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CRP.No.1265 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.04.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

CRP.No.1265 of 2025
and CMP.No.7592 of 2025

S.Swaminathan
Proprietor
M/s.Sri Lakshmivasan Builders
No.6, 2nd Link Street, Sadasivam Nagar North
Madipakkam,
Madura Puzhuthivakkam
Chennai - 600 091.

... Petitioner

Vs.

1.R.Shravan Narayan

2.P.Mohana

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to allow the civil revision petition and set aside the order and decretal order dated 22.01.2025 passed in I.A.No.1/2024 in O.S.No.67/2023 on the file of Sub Court, Alandur, and pass any further similar other order as this Court may deem fit and proper in the above case.



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For Petitioner : Mr.T.Easwara Dhas
For Respondents : Mr.R.Ragavendran for R1
R2 - Not ready in notice

ORDER

The defendant is the revision petitioner and he challenges the order passed in I.A.No.1/2024 in O.S.No.67/2023 on the file of Sub Court, Alandur.

2. The facts which have given rise to the filing of civil revision petition are herein below set out :

- a) The respondents/plaintiffs have originally filed a suit in O.S.No.6309 of 2021 on the file of XX Assistant City Civil Court, Chennai, which was later transferred to Sub Court, Alandur and re-numbered as O.S.No.67/2023. The suit was filed for a recovery of total sum of Rs. 8,25,993/-, which includes the principal sum Rs.6,00,000/- and the interest amount of Rs.2,25,993/- at the rate of 24% per annum from the date of receipt of the loan till 30.07.2021 and further interest at the rate of 24% per annum on



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Rs.6,00,000/- from the date of plaint till the date of realization.

- b) The averments of the plaint is that in the year 2019, the plaintiffs had engaged the services of the defendant, who claimed to be a renowned builder for constructing their dream house. The defendant had informed the plaintiffs that he had proposed a new construction project at Madipakkam. Believing this representation, the plaintiffs and defendant had mutually entered into an agreement on 27.10.2019 for putting up an apartment together with an undivided share of 600 sq.ft., The total consideration was fixed at Rs.39,60,000/- The plaintiffs had paid a sum of Rs.6.0 lakhs as advance, for which, receipts have been issued by the defendant. It was agreed between the parties that the construction would commence within three months from the date of the said agreement and the apartment would be handed over to the plaintiffs within a period of six months and that the balance sale consideration shall be paid to the defendant on the execution of the sale deed in favour of the plaintiffs.
- c) Apart from the sale agreement, the plaintiffs and defendant had entered into a construction agreement on the very same date, in



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which, it was agreed the the defendant would construct a flat measuring a plinth area of 1,630 sq.ft. and a total area of 1,875 sq.ft. in the second floor of the proposed construction. According to the plaintiff, this construction agreement was not given effect to.

- d) There was a default on the part of the defendant in completing the project, even after a lapse of two years. Therefore, the plaintiff sent a legal notice dated 06.05.2021 to the defendant cancelling the said sale agreement dated 27.10.2019 and requested the defendant to repay the amount along with interest. Despite the notice being received by the defendant on 05.06.2021, there was no response. Hence, the plaintiffs have come forward with the suit in question.
- e) The defendant had filed the written statement *inter alia* contending that the City Civil Court, Chennai, has no jurisdiction, as the cause of action for the suit fell within the jurisdiction of Sub Court, Alandur. The defendant simply denied the sale agreement, sale price, receipt of the advance amount and the date of receipt etc., It is his contention that as per the construction agreement dated 27.10.2019, it is admitted by the parties that in case of any dispute, the matter has to be referred to Arbitration and that arbitration



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proceedings alone can be invoked.

- f) In the meantime, the plaintiffs did not cross-examine the defendant, but informed the trial Court that they had filed a transfer petition before this Court in Tr.CMP.No.1170 of 2022. This transfer petition came to be allowed and thereafter, the suit in O.S.No.6309/2021 was transferred to the file of the Sub Court, Alandur and re-numbered as O.S.No.67 of 2023.
- g) It appears that after the arguments on the side of the plaintiffs and defendant was over and their written arguments filed, and matter was posted for judgment. At this juncture, the defendant had filed an application for re-opening and recalling the evidence of the defendant, which was allowed. Once again, the defendant had not submitted his evidence, therefore, the suit was adjourned to 11.07.2024, for further evidence of defendant, at which point of time, the defendant had come forward with his application in I.A.No.1/2024, which is the subject matter of revision, seeking leave to issue summons to one Ranganatha Sharma, the father of the first plaintiff.
- h) According to the defendant/revision petitioner, it was Ranganatha



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Sharma, who was actually involved in the transaction and he is the attesting witness to Ext.A1 and Ext.A2, viz., sale agreement and construction agreement. Therefore, he is a necessary witness to be examined.

- i) The plaintiffs have filed their counter in the said I.A., *inter alia* contending that this application is an yet another attempt to protract the suit proceedings and nowhere in his pleading / proof affidavit / chief examination, the defendant had made a mention about the alleged transaction between him and Ranganatha Sharma. In the said counter, the plaintiffs have tabulated the adjudication details i.e., from 30.09.2022, the date on which plaintiffs side evidence was closed, till 11.07.2024, the date on which the instant IA was filed, which clearly sets out the conduct of the defendant in delaying the suit proceedings.
- j) The learned Sub Judge after hearing the parties, dismissed the said I.A., holding that the application was moved at the stage when the matter was posted for judgment and that too, after giving sufficient time to defendant for producing his evidence.

Challenging the same, the defendant/revision petitioner is before this Court.



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3. Heard the learned counsel for the revision petitioner and the learned counsel appearing for the first respondent.

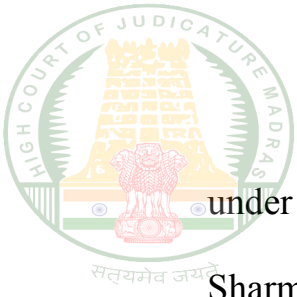
4. The plaintiff had sought for a recovery of money on the basis of agreement of sale and construction agreement. In the written agreement, ***except for the denial and the contention that the parties have to go before the Arbitral Tribunal***, there is no other defense set out by the defendant, to connect the said Ranganatha Sharma to the transaction. Further, after the settlement of issues and when the list of witnesses were directed to be produced by either parties before the trial Court, the defendant have not mentioned the name of Ranganatha Sharma.

5. Further, the adjudication details which have been set out in the counter in I.A.No.1 of 2024 would show that on 01.11.2022, the chief examination of DW1 was completed and the matter was posted for cross-examination of DW1 on 04.11.2022. It is at this juncture, the suit in O.S.No.6309/2021 pending on its file was transferred to Sub Court, Alandur, and on 26.04.2032, the suit was re-numbered as O.S.No.67 of 2023 and it



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was listed for cross-examination of DW1 on 09.06.2023. Despite this, adjournments spread over a period of three months, without DW1 submitting himself for cross-examination. On 22.11.2023, an adjournment petition was filed by the defendant for cross-examining DW1 and the same was allowed on payment of cost of Rs.1,000/- and with a caveat that no further adjournments will be given, the matter was adjourned to 08.12.2023. On 08.12.2023, D.W.1 was not present and therefore, the evidence of DW1 was closed and the suit was posted for arguments on 20.12.2023. On 20.12.2023, the plaintiffs have completed their arguments, and written arguments were filed, and the matter was adjourned for defendant side arguments on 05.01.2024. On 12.01.2024, the defendant counsel was not ready and the defence arguments was closed, and the matter was posted for judgment on 02.02.2024. At this juncture, the defendant filed an application to recall and re-open evidence. This petition was allowed on 20.03.2024 and thereafter, DW1 was cross-examined on 12.06.2024 and the matter was adjourned to 26.06.2024 for further evidence. On 26.06.2024, no further evidence was produced on the side of the defendant and the matter was adjourned to 11.07.2024 at the request of the defendant. On 11.07.2024, the defendant had taken out the application in I.A.No.1 of 2024



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under Order XVI Rule 1(3), to issue witness summons to said Ranganatha Sharma.

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6. A mere perusal of the adjudication data would clearly demonstrate the conduct of the defendant and show that the filing of the instant I.A., is to protract the proceedings. Even in the affidavit that has been filed in support of the said application, no reasons have been given by the defendant for summoning the said witness. That apart, in his written statement, the defendant has not made any reference to the role played by the said Ranganatha Sharma in the transactions of the alleged sale agreement and construction agreement. Therefore, without any pleadings, the defendant seeks to examine a witness. Hence, the impugned order passed by the learned Subordinate Judge, Alandur, dismissing the said I.A., filed by the defendant, appears to be in order and I see no reasons to interfere with the same.

7. Accordingly, this revision petition is dismissed. Consequently,



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connected miscellaneous petition is closed.

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

- 1.The Sub Judge
Alandur.
- 2.The Section Officer
VR Section, High Court, Madras.



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P.T. ASHA, J.

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