
(2013) 07 AP CK 0140
In the Andhra Pradesh High Court
Case No : Writ Petition No. 6577 of 2010

Wg. Cdr. (Retd) V.S. Reddy

APPELLANT

Vs

Secretary, Co-operative Appellate Tribunal

RESPONDENT

Date of Decision : 22-07-2013

Acts Referred:

Citation : (2017) 1 AndhLD 449

Hon'ble Judges : M.S. Ramachandra Rao, J.

Bench : Single Bench

Advocate : Ch. Janardban Reddy, Advocate, for the Petitioner; G. Maloji Rao, Advocate, for the Respondent No. 2.; Government Pleader for Co-operation, for the Respondent No. 1.

Final Decision : Disposed Off

Judgement

M.S. Ramachandra Rao, J. - This writ petition is filed seeking a Writ of Mandamus to declare the order dated 22-02-2010 of the A.P. Co-operative Tribunal, Hyderabad (for short, "the Tribunal") in I.A .No. 249 of 2009 in C.T.A. No. 27 of 2009 as illegal, arbitrary, unjust and to set aside the same.

2. The petitioner was an allottee of a flat No.J-4, Sector-C of AWHO Colony, Gowtham Enclave, Sikh road, Secunderabad, from 3rd respondent on 05-11-1986. Alleging that the petitioner entered into an agreement of sale dated 07-12- 1994 with the 2nd respondent for sale of the said plot, the 2nd respondent filed A.R.C. No. 9/04-J1 u/s.61 of the A.P. Cooperative Societies Act, 1964 (for short, "the Act") before 5th respondent to register the above flat in his favour through a registered sale deed and refund rental dues from June, 2000 with interest at the rate of 18% per annum.

3. The petitioner filed a counter contending that 4th respondent was to grant provisional permission to 2nd respondent for transfer of the above property in his favour, but 2nd respondent failed to comply with the formalities within the time stipulated and therefore 4th respondent had cancelled the provisional permission

granted to 2nd respondent; that the 2nd respondent had addressed letters dated 05-11-2001 and 19-05-2004 to petitioner asking him to inform within 15 days how much amount the petitioner intended to refund to him, the mode of payment etc. and sought refund of the amount paid by him for the above property with interest from June, 2000 till date of payment; therefore the 2nd respondent is not entitled to relief of specific performance.

4. By award dated 06-10-2007, the 5th respondent/Arbitrator passed award relying on the letters referred to above holding that the 2nd respondent is only interested in taking back his amount with interest and therefore petitioner should refund Rs.2,50,000/- to the 2nd respondent with interest at the rate of 12% per annum from June, 2000 apart from paying Rs.6,024/- towards transfer fee expenses incurred by 2nd respondent.

5. Aggrieved thereby, 2nd respondent filed C.T.A. No.27 of 2009 before the Tribunal. In the said appeal, the 2nd respondent prayed that apart from the relief of transfer of allotment of the flat in his favour from the petitioner and the execution of a registered sale deed by him and refund of rentals, an alternative relief of damages of Rs.30,00,000/- towards breach of the conditions of the agreement of sale and Rs.10,00,000/- towards damages for mental agony may also be granted.

6. The petitioner also filed C.T.A. No.73 of 2009 before the Tribunal. In the appeal filed by the petitioner, the petitioner raised a contention that the award of the 5th respondent is without jurisdiction as 2nd respondent is not a member of the 3rd respondent society and so, 5th respondent is not entitled to entertain the dispute raised by 2nd respondent under Section 61 of the Act. Apart from that he also contended that the 2nd respondent's claim is barred by limitation.

7. It appears that the Tribunal took an objection to the raising of the alternative reliefs of damages in the appeal C.T.A. No.27 of 2009 filed by 2nd respondent, without there being any such claim before the 5th respondent.

8. This prompted the 2nd respondent to file I.A. No.249 of 2009 in C.T.A. No.27 of 2009 before the Tribunal under Section 76(6) of the Act r/w Order VI Rule 17 C.P.C. to grant permission to him to claim Rs.30,00,000/- towards damages as alternative relief for breach of the conditions of the agreement of sale and also to claim Rs.10,00,000/- towards damages for mental agony allegedly suffered by him on account of breach of contract by petitioner.

9. The petitioner filed a counter opposing the said application contending that when the claim petition itself under Section 61 of the Act is not maintainable, the said I.A. cannot be considered. He also contended that the alternative relief claimed is beyond the scope of the appeal and would completely change the original claim before the 5th respondent and therefore the I.A should be rejected.

10. By order dated 22-02-2010, the Tribunal allowed the I.A. with costs of Rs.1,000/- on the ground that 2nd respondent in the I.A. is only seeking

alternative relief; whether such relief should be granted or not can be adjudicated while disposing of the main appeal; allowing the amendment sought for by 2nd respondent will not change the nature of the case; both parties would be at liberty to put forth their case at the time of hearing of the appeal; although the 2nd respondent was not diligent in raising this claim for damages earlier, no prejudice would be caused to petitioner as he can file an additional counter and put forth his case; whether the 2nd respondent is a member of 3rd respondent-Society or not can be decided at the time of hearing and that it will not come in the way in the Tribunal considering the application for amendment of the relief.

11. Aggrieved thereby, the petitioner has filed the present writ petition.

12. Heard Sri Ch. Janardhan Reddy, learned counsel for the petitioner, Sri G. Maloji Rao, learned counsel for the 2nd respondent. None appears for the other respondents.

13. The learned counsel for the petitioner contended that the Tribunal erred in allowing the application for amendment of the relief prayed by 2nd respondent; that 5th respondent inherently lacked jurisdiction to entertain the claim of 2nd respondent who is not a member of 3rd respondent-Society; that petitioner had already filed C.T.A. No.73 of 2009 before the Tribunal raising the said plea which is not taken up by the Tribunal; the amendment of relief sought by 2nd respondent is outside the scope of the appeal; it has entirely changed the nature of case prayed before 5th respondent and cannot be permitted at the appellate stage; the Tribunal has not considered the objections raised by petitioner in opposition to the prayer for amendment of relief made by 2nd respondent; and relied upon M/s. Hyderabad Sheet Metal and Allied Industries v., M/s. Industrial Packages and others AIR 1993 A.P. 213 M. Venkataramana v. A.P. Co-operative Tribunal, Hyderabad and others 2010 (4) ALD 500 (DB) and V. Shravan Kumar v. Lt. Col. S.B. Sharma and others 2011 (1) ALD 385.

14. The learned counsel for 2nd respondent, however, contended that the Tribunal had rightly allowed the application for amendment of prayer made by 2nd respondent in C.T.A. No.27 of 2009; that allowing the amendment and permitting the 2nd respondent to seek alternative relief do not amount to changing the scope of the claim before the Arbitrator or in the appeal; that the learned counsel for the petitioner had in fact received the costs granted by the Tribunal under the impugned order from 2nd respondent on 04-03-2010 and therefore, it is not open to petitioner to file this writ petition challenging the impugned order. He relied upon Rattan Chand and others v., Mori (dead) by LRs and others (2010) 11 Supreme Court Cases 768.

15. I have noted the submissions of the respective parties.

16. The above facts indicate that 2nd respondent had sought the relief of specific performance of the agreement of sale dated 07-12-1994 executed by petitioner in his favour before the 5th respondent under Section 61 of the Act. After the award was passed in A.R.C. No.9/04-J1 on 06-10-2007 by 5th respondent

granting only refund of the sale consideration, the 2nd respondent preferred C.T.A. No.27 of 2009 before the Tribunal under Section 76 of the Act. In that appeal I.A. No.249 of 2009 was filed by the 2nd respondent for amendment of the claim by seeking alternative relief of damages. As it was allowed under the impugned order dated 22.2.2010, this writ petition has been filed.

17. Section 21 of the Specific Relief Act, 1963 enables a person in a suit for specific performance also to claim compensation for breach of the agreement of sale in his favour either in addition to or in substitution of such performance. Proviso to sub-section (5) of Section 21 states :

"Provided that where the plaintiff has not claimed any such compensation 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 compensation".

18. In Jagdish Singh v., Natthu Singh AIR 1992 SC 1604 the Supreme Court considered the above proviso and held that if the amendment relates to relief of compensation in lieu of or in addition to specific performance where the plaintiff has not abandoned his relief of specific performance, the Court will allow the amendment at any stage of the proceeding.

19. In view of proviso of Section 21(5) of Specific Relief Act, 1963 and the judgment in Jagdish Singh (5 supra), I am of the opinion that the Tribunal rightly allowed the application for amendment sought for by 2nd respondent.

20. I am also of the view that the learned counsel for the petitioner having received the costs awarded by the Tribunal from 2nd respondent is deemed to have acquiesced in the order of the Tribunal and therefore the petitioner could not have filed this writ petition assailing the same. In Rattan Chand and others (4 supra) the Supreme court held :

"In view of the fact that the counsel for the appellants herein specifically agreed and suggested the manner of payment of costs, he is deemed to have agreed and accepted the order dated 1-11-2001 by receiving the cost. Hence, it is not open to the appellants to subsequently challenge the order dated 1-11- 2001 which permitted the legal representative of the deceased Mori Devi to come on record in her place and pursue the restored second appeal."

21. As regards the contention of the counsel for petitioner that the 5th respondent had no jurisdiction to entertain the claim made by 2nd respondent as he is not a member of 3rd respondent Society is concerned, the learned counsel for 2nd respondent contended that the 2nd respondent has also been admitted as a member of the 3rd respondent society. As this is a disputed question of fact, both parties are at liberty to raise it before the Tribunal in C.T.A. No.27 of 2009 and C.T.A. No.73 of 2009 and the Tribunal may consider the same in accordance with law. As this is a matter requiring appreciation of evidence, it is not appropriate to decide the same in this writ petition. Therefore, I do not propose to consider the decisions in M/s. Hyderabad Sheet Metal and Allied Industries (1

supra), M. Venkataramana (2 supra) and V. Shravan Kumar (3 supra). It is open to the petitioner to raise the contention regarding the lack of jurisdiction of the 5th respondent before the Tribunal, who shall consider the same in accordance with law.

22. I am of the view that the impugned order passed by the Tribunal does not suffer from any error of law apparent on the face of record warranting interference by this Court under Article 226 of Constitution of India.

23. The writ petition accordingly fails and is dismissed. No costs.

24. Miscellaneous applications, if any, pending in this Writ Petition shall stand closed.