



C.R.P.(MD).No.68 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2025

CORAM:

THE HONOURABLE MR JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.68 of 2024

in

I.A.No.226 of 2022

in

O.S.No.604 of 2022

and

CMP(MD)No.388 of 2025

P.Murugesan

.. Petitioner/Respondent/Defendant

Vs.

J.R.Ganesh

.. Respondent/Petitioner/Plaintiff

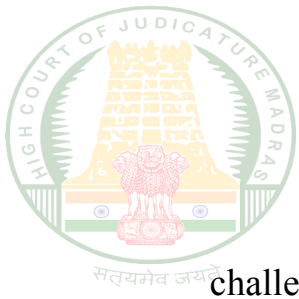
For Petitioner : Mr.S.C.Herold Singh

For Respondent : Mr.V.P.Rajan

Prayer: This civil revision petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 28.10.2024 passed in I.A.No.226 of 2022 in O.S.No.604 of 2022 on the file of the II Additional Sub Court, Madurai.

ORDER

The defendant in O.S.No.604 of 2022 on the file of the II Additional Sub Court, Madurai has filed this civil revision petition,



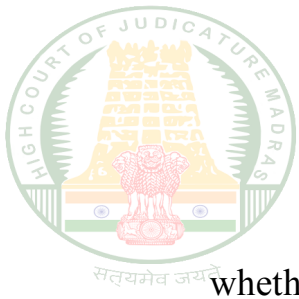
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challenging the allowing of an application for appointment of an advocate commissioner to note down the works carried out by the plaintiff and the value of the works carried out by him.

2. The respondent herein has filed the above said suit for the relief of recovery of money for the interior polish work and structural work carried out by him in the defendant's house at Batalagundu. Pending suit, the plaintiff has filed the application in I.A.No.226 of 2022 to appoint an advocate commissioner to note down the physical features of the defendant's house and to measure the interior cupboard work, painting and polish work with the help of valued engineer. This application has been allowed by the trial Court. Challenging the same, the present civil revision petition has been filed by the defendant.

3. According to the learned counsel appearing for the defendant there is no dispute that the plaintiff has carried out the work as per the contract. The learned counsel appearing for the defendant further contends that, according to him, the entire amount has already been paid. Therefore, the only dispute that remains to be agitated in this suit is that



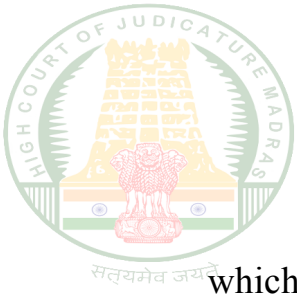
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whether the plaintiff has received the entire amount as per the contract or some amount is due to the plaintiff or not. In such circumstances, appointment of an advocate commissioner to note down the physical features or the measurement of interior work undertaken by the plaintiff is not necessary.

4. *Per-contra*, the learned counsel appearing for the respondent/plaintiff has contended that the plaintiff has undertaken some additional work based on the oral instruction of the defendant and therefore, they are not within the purview of the written contract. In such circumstances, unless the commissioner is appointed to note down additional works carried out by him, it would be difficult to adjudicate a proper suit.

5. On perusal of the plaint averments, it reveals that there is no pleading to the effect that the plaintiff has carried out any additional work on the oral instructions of the defendant. It is the specific case of the plaintiff that he had carried out the work as per two contracts entered into between the plaintiff and then he has not been paid for the work



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which is undertaken. In such circumstances, the only dispute that that has to be adjudicated by the Court is that whether the defendant has to pay any amount to the plaintiff as per the contract or not. In such circumstances, the appointment of an advocate commissioner is unnecessary. Therefore, the order impugned in the civil revision petition is to be set aside and the civil revision petition stands allowed. No costs. Consequently, connected civil miscellaneous petition also stands closed.

28.02.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes
nst
To
The learned I Additional District Court,
Thoothukudi.



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R.VIJAYAKUMAR, J.

nst

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