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C.R.P.(PD).No.4317 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4317 of 2024
and C.M.P.No.23989 of 2024

1. M.K.Moideen Kunhi
2. Ramiya Moideen

.. Petitioners

Versus

M/s.Sreerosh Properties Pvt. Ltd.,
rep. by its Authorised representative D.Dhiraj

.. Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.4 of 2024 in C.O.S.No.90 of 2024, dated 11.09.2024 on the file of the Principal Commercial Court at Egmore, Chennai and allow I.A.No.4 of 2024.

For Petitioners : Mr.K.Premkumar

For Respondent : Mr.T.Shrinikethan

ORDER

This Civil Revision Petition challenges the order of the learned Principal Commercial Court at Egmore, Chennai in I.A.No.4 of 2024 in C.O.S.No.90 of 2024, dated 11.09.2024. For the sake of convenience, the parties are referred to as per their array in the suit.



C.R.P.(PD).No.4317 of 2024

WEB COPY

2. Mr.K.Premkumar, learned Counsel for the petitioners/defendant Nos.1 and 2 raises an interesting question of law. There is no dispute in the relationship between the parties. The petitioners/defendant Nos.1 and 2 entered into a contract with the respondent/plaintiff for the purpose of putting up a residential superstructure. The case of the respondent/plaintiff is that they proceeded with the construction based on the agreement and during the course of construction, disputes arose and hence, the construction was stopped. For the amounts spent by the respondent/plaintiff in putting up the construction, it brought forth the suit for recovery of a sum of Rs.24,90,789/- together with interest on the principal amount of Rs.22,24,245/- at the rate of 18% per annum.

3. On being served with the summons, the petitioners/defendant Nos.1 and 2 moved an application for rejection of plaint pleading that it is not a commercial dispute and relied upon a judgment of the Supreme Court in *Ambalal Sarabhai Enterprises Limited Vs. K.S.Infraspace LLP and Anr., (2020) 15 SCC 585*. The plea, being that, the dispute is not a commercial dispute, it is not triable by the Commercial Court.



C.R.P.(PD).No.4317 of 2024

WEB COPY

4. The respondent/plaintiff filed a counter-affidavit pleading that under Section 2(1)(c)(vi) of the Commercial Courts Act, 2015, being a construction and infrastructure contract, it is a commercial dispute. The learned Commercial Judge agreed with the respondent/plaintiff and dismissed the petition. Hence, this Civil Revision Petition.

5. Mr.K.Premkumar invites my attention to the judgment of the Supreme Court in *Ambalal Sarabhai Enterprises Limited's* case (cited *supra*) and argues that the Supreme Court held that unless and until the contract relates to an immovable property exclusively used in trade or commerce, then, it will not attract the provisions of the Commercial Court.

6. Per *contra*, Mr.T.Shrinikethan, learned Counsel for respondent/plaintiff invites my attention to Section 2(1)(c)(vi) pointing out that all construction contracts are governed by the said provision. He relies upon the judgment of the Bombay High Court in *Vaijanath Dayanand Kale and Ors. Vs. Nerkar Properties LPP and Ors., 2021 (3) Mh.L.J. 202*, and



C.R.P.(PD).No.4317 of 2024

WEB COPY

that of the Andhra Pradesh High Court in ***Blue Nile Developers Private Limited Vs. Movva Chandra Sekhar and Ors., 2021:APHC:28878.***

7. I have carefully considered the submissions of both the sides.

8. A reading of the judgment in ***Ambalal Sarabhai Enterprises Limited's*** case (cited *supra*) shows that the dispute that arose between the parties was relating to mortgage deed which was entered into between the parties. The mortgage deed was executed, but, was not registered. The Supreme Court interpreted Section 2(1)(c)(vii) and held that unless and until it constitutes a commercial dispute arising out in relation to an immovable property used exclusively for trade or commerce, it will not be governed under the said clause. I am unable to apply the said judgment to the facts of this case for the following reasons.

9. A reading of the agreement into between the parties on 21.11.2022 shows that the purpose of the contract was the owners intended to **construct** a modern residential over the A-schedule property, of which, they were the owners. For the mere fact that the building that is sought to be constructed



C.R.P.(PD).No.4317 of 2024

WEB COPY

is a residential house, it will not take it out of the word "construction" as used under Section 2(1)(c)(vi) of the Commercial Courts Act. In fact, as rightly pointed out by Mr.T.Shrinikethan, Hon'ble Mr.Justice S.C.Gupte of the Bombay High Court, in paragraph No.7 of the judgment in ***Vaijanath Dayanand Kale's*** case (cited *supra*) specifically holds that the term "construction contract" includes construction of building for commercial or residential use.

10. Apart from this judgment, applying the principles of statutory interpretation also, I come to the same conclusion. This is because, the word "construction" means the activity of construction that is being carried on by one party pursuant to an agreement. The Parliament was clear while enacting Section 2(1)(c)(vi) not to include the words 'transactions which are not trade or commerce', while dealing with construction contracts. Whether the respondent/plaintiff had put up a residential house or put up a commercial complex, it has still indulged in the process of construction. Furthermore, if I were to accept the submission of Mr.K.Premkumar, then, I would be interpreting Section 2(1)(c)(vi) to mean that construction and



C.R.P.(PD).No.4317 of 2024

WEB COPY

infrastructure contracts relating "exclusively to trade or commerce". The provision, as it stands today, does not include the later inclusion.

11. When the Act is clear, it is the duty of the Court to apply the statute as it stands. There can be simple construction activities and construction activities which are infrastructure activities. The section does not read construction in the nature of infrastructure contracts, but, it reads construction and infrastructure contracts. Therefore, I am not able to read the word "construction" and "infrastructure" together. The words of definition have to be given the interpretation that they deserve. The respondent/plaintiff entered into an agreement only for the purpose of construction which is commercial with respect to the respondent/plaintiff. The fact that the petitioners/defendant Nos.1 and 2 are not exploiting the said property in a commercial manner, it does not mean that the contract stops being a construction contract.

12. In the light of the above discussion, I am not inclined to admit the revision. This Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



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C.R.P.(PD).No.4317 of 2024

24.10.2024

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

To

The Principal Commercial Court,
Egmore, Chennai.



WEB COPY



C.R.P.(PD).No.4317 of 2024

V.LAKSHMINARAYANAN, J.

grs

C.R.P.(PD).No.4317 of 2024
and C.M.P.No.23989 of 2024

24.10.2024