 28(2)(b) of the Act. Having failed to do so, I am constrained to interfere with the order.

9. Therefore, in the light of the statutory provision, I am constrained to interfere with the order of the trial Court in so far as it denies the refund of a sum of Rs.4,50,000/- paid by the petitioner to the respondent and pass the following order:

(i) The Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

(ii) The order of the trial Court in so far as it directed the party to file a separate suit for refund of the advance amount is set aside.



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(iii) There shall be a direction to the respondent to refund the sum of

Rs.4,50,000/- together with the interest @ 6% per annum to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

kj

To

III Additional District and Sessions Judge
Coimbatore.



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V.LAKSHMINARAYANAN,J.

Kj

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