

BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI

Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,

I.A. No. 44 of 2022

in

CCP No.193 of 2021

Army Welfare Housing Organisation (AWHO)

Rep. by its Managing Director

... Applicant/Respondent

-Vs-

Colonel C.M. Unnithan (Retd.)

... Respondent/Complainant

Heard on : 29.08.2022

Delivered on : 14.09.2022

ORDER

The above interim application under Section 151 of the CPC is filed by the petitioner/respondent seeking to re-open the averments on their side and permit them to file additional proof affidavit with documents and also to mark the documents in the proceedings.

2. Averments of the petitioner/complainant, in brief, as follows:-

The petitioner/respondent has already filed their counter, proof affidavit with documents in support of their case. However at the time of filing the above documents, some important documents were missed out as the same were recently traced only and could not be filed at earlier time. The additional documents are also highly essential to place correct facts before this Forum. The non-filing of the above additional documents was neither willful nor wanton and no prejudice will be caused to the respondent/complainant. Hence the Petitioner/respondent prays the Forum

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to permit them to file the additional proof affidavit with documents and mark the same as exhibits on their side.

3. Counter averments of the respondent/complainant, in brief, as follows:

The above petition is filed to protract the case at the time of argument of the matter. Both the parties argued the matter partly and the case was adjourned for the limited purpose of filing certain citations. The petitioner is merely attempting to fill lacuna in the case by filing additional documents. The Hon'ble Supreme Court in *Bagai Construction Vs. Gupta Building Materials Stores* reported in (2013) 14 SCC 1 has held that when documents were very well available throughout the proceedings, exercise of power under Section 151 of CPC cannot be permitted. The facts of the said decision and the facts of the present case are similar whereby in the former, documents were attempted to be introduced and recall, reopen a witness was sought to be done at the final stage. Therefore, the petition is liable to be dismissed.

4. Point for determination:

Whether the petition seeking to permit the petitioner to file the additional proof affidavit with rejoinder and additional documents is to be allowed?

5. Answer to the point:

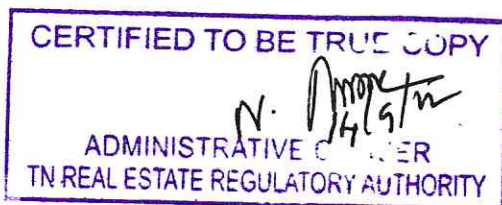
(a) The learned counsel for the petitioner submitted that some important documents could not be filed as the same are traced only recently and the documents are very essential to place the correct facts before this Forum for arriving at a just decision and in furtherance of justice as contemplated under Section 72 of the RERA Act and therefore the petition is to be allowed.

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(b) However, the learned counsel for the respondent vehemently opposed the petition contenting that the matter has already been argued and the petition is filed to delay and protract the case and the same is liable to be dismissed. The learned counsel relied on the decision of the Hon'ble Supreme Court in *Bagai Constuction Vs. Gupta Building Materials Stores* reported in (2013) 14 SCC1 as it was held that when documents were very well available throughout the proceedings, exercise of power under Section 151 of CPC cannot be permitted and contended the facts of the said decision and the present case are similar and documents were attempted to be introduced and recall, reopen a witness was sought to be done at the final stage.

(c) As pointed out by the learned counsel for the petitioner, this Forum is bound to consider the scope of Section 72 of the RERA Act and the sub-clause (d) of the Section says that the Adjudicating Officer is to consider all the factors necessary to the case in furtherance of justice. No doubt the documents are filed at a belated stage of the case. The merits of the documents cannot be decided at this stage. Therefore, considering the facts and circumstances of the case, this petition is allowed on condition of payment of Rs.5,000/- as cost to the respondent on or before 28.09.2022 failing which, the petition is liable to be dismissed. Thus the point is answered accordingly.

In the result, the application is allowed on condition. Call on 28.09.2022.



Sd/- 14.09.2022
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI