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CRP. No.3626 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP. No. 3626 of 2023

M/s G Square Realtors Pvt Ltd.,
Rep by its Authorized Signatory,
J Vaira Ganesh, aged about 23
No.75, Century Center, TTK Road,
Alwarpet, Chennai – 600 018.

...Petitioner

1.M/s J Cube Projects,
Registered Partnersip Firm,
Regpresented by its partner,
Mr.J. Ramanjaneyulu, Age not known
No. 137/8, 3rd floor, 2nd Avenue,
AC block, Anna Nagar,
Chennai – 600 044.
2.Sarvanth Ram Creations
Registered Partnersip Firm,
Represented by its partner,
Mr.J. Ramanjaneyulu , Age not known
2/19 Kurian Complex,
Nelson Manickam Road, Aminjikarai.

...Respondents



CRP. No.3626 of 2023

PRAYER : This Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the impugned order passed by the learned Commercial court at Chennai in C.O.S.S.R. No. 931 of 2023 on 07.09.2023.

For Petitioner : Mr.V.Karthikeyan

For R1 : Mr.D.Ferdinand, for BFS Legal

ORDER

Challenging the impugned order dated 07.09.2023 passed by the Commercial Court, Chennai, in C.O.S.S.R No. 931 of 2023, the petitioner filed this petition.

2.The brief facts of the case are as follows:

The petitioner herein is the plaintiff filed a suit a suit in un-numbered C.O.S.S.R No. 931 of 2023, before the Commercial court, Chennai, for relief of declaration and other consequential relief against the respondents herein/Defendants 1 & 2. According to the plaintiff, the first defendant is owner of item 1 to 12 of suit property with an extent of 9.8 acres, which is situated in Belavatha Village, Kasabe Hobli, Mysore Taluk, Mysore, and the first defendant had formulated a scheme to form a residential layout with all the infrastructure, facilities and amenities in the scheduled property and



CRP. No.3626 of 2023

approached the plaintiff to develop the same. In pursuant to the verbal agreement the petitioner employed his resources to develop the schedule A property into a residential layout and obtained the approval of Mysore Urban Development Authority, Mysore, on 28.11.2022 and on the same day assignment agreements was signed between the petitioner and the first respondent reducing the verbal agreement in writing in chennai, where both the petitioner and the first respondent reside and done their business. Further, it was mutually agreed between the parties that to promote the approved residential layout in A schedule property in the name as G square Paalcia as defined in Section 8 of the Assignment agreement deed. It has been explicitly stated in Section 8(d) of the said agreement that the first defendant shall not publish, distribute or use any such advertising, promotional materials or products or services in which the branch name is use. In addition vide Section 8 (e) the defendant has delegated sole and exclusive rights to promote, market and sell the plots/sites formed in Schedule A property under its own Brand Name and the 1 Defendant shall not change the same. It was mutually agreed to provide common roads, necessary facilities like electricity, drainage, water connections for the benefit of the Intending/Prospective Plot purchasers in the said layout G



CRP. No.3626 of 2023

SQUARE PALACIA. Section 7 of the Assignment Deed lays out the Scope of Work of the Second Party/Assignee/Plaintiff herein. Consequently the 1st defendant had assigned all the rights to the petitioner to perform and complete the development work in the project in accordance with the terms of the agreement to develop the Schedule A Property as per the terms of Assignment Agreement dated 28.11.2022. Further, as per the assignment deed, the 1st defendant agreed to indemnify the loss, damages, cost and breach of the assignment deed to the petitioner, and the defendant is solely responsible for bearing all the cost. The 1st defendant specifically conferred all the rights to comply with and carry out the agreements or letters of allotment, writings, and documents with the prospective purchasers. Further, it is pertinent to mention that, as per the deed of assignment dated 28.11.2022, the petitioner have invested a huge amount of money and efforts for obtaining approvals from various competent authorities and the petitioner laid roads and developed the layout for the entire schedule property by providing several infrastructure and amenities facing lot of hardships, and the petitioner spent huge money for Marketing advertisement and to pool in marketing executives and started marketing process to sell the plots by my brand name. The petitioner has performed his duties without



CRP. No.3626 of 2023

any delay, spilling blood, sweat and tears. After the said promotion and branding of the above said Project "G Square Palacia" in the Schedule A property, the plots were agreed to be registered to the individuals channelized by the petitioner, by way of various sale deeds executed by the first defendant with the petitioner as confirming party as per the said agreement. Accordingly, 45 sale deeds have been registered till date by the first respondent with the petitioner herein as confirming party. The progress of the development of Project G Square Palacia was much ahead of schedule as agreed in the agreement dated 28.11.2022. After executing some sale deeds to the individual buyers, the 1st defendant started his Non-cooperation and showed reluctance in selling the remaining portion of the layout lands. In spite of several request made by him, the 1st defendant refused to sell the remaining portions of land. Thereafter, the 1st defendant is trying to cheat and planning to sell the remaining plots to the various third without the knowledge and consent of the petitioner. Towards this, the 1st defendant has registered a sale deed vide document No MYN-1-02426-2023-24 dated 23.06.2023 in favour of Mr B Kempahnumaiah and Mrs Siddarajamma for an extent of 109.50 Sq M (1178.64 Sq ft) in Plot No 63 without the petitioner's consent and the sale deed has been registered



CRP. No.3626 of 2023

without the petitioner as Confirming Party, as were executed in earlier registrations. In addition, the 1st defendant has wantonly omitted the brand name of G Square from the Project name G Square Palacia and registered this sale deed in complete violation of the Assignment Agreement and breach of trust. The First defendant has wantonly infringed the agreement disregarding terms of the Assignment agreement which was entered between us. In the meanwhile 71 prospective buyers have been identified and plots in the Schedule A Property have been booked by the petitioner against their name. The 1st defendant is not coming forward to register sale deeds to the intended purchasers of the said plots identified and channelised by the petitioner and due to which the petitioner incurring a huge loss and damage of reputation. It is pertinent to mention here that the 1 defendant is attempting to execute sale deeds discreetly to all these 71 buyers without the petitioner consent and hence there is an urgent need to injunct the 1 defendant and his men by way of Attaching the Property before judgement in the present COS. Further, the 1 defendant is not honoring the terms and conditions of the agreement and in an act of breach of trust he is attempting to sell the unsold/existing plots by himself without his knowledge. It is further represented that, the acts and action done by the defendant is



CRP. No.3626 of 2023

attempting to do is highly condemnable one. Now, the defendant's registration of sale deed for Plot No. 63 and further attempts to alienate the Schedule A property to third parties without the petitioner knowledge, shall constitute breach of agreement and the petitioner has invested huge amount of capital and got all approvals and followed the terms of the assignment deed till date without any default but the 1st defendant on his own volition, wantonly is violating the terms of the said assignment deed, due to which the petitioner suffering huge monetary loss and mental agony. Further, the petitioner has pooled in a lot of resources, both men and material, employed them towards achieving the objective of the Assignment Agreement and the same are still employed in the Project site and also at various locations for background work like Call Centres incurring huge recurring expenditure by way of salary to all the employees. It has also been observed that the 1st defendant had hatched a conspiracy towards cheating him as the petitioner has been indulging in advertising the Project G Square Palacia as J Cube Palaci since very inception itself. This act of criminal intent can be ascertained from the publication of his advertisement in Housing.Com on 03.01.2023 itself as J Cube Palacia. In regards to the above dispute the petitioner has filed a Commercial Suit against the the respondents before the



CRP. No.3626 of 2023

Commercial Court Egmore, but the plaint was returned on various grounds.

Challenging the order passed by the Learned Commercial Court, Egmore, the petitioner/plaintiff filed this Civil Revision petition.

3. The learned counsel for the petitioner submitted that the Court below erred in interpreting the provisions of the Section 16 of CPC as well as Section 20 of CPC, erroneously returned the plaint, stated that to present the same before the appropriate forum as such is unfair and liable to be set aside. Further, he submitted that in the primary stage of numbering, the court ought not to have considered the non registration of the assignment agreement, and also stated that the both the plaintiff and the defendants are residing at Chennai and doing their businesses, moreover the assignment agreement also entered between the parties at Chennai office. Besides, as per the terms of the assignment agreement the Court in Chennai alone is having the jurisdiction to decide the dispute between the parties thereby plaint was rightly presented before the commercial court at Chennai and it is only having the jurisdiction to decide the issue but the court below erroneously returned the plaint as it has not territorial jurisdiction to decide the issue.



CRP. No.3626 of 2023

4. The learned counsel for the respondent replied that the suit properties are situated at Mysore district at Karnataka State and alleged sale deed also said to be executed in Mysore District, thereby the Trial Court rightly returned the plaint as such it has no territorial jurisdiction to decide the said issue. Further, he submitted that by invoking arbitration clause this defendant filed arbitration petition before the commercial Division of this Court wherein plaintiff also appeared, during the pendency of that proceedings the petitioner filed this petition, hence he prays to dismiss this petition as two parallel proceedings cannot be permitted.

5. By way of reply, the learned counsel for the plaintiff/petitioner submitted that on plain reading of Proviso clause of Section 16 of CPC and Section 20 of CPC, would clearly support the case of the plaintiff for the reason that the defendants and the plaintiff who are parties residing at Chennai, hence the plaintiff is entitled to file suit at Chennai. Therefore, the commercial Court, Chennai, alone is having territorial jurisdiction to decide the said issue but the same was not properly appreciated by the court below. For the sake of convenience Section 16 and Section 20 of CPC is extracted hereunder:



WEB COPY



CRP. No.3626 of 2023

Section 16. Suits to be instituted where subject-matter situate.

Subject to the pecuniary or other limitations prescribed by any law, suits

- (a) for the recovery of immovable property with or without rent or profits,
- (b) for the partition of immovable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
- (d) or the determination of any other right to or interest in immovable property,
- (e) for compensation for wrong to immovable property,
- (f) for the recovery of movable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.



WEB COPY



CRP. No.3626 of 2023

Explanation.-- In this section "property" means property situate in ¹[India]

Section 20:

Section 20. Other suits to be instituted where defendants reside or cause of action arises.

Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or

(c) The cause of action, wholly or in part, arises.^{1**** *}
²[**Explanation**].-- A corporation shall be deemed to carry on business at its sole or principal office in ³ [India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations

(a) A is a tradesman in Calcutta, B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either



WEB COPY



CRP. No.3626 of 2023

in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta and C at Delhi. A, B and C being together at Benaras, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benaras, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

6. On combined reading of the above Sections, it reveals that Section 16 of CPC clearly indicates that suit to be instituted at subject matter situated, shall be instituted in the Court within local limits whose jurisdiction property is situated. Accordingly, in the present case the suit property situated at Mysore in Karnataka State. Therefore, as per Section 16 of CPC as well as Section 20 of CPC, insist that suit 'shall be' instituted in the jurisdiction where the property is situated. But the learned counsel for the plaintiff submitted that as per Section 20 of CPC, suits to be instituted where defendants reside or cause of action arise, subject to the limitations. Further, he pointed out that the assignment agreement was executed between the parties at Chennai where both parties resides, also conducting



CRP. No.3626 of 2023

businesses as well as cause of action arise here. Therefore, he is entitle to file suit in Chennai.

7. On perusal of unregistered assignment agreement said to be entered between the parties at Chennai, in the year 2022, the plaintiff is having Office at No.75, Century Centre, TTK Road, Alwarpet, Chennai – 600 018 and also the plaintiff is having office at Bangalore, though both parties are running their businesses at Chennai. In respect of cause of action the learned counsel for the plaintiff submitted that as an assignment agreement was entered at Chennai and the cause of action also aroused hence as per Section 20 of CPC the plaintiff is entitle to file the suit at commercial court, Chennai. On seeing the plaint averments in respect of cause of action the plaintiff categorically stated that the first defendant wantonly violated the terms of the assignment agreement also attempted to sell the suit property to third parties. Admittedly, on perusal of the prayer column in the suit, the first prayer is for permanent injunction to restrain the first defendant from alienating the A schedule property which is situated at Mysore, Karnataka, and the second prayer is to declare the sale deed dated 23.06.2023 executed by the parties and any other document might have been registered



CRP. No.3626 of 2023

with respect to A schedule properties as null and void. Further, on perusal of the sale deed which said to be executed by the first defendant annexed in the typed of papers at page No. 103, reveals that the first defendant M/s J CUBE PROJECTS represented by Mr. Krishna Chaithanya Nannupaent or Mr.M.R. Raghavan registered on 17.12.2022 as document No. MYN. - 4 00347/2022-23, Book – 4, in the office of the Sub-Registrar Mysore North in favour of one Mr.B.Kempahanumaiah and Mrs. Siddarjamma, who are residing at Bangalore, karnataka State. Moreover, the alleged sale deed was not directly executed by the first defendant, only through **his power of attorney** who is residing at Bangalore. Hence, Section 20 of CPC, is not supporting the case of the plaintiff for the aforesaid reasons. However, the Counsel for the plaintiff by relying the clause 17.5 of the assignment agreement stating that the Court in Chennai alone is having jurisdiction over the agreement, based on the said terms, the learned counsel for the plaintiff stated that if at all any dispute arouse the Court at Chennai alone is having jurisdiction to decide the issue and not at Karnataka. On the contrary, the learned counsel for the defendant submitted that before invoking Clause 17.5 of the assignment agreement, the plaintiff ought to have invoked the



CRP. No.3626 of 2023

clause 14 of the said assignment agreement, which denotes that if any dispute arise between the parties such dispute shall be resolved by referring to arbitration, without utilising the said remedy the plaintiff filed the suit and the same was rightly returned by the Court below. But his contention was strongly objected by the plaintiff stated that since the first defendant attempted to alienate the property by committing breach of terms of the agreement which forced him to file the suit.

8. Considering the submissions on either side and also on perusal of records, the clause 14 of the assignment agreement, which deals with the arbitration, if any dispute arising between the parties with regard to terms of the agreement. As per clause 14 of the assignment, now the defendant invoked the said arbitration clause filed the petition before the commercial Division of this Court, wherein the plaintiff also appearing till date through his counsel before the arbitration proceedings even otherwise petition is pending before the commercial division of the Court in O.A NO. 748 of 2023, as the defendant is entitle to invoke arbitration proceedings as per the Section 3 and 15 of commercial courts Act, for the reason that in respect of commercial dispute the application is to be filed before the Court



CRP. No.3626 of 2023

established and constitute under Section 3 of the Act including arbitration disputes shall be filed and heard the disputes by the commercial Court exercising safety arbitration where said commercial court has been constituted, the learned counsel for the defendant also submitted that having appeared before the arbitration proceedings the plaintiff is not entitle to initiate parallel proceedings before the Commercial court.

9. In respect of Arbitration clause already defendant referred the matter to arbitration and same is taken on file in O.A No. 748 of 2023 wherein the plaintiff also appeared. Therefore, the maintainability of the arbitration proceedings is not the scope of this revision. Further, the plaintiff is entitle to put forth all his defence before the said arbitration proceedings with regard to its maintainability therefore this Court is not inclined to pass any order in respect of maintainability of the arbitration proceedings. In the instant case, the plaintiff challenging the plaint returned by the commercial Court Judge, who declined to accept the plaint stating that it has no territorial jurisdiction.



CRP. No.3626 of 2023

WEB COPY

10. Considering the entire facts, as discussed above, the suit property is situated at karnataka and the party purchased the property also residing at karnataka, besides the sale deed was executed by defendant's power of attorney who is residing at karnataka. Moreover, as per the plaint averments the plaintiff contended that terms of assignment agreement was violated by the defendant thereby it amounts to breach of contract, so also the plaintiff silent about the arbitration clause in the suit, however in respect of jurisdiction the plaintiff relied the part of the agreement stating that as per clause 17 of assignment agreement, the Court in Chennai alone is jurisdiction to solve the dispute contrary to his own defence. Furthermore, the plaintiff is also having registered office at karnataka, thus cause of action for sit arose at karnataka. When the plaintiff ignore the terms of the agreement in respect of jurisdiction he cannot rely the particular clause as rightly pointed out by the defendant. Considering the relief claimed in the plaint the court at karnataka alone having jurisdiction to decide the said issue and the plaint was rightly returned by the court below which needs no interference. Further, the appropriate forum can be proceed with the matter without



CRP. No.3626 of 2023

influence of the findings of this Court.

11. In result, this Civil Revision petition is dismissed. No Cost.

Consequently, connected miscellaneous petition is closed.

31.10.2023

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WEB COPY



CRP. No.3626 of 2023

T.V.THAMILSELVI,J.

Pbl

CRP. No.3626 of 2023

31.10.2023