

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-08-2015

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 762 of 2015

J.A.Chandar

... Petitioner(Proposed Party)

Versus

K.Murugesan

... Respondent (Accused)

Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C. against the order dated 02.12.2013 made in C.M.P.No.7532 of 2012 in unnumbered S.T.C.No... of 2010 on the file of the Judicial Magistrate No.III (FAC), Salem.

For Petitioner : Mr.P.Jagadeesan

ORDER

The case of the petitioner/proposed party is that his mother Late Swayamprabha, who was the Proprietrix of M/s.Prabha Industries, had filed a private complaint before the Judicial Magistrate No.III (FAC), Salem, against the respondent/accused for the dishonour of cheque. Subsequently, the petitioner's mother died on 15.10.2008. According to the petitioner, during her life time, the petitioner's mother executed a Will, dated 21.07.2008 and petitioner's mother appointed him to take necessary action for recovery of money due and hence, he has filed C.M.P.No.7532 of 2012 before the Trial Court seeking to implead him as one of the complainant in the complaint. The learned Judicial Magistrate No.III (FAC), Salem, has dismissed the said petition on 02.12.2013. Aggrieved against the said order, the petitioner/proposed party has preferred this Criminal Revision Case.

2. Mr.P.Jagadeesan, learned counsel appearing for the petitioner/proposed party would mainly contend that the Trial Court has dismissed the petition only on the ground that the execution of the Will has not been proved through the attestors of the Will or the Will has not been probated. He would further add that all that it requires is the death of a person and an application filed by the legal representative of the deceased complainant seeking to implead for the purpose of prosecuting the case and therefore, the dismissal of the petition on the ground that the execution of the Will has not been proved or the Will has not been probated is not correct and hence, he seeks for allowing the Criminal Revision Case.

3. Even at the time of admission, sufficient time was granted to the learned counsel appearing for the petitioner/proposed party, on

many occasions, to find out, whether any steps had been taken in the manner known to law for the proper conduct of the case in the Trial Court, but, inspite of time granted, he is not able to find out and report the same to this Court, hence, the main revision itself is taken up and disposed of at the stage of admission itself.

4. It is rather an unfortunate case, where the cheques, which involve huge amount, have gone of no use, because of the lethargic attitude of the party or somebody else. The dates and events enumerated hereinafter would clearly prove that the petitioner/proposed party has lost all his opportunity to be impleaded as complainant in view of the fact he has not come to Court with clean hands. The case of the complainant is that the complainant offered to sell her land for Rs.80,00,000/- and one Sanjay Chawla agreed to purchase the said land for the said price through accused. In the mean while, the accused approached the complainant and asked for loan of Rs.45,00,000/-, agreeing to repay the same within four months. The accused borrowed the said amount from the complainant on 10.08.2007. On the same day, the accused issued two cheques for Rs.15,00,000/- and Rs.30,00,000/-, dated 10.08.2007 and 23.08.2007 respectively. When the complainant presented the cheques on 12.12.2007 for collection, it returned unpaid for the reason "stopped payment". The complainant issued a legal notice to the accused on 16.12.2007 demanding for payment. Though, the accused received the said notice, he has not come forward to pay the cheques amount and hence, the complainant lodged a complaint before the Trial Court on 29.01.2008 and the complaint was returned on the same day i.e., on 29.01.2008 itself. Thereafter, it was represented before the Trial Court that the complainant died on 15.10.2008. But, an attempt was made in the Trial Court by the petitioner/proposed party to state as if the very complaint was represented on 09.04.2008, when the complainant was very much alive. But, the Trial Court, in its order, has clearly pointed out that on 09.04.2008, the complaint was not represented, as there was no seal of the Trial Court or the signature of the officer found and therefore, the complaint was not represented on 09.04.2008. Further, it was found out that it was only the Trial Court counsel, who has made an endorsement, as if the complaint was represented on 09.04.2008, but, the same was disbelieved by the Trial Court, as in the Court record, there was no endorsement to the effect that the complaint was represented on 09.04.2008. Therefore, when the complaint was never represented on 09.04.2008, a misleading attempt was made by the petitioner/proposed party in the Trial Court to state as if the complaint was represented again on 09.04.2008 and the same was rightly disbelieved by the Trial Court. Thereafter, after return of the complaint, for the first time, the complaint has been represented into Trial Court only on 01.10.2010 i.e., nearly after two years and eight months. Even the complaint was again represented without even an application to implead the legal representatives or bringing to the notice of the Trial Court regarding the death of the complainant. The complaint was again returned on 05.10.2010 stating that the petition seeking permission to implead has to be filed. But, now, an attempt has been made by the petitioner/proposed party to state that, on the same day, a petition seeking permission to implead was also filed. Be that as it may. Since, no proper petition was filed, the Trial Court has rightly returned the complaint on

05.10.2010. Thereafter, the complaint was not represented again. The petitioner/proposed party took another two years. Thereafter, he again represented the complaint only on 19.10.2012 along with the Will, dated 21.07.2008. Only at that point of time, the petitioner/proposed party has alleged that the deceased complainant had executed a Will in favour of the petitioner/proposed party on 21.07.2008. The petitioner himself has admitted that the deceased complainant had another son and daughter apart from the petitioner herein. Admittedly, the other two persons were not sought to be impleaded. In the Will, two other persons were shown as legal heirs of the deceased complainant. In the alleged Will, it is shown as if the deceased complainant and her husband have made sufficient arrangements for the other legal heirs and therefore, according to the petitioner, he has not sought to implead the other two persons. As stated earlier, on the date, when the complaint was represented on 01.10.2010, the Will has not been produced nor any affidavit of legal heirs has been filed, therefore, when the Will was produced before the Trial Court for the first time in 2012, the Trial Court has rightly stated that the execution of the Will has to be proved through the attestors of the Will or the Will has to be probated. Because of the production of the Will after four years of the death of deceased complainant before the Trial Court and after the second time return of the complaint by the Trial Court, the Trial Court has asked the petitioner/proposed party, as to whether the Will has been properly proved or the Will has been probated, in my considered opinion, definitely, the Trial Court is vested with such a power to ask the said question. If the Will was produced at the earliest point of time along with the affidavit of others, the matter could have been looked into in a different angle. Therefore, the Trial Court has rightly dismissed the petition.

5. Further, I have to state that here is a case, where the cause of action has arisen on the date of issuance of cheques dated 10.08.2007 and 23.08.2007. Further, cause of action has arisen on the date when the cheques got dishonoured i.e., on 12.12.2007. Thereafter, the petitioner can either move the Civil Court for recovery of cheques amount only within a period of three years or he can move by way of filing complaint within a period of 45 days. Though, the complaint was lodged by the petitioner in time, thereafter, he allowed to lapse like this. The valuable right has gone to the other party right from 2010 and for the past five years, he was allowed to enjoy the right and that cannot be now set at naught by allowing the petition or the same cannot be entertained. Hence, I do not find any reason to interfere with the reasoned order passed by the Trial Court. The order passed by the Trial Court dated 02.12.2013 stands confirmed. This Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar

True Copy

To

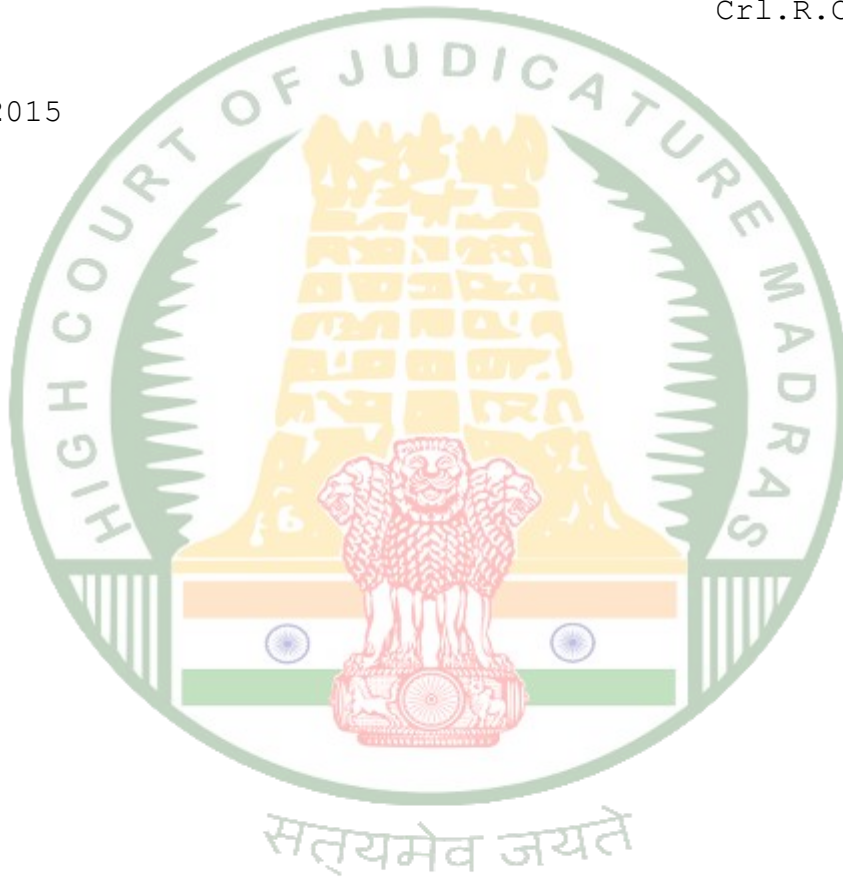
1.The Judicial Magistrate No.III,
FAC, Salem.

2.-do- Thro The Chief Judicial Magistrate,
Salem

1 cc to Mr..P.Jagadeesan , Advocate Sr.No.44691.

Cr1.R.C.No. 762 of 2015

vd(co)
pmk.22.9.2015



WEB COPY