

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)Nos.1396 and 1397 of 2015

and

M.P.No.1 of 2015

1. M/s Subba Row Apparels, rep by
its Partner, No.5, Kumaran Colony,
7th Street, Vadapalani, Chennai-600 026

2. J. Raja Ramesh
Partner – Subbarow Apparels,
No.70, Munnappa Mudali Street,
Chennai-600 021

3. J. Raja Sekar Babu
Partner-Subbarow Apparels,
No.70, Munnappa Mudali Street,
Chennai-600 021

... Petitioners/defendants 1 to 3 in
both the revision petitions

vs

7 Degrees South Limited, rep by its
Power of Attorney Holder
Mr.K. Ravichandran
No.128, Kenilworth Court,
Lower Richmond Road,
Lodon SW15 IHB

.... Respondent in both the revision
petitions

C.R.P.No.1396 of 2015

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 17.3.2014 passed by the learned VII Additional City Civil Court, Chennai in I.A.No.11703 of 2012 in O.S.No.9278 of 2010.

C.R.P.No.1397 of 2015

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 13.10.2014 passed by the learned VII Additional City Civil Court, Chennai in I.A.No.10921 of 2014 in O.S.No.9278 of 2010.

For Petitioner : Mr.P. Jagadeesan

COMMON ORDER

C.R.P.No.1396 of 2015 arises against the fair and final order passed in I.A.No.11703 of 2012 in O.S.No.9278 of 2010 on the file of VII Additional City Civil Court, Chennai.

C.R.P.No.1397 of 2015 arises against the fair and final order passed in I.A.No.10921 of 2014 in O.S.No.9278 of 2010 on the file of VII Additional

City Civil Court, Chennai.

2. Challenging the fair and decreetal orders passed in the above two applications, the defendants 1 to 3 have filed the above civil revision petitions.

3. The plaintiff filed a suit in O.S.No.9278 of 2010 (originally filed before this Court and numbered as C.S.No.1063 of 2005), seeking for recovery of money. The defendants filed their written statement on 24.3.2006 and are contesting the suit. The defendants filed an application in I.A.No.11703 of 2012 under Order VII Rule 11 of Civil Procedure code to reject the plaint and also filed an application in I.A.No.10921 of 2014 to dismiss the suit on the preliminary issue of maintainability.

4. The application under Order VII Rule (11) of Civil Procedure Code can be filed based on the averments stated in the plaint. In the case on hand, the defendants have filed the applications after filing of their written statement, that too, after a lapse of seven years from the date of filing the suit.

5. According to the defendants, in the absence of Articles of Association and Memorandum of Association and also in the absence of any

averment to that effect, the plaintiff cannot succeed in the suit. Further, the learned counsel for the defendants contended that there is no cause of action at Chennai. The defendants filed an application in I.A.No.10921 of 2014 to try the issue with regard to the maintainability of the suit as a preliminary issue.

6. Both the applications were contested by the plaintiff on various grounds. The trial court took into consideration of both the parties and dismissed both the applications.

7. Since the application under Order VII Rule 11 of Civil Procedure Code was filed at belated stage, that too, after a lapse of seven years from the date of filing of the suit and after six years from the date of filing of the written statement and the application to try the preliminary issue was filed after nine years from the date of filing of the suit, I do not find any merit in the applications.

8. The learned counsel for the petitioner submitted that now the plaintiff has filed proof affidavit before the trial court. Therefore, when the trial has already commenced in the suit, I do not find any reason to entertain these two applications. The trial court has rightly dismissed both the applications. However, the trial court is directed to decide the suit,

taking into consideration the preliminary issue raised in I.A.No.10921 of 2014 and decide the preliminary issue at the time of deciding the suit.

9. In these circumstances, I do not find any merit in both the civil revision petitions and hence both the civil revision petitions are dismissed. No costs. Consequently, connected MP is closed.

10. It is needless to say that the defendants are at liberty to raise all the issues, which are stated in the pleadings, at the time of arguing the suit.

10.04.2015

sr

Index:no
website:yes
To

VII Additional City Civil Court, Chennai

M. DURAISWAMY,J.,

sr

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