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C.R.P(PD)(MD).No.886 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.04.2023

Pronounced on : 19.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(PD)(MD).No.886 of 2019

and

C.M.P(MD)No.5156 of 2019

Asiya Beevi

represented by her Power Agent Dawood Ali,

Kunnam Taluk,

Perambalure District.

... Petitioner/Plaintiff

Vs.

1.Noorjahan Bi

2.Anwar

3.Nazar

4.Haskar

5.Salaudeen

6.Sardhar

7.Hakkani

8.Chanma

... Respondents/Defendants

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 11.01.2019 passed in I.A.No.635 of 2016 in O.S.No.132 of 2004 on the file of the III Additional District Court (FAC), Thiruchirappalli and to allow this Civil Revision Petition.



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For Petitioner : Mr.Sankar Murali
For R1 to R3 : Mr.S.Vinod Sathya Lazar
For R4 to R8 : No Appearance

ORDER

This Civil Revision Petition is filed against the fair order and decreetal order dated 11.01.2019 passed in I.A.No.635 of 2016 in O.S.No.132 of 2004 on the file of the III Additional District Court (FAC), Thiruchirapalli.

2. The brief facts of the case:

The revision petitioner is the plaintiff in O.S.No.132 of 2004 on the file of the III Additional District Court (FAC), Thiruchirapalli for specific performance and other reliefs against the respondents/defendants. A compromise decree was passed in that suit on 09.10.2006. Thereafter, the revision petitioner/plaintiff has filed a petition in I.A.No.635 of 2016 in O.S.No.132 of 2004 to set aside the compromise decree dated 09.10.2006. The first defendant has resisted the petition and also filed the petition in I.A.No.267 of 2016 directing the revision petitioner/plaintiff to receive a sum of Rs.13,53,870/- towards full satisfaction, failing which permit the respondents/defendants to

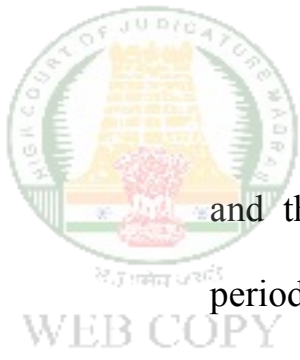


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deposit the same into Court. The revision petitioner/plaintiff filed a counter in that petition. After hearing both, the Trial Court has dismissed the petition in I.A.No.635 of 2016 and allowed the petition in I.A.No.267 of 2016 to pay Rs.13,53,870/- within 30 days either directly to the revision petitioner/plaintiff or to deposit into Court. Aggrieved by the order of the Trial Court passed in I.A.No.635 of 2016, the revision petitioner/plaintiff has moved this Court by way of this Civil Revision Petition.

3. Heard both side and perused the records in this Civil Revision Petition.

4. The learned counsel appearing for the revision petitioner has argued that the revision petitioner has filed the main suit in O.S.No.132 of 2004 against the respondents/defendants for specific performance or in the alternative to repay a sum of Rs.4,90,000/- with interest at the rate of 36% p.a. and other reliefs. The plaintiff and defendants entered into compromise and a compromise decree was passed on 09.10.2006. As per the compromise, the respondents/defendants have to pay the principal sum of Rs.4,90,000/- to the revision petitioner with interest at 18% p.a from the date of suit till the date of compromise and thereafter at 6% p.a.



and the respondents/defendants should pay the said amount within a period of three months. But, the respondents/defendants have not repaid the said sum and violated the terms of compromise. But, the Trial Court has granted further time to deposit the said sum to the first respondent/1st defendant in I.A.No.267 of 2016, which is filed after lapse of more than 10 years and the same is against the principle of law. Therefore, the revision petitioner/plaintiff has filed the petition in I.A.No.635 of 2016 to set aside the decree. The learned counsel for the revision petitioner/plaintiff has further contended that while drafting the decree, the time of three months was omitted in the compromise decree. Since no appeal would lie against the compromise decree, the party has to approach the concerned Court which passed the compromise decree to set aside the same. In support of his argument, the learned counsel for the revision petitioner/plaintiff has relied on the following citations:

(1) AIR 1988 Supreme Court 981 (Sova Ray and Anr. Vs. Gostha Gopal Dey and Ors.), wherein it is held in paragraph No.8 as follows:

“8.Coming to the next question as to whether the High Court acted rightly in extending the period for payment of the second installment, the learned counsel for the parties have placed all the facts and



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circumstances of the case in detail in support of their respective arguments and we have considered them closely and do not have any hesitation in holding that the High Court, assuming that it had the power to do so, was not justified in allowing the prayer of the defendant No.9 permitting him to make a grossly belated payment. Even where such a power exists it is not to be exercised liberally”.

(2) 2021 SAR (Civ) 737 (R.Janakiammal Vs. S.K.Kumarasamy

(D) through Legal Representatives and Ors.), wherein it is held in paragraph No.55 as follows:

“55. The above judgments contain a clear ratio that a party to a consent decree based on a compromise to challenge the compromise decree on the ground that the decree was not lawful i.e., it was void or voidable has to approach the same court, which recorded the compromise and a separate suit challenging the consent decree has been held to be not maintainable.”

5. Per contra, the learned counsel for the respondents vehemently contended that both the parties have entered into compromise and as per



compromise the revision petitioner/plaintiff has agreed to receive the principal amount with interest and accordingly compromise decree was passed directing the defendants to pay the principal sum of Rs.4,90,000/- with subsequent interest. The respondents/defendants issued Demand Drafts towards payments but the revision petitioner/plaintiff has not received the same and left for Dubai. Even for the sake of argument, if the respondents/defendants committed a default in payment within the stipulated time, she has to file the execution petition to receive the decree amount. The revision petitioner/plaintiff has not stated that the compromise decree is not lawful one. It was entered into legally between the parties and there is no allegation of fraud upon the compromise decree. Further more, the first respondent/1st defendant filed the petition in I.A.No.267 of 2016 to grant extension of time for payment and the same was granted for 30 days. The revision petitioner/plaintiff has not challenged the order. The Trial Court has rightly held that the revision petitioner/plaintiff has to file the execution petition to execute the decree and considering all these aspects, the Trial Court has dismissed the petition in I.A.No.635 of 2016, which warrants no interference by this Court. Hence, the revision petitioner has no valid case in this Civil Revision Petition and the same may be dismissed.



6. On hearing both and on perusal of records, it is clear that the revision petitioner has filed the main suit in O.S.No.132 of 2004 for specific performance with alternative prayer of refund of principal amount of Rs.4,90,000/- with subsequent interest. It is admitted that compromise decree was passed on 9.10.2006. A perusal of compromise decree, it is clear that the respondents/defendants shall pay the principal sum of Rs.4,90,000/- with subsequent interest at the rate of 36% p.a. from the date of plaint till the date of compromise and thereafter at 6% p.a. Though the petitioner states that there is a stipulated time frame to pay the amount i.e., within three months the same was not drafted in the decree. It is for the revision petitioner/plaintiff to get the decree amended as per compromise terms, but she has not taken any steps to do so till the filing of this petition in I.A.No.635 of 2016. It is the case of the respondents/defendants that though the respondents/defendants paid the sum by way of Demand Draft the plaintiff did not receive the same, the revision petitioner/plaintiff has not denied the averments. On perusal of the impugned order, the Trial Court has correctly observed that the revision petitioner/plaintiff has to execute the decretal clause by filing the execution petition. Even as per the citation relied on by the learned counsel for the revision petitioner, the decree has to be not lawful i.e., it has to be void. The revision petitioner/plaintiff has not assigned any valid



reason that the compromise decree was not lawful. Mere default in payment of amount as per decreetal clause, that could not be said to be void one. On perusal of records, it is clear that the suit is filed for specific performance with alternative prayer and the compromise money decree was passed. The citations relied on by the revision petitioner/plaintiff are in respect of the suit for partition and hence, the citations are not applicable to the facts of this case. The revision petitioner/plaintiff has not filed any appeal or revision against the order of extension of payment of decree amount. It is a settled principle of law that the party should be more vigilant in his/her case proceedings, if he/she slept for years together and wake up one morning and cannot approach the Court to seek relief as he wishes. While obtained decree in her favour, it is for the revision petitioner/plaintiff to execute the same in case of default in repayment by the defendant. Instead, the revision petitioner/plaintiff approached the Trial Court to set aside the compromise decree, which is not acceptable in law. The revision petitioner/plaintiff has not assigned any reason for fraud in getting the compromise decree as grounds to set aside the compromise decree. She himself admitted the terms of compromise. Therefore, considering all the facts and circumstances, there is nothing wrong in dismissing the petition in I.A.No.635 of 2016 filed by the revision petitioner/plaintiff which



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warrants no interference by way of this Civil Revision Petition and thus,
this Civil Revision Petition fails and the same is liable to be dismissed.

7. In the result, this Civil Revision Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

19.07.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

- 1.The III Additional District Court (FAC),
Thiruchirappalli.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

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Pre - Delivery Order made in
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