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C.R.P. (PD) .No.4837 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4837 of 2024

1.Radha

2.Gokul

.. Petitioners

Vs.

R.Radhakrishnan

.. Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the orders dated 03.09.2024 made in I.A.No.3 of 2024 in O.S.No.96 of 2023 on the file of the Subordinate Judge, Pappireddipatti, by allowing this Civil Revision Petition.

For Petitioners : Mr.G.Saravanan

ORDER

This civil revision petition arises against the order passed by the learned Subordinate Judge, Pappireddipatti, in I.A.No.3 of 2024 in O.S.No.96 of 2023 dated 03.09.2024.



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2.O.S.No.96 of 2023 is a suit for specific performance of an alleged agreement of sale dated 21.10.2013. In the said suit, the plaintiff took out an application seeking for amendment of the plaint in I.A.No.3 of 2024. He wanted to include a prayer for refund of advance amount. The said application was opposed by the defendants / petitioners, stating that the amendment being a post-trial one, if it is granted, it will change the nature of the suit and hence, it should be dismissed. The learned Trial Judge did not agree with the defendants and granted the said relief. Hence, the revision.

3.I Heard Mr.G.Saravanan for the civil revision petitioners.

4.Mr.G.Saravanan argues that the transaction between the parties is merely a loan transaction and the alleged transaction entered into between the plaintiff and defendants is not an agreement for sale. He adds that if the prayer is amended, it will change the character of the suit. Furthermore, as the trial has commenced, such prayer cannot be granted in terms of Order VI Rule 17 proviso of the Code. He places reliance upon the judgment of the Supreme Court in ***Desh Raj and others Vs. Rohtash Singh, (2023) 3 SCC 714***, in particular paragraph No.33 to 36 and pleads that the impugned order



deserves to be revised.

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5.I have carefully perused the records and I have analysed the submissions of Mr.G.Saravanan.

6.The first plea is that, in a suit for specific performance, by granting amendment, it loses the original character of the suit. I am not in agreement with the said submission. By granting the amendment for refund of advance amount in addition to the relief of specific performance, the suit does not stop being one from specific performance. The plaintiff only seeks that, in case, the Court comes to a conclusion that he is not entitled to the relief of specific performance, he pleads that the Court should grant him the relief of refund. Even post the amendment, the suit continues to be one for specific performance.

7.In so far as the plea that proviso to Order VI Rule 17 bars the application for amendment, here too I cannot agree with Mr.G.Saravanan. This is for the simple reason under Section 22 of the Specific Relief Act is a special legislation and Order VI Rule 17 is general in character. Under



Section 22 of the Specific Relief Act, an amendment seeking for advance amount or such other reliefs covered under Section 22, can be made at any stage of the proceedings. In fact, if such an application is made to even in a Second Appeal, this Court is entitled to permit the plaintiff to amend the plaint. The bar under proviso to Order VI Rule 17 does not find a place in the Specific Relief Act. The word amendment shall be granted at any stage of the proceeding has to be given the widest possible amplitude. It is the very same Parliament which enacted the Code of Civil Procedure that enacted the Specific Relief Act. While it placed a limitation under the Code of Civil Procedure, it did not enact any such restriction under the Specific Relief Act. This enactment indicates that in suits for specific performance, the Courts should be liberal when it comes to an application seeking for amendment to include the prayer for refund of advance amount.

8.Turning to the authority cited by Mr.G.Saravanan, the Supreme Court in the said judgment had held that a Court is incompetent to grant the relief of refund of advance amount, unless and until, it is specifically prayed. The Supreme Court held, in case a party does not seek for it, the Court cannot grant for it. It does not have any bearing in the present case, because the



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plaintiff has sought for the refund of the advance amount by way of an amendment in this case.

9.In the light of the above discussions, I do not find any reason to interfere with the order passed by the learned Subordinate Judge, Pappireddipatti, in I.A.No.3 of 2024 in O.S.No.96 of 2023.

10.In the result, this Civil Revision Petition is dismissed. No costs.

06.12.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The Subordinate Judge,
Pappireddipatti.



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V.LAKSHMINARAYANAN, J.

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