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C.R.P.No.1583 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1583 of 2024

and

C.M.P.No.8495 of 2024

Dr.Vandana Parvez

... Petitioner

Vs.

1.SIS Meridian Flat Owners Association

(Reg as Doc.No.246/2010)

Rep by its Secretary,

Having office at SIS Meridian,

Velachery Bypass Road, Chennai – 600 032.

2.M/s.South India Shelters,

Rep by its Managing Partnership

Mr.Mohammed Ali,

No.14, Gulmohar Avenue,

Velachery Main Road,

Guindy, Chennai – 600 042.

... Respondents

PRAYER: Civil Revision Petition has been filed under Article 227 of Constitution of India, 1950, praying to set aside the docket order dated 10.06.2022 passed in I.A.No.2 of 2019 in O.S.No.2990 of 2019 by the learned XIX Additional Judge, City Civil Court, Chennai.



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For Petitioner : Ms.Vandana Parvez
(Party-in-Person)

For Respondent-1 : Mr.P.B.Sampath Kumar

For Respondent-2 : Mr.Rahul Vivek

ORDER

This Civil Revision Petition has been filed seeking to set aside the docket order dated 10.06.2022 passed in I.A.No.2 of 2019 in O.S.No.2990 of 2019 by the learned XIX Additional Judge, City Civil Court, Chennai.

2.The petitioner/party-in-person has filed a suit in O.S.No.2990 of 2019 against the respondents/defendants seeking a relief of mandatory and permanent injunction and also for damages. She filed I.A.No.2 of 2019 in O.S.No.2990 of 2019 seeking to grant interim injunction and direction to the first respondent to rectify the defects in the common area, fixing the severe seepage of water oozing through the structural beams under the terrace slab in the schedule mentioned property. This petition was closed on 10.06.2022 for



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the reason, the relief sought in the interim application and in the suit are one and the same, the same can be decided only at the end of the trial, against which the present revision has been filed.

3.The contention of the petitioner is that the petitioner is the owner of Flat No.9M, SIS Meridian, Velachery Bypass Road, Chennai. She purchased the Flat in the year 2004, from thereon she was in absolute possession of the property. The petitioner purchased two Flats from the second respondent, who is the promoter. First respondent is the Flat Owner's Association. The second respondent/Promoter obtained approval from M.M.D.A. on 18.12.2003 and handed over possession to the petitioner in the year, 2006. The petitioner had been sending several representations highlighting damages and distress in the newly constructed building between 2007-2008. By fraudulent manner completion certificate obtained from C.M.D.A. on 26.07.2009. The petitioner sent e-mail request to the second respondent for terrace/roof maintenance on 30.06.2009 and the same was



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reverted on 14.09.2009. In the meanwhile, the second respondent in a haste manner handed over the SIS project to the first respondent on 01.07.2010 for future upkeep and maintenance without addressing the petitioner's complaint with regard to seepage in building roof and other damages.

4.The petitioner further submitted that she took the service of professionals, such as qualified Architects and structural Engineers to find out the root cause of the problem and to set right the damages. Thereafter, interim repair works undertook, in which, three major problem areas that need to be rectified are: (i) Terrace of the East Block, (ii) Elevation of the East Block under the terrace and (iii) Foundation of South East corner of East Block. The terrace floor showed inherent signs of compromised quality ever since 2009 just three years after handing over possession and two years after the completion certificate was secured by the second respondent. The poor quality of construction material and inferior quality of labour used by the second respondent has resulted in the terrace floor being undulated and



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porous. Due to seepage of rain water, the ceiling of two bathrooms of the petitioner is dripping/leaking, the walls adjacent to that bathroom is always in a soaking condition and it also affects the electrical conducts, which as a fallout, has now started radiating electrical shocks during the rainy season. The structural stability provided signals shows defects since 2013. The parapet wall supporting the front elevation on the terrace just above the suit schedule property developed major crevasse resulting in loose blocks of concrete falling off from the structure. This was reported as early as on 23.09.2013 along with the photographic evidences and follow up with e-mails and also complaining to the second respondent over phone but no repair or restoration done.

5.Further she submitted that the first respondent/Association is also not taking any follow-up measures with the second respondent and ensure the rectification of the repair and structural defects. The financial implications due to the error committed by the defendants is quite huge and both the



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respondents herein are responsible for the rectification. The petitioner engaged a Chartered Engineer registered as Valuer under Section 34AB of Wealth Tax Act, who provided estimate for proposed renovation and repair works on the schedule suit property and its report dated 10.11.2017 confirms that expenditure of Rs.13,00,000/- to be incurred by the petitioner to rectify the damages. For this reason, the petitioner filed a suit in O.S.No.2990 of 2019 and other interim applications. Further submitted that the trial Court closing I.A.No.2 of 2019 on technical grounds is not proper. The seepage is regular and during rainy season the amount of seepage increases and there was imminent damage of fall of the roof, which causes danger to the life of the petitioner. In fact, the petitioner is unable to use these two bathrooms. Further due to seepage, electric shock is also felt. For imminent rectification and corrective measures, waiting till the completion of the suit would further cause danger to the safety of the petitioner and her family members.



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6.The learned counsel for first respondent submitted that there are several Flat owners, who occupied and enjoying the property without any complaint. The complaint of the petitioner can be addressed only when the petitioner co-operates with the Association to inspect the damage and to take corrective measures to repair the damages and to arrest the seepage of water. The Association employed an Engineer to inspect and carryout repair works in the petitioner's Flat. When the Engineer and its technical team approached the petitioner to see the damages, she refused entry to them. Hence, it could not be carried out, on the other hand, the petitioner claims that she has got a report from the valuer and the damages of Rs.13,00,000/- to be paid. The building maintenance, repair and restoration of all common and basic amenities is the responsibility of the Association. The complaint made by the petitioner are on the common area and according to the petitioner, seepage from the roof drips into the wall inside the house. Unless accessibility to the damaged area inside the petitioner's house is permitted, the damage could not be repaired. It is only due to the non cooperation of the petitioner the actual



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damages could not be examined and rectification could not be taken. It is also to be taken on her own admission that the petitioner purchased the Flat in the year 2004, from thereon she was residing there. But she filed the suit in the year 2019 making wild allegations. Even today, the Association is ready to examine the damages and rectify the same, provided, the petitioner is cooperating with them.

7.The learned counsel for the second respondent submitted that the second respondent taken over the project in the year 2003 and completed the same in the year 2006 and C.M.D.A. officials on inspecting the property had given completion certificate and other certificates. Thereafter for some period, the second respondent is completely maintaining the building. Thereafter handed over the building to the Association. It is for the Association to maintain the building, carryout repairs and as and when any request is made by the Association, the same would be attended. Earlier, when the second respondent employed technician, there was some resistance



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by the petitioner in allowing the technician to inspect the damages and to take remedial measures. Without permitting to inspect and study the damages, filing the suit is not proper. Further the prayer sought in the suit as well as in the interim application are one and the same and the trial Court had rightly dismissed the same.

8.Both the learned counsel for respondents submitted that direction may be issued to complete the suit within a stipulated period and they will not be a reason for any delay.

9.The petitioner is also agreed that the suit itself can be completed without delay.

10.Considering the submissions made on either side, this Court directs the XIX Additional City Civil Court, Chennai to complete the trial in O.S.No.2990 of 2019 within a period of four months from the date of receipt of a copy of this order.



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M.NIRMAL KUMAR, J.

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11.With the above directions, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

02.07.2024

Index : Yes/No

Internet : Yes/No

Speaking order/Non speaking order

Neutral Citation : Yes/No

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To

The XIX Additional Judge,
City Civil Court, Chennai.

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and

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