

(2013) 01 MAD CK 0123

In the Madras High Court

Case No : C.R.P. (PD) (MD) No. 58 of 2013 and M.P. (MD) No. 1 of 2013

R. Manoharan

APPELLANT

Vs

M. Hariharan, Mrs. M. Rajeswari and M. Sivakami

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 9
Specific Relief Act, 1963 — Section 16, 16(c), 20

Citation : (2013) 01 MAD CK 0123

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : K.S. Sankhar Murali, for the Appellant;

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—The Civil Revision Petition has been filed to get set aside the order dated 27.11.2012 passed in I.A. No. 594 of 2012 in

O.S. No. 100 of 2011, by the learned III Additional District Judge, Tiruchirappalli. Heard the learned Counsel for the revision petitioner who

would strenuously put forth his case to the effect that at the end of the trial, when the matter was posted for the defendants to adduce evidence,

they came forward with an application in I.A. No. 594 of 2012 under Order VIII Rule 9 of the CPC to file additional written statement.

Whereupon, after hearing both sides, the lower Court allowed the said application warranting interference for the foregoing reasons:

(i) The plea should not be in piece meal. As per the amended Code of Civil Procedure, within the stipulated time frame, the written statement itself

should be filed and the same rule is also applicable for filing additional written statement.

(ii) Here, the lower Court did not call upon the defendants to file the additional written statement, but the defendants volunteered themselves in filing the additional written statement raising the plea that the plaintiff was not ready and willing to perform his part of contract by paying the remaining sale consideration amount and the fact remains that there was no valid agreement to sale and the suit sale agreement referred to in the plaint is a forgery one.

(iii) In such a case, the antithetical plea attempted to be put forth in the additional written statement cannot be countenanced and if it is allowed to subsist, certainly it would prolong the life of the litigation, warranting interference in this Civil Revision Petition.

2. On poring over and perusal of the proposed additional written statement as well as the order of the lower Court, what I could glean and discern is that in the written statement, the defendants had taken the extreme plea of forgery. When a question was posed to the learned Counsel for the revision petitioner about the plea of the defendants that the plaintiff was not ready and willing to perform his part of contract, he would submit that as per the plaintiff there was no contract at all and wherefore there was no question of the defendants raising a plea of non-performance would arise. While arguing the matter, the learned Counsel for the revision petitioner would in all fairness, submit that Sections 16 and 20 of the Specific Relief Act, the plaintiff is bound to establish the prima facie case about the plaintiff's readiness and willingness to perform his part of contract as per the sale agreement and there should be bona fides on his part.

3. According to the learned Counsel for the revision petitioner, the plaintiff discharged his initial burden and it is for the defendants to prove their plea of forgery, but they wanted to raise a false plea that the plaintiff was not ready and willing to perform his contract by paying the remaining sale consideration amount.

4. In this connection, I would like to call up the following decisions of the Honourable Apex Court:

(i) Man Kaur (dead) by LRS. Vs. Hartar Singh Sangha, An excerpt from it, would run thus:

40. This contention has no merit. There are two distinct issues. The first issue is the breach by the defendant vendor which gives a cause of action

to the plaintiff to file a suit for specific performance. The second issue relates to the personal bar to enforcement of a specific performance by

persons enumerated in Section 16 of the Act. A person who fails to aver and prove that he has performed or has always been ready and willing to

perform the essential terms of the contract which are to be performed by him (other than the terms the performance of which has been prevented

or waived by the defendant) is barred from claiming specific performance. Therefore, even assuming that the defendant had committed breach, if

the plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to

be performed by him (other than the terms the performance of which has been prevented or waived by the plaintiff), there is a bar to specific

performance in his favour. Therefore, the assumption of the respondent that readiness and willingness on the part of the plaintiff is something which

need not be proved, if the plaintiff is able to establish that the defendant refused to execute the sale deed and thereby committed breach, is not

correct. Let us give an example. Take a case where there is a contract for sale for a consideration of Rs. 10 lakhs and earnest money of Rs. 1 lakh

was paid and the vendor wrongly refuses to execute the sale deed unless the purchaser is ready to pay Rs. 15 lakhs. In such a case there is a clear

breach by the defendant. But in that case, if the plaintiff did not have the balance Rs. 9 lakhs (and the money required for stamp duty and

registration) or the capacity to arrange and pay such money, when the contract had to be performed, the plaintiff will not be entitled to specific

performance, even if he proves breach by the defendant, as he was not ""ready and willing"" to perform his obligations.

(ii) J.P. Builders and Another Vs. A. Ramadas Rao and Another, . An excerpt from it, would run thus:

27. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that the plaintiff has to comply

with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the court is not bound to grant specific

performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the

relevant points of time. ""Readiness and willingness"" to perform the part of the contract has to be determined/ascertained from the conduct of the

parties.

5. In view of the dicta laid down by the Honourable Apex Court in the aforesaid precedents, the plaintiff is enjoined to establish his case strictly in

accordance with Sections 16 and 20 the said Act. No doubt, the defendants in their additional written statement stressed upon the burden of the

plaintiff to prove his readiness and willingness to perform his part of contract by paying the remaining sale consideration. The lower Court, after

discussing the facts in full, held that if at all there is any prevarication in the plea of the defendants, the plaintiff can very well deny it by way of reply.

The lower Court exercising its discretionary power allowed the defendants to file the additional written statement.

6. I am of the view that this Court in the Civil Revision Petition is not expected to interfere with the discretion exercised by the lower Court, which

is not fraught with illegality. I would like to give liberty to the revision petitioner to file reply statement to the additional written statement.

Whereupon the lower Court shall proceed with the matter untrammelled and uninfluenced by any of the observations made by this Court in this

order and do well to see that O.S. No. 100 of 2011 is disposed of within a period of two months from the date of receipt of a copy of this order.

In the result, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is dismissed. No costs.