



C.M.A.No.1380 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1380 of 2020

And

C.M.P.Nos.10151 of 2020 and 12366 and 12367 of 2023

M.Narayanan

... Appellant

Vs.

1.M/s.Thiyagar Industries,
Represented by its Partner T.S.Sridhar

2.T.S.Sridhar
3.S.Muthu Kumar
4.S.Ganesh Babu
5.R.Kala Easwari

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Order 43 Rule 1 of C.P.C., to set aside the decree and judgment No.I.A.882 of 2008 in O.S.No.30 of 2007, dated 24.08.2012 passed by the Hon'ble IV Additional District Judge, Ponneri and allow the civil miscellaneous appeal filed by the plaintiff herein.

For Appellant : Mr.G.Nagarajan
for M/s.P.Subba Reddy

For Respondents : R1 & R4 – NRN
R2 & R3 – Died
Mr.R.Kannan for R5



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J U D G M E N T

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This appeal has been filed seeking to to set aside the decree and judgment made in I.A.882 of 2008 in O.S.No.30 of 2007, dated 24.08.2012 passed by the learned IV Additional District Judge, Ponneri.

2.The learned counsel appearing for the appellant submitted that the appellant herein filed a suit for specific performance of the sale agreement dated 27.02.2003 on the file of the District Court at Tiruvallur and the same was transferred to IV Additional District Court, Ponneri and was taken as O.S.No.30 of 2007, in which, the respondents filed interlocutory application in I.A.882 of 2008 seeking rejection of plaint. The said application was allowed without providing opportunity to the appellant/ plaintiff. Aggrieved by the same, the appellant has filed this appeal.

3.The learned counsel appearing for the appellant further submitted that during the pendency of this appeal, the matter was compromised inbetween the parties and prayed that since the matter was settled inbetween the parties, without conducting trial, full Court Fee may be ordered to be refunded in favour of the appellant. To



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that effect, the learned counsel filed Compromise Memo filed by the appellant and respondents for settlement of dispute dated 18.12.2023, signed by the appellant, learned counsel for appellant and learned counsel for fifth respondent.

4.The Compromise Memo filed by the appellant and respondents for settlement of dispute, dated 18.12.2023, is extracted hereunder:

**" Compromise Memo filed by the
Appellant and Respondents for Settlement
of dispute**

1. The above named appellant has filed the suit in O.S.No.30 of 2007 on the file of IV Addl. District Court, Ponneri praying for Specific Performance of the Sale Agreement dated 27.02.2003 entered into with the Respondents/ Defendants to execute the sale deed in his or his nominees' favour after receiving the balance sale consideration. The defendants had already sent a cheque for a sum of Rs.8,00,000/- drawn in favour of the appellant on 16.03.2006 return of the advance amount by cancelling the sale agreement. But the appellant did not realize the cheque amount nor returned the same. The defendants contended inter alia that the sale agreement duly cancelled on 09.07.2004 since



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the plaintiff did not comply with the terms and condition and pay the balance of sale consideration as per terms after the expiry of time for completion of sale transaction and filed written statement. Since the suit was filed on 24.11.2006 after the expiry of period of limitation under Article 54 of the Limitation Act on 26.02.2006, the respondents filed a petition in I.A.No.822 of 2008 under Order 7 Rule 11 for Rejection of the Complaint on the ground of suit is barred by limitation. The appellant had also filed the counter appearing through advocate who did not argue the case and the Trial Court passed the order on merits by rejecting the suit complaint on 24.08.2012. Against the said order the above appeal has been filed before this Hon'ble Court.

2. Since the appellant has come forward to settle dispute on refund of the total advance amount of Rs.8,00,000/- with interest 6% per annum and this respondents have also agreed for the same. Thereafter the party respondents have agreed to repay the advance amount of Rs.8,00,000/- with interest of Rs.9,60,000/- at the rate of 6% per annum from 27.02.2003 to this 18.12.2023 in total a sum of Rs.17,60,000/- (Rupees



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Seventeen Lakhs Sixty Thousand Only). The said amount has been paid to the appellant by way of two cheques bearing No.334037 & 334038 dated 30.12.2023 & 30.01.2024 for the value of Rs.8,00,000/- and Rs.9,60,000/- respectively (Total Rs.17,60,000/- (Rupee Seventeen Lakhs Sixty Thousand Only), drawn on Canara Bank, Egmore Branch, in the name of M.Narayanan, Appellant herein as full and final settlement on behalf of all the respondents herein. The appellant has also acknowledged the receipt of the above cheques. Hence, the above appeal may be dismissed as settled out of Court.

3. The appellant also submits that in this case no trial conducted before Trial Court. The above C.M.A. passed based on interlockatary application filed by defendants which was allowed and against which the above C.M.A. preferred. Hence, as the matter settled between the parties without conducting any trial full, court fee of R.3,27,289/- may be ordered to refund by this Hon'ble Court in favour of the appellant Mr.M.Narayanan or in the alternative the suit may be restored and suitable directions shall be given to the IV Addl District Court, Ponneri



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*for refund of court fee to the true
Rs.3,27,289/- to the plaintiff. Both the parties
consent for the refund of court fees in the
name of Appellant/plaintiff Mr.Narayanan and
Justice may be rendered.”*

5.The Compromise Memo filed by the appellant and respondents for settlement of dispute, dated 18.12.2023, shall form part and parcel of the Judgment. Since the matter was settled inbetween the parties without conducting any trial, the appellant/ plaintiff is entitled for refund of the full Court Fee. Hence, the IV Additional District Court, Ponneri, is directed to refund full Court Fee of Rs.3,27,289/- to the plaintiff/ appellant herein.

6.The civil miscellaneous appeal is dismissed as settled out of Court. No costs. Consequently, the connected miscellaneous petitions are closed.

20.12.2023

pri
Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

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1.The IV Additional District Court, Ponneri.

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M.DHANDAPANI,J.
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