



CRP.No.4971 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.03.2025**

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THE HONOURABLE MS. JUSTICE P.T. ASHA

CRP No. of 4971 of 2023

&

CMP.No.29172 of 2023

1. Mr. Kishor Kumar Gokaldas,
No.5, Bishop wallers Avenue East,
Mylapore, Chennai 6004
2. M/s.KG Foundation Pvt. Ltd.,
No.5, Bishop Walleers Avenue East,
Mylapore, Chennai 600 004
represented by its authorised signatory
Mr.Mahendra Chug

.... Petitioners

Vs

Marble Arch Apartment Owners Association,
represented by its Secretary
No.5, Bishop Wallers Avenue East,
Mylapore, Chennai 600 004.

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the docket order dated 23.06.2022 in O.S.No.5985 of 2021 on the file of the First Assistant City Civil Court, Chennai.



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For Petitioners : Mr.D. Sairam Kumar

For Respondent : M/s. Hema Sampath for
M/s. R. Meenal

ORDER

This Civil Revision Petition is filed by the defendant challenging the docket order passed by the First Assistant City Civil Court, Chennai in O.S.No.5985 of 2021 directing the defendant to begin the trial.

2. The brief facts necessary to dispose of the Civil Revision Petition are herein below set out and the parties are referred to in the same litigative status as before the trial court.

(i) The plaintiff association had filed the suit in O.S.No.5985 of 2021 on the file of the First Assistant City Civil Court, Chennai for recovery of a sum of Rs.7,60,905/- along with interest at the rate of 12% per annum on the amount, till the date of payment, which according to the association, is the amount payable by the defendant towards maintenance and for a mandatory injunction directing the defendants to hand over to the plaintiff association, all the original documents of title deeds.



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(ii) The grievance of the plaintiff is that the defendant who was a builder, is occupying the entire ground floor without paying any maintenance towards common maintenance like water supply, upkeep and maintenance of the common areas, electricity for the lift, lobbies, common areas etc.

(iii) The defendant in addition, has also made alterations in front of the buildings by converting the same into his office space. He has also shifted the entrance by breaking open the mother wall. The building is nearly 35 years old and requires major repairs and replacements. The defendant is refusing to contribute to this and continues to holding to the original documents in respect of the suit property.

(iv) The petitioner/respondent had filed a written statement denying the allegations. He would submit that he only shares the water supply with the residential portion, for which, he is paying a sum of Rs.6480/- per year. The petitioner is not using any of the common facility that is available for the flat like lift, lobbies, security personnel, sweepers, separate electricity supply to the common areas like lobby, stair case, lift etc. Therefore, it is the contention of the defendant that he is not liable to pay the said amounts. He had also raised a contention that the plaintiff is an association for Apartment Owners and not for the commercial portion. In short, the defendant's



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contention is that he is not required to pay any of the charges that the apartment owners are required to pay.

3. After the pleadings were completed, the learned First Assistant City Civil Court Judge, Chennai has framed the following issues:

“1. Whether the plaintiff Association is meant for residential flats only, as alleged by the Defendant (KG)?

2. Whether the Defendant (KG) is a separate entity, since the property of KG is a Commercial portion and not amenable to the Plaintiff Association, as alleged by the Defendant (KG)

3. Is it true that no privity of Contract exists between the Plaintiff Association and KGF?

4. Is it true that the defendant (KG) is liable only for water charges towards the supply of water through association, as alleged by the Defendant (KG)?

5. Is the plaintiff association not authorized to claim any amount/dues retrospectively prior to 2018 (date of registration of the association), as alleged by the defendant (KG)?

6. Whether the plaintiff association is entitled for the sum of Rs.7,60,905/- from the Defendant, as alleged by the plaintiff?



7. *Whether the defendant is under any legal obligation to return the documents to plaintiff association, as alleged by the plaintiff association?*

8. *Whether the plaintiff is entitled for any other relief?*

4. Since the issues as framed would indicate that once the defendant comes forward with the contention that the plaintiff is not entitled to any part of the relief, then in such case, the defendant has the right to begin the trial, the same is sought to be challenged in this Civil Revision Petition.

5. Heard both sides.

6. A perusal of the issues framed would clearly show that if the issues 1 to 4 are answered, in favour of the defendants, then the issues 5 to 8 would automatically stand answered against the plaintiff.

7. Order 18, Rule 1 of CPC reads as follows:

1. Right to begin:

The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.”



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8. Therefore, from a reading of the above provisions and the issues framed in the instant case, if the issues 1 to 4 are answered in favour of the defendant, the plaintiff's case would automatically stand dismissed. Therefore, I see no reason to interfere with the impugned order passed by the learned First Assistant Judge, City Civil Court, Chennai. The Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

9. It is informed that the matter is next posted on 10.06.2025 before the trial court for the evidence of DW1. DW1 shall enter the witness box on the said date and the defendants shall positively file his documents after serving copies on the respondents before 10.06.2025. The learned trial Judge is directed to dispose of the suit by the end of 31.07.2025.

28.03.2025

msr
Index: yes/no
Internet:yes/no

To

The First Assistant City Civil Court, Chennai.

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P.T. ASHA, J.

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