

Orders on I.As. Dated 02-09-2021

The plaintiff filed Application u/S.151 of C.P.C. praying to reopen the case of the plaintiff to lead further evidence by examining the witness and also filed Application u/O.XVI R.1 and 6 r.w. S.151 of C.P.C. praying to summon the Branch Manager, State Bank of India, Kudalahalli Branch, Bengaluru, to produce the documents disclosed in the application and give evidence on those documents.

2. In support of the I.As. the plaintiff sworn to Affidavits by stating that he has filed this suit for specific performance of contract and other reliefs and 1st defendant has filed Written Statement contending inter alia that she has not executed the agreement of sale and has not received the amounts into the Bank bearing S.B.A/c. No.30013314997 with the State Bank of India, Kudalahalli Branch, Bengaluru. The plaintiff submitted that the loan amount has been transferred into the account of 1st defendant RACPC from Loan account of the plaintiff and therefore these documents are required to prove the transaction of sale agreement and to further prove that aforesaid account is pertaining to the 1st defendant. Without the original documents before this Court, he will not be able to prove the documents effectively. Hence, prayed to summon the bank documents of 1st defendant.

3. The 1st defendant appeared before the Court and filed her separate objection statement to both the I.As.

wherein she has stated that she has specifically taken up a contention as to not executing any agreement with the plaintiffs and that she has not received any amount. She has also cross-examined P.W.1 on the same lines. Now when the case is posted for arguments, the application is filed only to fill up the lacunae, diffuse the issues and distract the proceedings. The evidence of the alleged witness is not vital to the case and is filed only to prolong the proceedings. Hence, prayed to dismiss the applications.

4. Heard the arguments.
5. The only Points that arise for consideration are:
 1. Whether the plaintiff has made out a ground to allow these Applications?
 2. What Order?
6. The answers to the above Points are:

Point No.1 – In the Negative,
Point No.2 - As per Final Order,

for the following:

REASONS

7. **Point No.1:** The plaintiff has filed this suit against the defendants for the relief of specific performance of contract dated 16-3-2013 by directing the defendants to execute the appropriate sale deed in favour of this plaintiff in respect of suit B schedule property, failing which, the Court shall execute the sale

deed on behalf of the defendants. Even according to the plaintiff, the defendant No.1 being the absolute owner of the property, had entered into J.D.A. with defendant No. 2, a Partnership Firm and thereafter the 2nd defendant has constructed a multi storied building in the suit A schedule property and later thereon, the defendants 1 and 2 have executed the sale agreement in favour of this plaintiff on 16-3-2013 by agreeing to sell the suit B schedule property in his favour for the total sale consideration amount of Rs.74-lakhs. The plaintiff has stated that he paid a sum of Rs.15-lakhs on different dates towards the part performance of contract and subsequently, again he paid a sum of Rs.11-lakhs and accordingly he paid the major portion of sale consideration amount and the remaining balance sale consideration is only Rs.8-lakhs payable to the defendants at the time of registration of the sale deed.

The plaintiff, in this application has stated that he paid the consideration amount to the defendants through his S.B.Account No.30013314997 of State Bank of India, Kudalahalli Branch, Bengaluru and in order to prove the passing of consideration to the defendants, examination of the Bank Manager is very much necessary and therefore the Bank Manager be summoned before this Court along with the documents relating to the Statement of Accounts, KYC particulars and other documents disclosed in the application.

The plaintiff has not stated why all these documents are required before the Court and in order to prove which fact in issue these documents are required. Likewise, the plaintiff has not stated what is the impediment on him to produce his own Bank Statement before the Court to prove the passing of consideration to the defendants based on a sale agreement. The plaintiff, without explaining all these facts and even without disclosing that the KYC particulars, along with Account Opening Form and other particulars disclosed in this application are very much necessary to prove his case, filed this application which is not maintainable. As I have discussed supra, the documents summoned by the plaintiff before this Court are not required for the purpose of proper adjudication of the case. The only required document, i.e., Account Extract, can be produced by the plaintiff himself before this Court and he can very well plead and prove the contents of his account statement. The plaintiff has already produced Ex.P5—his account statement before this Court along with other bank document, which are already marked as Exs.P4 to P8 and also got produced the receipt which is already marked as Ex.P9. In such being the case, the present application is not maintainable. The plaintiff has not made out any good valid grounds to allow these applications. There is no merits in the applications. Hence this Point is answered in the Negative.

8. **Point No.2:** For the aforesaid reasons, this Court proceeds to pass the following:

ORDER

Both the Applications dated 02-09-2021 filed by the plaintiff u/S.151 of C.P.C. and u/O.XVI R.1 and 6 r.w.S.151 of C.P.C. are dismissed.

Arguments by 28-09-2021.

(Israth Jahan Ara)
III A.C.C. & S.J., Bengaluru.