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CRP No.2934 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.2934 of 2023
and
CMP.No.18131 of 2023

1.N.Nithyanandam
2.C.Anandhi

... Petitioners

Versus

A.Veerapandian

...Respondent

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 07.06.2023 made in I.A.No.6 of 2023 in O.S.No.21 of 2022 pending on the file of District Court, Karaikal.

For Petitioners : Mr.M.V.Venkataseshan
For Respondent : Mr.T.Saikrishnan

ORDER

The petitioners have filed this revision petition to set aside the fair and decretal order dated 07.06.2023 made in I.A.No.6 of 2023 in O.S.No.21 of 2022 pending on the file of District Court, Karaikal.

2. Heard, Mr.M.V.Venkataseshan, learned counsel for the petitioners,



CRP No.2934 of 2023

and Mr.T.Saikrishnan, learned counsel appearing for the respondent. Perused the materials placed on record.

3.Before the trial Court, the respondent / plaintiff has filed a suit O.S.No.21 of 2022 for refund of the advance amount, with interest. After receipt of the notice, the defendant has filed an application under Order VII Rule 11 of CPC and that application was strongly resisted by the plaintiff stating that the suit is not barred by limitation. On the other hand, as per Section 62 of the Limitation Act, 12 years time is prescribed for enforcement of charge over the property, when the money becomes due. Hence, this is a suit for recovery of a part sale consideration or advance amount received by the first defendant from the plaintiff, and as such it is maintainable.

4. Considering both side submissions, the learned trial Judge dismissed the said application holding that with the help of oral and documentary evidence, the suit claim can be decided. Aggrieved the same, the defendant has preferred this revision petition.

5. The learned counsel for the revision petitioner submitted that the learned trial Judge took note of the fact that the alleged agreement was said to



have happened in the year 2011 and thereafter, in the year 2013, the plaintiff was not ready to perform his part of agreement and the same was terminated by him. Immediately, the plaintiff has not taken steps to refund the amount, on the other hand, nearly about 5 years later, he filed the suit and as such, it is not permissible in law.

6. By way of reply, the learned counsel for the respondent submitted that by issuing reply notice to the revision petitioner / defendant, agreed to repay the advance amount which comes which around Rs.66 lakhs, but he failed to repay the same. Thereafter, he issued notice in the year 2018, for which he gave reply and denied the plaintiffs claim. Thereafter, he filed a suit in the year 2020 within 3 years from the date of denial of the plaintiff as maintainable, besides as per Section 62 of the Limitation Act, the present suit is maintainable, for which he relied upon the decision of *the Hon'ble Supreme Court, in the case of "Videocon Properties Ltd., vs. Dr.Bhalchandra Laboratories and others"* reported in (2004) 3 SCC 711, which reads as follows:

"13. The buyer's charge engrafted in clause (b) of Sub-Section (6) of Section 55 of the Transfer of Property Act would extend and enure to the purchase money or earnest money paid before the title passes and property has been delivered by the



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seller to the purchaser, on the sseller's interest in the property or when he properly declines to accept delivery – including for the interest on purchase money and costs awarded to the purchaser of a suit to compel specific performance of the contract or to obtain a decree for its rescission. The principle underlying the above provision is a trite principle of justice, equity and good conscience. The charge will not be lost by merely accepting delivery of possession alone. This charge ill not be lost by merely accepting delivery of possession alone. This charge is a statutory charge in favour of a buyer and is different from contractual charge to which the buyer may become entitled to under the terms of the contract, and in substance a converse to the charge created in favour of the seller under Section 55(4)(b). Consequently, the buyer is entitled to enforce the said charge against the property and for that purpose trace the property even in the hands of third party and even when the property is converted in to another form by proceeding against the substituted security.....”

7. Admittedly, between the parties, the claim arises out of the alleged sale agreement said to be happened on 18.03.2011. Thereafter, exchange of notice between the parties was during the year 2013. By way of reply notice, the revision petitioner / defendant agreed to repay Rs.66 lakhs, when the amount was not repaid as he agreed, and the plaintiff issued another notice on



CRP No.2934 of 2023

24.08.2018 and for that, reply was sent by the defendant on 12.05.2018, denying the amount quoted by the plaintiff. Thereafter, the present is filed.

Therefore, if at all any amount is remitted before the trial Court, because of the allegation, whichever in the facts and circumstances of the case, the same cannot be simply thrown out by mere filing of application under Order VII Rule 11 of CPC. Furthermore, on exchange of notices, the defendants agreed to repay the amount. Subsequently, he has not repaid, and therefore it needs oral and documentary evidence and on what basis he was not able to repay the amount. The learned trial Judge rightly concluded, and hence, I do not find any irregularity in the impugned order passed by the learned trial Judge.

8. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

9. However, the learned trial Judge is directed to dispose of the suit within a period of 4 months from the date of receipt of a copy of this order.

06.12.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

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WEB COPY



CRP No.2934 of 2023

T.V.THAMILSELVI, J.

To

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- 1.The District Judge, Karaikal.
- 2.The Section Officer,
VR-Section, High Court of Madras.

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