



C.R.P.(MD)No.3204 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 17.10.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.3204 of 2023

and

C.M.P.(MD)No.16517 of 2024

Mayan

... Petitioner / Petitioner / Appellant

Vs.

1.S.M.Sivaprakasam

2.Maheswari

... Respondents / Respondents / Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records pertaining to the impugned fair and decreetal order made in I.A.No.3 of 2022 in A.S.No.37 of 2020 on the file of the Principal District Court, Theni dated 28.07.2022 and set aside the same by allowing this civil revision petition.

For Petitioner : Mr.R.Shankar Ganesh

For Respondents : Mr.K.Sathiya Singh for R2
No appearance for R1.

* * *

ORDER

Heard both sides.



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2.The plaintiff in O.S.No.205 of 2014 on the file of the Sub Court, Uthamapalayam is the revision petitioner herein. The suit was for specific performance. The suit was dismissed on 27.11.2019. Questioning the same, the plaintiff filed A.S.No.37 of 2020 before the Principal District Court, Theni. The plaintiff / appellant filed I.A.No.3 of 2022 for amendment of plaint itself. The petitioner wanted to include the alterative prayer for refund of advance amount. This I.A. was dismissed vide order dated 28.07.2022. Challenging the same, this civil revision petition came to be filed.

3.The learned counsel for the petitioner submitted that the petitioner has been constrained to come up with a prayer for amendment of the plaint in view of the decision of the Hon'ble Supreme Court reported in ***AIR 2023 SC 163 (Desh Raj v. Rohtash Singh)***. He submitted that for want of alterative prayer for refund of advance amount in the event of the appeal being dismissed, he will be left without any remedy.

4.Even though the learned counsel for the second respondent strongly submitted that the impugned order does not warrant interference, I am of the view that the civil revision petition deserves to be allowed.



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5.By permitting the amendment, there is not need to adduce any fresh evidence. Only in the event of first appellate Court coming to the conclusion that specific performance will have to be denied, the question of granting the alterative prayer will arise. It is true that the petitioner ought to have included the alterative prayer even while filing the suit itself. Of course, the question of refund would arise only if the appellant is able to establish that he had paid advance amount to the respondents herein.

6.In the interest of justice, I am of the view that the amendment deserves to be allowed. The impugned order is set aside and the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

17.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
ias

To:

The Principal District Court,
Theni.



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G.R.SWAMINATHAN, J.

ias

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