



C.R.P.No.2821 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2024

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.2821 of 2024

1. R.Dhanalakshmi
2. R.Anantha Kumar
3. R.Veerash Kumar

.. Petitioners

Vs.

1. M/s. Parthas
Building No.1515, Ward 38
Post Box No.5716
Power House Road
Thiruvananthapuram 695 036
Rep. By its Managing Partner.

2. Standard Chartered Bank
Having its Regional Office at:
Haddows Road
Chennai 600 006.

.. Respondents

Prayer: Petition under Article 227 of the Constitution of India to set aside the order dated 28.03.2024 passed in I.A.No.1 of 2024 in O.S.No.3957 of 2021 on the file of XV Additional City Civil Court, Chennai.



C.R.P.No.2821 of 2024

WEB COPY

For the Petitioners : Mr.S.L.Sudarsanam

For the Respondents : Mr.B.Madhan Babu
for Respondent-1

No appearance
for Respondent-2

ORDER

This civil revision petition is filed against the order passed by XV Additional City Civil Court, Chennai in I.A.No.1 of 2024 in O.S.No.3957 of 2021.

2. This case has an unfortunate long history. O.S.No.3957 of 2021 was originally presented as C.S.No.659 of 2006 on the file of the Original Side of this Court. At the time of presentation of the suit, relief that was sought was specific performance of an agreement of sale dated 02.04.2005 and another supplemental agreement dated 30.06.2006 and for a direction to defendants 1 to 3 to execute and register a sale deed in terms of the agreement. It also sought recovery of possession from defendants 1 to 3 as they were in possession of the property.



C.R.P.No.2821 of 2024

WEB COPY

3. Pending suit, applications were taken out in O.A.No.688 of 2006 and A.No.3264 of 2006. These were applications seeking relief of injunction restraining the defendants from in any manner alienating or encumbering the property and to permit the plaintiff to deposit the balance sale consideration of Rs.10.00 lakh to the credit of the suit. These applications came to be heard by this Court on 25.06.2012. On that day, an order was passed in the said applications allowing the same. Aggrieved by the said order, appeals were preferred to a Division Bench of this Court.

4. In the meantime, when the parties were hotly contesting the applications, it transpires that learned Master had dismissed the suit for default. Based on the said dismissal, a review was filed before the Division Bench seeking to review the order passed in O.S.A.No.400 of 2012 dated 01.02.2017. The specific plea that was raised before the Court was that there was no *lis* pending between the parties as the suit itself had been dismissed for default on 15.10.2008 and therefore, without noticing this fact, orders were passed in the application and in



C.R.P.No.2821 of 2024

WEB COPY

the appeal. The review was disposed of by an order dated 30.08.2017.

Subsequently, an application was taken to restore the suit and it was allowed on 19.04.2018.

5. On account of the enhancement of the pecuniary jurisdiction of the City Civil Court at Madras, the suit stood transferred to the file of XV Additional City Civil Court and was renumbered as O.S.No.3957 of 2021. On the suit being re-numbered, the plaintiff took out an application in I.A.No.1 of 2024 seeking to amend the plaint. The amendment that was sought for was to add the relief, alternatively for refund of the advance amount of Rs.40.00 lakh together with interest at the rate of 14% per annum. Learned Judge referring to Section 21(5) of the Specific Relief Act allowed the application. Hence, this revision at the instance of defendants 1 to 3.

6. Mr.S.L.Sudarsanam pleads that on account of the amendment being ordered, the nature of the suit changes and more importantly, the plaintiff will be entitled to interest for the period the suit had been dismissed for default from 2008 to 2018. He states that the Court



C.R.P.No.2821 of 2024

should have taken into consideration that the suit had been dismissed on account of the mistake committed by the plaintiff and the defendants 1 to 3 cannot be made answerable to the said claim.

7. I heard Mr.S.L.Sudarsanam and Mr.Madhan Babu for respective parties.

8. Power to amend the plaint in a suit for specific performance is governed under Section 22 of the said Act. In terms of Section 22, a party is entitled to claim for possession or partition and separate possession and also make a claim that he is entitled to refund of earnest money paid by him or deposit made by him, in case the relief of specific performance is refused. With respect to the claim of partition or possession, it is in addition to the relief of specific performance. In case of refund of earnest money, it arises only when the relief of specific performance is rejected. Section 22(2) makes it very clear that unless and until these reliefs are specifically sought for, a Court cannot grant the relief that is covered under Section 22(1)(b) of the Act. Proviso to Section 22(2) makes it abundantly clear that if



C.R.P.No.2821 of 2024

WEB COPY

the plaintiff seeks for inclusion of the reliefs by way of amendment, the Court should allow him to make the said amendment.

9. Order VI, Rule 17, CPC does not apply for an amendment that is sought in terms of Section 22(2) of the Specific Relief Act. The power of amendment of pleading under Order VI, Rule 17, CPC or the general power of amendment in terms of Section 153 CPC, does not bind the Court at the time of granting the relief under Section 22 of the Act since it is a special provision. The Court need not refer to the general provision. Proviso to Section 22(2) also states that the prayer for amendment can be sought for at any stage whether it is at the stage of trial, appeal or even in the second appellate stage. The power being wide and as the Parliament has mandated the Court to grant such an amendment, I do not see any error in the amendment that has been ordered by the learned trial Judge.

10. The plea of Mr.S.L.Sudarsanam that the plaintiff is not entitled to interest for the period from 2008 to 2018 can be argued by him if he takes such a plea in his amended written statement. I am



C.R.P.No.2821 of 2024

WEB COPY

sure that if the said plea is taken, the Court will frame an issue to that effect and pass an order appropriately at the time of disposal of the suit.

11. The civil revision petition is dismissed. There shall be no order as to costs. Consequently, C.M.P.No.14993 of 2024 is also dismissed.

28.10.2024

Index : Yes/No

Neutral Citation : Yes/No

kpl

To

The Registrar
City Civil Court
Chennai.



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C.R.P.No.2821 of 2024

V.LAKSHMINARAYANAN,J

(kpl)

C.R.P.No.2821 of 2024

28.10.2024