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C.R.P.(PD)No.4104 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **05.11.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4104 of 2023 and
C.M.P.No.25052 of 2023

B.V.V.Prasad

.. Petitioner

Vs

1. Phoenix ARC Private Limited,
3rd floor, Wallace Towers,
No.139/140/B/1, Crossing of Sahar Road
and Western Express Highway,
Vile Parle East, Mumbai-400 057.

(The 1st respondent substituted as per the
order of this Court dated 05.11.2024 in
C.M.P.No.21245 of 2024 in C.R.P.(PD)
No.4104 of 2023)

2. M/s. Virgo Properties Private Limited,
Represented by its Managing Director,
“Plaza House”, New No.5,
Old No.3, Thirumurthy Street,
T.Nagar, Chennai-600 017.



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3. M/s.Virgo Realtors Private Limited,
Represented by its Managing Director,
“Plaza House”, New No.5,
Old No.3, Thirumurthy Street,
T.Nagar, Chennai-600 017.

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the docket order dated 20.10.2022 in O.S.No.1615 of 2022 on the file of the XXIII Assistant Judge, City Civil Court at Chennai.

For Petitioner : Mr.V.T.Balaji

For R1 : Ms.Aishwarya S.Nathan

ORDER

This civil revision petition arises against the docket order dated 20.10.2022 passed by the learned XXIII Assistant Judge, City Civil Court, Chennai.

2. The plaintiff is the civil revision petitioner. He presented O.S.No.1615 of 2022 seeking for a declaration that the personal guarantee executed by him on 23.06.2017 in favour of the 1st defendant is



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null and void and for a consequential injunction from enforcing the said personal guarantee. The fact that a personal guarantee was executed in favour of the 1st defendant is not in dispute. However, the same is sought to be avoided on account of the plea that it is contrary to Section 10 of the Indian Contract Act.

3. Pending the litigation, the 1st defendant had assigned the loan in favour of one Phoenix ARC Private Limited, an Asset Recovery Company under Section 3 of the SARFAESI Act. Since the assignment has been made in favour of the aforesaid entity, the 1st defendant filed a memo, before the Trial Court, bringing to its notice the factum of assignment. It sought for an order to substitute its name with that of the 1st defendant. To the said memo, the order of the Trial Court records that the plaintiff had no objection. It was ordered and a direction was given to the plaintiff to amend the plaint.

4. Aggrieved by the said order dated 20.10.2022, the present revision.

5. Heard Mr.V.T.Balaji for the civil revision petitioner and Ms.Aishwarya S. Nathan for the substituted party.



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6. A perusal of the order shows that the plaintiff had no objection to the memo that had been filed. After having tendered no objection, I failed to understand how this revision is maintainable.

7. Mr.V.T.Balaji submits that he did not tender no objection to the said memo. He states that he filed a counter to the said memo, yet the Court has recorded as if he has tendered no objection. At the least a century ago, the Privy Council has settled the position. It held matters of judicial record are unquestionable. It opined “judgments cannot be treated as mere counters in the game of litigation”. See, ***Somasundaram v. Subramanian, AIR 1926 PC 136***. It is the duty of a party in case a wrong recording has been made by the Court to approach the very Court and bring it to its notice that the recording is erroneous. See, ***Madhu Sudan Chowdhri v. Chandrabati Chowdhrair, AIR 1917 PC 30***. These views of the Privy Council has found acceptance at the hands of the Supreme Court in ***A.R.Antulay v. R.S.Nayak and another, (1982) 2 SCC 463***.

8. Be that as it may, since Mr.V.T.Balaji has stated that he did not



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tender “no objection”, I decided to consider the memo on its merits. As pointed out above, there is no dispute that a guarantee agreement was executed by the plaintiff in favour of the 1st defendant on 23.06.2017. As per the said agreement, he gave his personal guarantee for the loan transaction entered into inter se the defendants. The original 1st defendant, in its wisdom, had executed an assignment deed in favour of the substituted party on 29.03.2022. Therefore, whatever rights that vested with the 1st defendant stood transferred in favour of the substituted party.

9. Mr.V.T.Balaji urges that though the assignment agreement was entered into on 29.03.2022 and it was presented for registration on 20.10.2022, it was finally registered only on 23.11.2023. The point that he pressed forward is that, it is only on 23.11.2023 i.e. on completion of registration that the rights which stood in favour of the 1st defendant got assigned to the substituted party.

10. I am afraid that is not the position of law. The transfer of interest of the 1st defendant happens on its execution and the process of registration relates back to the date of execution. That is to say on



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23.11.2023, on completion of registration, it related back to the date of execution of the document namely, 29.03.2022. This is clear from Section 47 of the Registration Act. The assignment or transfer of title is not dependent upon the ministerial act that is carried on by the Sub-Registrar. A document is registered only for the purpose of Section 17 and Section 49 of the Registration Act. Therefore, the order of the Trial Court, even on merits, cannot be found fault with.

11. Mr.V.T.Balaji pleads that the appropriate procedure that should have been followed is to file an affidavit and petition to implead or substitute the substituted party and it cannot be done by way of a memo.

12. A perusal of Order XXII Rule 10 of the Code of Civil Procedure makes it clear that all that it requires, when there is an assignment of right other than the death of a party, the Court only has to grant leave to the party to continue the proceedings. Granting of leave does not require a formal petition as submitted by Mr.V.T.Balaji. A memo filed by a counsel has the same effect of an affidavit filed by a party. See, *Mangayarkarasi v. Suseela and others*, (2000) 3 LW 896. In this case, the memo merely brings certain facts to the notice of the Court, which cannot be disputed inter se the parties.



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13. That being the position, the ordering of the memo by the learned Judge bringing to its notice that there has been an assignment is not in error. In any event, the procedure is only a handmaid of justice and it cannot be used to stultify a right which is vested with the substituted party by virtue of the deed of assignment dated 29.03.2022.

14. In the light of the above discussions, I find no merits in the revision. Accordingly, the civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.11.2024

Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes/No

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To

XXIII Assistant Judge, City Civil Court at Chennai.



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V. LAKSHMINARAYANAN,J.

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