
(2012) 11 MAD CK 0055
In the Madras High Court
Case No : O.S.A. No. 268 of 2012

K.R. Narayanan

APPELLANT

Vs

M. Siva Prakasam

RESPONDENT

Date of Decision : 22-11-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9

Citation : (2012) 11 MAD CK 0055

Hon'ble Judges : R. Banumathi, J;K.K. Sasidharan, J

Bench : Division Bench

Judgement

R. Banumathi, J.—These appeals are preferred against the order in (i) O.A. No. 1028 of 2010 granting temporary injunction restraining the

Appellant-Landlord from alienating the suit property and (ii) O.A. No. 1031 of 2010 restraining the Appellant-Landlord from interfering with the

possession of the Respondent-Builder in respect of the suit property. Appellant is the owner of Door No. 1, New Door No. 49, First Main Road,

Siringeri Mutt Road, Ramakrishna Nagar, Chennai-28. Appellant-Landlord and Respondent-Builder have entered into Memorandum of

Understanding (MOU) on 23.12.2003 for joint development of the said house property bearing Door No. 41, New Door No. 49. As per the

Memorandum of Understanding, Respondent-Builder has to put up twelve flats consisting of three flats in each floor i.e. 1 to 4 floors. Out of the

constructed flats, fifty percent of the flats i.e. six flats in 3rd and 4th floor to be allotted to the Appellant-Landlord and six flats in the 1st and 2nd

floor to be allotted to the Respondent-Builder. The entire cost of construction of twelve flats shall be borne by the Respondent-Builder. A sum of

Rs. 25,00,000/- was paid by the Respondent-Builder to the Appellant-Landlord as

security deposit, refundable without interest. In addition, a sum of Rs. 10,000/- shall be paid by the Respondent-Builder every month to the Appellant-Landlord towards monthly rent for the accommodation of the Appellant-Landlord, since he has to shift his residence to some other building till the construction of the building is over. In terms of Clause 7 of the Memorandum of Understanding, Appellant-Landlord executed a power of attorney infavour of Respondent-Builder on 23.12.2003. Besides the agreed amount of Rs. 25,00,000/-, another sum of Rs. 1,00,000/- was paid by the Respondent-Builder to the Appellant-Landlord for his urgent needs by treating the same to be the additional security. Thus total sum of Rs. 26,00,000/- was paid as security by the Respondent-Builder. Appellant-Landlord appointed the Respondent-Builder as power of attorney to develop and sell the property. On 17.6.2004 the building was handed over by the Appellant-Landlord to the Respondent-Builder for demolition. Original title deeds were also handed over to the Respondent-Builder for applying planning permit.

2. Case of Respondent-Builder is that after completion of construction of flats, Appellant-Landlord requested the Respondent-Builder to hand over the keys of three flats allotted to him to conduct house warming ceremony i.e. Grahapravesam and agreed to return the keys next day itself and believing his words, the keys of three flats in the top floor given to the Appellant-Landlord. But the Appellant-Landlord did not return the keys and occupied all the three flats. Without returning the keys, on 10.05.2010, Appellant-Landlord issued a lawyer's notice stating that the power of attorney dated 23.12.2003 executed by him appointing the Respondent-Builder as power of attorney stands cancelled. According to Respondent-Builder, the cancellation of power of attorney is unilateral and illegal and in violation of Memorandum of Understanding.

3. According to Respondent-Builder, in violation of Memorandum of Understanding, Appellant-Landlord occupied three flats in the third floor allotted to him without refunding the security deposit of Rs. 26,00,000/- and also without paying a sum of Rs. 5,40,000/- being the deposit for electricity charges, water and drainage charges. According to Appellant, the unilateral act of Appellant-Landlord in cancellation of the power of attorney resulted in preventing the Respondent-Builder from selling the six flats

in 1st and 2nd floor allotted to the Respondent-Builder as per the Memorandum of Understanding.

4. In these circumstances, Respondent-Builder filed two applications u/s 9 of Arbitration and Conciliation Act in O.A. No. 1028 and 1031 of

2010 restraining the Appellant-Landlord from alienating the property and also from interfering with the possession of the Respondent-Builder respectively.

5. Upon hearing both parties, pending arbitration proceedings, learned single Judge passed the following order:-

(i) Respondent-Builder is permitted to continue in possession of the flats in his occupation for personal use. Rent received from the tenants was

directed to be deposited in the Bank and right to rent will be determined by the Arbitrator. Rent amount can be withdrawn by either party only

with the permission of the Arbitrate Tribunal.

(ii) Appellant-Landlord has no right to occupy 1st and 2nd floor and therefore, Appellant-Landlord is restrained from interfering with the

possession of the flats in 1st and 2nd floor in terms of Clause 4 of Memorandum of Understanding.

(iii) Appellant-Landlord is also restrained from executing any fresh power of attorney infavour of any other person as the cancellation of power of

attorney deed dated 23.12.2003 is not in consonance with law, as the power of attorney was for consideration.

(iv) Appellant-Landlord was directed to nominate his Arbitrator in terms of the Arbitration Agreement within 30 days on receipt of the certified

copy of the order.

6. On being mentioned, the matter was taken up on 21.11.2012. When the appeal came up for hearing on 21.11.2012, the learned counsel for

Appellant submitted that Appellant-Landlord is ready to pay back the security deposit of Rs. 26,00,000/- provided Respondent-Builder obtains

completion certificate from CMDA.

7. Per contra, learned counsel for Respondent-Builder submitted that when the power of attorney has been cancelled by the Appellant-Landlord,

Respondent-Builder is not in a position to approach CMDA and obtain completion certificate and therefore, Respondent-Builder could not fulfill

his obligation in obtaining the completion certificate.

8. At this juncture, learned counsel for Appellant submitted that Appellant-Landlord is ready to revive the power of attorney only for obtaining completion certificate. On that understanding, the matter was adjourned to 22.11.2012.

9. When the matter was listed on 22.11.2012, both Appellant-Landlord and Respondent-Builder are present in Court. Appellant-Landlord filed authorisation letter authorising the Respondent-Builder to approach CMDA by filing necessary application for the purpose of obtaining completion certificate for the building in question. The original authorisation letter was received by the Respondent-Builder in the open Court.

10. Appellant-Landlord is to be allotted flats 7 to 12 in 3rd and 4th floor and Appellant-Landlord is stated to have taken possession of all the six flats. Out of which, Appellant-Landlord sold flat No. 12 to his own sister. Insofar as flats 1 to 6 in 1st and 2nd floor, as per the Memorandum of

Understanding, Respondent-Builder is in possession of the said six flats in 1st and 2nd floors and out of which, Respondent-Builder sold flat No.

4.

11. Considering the submissions made by the learned counsel for Appellant and the Respondents, we are of the view that the possession of

Appellant-Landlord as on date shall continue until further orders. Insofar as the order of learned single Judge that Appellant-Landlord not to

alienate the property shall also continue until further orders.

12. Learned counsel for Respondent submitted that Respondent-Builder will approach CMDA and take steps for filing necessary application for

the purpose of obtaining completion certificate. The said statement of learned counsel for Respondent is recorded.

13. Without expressing any opinion on the merits of the contention of either parties, we direct the Appellant-Landlord to pay a sum of Rs.

3,00,000/- (Rupees Three Lakhs) by way of Demand Draft to the Respondent-Builder within a period of one week from today directly to the

Respondent through his counsel. Payment of the said amount of Rs. 3,00,000/- is subject to the out come of the arbitration proceedings. In

addition, Appellant-Landlord is also directed to deposit a sum of Rs. 26,00,000/- (Rupees Twenty Six Lakhs) which was paid to him by way of

security deposit to the credit of O.S.A. Nos. 268 and 269 of 2012 within a period of two weeks thereafter. Respondent-Builder shall take appropriate steps in approaching Chennai Metropolitan Development Authority with necessary application for the purpose of obtaining completion certificate on the basis of the said authorisation letter. We also direct the Chennai Metropolitan Development Authority to treat the authorisation letter as due power of attorney given to the Respondent-Builder. The matter shall be listed on 14.12.2012.