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C.R.P.Nos.4359, 4363 & 4364 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.Nos.4359, 4363 & 4364 of 2023

and

C.M.P.Nos.26491, 26514 and 26516 of 2023

Mr.R.Deepak Raju
S/o.R.Raju

... Petitioner in all CRPs

Versus

C.S.Vasanth
W/o.Ramamurthy

... Respondent in all CRPs

PRAYER :

Civil Revision Petition No.4359 of 2023 filed Under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 11.08.2023 passed in C.M.A.No.16 of 2023 on the file of II Additional Sub Court, Coimbatore reversing the fair and decreetal order dated 06.01.2023 passed in I.A.No.05 of 2022 in O.S.No.1195 of 2022 on the file of Principal District Munsif Court, Coimbatore.

Civil Revision Petition No.4363 of 2023 filed Under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated



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11.08.2023 passed in C.M.A.No.14 of 2023 on the file of II Additional Sub Court, Coimbatore reversing the fair and decreetal order dated 06.01.2023 passed in I.A.No.03 of 2022 in O.S.No.1195 of 2022 on the file of Principal District Munsif Court, Coimbatore.

Civil Revision Petition No.4364 of 2023 filed Under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 11.08.2023 passed in C.M.A.No.15 of 2023 on the file of II Additional Sub Court, Coimbatore reversing the fair and decreetal order dated 06.01.2023 passed in I.A.No.02 of 2022 in O.S.No.1195 of 2022 on the file of Principal District Munsif Court, Coimbatore.

For Petitioner in all CRPs : Mr.R.Viduthalai
Senior Counsel
for Mr.M.Jaikumar

COMMON ORDER

These petitions have been preferred to set aside the orders dated 11.08.2023 passed in C.M.A.Nos.16, 14 and 15 of 2023 respectively on the file of II Additional Sub Court, Coimbatore reversing the fair and decreetal order dated 06.01.2023 passed in I.A.Nos.5, 3 and 2 of 2022 in O.S.No.1195 of 2022 respectively on the file of Principal District Munsif Court, Coimbatore.



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2. The parties are referred as per their ranks in the original suit for the sake of convenience. The revision petitioner / plaintiff has filed the suit in O.S.No.1195 of 2022 for permanent injunction restraining the defendant/respondent herein from in any way illegally encumbering the suit property unless and until the defendant cancels the MOUs and Power of Attorney documents entered into between the plaintiff and defendant. In the said suit, I.A.Nos.2, 3 and 5 of 2022 were filed by the plaintiff. I.A.No.2 of 2022 was filed seeking temporary injunction restraining the defendant from encumbering the petition mentioned property, I.A.No.3 of 2022 was filed seeking restraining the defendant from interfering with the peaceful possession of the petition mentioned property till the disposal of the suit and I.A.No.5 of 2022 was filed to refer the parties for Arbitration by returning the plaint and dismissing the injunction applications in I.A.Nos.2 and 3 of 2022.

3. The brief facts are as follows:

The plaintiff and the defendant entered into a Memorandum of Understanding dated 07.03.2012 for developing the suit property. On



12.03.2012, a partnership agreement was entered into between them.

Thereafter, on 04.09.2013, a Power of Attorney document was executed by the defendant in favour of the plaintiff. On 04.09.2013, an addendum to MOU was entered between the parties, followed by two additional addenda dated 29.03.2017 and 29.10.2010. The defendant has received a sum of Rs.74,40,000/- as advance from the plaintiff, from and out of the total expenditure of Rs.5.60 Crores (proposed cost of construction). In the last addendum dated 29.10.2010, it was agreed to identify a new developer to develop the petition mentioned property.

4. While the matter stood thus, the defendant entered into a Joint Development Agreement dated 30.11.2020 with M/s.JMJ Housing Limited to develop the suit property, wherein the defendant received a sum of Rs.25 Lakhs as advance from the third party developer. Thereafter, the defendant filed I.A.No.6 of 2022 under Section 8(1) of the Arbitration and Conciliation Act, 1996 claiming that the plaintiff had approached the civil Court by concealing the fact that there was an arbitration clause in the MOU as well as addenda. Citing the said ground, the defendant raised the objections to



the filing of I.A.Nos.2 and 3 of 2022. It is to be noted that I.A.No.6 of 2022 was taken on file and was adjourned to 08.12.2022.

5. The trial Court, came to a conclusion that since there is no agreement between the third party developer and the plaintiff, the plaintiff cannot seek any remedy before the Arbitral Tribunal and even if such approach is undertaken by the plaintiff the decision of the Arbitral Tribunal will not bind the third party developer. Hence, citing the said reason, the trial Court dismissed the I.A.No.5 of 2022 filed for referring the parties for arbitration.

6. With respect to the injunction applications in I.A.Nos.2 and 3 of 2022, the trial Court came to a conclusion that the action of the defendant in entering into an agreement with a third party developer after entering into the MOU with the plaintiff for developing the suit property and that the plaintiff's pending considerable sum of money for developing the suit property is illegal and hence, I.A.Nos.2 and 3 of 2022 were allowed and an order of temporary injunction was granted.



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7. The said orders were challenged by the defendant in CMA Nos.14, 15 and 16 of 2023. By the impugned order dated 11.08.2023, the Appellate Court (IInd Additional Sub-Court, Coimbatore) reversed the orders passed by the Principal District Munsif, Coimbatore in the said I.As. Aggrieved by the same, the plaintiff is before this Court by filing the present revision petitions.

8. Heard Mr.R.Viduthalai, learned Senior counsel appearing on behalf of the revision petitioner and perused the materials placed on record.

9. The Appellate Court, after taking into consideration the entire facts and circumstances of the case, has come to the conclusion that since the plaintiff had agreed to hand over the possession of the suit property in "as is where is" condition to the defendant by way of an additional addendum dated 29.10.2010, the plaintiff is not entitled to get the relief of temporary injunction against the defendant and thereby, the first Appellate Court allowed the CMA Nos.14 and 15 of 2023. The First Appellate Court also took into consideration that the action of the defendant in entering into a



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Joint Development Agreement after the second addendum to the MOU dated

29.10.2010 is not illegal and thereby allowed the C.M.A.No.16 of 2023.

10. This Court is also alive to the fact that in the initial MOU dated 07.03.2012 as well as the subsequent addenda entered into between the plaintiff and the defendant, there was an arbitration clause. Admittedly, in Ex.P1-Second Additional Addendum dated 29.10.2010, Ex.P3 - MOU dated 07.03.2012, Ex.P4 - Addendum to MOU dated 04.09.2013 and Ex.P7 - Additional Addendum to MOU dated 29.03.2017, the arbitration clause was specifically mentioned.

11. Therefore, this Court is of the view that the findings of the trial Court I.A.Nos.2, 3 and 5 of 2022 are erroneous and liable to be set aside. As per the terms of MOU, the Civil Court is not having power to settle the said issue. As per the second additional addendum dated 29.10.2020, it was agreed between the plaintiff and defendant that the plaintiff had spent a sum of Rs.5.60 Crores towards development of the suit property and has given an advance of Rs.74,40,000/- to the defendant and that the further construction



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can be handed over to a third party developer under the supervision of the plaintiff and the terms of the said addendum dated 29.10.2020 shall act as an additional addendum to the first addendum dated 29.03.2017, if there are any disputes between the parties the matter may be referred to arbitration. This was the crux of the agreement entered into between the parties. Hence, CMA Nos.14, 15 and 16 of 2023 were rightly allowed by reversing the orders passed in I.A.Nos.2, 3 and 5 of 2022.

Accordingly, all these Civil Revision Petitions are dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

13.12.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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WEB COPY To

1. II Additional Sub Judge
II Additional Sub Court
Coimbatore.
2. The Principal District Munsif
Principal District Munsif Court
Coimbatore.

T.V.THAMILSELVI, J.



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