

HON'BLE SRI JUSTICE RAVI CHEEMALAPATI**CIVIL REVISION PETITION No. 1221 of 2022****ORDER:**

This Civil Revision Petition is filed under Article 227 of the Constitution of India, aggrieved by the orders dated 14.12.2021 passed in I.A.No.175 of 2018 in O.S.No.193 of 2017 on the file of the Court of the learned I Additional District Judge, Nellore.

2. The petitioners are the defendants and the respondent is the plaintiff in the suit filed for recovery of the advance sale consideration paid under suit agreement of sale.

3. The petitioners/ defendants filed I.A.No.175 of 2018 under Order VII, Rule-11 of the Civil Procedure Code to reject the plaint, contending that, even though in cause of action para it was mentioned as if a notice has been issued to the petitioner demanding them to refund the earnest money there was no such demand at any time by the respondent for refund of the amount by issuing any notice and for the notice issued by the petitioners, the respondent sent reply reporting his willingness to perform his part of the contract and he never demanded the respondents

to pay back the earnest money. Therefore, the plaint does not disclose cause of action for recovery of money and the same is liable to be rejected.

4. The respondent/ plaintiff opposed the petition by filing counter contending that, he is always ready and willing to perform his part of the contract and even though the petitioners/ defendants have no interest to perform their part of the contract, they issued legal notice dated 28.01.2016 intimating the respondent that they have cancelled the agreement of sale. The petitioners have admitted the execution of the agreement of sale and receipt of earnest money and they are bound to return the advance amount. The plaint discloses cause of action. Hence, prayed to dismiss the petition.

5. The Court below, upon hearing both sides and upon perusing the material available on record, dismissed the petition.

6. Aggrieved thereby, the petitioners/ defendants filed this Civil Revision Petition.

7. Heard Sri Harinath Reddy Soma, learned counsel for the petitioners and Sri C.Subodh, learned counsel for the respondent.

8. Sri Harinath Reddy Soma, learned counsel for the petitioners, in elaboration to what has been raised in the grounds of Civil Revision Petition, would submit that, the respondent/ plaintiff has categorically admitted that the petitioners/ defendants issued legal notice on 28.01.2016 intimating cancellation of sale agreement and forfeiture of advance amount paid under the agreement. It is further submitted that non issuance of legal notice seeking refund of earnest money, no cause of action of action arise for institution of the suit and thus the suit is liable to be rejected for non disclosure of cause of action. The Court below upon erroneous view of the matter that there is no provision of law that mandates issuance of prior notice, went wrong in dismissing the petition, without noticing that cause of action would arise only when the defendants deny payment of earnest money. The impugned orders is exfacie unsustainable and the same requires interference of this Court. Hence, prayed to allow the Civil Revision Petition.

9. On the other hand, Sri C.Subodh, learned counsel for the respondent would submit that, the respondent was always ready and willing to perform his part of the contract and the petitioners, who have no interest to perform their part of the contract got issued legal notice

intimating that the agreement of sale stood cancelled and the advance sale consideration stood forfeited. Thereupon, the respondent, finding that the petitioners have no interest to perform their part of the contract, filed the suit for refund of advance sale consideration. The Court below upon proper appreciation of the material on record and the attendant circumstances, has rightly dismissed the petition, holding that the petitioners failed to specify the provision of law that mandates prior issuance of notice. The order impugned does not require any interference of this Court. There are no valid and justifiable grounds either raised or urged in this Civil Revision Petition warranting interference of this Court. Hence, prayed to dismiss the Civil Revision Petition.

10. Perused the material available on record and the orders impugned in this Civil Revision Petition. In the suit filed by the respondent/plaintiff for recovery of advance sale consideration paid under the agreement of sale, the respondents/ defendants filed the petition to reject the plaint on the ground of lack of cause of action, on the ground that the respondent/ plaintiff, who reported his readiness to perform his part of the contract in the reply notice, never demanded the petitioners for refund of the advance sale consideration and therefore, the plaint does not

disclose any cause of action for relief sought in the plaint for refund of advance sale consideration. The Court below, dismissed the petition holding that, though the respondent/ plaintiff did not issue any prior notice, the petitioners failed to show that such issuance of notice prior to filing of the suit is mandatory. Non issuance of notice by the plaintiff calling upon the defendants for refund of the advance sale consideration, which is not made mandatory by the provisions of the Act is not at all a ground to reject the plaint on the ground that no cause of action has arisen to file the suit. Thus, the basis on which the petitioners/ defendants sought rejection of the plaint is not tenable. Further, the Court below observed that all other aspects would be taken into consideration at the time of trial but not at the pre-trial stage.

11. The Court below has dealt with the issue in right perspective and dismissed the petition and the order impugned does not require any interference of this Court. No valid grounds are either raised or urged in this Civil Revision Petition, warranting interference of this Court. Therefore, the Civil Revision Petition is liable to be dismissed.

12. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

As sequel thereto, miscellaneous petition, if any, pending shall stand closed. Interim orders, if any, shall stand vacated.

JUSTICE RAVI CHEEMALAPATI

28th March, 2023

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