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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5456 OF 2004

K.C. CHANDRASHEKHAR RAJU

Appellant (s)

VERSUS

CUSTODIAN

Respondent(s)

O R D E R

1. Having heard learned counsel for the appellant as well as respondent and having perused the application preferred by the respondent before the High Court in Miscellaneous Application No. 410 of 2003 in Miscellaneous Petition No. 274 of 1995, the order dated 21.1.2004 in the said application as well as present impugned order passed in Miscellaneous Application No. 102 of 2004 dated 30.6.2004, we find that the grievance of the appellant can still be effectively worked out in the High Court itself where the main matter, namely, Miscellaneous Petition No. 274 of 1995 stated to be pending.

2. The impugned order came to be passed by the High Court in the appellants' application in Miscellaneous Application No. 102 of 2004 where the appellant prayed for setting aside the order dated 21.1.2004 passed in Miscellaneous Application No. 410 of 2003. In the Miscellaneous Application No. 410 of 2003, the respondent herein came forward with the prayers in paragraph 11(a),(b) with an alternate prayer in para 11(c) which are reproduced below:-

(a) that this Hon'ble Court may be pleased to order and direct the Applicant to take over the possession of Flat No. 14 instead of Flat No. 19 as offered by Respondents No. 1 and 2.

(b) In the event of this Hon'ble Court approving the take over of Flat No. 14 in lieu of Flat No. 19 as stated in prayer(a) herein above, this Hon'ble Court be pleased to order release of a sum of Rs. 8,54,660.29p(as per details given in Exhibit-G hereto)from the attached account of Respondent No. 3 to the 1st and 2nd Respondents.

(c) In the alternative this Hon'ble Court be pleased to order annulment of the agreements dated 11th January, 1992 in respect of flat no. 19 and direct Respondent No. 1 and Respondent No. 2 forthwith to repay the entire amount of Rs. 20,03,868.46p being the excess payment received by them from the Applicant on various dates with interest @ 24% per Exhibit H-2 hereto.

3. The appellant did not appear at the time of hearing of Miscellaneous Application No. 410 of 2003. The High Court chose to pass the order dated 21.1.2004 noting the no objection expressed by the third respondent in that application and the prayer in a, b of paragraph 11 was granted.

4. By the said order, the appellant was directed to hand over possession of flat no. 14 instead of flat no. 19 as offered by the appellant himself. In view of the direction to hand over flat no. 14, it was further directed that the appellant would be entitled for a sum of Rs. 8,54,660.29p from the attached account of the third respondent in the said application to the appellant.

5. The grievance of the appellant in its application in Miscellaneous Application No. 102 of 2004 was that the order dated 21.1.2004 came to be passed without hearing the appellant and, therefore, the order should be set aside and the appellant should be given an opportunity.

6. By the order impugned in this appeal, the High Court while rejecting the appellant's application, however, directed as under in paragraph 7:-

"Taking overall view of the matter therefore, in my opinion, the application deserves to be rejected. It is accordingly rejected. It is made clear that despite this order and the order dated 21st January, 2004, the applicant would be at liberty to approach this Court with a fresh application if according to the applicant the amount mentioned in prayer clause (b) of miscellaneous application No. 410 of 2003 is not correct and the applicant is entitled to recover some more amount. But, before making that application, the applicant will have to handover possession of flat no. 14 to the Custodian after receiving the amount from the Custodian, which is mentioned in prayer clause (b) of the miscellaneous application no. 410 of 2003."

7. Insofar as the handing over of flat no. 14 instead of flat no. 19 is concerned, there has been no grievance at all for the appellant, inasmuch as, it was the appellant himself who persuaded the respondent herein to seek for such a prayer and, therefore, the said part of the order impugned in this appeal does not require any interference.

8. Insofar as the grant of prayer (b) in paragraph 11 of Miscellaneous Application no. 410 of 2003 is concerned, while rejecting the appellant's application for setting aside the order dated 21.1.2004, the High Court made it clear that, if according to the appellant, the figure of Rs. 8,54,660.29 does not reflect the correct amount for handing over the possession of flat no. 14, the appellant can always approach the High Court with a fresh application and seek for appropriate orders. The only apprehension of the appellant is that if, as per the order dated 21.1.2004, the appellant is obliged to hand over flat no. 14 to the respondent herein on receipt of sum of Rs. 8,54,660.29p, the appellant may be deprived of its right to seek for payment of any further amount towards the value of the said flat.

9. We do not find any basis for such an apprehension entertained by the appellant, inasmuch as, the order impugned in this appeal itself makes the position clear that the appellant is always at liberty to approach the High Court with a fresh application, if

according to the appellant, the amount mentioned in prayer (b) of the Miscellaneous Application No. 410 of 2003 is not correct, and according to the appellant he is entitled to recover something more than the said amount. We also make it clear that even while complying with the order of the High Court by handing over possession of flat no. 14 as well as the receipt of amount mentioned in clause (b) of the prayer granted by the High Court, the appellant is still at liberty to approach the High Court and seek for payment of any further amount, if according to the appellant, the amount mentioned in prayer (b) and granted by the High Court does not reflect the correct value of flat no. 14.

10. It is also open to the appellant to satisfy the High Court as regards the exact amount which the appellant is entitled to in respect of flat no. 14 on the basis of the order of this Court dated 8.11.2001 in C.A. No. 14988 of 1996.

11. With these directions, the appeal stands disposed of.

.....J.
(B.S. CHAUHAN)

.....J.
(FAKKIR MOHAMED IBRAHIM KALIFULLA)

NEW DELHI
MARCH 05, 2013.

ITEM NO.105

Court No.7

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 5456 OF 2004

K.C. CHANDRASHEKHAR RAJU

Appellant (s)

VERSUS

CUSTODIAN

Respondent(s)

(With office report)

Date: 05/03/2013 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

For Appellant(s) Mr. Ajesh Kumar, Adv.
for Mr. S. Srinivasan, Adv.

For Respondent(s) Mr. Karun Mehta, Adv.
for Mr. Subramonium Prasad, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal stand disposed of in terms of the signed order.

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|--|---------------------|--|--------------|--|
| | (DEEPAK MANSUKHANI) | | (M.S. NEGI) | |
| | Court Master | | Court Master | |

(The signed order is placed on the file)