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CMP No. 20582 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-07-2025

CORAM

**THE HONOURABLE MRS.JUSTICE K. GOVINDARAJAN
THILAKAVADI**

CMP No. 20582 of 2024

IN

SA NO. 461 OF 2019

R.Krishnan
S/O. Ramalingam, No.27/2343
Manickammal Nagar, Villupuram,
Villupuram Dist.

Petitioner

Vs

K.Devarajan
S/o. Kulla Kounder, Ayyur Agaram
Village, Vikravandi Taluk, Villupuram
District.

Respondent

For Petitioner: Mr. N.Suresh

For Respondent: Mr. D. Rajasekar



ORDER

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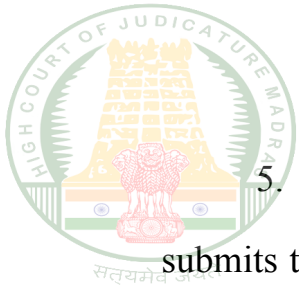
The captioned CMP is filed to amend the plaint as detailed hereunder in paragraph VI of the plaint prayer portion incorporate the following after clause VI(3):

- i. "(4) In the alternative direct the defendants to pay a sum of Rs.2,00,000/- with subsequent interest at the rate of 18% per annum from 16.06.2012 till the amount is realised"
- ii. Renumber existing clause VI(4) as "VI(5)".

2. The petitioner is the plaintiff in O.S. No.335/2013 on the file of the I Additional Sub Court, Villupuram. The suit was filed for specific performance of contract and the same was dismissed. The refund of the advance money was also not awarded for the reason that the plaintiff had not prayed for that alternative relief. In the Second Appeal, the appellant/plaintiff has filed the present petition to amend the plaint so as to include the prayer for the relief of refund of the advance money.

3. Counter has been filed by the respondent/defendant.

4. The learned counsel for the petitioner submits that in view of Section 22 of the Specific Relief Act, 1963, such amendment can be allowed at any stage of the proceedings.

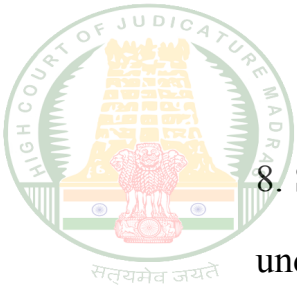


5. On the other hand, the learned counsel appearing for the respondent submits that the present amendment petition seeking for the alternative relief is filed after a lapse of 12 years and therefore, it is hopelessly barred by limitation and the same shall not be allowed at the belated stage of the Second Appeal. His further contention is that the petitioner is not entitled to seek interest at the rate of 18% per annum which is on the higher side and that apart, interest cannot be calculated from the date of alleged execution of agreement dated 16.06.2012. Hence, he would submit that the amendment will not relate back to the date of institution of the plaint in view of the fact that the alternative relief for refund of the amount is expressly barred by law of limitation.

6. Heard on both sides. Records perused.

7. The point for determination is as follows:

"Whether the amendment in plaint for the relief of refund of advance money, in a suit for specific performance of a contract, can be allowed at the stage of appeal?"



8. Section 22 of the Specific Relief Act, 1963 (in short 'the Act') reads as under:

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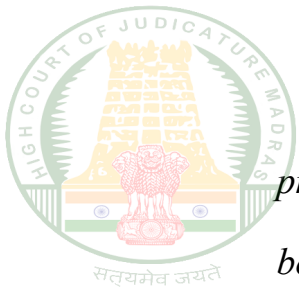
"22. Power to grant relief for possession, partition, refund of earnest money, etc. (1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for-

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the



proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

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9. A perusal of sub-section (2) of Section 22 of the Act shows that no relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed. Clause (b) provides for any other relief to which the plaintiff may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused. However, the proviso to sub-section(2) provides that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

10. So, the prayer under clause (b) for refund of earnest money can be claimed by way of amendment as well in the plaint 'at any stage of the proceedings' .

11. The Hon'ble Apex Court in ***K.R.Suresh Vs. R. Poornima*** reported in ***2025 SCC Online SC 1014*** has held that in view of Section 22 of the Specific Relief Act, such amendment can be allowed at any stage of the proceedings. The Hon'ble Apex Court in the above judgment has clearly held that this proviso to Section 22 of the Specific Relief Act overrides the proviso of Order VI Rule 17 of the Code of Civil Procedure.



12. In view of the aforesaid settled position, the captioned CMP is allowed.

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13. Let necessary amendments be incorporated in the plaint with respect to the alternative relief of refund of advance amount.

14. Let a report be submitted by the Registrar Judicial of this Court, with respect to the court fee if payable by the petitioner/appellant pursuant to the amendment and if any further court fee is required to be paid in addition to the court fee already paid.

15. List the Second Appeal on 07.08.2025.

30-07-2025

bga

To

1. The I Additional Sub-Judge, Villupuram.
2. The Section Officer, VR Section, High Court, Madras.
3. K.Devarajan
S/o. Kulla Kounder, Ayyur Agaram
Village, Vikravandi Taluk, Villupuram
District.



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K.GOVINDARAJAN THILAKAVADI J.
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