

**THE HON'BLE SRI JUSTICE B. CHANDRA KUMAR**

**C.C.C.A No. 295 of 2003**

**Judgment:**

This appeal has been filed against the judgment and decree dated 30.06.2003 passed in O.S. No. 588 of 1997 by the VII Senior Civil Judge, City Civil Court, Hyderabad.

The appellant herein is the plaintiff and the respondents herein are the defendants in the suit. The parties hereinafter will be referred to as they are arrayed before the lower Court.

The case of the plaintiff, in brief, is that as per the advertisement dated 13.11.1992 issued by the third defendant he applied for allotment of house and paid a sum of Rs.27,700/- on 30.11.1992 and subsequently he entered into an agreement with the second defendant on 30.06.1993, wherein the estimated cost of the house was fixed at Rs.2,77,700/-. The plaintiff paid 40% of the estimated cost on 30.11.1992 and on 30.06.1996 by way of demand draft. Defendant No.3 informed the plaintiff that in the draw conducted he was allotted HIG/AP-3 under self finance scheme. Subsequently, the plaintiff paid an amount of Rs.83,100/- towards the second instalment by bankers cheque and obtained bank loan from Andhra Bank Home Finance and with the permission of the defendants the plaintiff has mortgaged the property in the said bank. The work was not completed within the stipulated period of 18 months. However, possession was delivered to the plaintiff in January 1995. No water and drainage facilities were provided to the house. The plaintiff had to sink a bore-well by spending huge amount and also spent Rs.5000/- for soak pit. Subsequently, defendant No.3 issued a memo dated 04.03.1995

calling upon the plaintiff to pay a sum of Rs.1,70,003/- with penal interest of Rs.78,600/-. Contending that the claim made by the defendants for an amount of Rs.1,83,340/- is unjust, illegal and he is not liable to pay such amount, the plaintiff got issued a legal notice dated 22.11.1997 and then filed the suit seeking a direction to the defendants to execute a registered sale deed in his favour by accepting the balance of sale consideration of Rs.62,800/- and for consequential reliefs.

The third defendant filed a written statement, which is adopted by defendants 1 and 2. They admitted that the plaintiff was allotted a house and that the plaintiff has initially paid certain amounts and that there was delay of four months in payment of 30% of the estimated cost and subsequently the plaintiff committed default in payment, resulting in issuing a notice by the defendants on 13.09.1994. Again the defendants issued a letter dated 25.01.1995 demanding the plaintiff to pay balance estimated cost of Rs.83,100/- with penal interest. The defendants also demanded the plaintiff to pay the cost of excess plinth area which worked out to Rs.78,600/- and Rs.2493/- towards penalty for the belated payment, a sum of Rs.5,810/- for the belated payment of 30% of instalment and the total due amount to be paid by the plaintiff is Rs.1,70,003/-, which he failed to pay. The plaintiff is not entitled for the reliefs claims, since he himself failed to pay the instalments in time. It is also denied that the amenities were not provided to the house allotted to the plaintiff.

Necessary issues were framed and evidence was let in. The plaintiff himself was examined as PW.1 and another witness was examined as PW.2 and Exs.A1 to A16 were marked. On behalf of the defendants, DW.1 was examined and Exs.B1 to B7 and Ex.C1 were marked.

The lower Court has considered the entire oral and documentary evidence and came to the conclusion that the plaintiff himself did not pay the second and third instalments of 30% of cost each within the stipulated time and that the plaintiff has failed to prove that he was ready and willing to perform his part of contract, but however, held that the plaintiff cannot be evicted without adhering to the process of law. The lower Court also came to the conclusion that as per the recitals of Ex.A1 there is no stipulation with regard to levying of interest on delayed payment, however, the recitals of Ex.A1 go to show that the parties are bound by the decision of the Vice-Chairman and Housing Commissioner and the decision of the said authorities reveals that though the defendants cannot enforce for the payment of interest, but since the plaintiff has failed to pay the amounts even after the period of stipulation i.e., within 12 months from the date of entering into an agreement of sale, he is liable to pay the interest from the date of expiry of period of limitation of 12 months. The lower Court also observed that the plaintiff himself has categorically admitted in his evidence that he is prepared to pay the amount as fixed by the Court. Then the lower Court, considering the recitals of Ex.B2, wherein the plaintiff has admitted to pay the extra cost for extra plinth area of the construction, directed the plaintiff to pay Rs.78,600/- which is the cost of extra plinth area, third instalment of 30% of the cost which comes to Rs.83,100/- and the plaintiff was also directed to pay future extra cost of Rs.35,000/-. Accordingly, the plaintiff was directed to pay the said amounts, with interest at 12% p.a., from the date of expiry of Ex.A1 till the date of registration, within three months from the date of the judgment of the lower Court. It was also ordered that upon payment of such amount by the plaintiff, the defendants are ordered to execute sale deed in favour of the plaintiff.

Admittedly, the plaintiff alone has filed the appeal. It is not in dispute that the defendants have not filed any appeal. Now the learned counsel for the appellant/plaintiff submitted that the plaintiff is ready to abide by the directions of the lower Court. Having regard to the facts and circumstances of the case and having regard to the submission made by the learned counsel for the appellant/plaintiff, without going into the merits of the matter, I deem it appropriate to dispose of the appeal with the following directions.

The plaintiff is directed to pay the amounts with interest as shown in the impugned judgment and decree of the lower Court within three months from today. The amounts already paid by the plaintiff, if any, shall be given credit to. The defendants also shall comply with the directions of the lower Court with regard to execution of the sale deed in favour of the plaintiff within a period of three months from the date of payment of the amounts by the plaintiff.

Accordingly, the appeal is disposed of. However, in the circumstances, no costs.

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**B. CHANDRA KUMAR, J.**

Date: 30.08.2011  
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