



C.R.P. Nos. 129, 130 & 132 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.Nos. 129, 130 & 132 of 2023

R. Krishnamoorthy,
S/o. Ramasamy

... Petitioner in
all C.R.P.s

Versus

- 1 M/s. Century Leathers Pvt Ltd
Rep. By Its Directors
- 2 Avtar Singh
S/o. Jiwand Singh
- 3 Harkirat Singh
S/o. Avtar Singh
- 4 Ripudaman Bindra
D/o. Avtar Singh
- 5 Simmi Singh
W/o. Harkirat Singh
- 6 Govind Preet Bindra
S/o. Lakhjit Singh Bindra



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7 **HDFC Bank Ltd**
Rep. By Its Branch Manager
D.No.2212 Gali No. 64-65,
J Block, Gurudwara Road,
Karol Bagh, New Delhi - 110005.

.. Respondents in
all C.R.P.s

PRAYER in C.R.P.No.129 of 2023 :Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the impugned order dated 09.12.2022 passed in I.A.No.80 of 2018 in O.S.No.27 of 2018 on the file of the learned Principal Subordinate Judge, Chengalpattu.

PRAYER in C.R.P.No.130 of 2023 :Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the impugned order dated 09.12.2022 passed in I.A.No.79 of 2018 in O.S.No.27 of 2018 on the file of the learned Principal Subordinate Judge, Chengalpattu.

PRAYER in C.R.P.No.132 of 2023 :Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the impugned order dated 09.12.2022 passed in I.A.No.78 of 2018 in O.S.No.27 of 2018 on the file of the learned Principal Subordinate Judge, Chengalpattu.



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For Petitioner in
in all C.R.P.s : Mr.Om Prakash,
Senior Advocate
Asst. by Mr.P.Ilayaraj Kumar

For 1st Respondent : Mr.S.Parthasarathy
Senior Advocate

COMMON ORDER

The Revision Petitioner herein is the plaintiff and he filed a suit in O.S.No.27 of 2018 on the file of learned Principal Sub-Judge, Chenglepet against the respondents/defendants for the relief of permanent injunction directing the defendants not to alienate or encumber the suit schedule property in adverse to the interest of plaintiff as per the Memorandum of Understanding and letter dated 14.02.2015 and for granting mandatory direction directing the defendants 1 to 6 to produce and hand over the custody of original Memorandum of Understanding lying in the joint custody in the safety locker of the 7th defendant Bank.

2. For the sake of convenience, the parties are referred as per the ranking in the suit.



3. During the pendency of the suit, the plaintiff filed the Interlocutory

Applications as follows :-

a) I.A.Nos. 78 of 2018 was filed seeking to appoint an advocate commissioner to inspect the suit property and note down the physical features, measure the same with the help of Taluk Surveyor and file a report.

b) I.A.No.79 of 2018 was filed under Order 2 Rule 2 of C.P.C. to grant leave to the plaintiff to file a separate suit for the reliefs other than those prayed for in the present suit.

c) I.A.No. 80 of 2018 was filed under Order 26 Rule 9 of C.P.C. to appoint an advocate commissioner to visit the office of 7th defendant to inspect the joint locker of petitioner and 2nd respondent for the purpose of inspection of original Memorandum of Understanding in the presence of parties, take copy of the same and produce before this court

d) Another I.A.No.80 of 2018 was filed under Order 39 Rule 1 r/w Sec.151 of C.P.C. to pass an order of interim injunction not to encumber the property.



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e) I.A.No. 2 of 2022 in I.A.No.81 of 2018 was filed under Order 7

Rule 14 (3) of C.P.C. to permit him to file the additional documents morefully described in the Schedule.

f) I.A.No.3 of 2022 in I.A.No. 81 of 2018 was filed under Order 39 Rule 1 and 2 and Sec.151 of C.P.C. to grant an order of status quo in continuation of the order of Hon'ble Supreme Court in S.L.P. (C) No. 2535 of 2020 till the disposal of I.A.No.81 of 2018.

All these applications are objected by the defendants by filing their counter objections. The Trial Judge heard all the applications and passed a common order. Accordingly, the application to appoint an advocate commissioner to inspect and measure suit property in I.A.No. 78 of 2018 was dismissed as there is no necessity to visit the property and note down physical features for the reason that the issue involved in the suit is with regard to the involvement of Memorandum of Understanding. So, there is no necessity to appoint an advocate commissioner.



4. The Interlocutory Application in I.A.No.79 of 2018 was filed seeking to grant leave under Order 2 Rule 2 of C.P.C. to file a separate suit for reliefs other than those mentioned in the present suit was dismissed holding that proper reason was not assigned nor stated the other reliefs going to claim by the plaintiff in future, without which a blanket permission cannot be given.

5. The Interlocutory Application in I.A.No.80 of 2018 was filed seeking to appoint an advocate commissioner to inspect the original Memorandum of Understanding kept in bank locker of 7th defendant and to take copy of the same also dismissed holding that the main issue with regard to the said original document, mandatory injunction was prayed. So, there is no necessity to visit and take copy of the same as the parties have admitted the document, thereby the relief was not granted in favour of plaintiff.

6. The Interlocutory Application in I.A.No. 81 of 2018 was allowed by granting status quo order till the disposal of suit.



7. The Interlocutory Application in I.A.No.2 of 2022 filed seeking to receive additional document was allowed. I.A.No.3 of 2022 was closed. In respect of I.A.No.3 of 2022, in view of order passed in I.A.No. 81 of 2018, it was disposed of. Aggrieved over the common order passed in I.A.Nos.78, 79 and 80 of 2018, the plaintiffs preferred these Civil Revision Petitions.

8. The learned senior counsel for Revision Petitioner argues that the trial judge failed to take note of the fact that only on production of original copy of signed Memorandum of Understanding, the plaintiff can enforce his right and the same can be done only through appointment of advocate commissioner, but without appreciating the said aspect, the trial judge dismissed the Application filed in I.A.No. 80 of 2018 as such is totally unfair and liable to be set aside. Furthermore, the trial judge erroneously held that already copy of Memorandum of Understanding was filed along with plaint, but it is only a draft typed copy of Memorandum of Understanding and not copy of signed Memorandum of Understanding. Therefore, the appointment of advocate commissioner is necessary. Hence, they prayed to set aside the findings of trial judge in I.A.No.80 of 2018.



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9. In respect of appointment of advocate commissioner to note down the physical features of property, the learned senior counsel would submit that after the Memorandum of Understanding, the defendants caused encumbrance by selling the portion of property to a third party. Therefore, the appointment of advocate commissioner to note down physical features is just and necessary and the defendants also not denied the alleged alienation. Furthermore, having known the said alienation, the Apex Court granted status quo order. Therefore, to prove the further development in the property, the appointment of advocate commissioner as such is necessary, but the trial judge without appreciating the said legal aspect, erroneously dismissed the I.A. Hence, the findings of the trial judge in I.A.No.78 of 2018 as such is liable to be set aside.

10. The learned senior counsel further argues that the defendants attempted to cause encumbrance over the property. Hence, immediately he filed a suit for permanent injunction as well as mandatory injunction, however considering the subsequent development, he is seeking leave of the court to file a comprehensive suit, but the trial judge without appreciating



the further development in the suit, erroneously dismissed the I.A.No.79 of 2018 as such is liable to be set aside. By submitting all these facts, the learned counsel for Revision Petitioner prayed to set aside the findings of trial judge by allowing all these Civil Revision Petitions.

11. Per contra, learned senior counsel for Respondents/defendants argue that the plaintiff failed to comply the terms of Memorandum of Understanding and he has not taken any steps to deal with the schedule mentioned property as per the terms and he orally expressed his inability to carry out the terms and conditions, thereby the agreement is not in force on account of non-fulfilment of terms and conditions. He would further submit that an amount of Rs.1 crore was paid by the plaintiff through cheque also not encashed. So, due to non-compliance of the terms, he was not permitted to inspect or to fix boundary stone. As they failed to complete the entire transaction within 120 days as specified in the Memorandum of Understanding, the respondents are entitled to terminate the agreement and also retain any advance amount paid. So, the trial judge rightly analysed all the facts and dismissed those applications, which needs no interference by



this court.

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12. Heard and considered rival submissions made by learned counsel for Revision Petitioner as well as Respondents and perused the records.

13. Considering both side submissions and on perusal of records, the fact remains that there is a Memorandum of Understanding executed between plaintiff and the defendants on 14.05.2015 and the said original signed Memorandum of Understanding is now lying in the joint custody of safety locker of 7th defendant bank at New Delhi. As a Director of R.K. Group of company, the plaintiff entered into said Memorandum of Understanding with the defendants in respect of the property belongs to 1st defendant. To develop the same, the said Memorandum of Understanding came into force. According to plaintiff, he paid a sum of Rs.4 crores and out of which, a sum of Rs.1 crore was paid through cheque, but the defendants denied the said transaction and also content that the plaintiff failed to comply the terms of Memorandum of Understanding. Hence, the said agreement was not in force. However, it is an admitted fact that the original



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Memorandum of Understanding is now in the safety locker with the joint custody in the 7th defendant bank at New Delhi. Before the trial court, draft copy of Memorandum of Understanding was filed and not produced the signed copy of Memorandum of Understanding. Now, during the pendency of the suit, the plaintiff filed number of Interlocutory Applications as discussed above. In respect of I.A.No.78 of 2018 was filed to appoint advocate commissioner to note down physical features of the property. But, as rightly pointed out by the trial judge that the issue between the parties in the suit is mainly with regard to enforcement of Memorandum of Understanding. Therefore, the appointment of advocate commissioner to note down the physical feature is unwarranted one. Hence, the findings in I.A.No.78 of 2018 is sustainable one, thereby C.R.P.No.132 of 2023 is dismissed as no merits.

14. In respect of Interlocutory Application filed in I.A.No.79 of 2018 praying to grant leave to file a separate suit for the relief other than the reliefs mentioned in the present suit arising out of the same cause of action, admittedly, the present suit is filed for permanent injunction and mandatory



injunction in respect of enforcement of Memorandum of Understanding entered between parties. According to plaintiff, during the pendency of suit, the defendants made certain requests and the same was not denied by them. But, the trial court observed that if any such alienation is made, it would hit by principles of lispendence. But, the contention of defendants is that the plaintiff failed to comply the terms of Memorandum of Understanding. So, he is not entitled for the enforcement of the same nor entitled for the advance amount if any paid by the plaintiff. On the other hand, as per the contention of plaintiff, he paid a sum of Rs.4 crores to the defendants. Therefore, with regard to the transaction of the amount, now there is no dispute arose between parties. Hence, the plaintiff is entitled to file a suit for the reliefs other than the reliefs claimed in the present suit. But, the trial judge failed to take note of the dispute between parties as well as further development arose between them, erroneously dismissed the The Interlocutory Application filed in I.A.No.79 of 2018. For the aforesaid reasons, the plaintiff is entitled to file a comprehensive suit and a statutory remedy available for the plaintiff cannot be deprived. Therefore, the reasons assigned by the trial judge in I.A.No.79 of 2018 is set aside.



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Accordingly, the I.A.No.79 of 2018 is allowed and thus, the Civil Revision Petition in C.R.P.No.130 of 2023 is allowed.

15. In respect of Interlocutory Application filed in I.A.No.80 of 2018, the plaintiff prayed to appoint an advocate commissioner to inspect joint locker in 7th defendant company in the presence of both parties and to take copy of the same and produce before this court in order to prove his claim. But, the trial judge observed that already copy of Memorandum of Understanding was produced before this court and parties also not denied the execution Memorandum of Understanding. Therefore, there is no necessity to appoint an advocate commissioner for the said purpose. But, admittedly, the draft copy of Memorandum of Understanding alone is produced before the trial court and not the signed copy of Memorandum of Understanding. It is true that this suit is with regard to enforcement of Memorandum of Understanding, but so far, the copy of original Memorandum of Understanding was not produced before the trial court. Furthermore, both parties admits the signed original Memorandum of Understanding and the same is kept in the joint locker at the 7th defendant



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bank. So, to proceed with the trial, the copy of signed Memorandum of Understanding is just and necessary, without which, with regard to terms and conditions agreed between parties, evidence cannot be adduced. But, without appreciating the said legal aspect, the trial judge erroneously dismissed the Interlocutory Application filed in I.A.No.80 of 2018. Therefore, the findings rendered by the trial judge is liable to be set aside. Accordingly, the I.A.No.80 of 2018 is allowed and the trial judge is directed to appoint an advocate commissioner for the said purpose within a period of four weeks from the date of receipt of copy of this order. Accordingly, the Civil Revision Petition in C.R.P.No.129 of 2023 is allowed. No costs.

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Index: Yes/No
Internet: Yes/No
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To

Principal Sub-Judge,
Chengalpattu.



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T.V.THAMILSELVI, J.

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