



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 22.11.2024

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.P.No.22732 of 2024

in

A.S.No.617 of 2018

D.P.Senthilkumar

... Petitioner/Appellant

Vs.

M.Samiappan

... Respondent/Respondent

PRAYER: Civil Miscellaneous Petition is filed under Order VI, Rule 17 of C.P.C. r/w Section 22(2) of Specific Relief Act, 1963 seeking to permit the Petitioner/Appellant to amend the plaint to include the prayer for refund of Earnest Money/Deposit amount and for compensation.

For Petitioner : Mr.Nanchill J. Rajkumar

For Respondent : Mr.L.Mouli



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ORDER

This Civil Miscellaneous Petition had been filed seeking to permit the Petitioner/Appellant to amend the plaint to include the prayer for refund of Earnest Money/Deposit amount and for compensation.

2. The learned Counsel for the Appellant submits that the Petition is filed seeking to include the prayer for refund of advance amount and also seeking to include the prayer for compensation.

3. It is the submission of the learned Counsel for the Appellant/Plaintiff that the counter of the Respondent objecting to the amendment claimed that it is hit by Limitation. It is his submission that pleadings can be amended even at the stage of Appeal. Therefore, the objection of the learned Counsel for the Respondent regarding amendment is to be rejected and the petition to be allowed.

4. The learned Counsel for the Respondent submits that the prayer is



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for including the prayer for compensation and the Plaintiff had not pleaded in the plaint regarding the injury or damage suffered by him because of breach of contract and had also not quantified the loss of damage suffered by him. The Plaintiff cannot be permitted to amend the prayer to include the compensation. Also, it is the objection of the learned Counsel for the Respondent that from the date of the alleged breach of contract within the specified time only the Plaintiff can seek the relief of compensation and now after the disposal of the suit at this stage the Plaintiff cannot be permitted to amend the plaint to include the prayer for compensation. It is belated and it is hit by Limitation. Therefore, the learned Counsel for the Respondent seeks to dismiss the objection seeking amendment of plaint.

5. The learned Counsel for the Respondent relied on the decision of the Hon'ble Supreme Court in **(2023) 3 SCC 714 in the case of Desh Raj and others Vs. Rohtash Singh** by which it is laid down by the Hon'ble Supreme Court that if the Plaintiff does not seek relief of refund of advance amount and does not seek compensation for the breach of contract, the Court need not grant the relief of refund of advance amount and the relief of



compensation.

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6. The learned Counsel for the Respondent relied on the said ruling for his objection that the Plaintiff had not pleaded the injury caused by the breach of contract by the conduct of the Defendant. Under those circumstances, he cannot now seek to amend the prayer in the Plaint to include the relief of compensation. As such, the Plaint pleading as it stands does not contain the pleading regarding the injury or loss and the quantum for compensation. To include such pleadings, now cannot be permitted as the Suit was instituted in the year 2014. The date of specific performance i.e., 05.05.2014, when the breach of contract taken place, the date is not mentioned. From that date within three years only the Suit can be instituted. Now, three years period had lapsed. Therefore, the claim for compensation to be included in the relief by the Plaintiff is barred by limitation.

7. By way of rejoinder, the learned Counsel for the Appellant submitted that the Appeal is pending before this Court. Therefore, the claim of limitation will not be attracted as there are reported decisions of this



Court reported in *2013 SCC OnLine Mad 331 [S.Rani vs.*

A.Gnanaprakasam] wherein it was held that when the Appeal is pending, the Plaintiff can be amended. The limitation need not be considered.

Point for consideration:

Whether the amendment is to be allowed.

8. Heard the learned Counsel for the Petitioner and the learned Counsel for the Respondent/Defendant.

9. The suit is of the year 2014. The suit was dismissed as per Judgment dated 06.02.2018. Now, pending Appeal, the Plaintiff seeks to include the prayer for refund of advance amount already paid as per the sale agreement deed dated 05.05.2014.

10. On perusal of Plaintiff, it is found that the Plaintiff had sought only the relief of specific performance of contract for sale and there is no prayer seeking alternate relief. After suffering the Judgment of disposal of the Suit



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filed by the Plaintiff, the Plaintiff had now sought to include the prayer for alternate relief of specific performance of contract as refund of advance amount. The objection of the learned Counsel for the Respondent that this Petition itself is not maintainable as it is hit by limitation. For this, the learned Counsel for the Appellant submitted that the Appeal is continuation of the Suit. Therefore, pending Appeal, Plaint can be amended and the Court shall not go into the technicalities of law, since the subject matter of the Suit is pending before the Court. The learned Counsel for the Appellant submitted that this Petition is to be allowed and it shall not be dismissed on the ground of technicalities of law. Still, the learned Counsel for the Appellant submitted that the amendment regarding compensation for the breach of contract is also connected with the Suit and since the Suit is pending for disposal of Appeal, the Court is within its discretion to pass appropriate orders.

11. The contention of the learned Counsel for the Respondent that the claim of the Plaintiff seeking amendment is barred by limitation, therefore, cannot be permitted is found justified from the pleadings in the Plaint.



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Regarding the objection that the amendment is likely to cause prejudice as it is belated after condoning the delay. Still the prayer for refund of the advance amount is found justified as it is continuation of the Suit proceedings in the Appeal. Therefore, Limitation aspect need not be considered.

12. Even if the alternate relief is granted, the Plaintiff cannot seek compensation as there is no pleading regarding injury suffered by the Plaintiff for inaction on the part of the Defendant. Therefore, the Petition is to be dismissed is not found proper since the Appellate Court is the continuation of the trial proceeding as per the Civil Procedure Code. The objection of the learned Counsel for the Respondent that the relief of compensation cannot be included in the Plaint is found not acceptable as the Plaintiff has sought only amendment. By considering the merits of the case, it has to be considered only in the appreciation of evidence and not otherwise. Therefore, the prayer of the Petitioner to amend the Plaint to include the prayer of refund of earnest money deposit amount and relief of compensation are to be allowed.



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13. Also, Considering the prayer of the Appellant as Plaintiff, since the Plaintiff had not pleaded in the Plaint regarding the alternate relief, the Suit was dismissed by the learned trial Judge, now pending Appeal, he seeks relief of refund of advance amount as alternate relief and also seek compensation.

14. Considering the vehement objection of the learned Counsel for the Respondent/Defendant that there are no pleadings in the Plaint to meet out the relief sought for in the amendment and also considering the fact that the Appeal is the continuation of the trial proceedings and the subject matter is pending for disposal, the Plaintiff is permitted to amend the same. What had been argued by the Defendant now at this stage can be considered after he files additional written statement to the amended Plaint at the appropriate stage.

15. In the light of the above discussion, the point for consideration is



answered in favour of the Petitioner and against the Respondent.

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In the result, this **Civil Miscellaneous Petition is allowed.**

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Index : Yes/No

Speaking/Non-speaking order



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SATHI KUMAR SUKUMARA KURUP, J.

dh/shl

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