

**Sakthivel Vs. Kandasamy**

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**SooperKanoon Citation :** [sooperkanoon.com/835187](http://sooperkanoon.com/835187)

**Court :** Chennai

**Decided On :** Jul-02-2002

**Reported in :** (2002)2MLJ719

**Appellant :** Sakthivel

**Respondent :** Kandasamy

**Judgement :**

ORDER

**S. Jagadeesan, J.**

1. The revision has been filed against the order of dismissing the application for amendment. The petitioner is the plaintiff in O.S. No. 33 of 1998 on the file of the Sub Court, Karur which suit was laid for specific performance. Pending the suit, the petitioner filed LA. No. 588 of 2001 seeking amendment of the plaint for inclusion of the alternative relief of advance amount paid by him. The said application was dismissed by the Court below. As against the same, the present revision has been filed.

2. When the amendment is sought for the inclusion of the alternative relief of refund of the advance amount, there cannot be any option for the respondent to oppose the same. In case, if the petitioner is not entitled for the relief of specific performance, naturally he will be entitled for the refund of the advance amount subject to the conditions stated in the terms of the agreement. Hence, the

amendment cannot be refused on technical ground. Accordingly, the order of the Court below is set aside and the revision is allowed. Time of four weeks from today is granted to the petitioner to carry out the amendment. Thereafter, the respondent is granted two weeks time for filing additional written statement, if any. There will be no order as to costs. Consequently, C.M.P. No. 22777 of 2001 is closed.

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