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C.R.P. No.4632 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2024

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THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

**C.R.P. No.4632 of 2024**  
**& CMP No.25909 of 2024**

M/s.Hillstar Developers Private Limited  
Rep. by its Managing Director,  
A.T. Somasundaram, 9/4-A, "Saravan Complex", 2<sup>nd</sup> Floor,  
Mettupalayam Road, R.S.Puram,  
Coimbatore 641 002.  
Petitioner

Vs

Mr.G.Praveen Pillai

Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order dated 31-07-2024 passed in IA.No.1 of 2024 in O.S.No.102 of 2023 on the file of the Learned District Munsif Court, Uthagamandalam.

For Petitioner : Mr.S.Haja Mohideen Githi

### **ORDER**

This Civil Revision Petition is against the order of the learned District Munsif, Uthagamandalam in I.A.No.1 of 2024 in O.S.No.102 of 2023, dated



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2.O.S.No.102 of 2023 is a suit filed for the following reliefs:

a) Permanent Injunction restraining the defendant, his agent, representatives, assignee etc., not to disturb the peaceful progress of construction consequently acting against the construction agreement by the defendant till the completion of the construction in the suit property as per the Construction Agreement,

(b) Permanent Injunction restraining the defendant, his agent, representatives, assignee etc., not to alienate/encumber of the suit property till the plaintiff completes the construction and handed over the possession to the defendant herein as per the Construction Agreement.

3. There is no dispute in the relationship between the parties. The plaintiff is the builder-cum-promoter of real estates. The defendant is the owner of the property. According to the plaintiff, he had approached the plaintiff and entrusted the work of construction. On account of the escalation in the prices of



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construction materials as well as delay caused by the defendant, the project could not be completed. It was further alleged that the defendant had defaulted in payment to the plaintiff to the tune of Rs.20,49,596/-. The plaintiff further pleaded that the defendant is trying to alienate the property. Hence, the suit.

4.The defendant entered appearance and filed a detailed written statement. According to him, the plaintiff had not even started the construction, since the approval for construction itself had been granted by the Commissioner of Uthagamandalam Municipality only on 19.05.2020. He further relied upon e-mails from the plaintiff to plead that, on account of non-availability of building materials, the work could proceed. The plaintiff is alleged to have stated, due to bad weather, the work could not be completed. He therefore sought for dismissal of the suit.

5.After the pleadings were completed, the plaintiff took out an application for appointment of an Advocate Commissioner to visit the suit property, to note down the physical features with the assistance of a valid building engineer, to take note of the completion stage of the construction, appropriate to the exchange of payments made and to submit the same as a report.



6.This was resisted by the defendant stating that the Commissioner cannot be appointed for a prospective money claim, to be presented by the plaintiff. He further pointed out, for the issues involved in the suit, appointment of an Advocate Commissioner is absolutely unessential.

7.The learned District Munsif, on appreciation of the affidavit and counter, came to a conclusion that the purpose of the application is only to collect the evidence by the plaintiff for a prospective suit. Hence, he dismissed the petition. During the course of discussion, he gave a finding that the issue in the suit is, as to who is in possession of the property.

8.Being aggrieved by the said order, the plaintiff is on revision.

9.Heard Mr.Haja Mohideen Gisthi, for the civil revision petitioner.

10.Mr.Gisthi pleads that if a Commissioner is appointed, he can visit the suit property and take note of the extent of construction made by the plaintiff and submit a report to the Court. He states that by adopting such a course of action, no prejudice would be caused to the defendant. Hence, he seeks the impugned order to be revised.



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11.I have carefully considered the submissions of Mr.Gisthi.

12.Under Order XXVI Rule 9 of C.P.C., an Advocate Commissioner can be appointed for the purpose of “elucidating the matter in issue”.

13.It is not in dispute that the plaintiff is a building contractor/realtor. The defendant is the owner of the property. The plaintiff pleads that by virtue of the agreement entered into between them, he is entitled to put up a construction over the suit schedule mentioned property. He also pleads that the defendant is not entitled to interfere with his right to put up such construction. Therefore, the issue involved in the suit is whether an injunction can be granted against the true owner and if the plaintiff is entitled to put up a construction over the property of the defendant based on a construction agreement dated 21.12.2017. This requires an interpretation of the agreement and as to whether the plaintiff has a right to seek for such an injunctive relief. The matter in issue does not relate to the expenses that have been incurred by the plaintiff to put up a construction. That would have to be gone into in a suit separately instituted for recovery of money. As the issue is not one for damages or recovery of money that the plaintiff has suffered at the hands of the defendant, appointment of an



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**V. LAKSHMINARAYANAN, J.**

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Advocate Commissioner, for the purpose for which it has been sought for, is absolutely not germane.

14.In the light of the above discussion, leaving it open to the plaintiff to file an appropriate application in the suit said to have been presented by him before the Commercial Court at Uthagamandalam for recovery of money, this Civil Revision Petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

**21.11.2024**

Index : Yes/No

Neutral Citation : Yes/No

Neutral Citation : Yes/No

Speaking/Non-Speaking Order

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To

The District Munsif Court, Uthagamandalam.

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