

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(PD).Nos.2354 & 2355 of 2015  
and M.P.Nos.1 & 1 of 2015

M/s.VME Infrastructure Pvt. Ltd.,  
rep by its Chairman/Managing Director,  
No.364, Pillaiyar Koil Street,  
Panner Nagar, Mogapier West,  
Chennai - XXXVII

... Petitioner in both C.R.Ps

Vs.

M/s.Sanghi Trading Copr.  
Rep by its Partner,  
Mr.Suresh Kumar Singh,  
17-A, Sembudoss Street,  
Chennai - 600 001.

... Respondent in both C.R.Ps

C.R.P.(PD).No.2354 of 2015 filed under Article 227 of the Constitution of India against the order made in I.A.No.9571 of 2012 in O.S.No.1870 of 2012 on the file of the II Additional City Civil Court, Chennai dated 13.10.2014 thereby dismissing the said I.A. filed under Order VII Rule 11 C.P.C. seeking rejection of plaint.

C.R.P.(PD).No.2355 of 2015 filed under Article 227 of the Constitution of India against the docket order dated 18.04.2015 as made in Review Petition SR No.60799/2014 in I.A.No.9571 of 2012 in O.S.No.1870 of

2012 on the file of the II Additional City Civil Court, Chennai thereby returning the Review Petition seeking to review the order dismissing I.A.No.9571 of 2012 filed under Order VII Rule 11 as not maintainable in the summary suit.

For Petitioner : Mr.V.Ayyadurai  
(in both C.R.Ps)

For Respondent : Mr.V.Bhiman  
(in both C.R.Ps) for M/s.Sampath Kumar Associates

### **C O M M O N   O R D E R**

Challenging the docket order dated 18.04.2015 passed in Un-numbered Review Application in Review Application SR.No.60799 of 2013 filed in I.A.No.9571 of 2012 in O.S.No.1870 of 2012 on the file of the II Additional Judge, City Civil Court, Chennai, the defendant has filed the Civil Revision Petition in C.R.P.(PD).No.2355 of 2015.

2.The plaintiff filed the suit in O.S.No.1870 of 2012 under Order 37 Rule 1 of the Code of Civil Procedure for recovery of money.

3.The defendant filed an application in I.A.No.9571 of 2012 under Order 7 Rule 11 of the Code of Civil Procedure to reject the plaint. The plaintiff filed their counter and opposed the petition. The trial Court dismissed the application by order dated 13.10.2014. Thereafter, the

defendant filed a Review Petition in Review Petition SR.No.60799 of 2014 in I.A.No.9571 of 2012 to review the order dated 13.10.2014.

4.In the Review Petition, the defendant has stated that the trial Court had not considered the vital aspects and therefore, sought for review of the order dated 13.10.2014 made in I.A.No.9571 of 2012. The II Additional Judge, City Civil Court, Chennai, by docket order dated 18.04.2015, returned the Review Petition stating that the suit has been filed under the Special Category (i.e.) under Order 37 Rule 1 of the Code of Civil Procedure and in that case, Order 7 Rule 11 application filed by the defendant is not maintainable. Further, the learned Judge has stated that his predecessors had numbered the petitions, also received the counter and posted both the petitions for enquiry, therefore, the application under Order 7 Rule 11 was disposed of by a judicial order.

5.On a perusal of the previous docket order dated 16.12.2014, it could be seen that the trial Court has returned the papers stating that there is no error apparent on the face of the record and that the correct provision of law was not quoted, for which the petitioner re-presented the papers after complying with the defects.

6.It is pertinent to note that the II Additional Judge, City Civil Court, Chennai is not sitting on appeal over the order passed in I.A.No.9571 of 2012 in O.S.No.1870 of 2012.

7.So far as the maintainability of the application filed under Order 7 Rule 11 of the Civil Procedure Code is concerned, even the plaintiff has not raised the said contention in their counter and also not advanced any arguments before the trial Court. Since it was not canvassed by the plaintiff before the trial Court, the trial Court had no occasion to consider the same at the time of deciding the application under Order 7 Rule 11 of the Civil Procedure Code. The II Additional Judge, City Civil Court, Chennai should not have gone into the merits of the case, when he finds that the petition filed by the defendant is not maintainable. Whether there is an error apparent on the face of the record or not can be gone into and decided at the time of deciding the Review Petition.

8.The Review Petition filed by the defendant under Order 47 of the Civil Procedure Code is very much maintainable and therefore, the docket order dated 18.04.2015 passed by the trial Court is liable to set aside and accordingly, the same is set aside.

9.The matter is remitted back to the II Additional Judge, City Civil Court, Chennai with a direction to number the Review Application and dispose of the same after hearing both sides, on merits and in accordance with law, within six weeks from the date of receipt of a copy of this order.

10.It is needless to say that the respondent is at liberty to file their counter before the trial Court in the Review Application.

11.With this observation, the Civil Revision Petition in C.R.P.(PD).No.2355 of 2015 is allowed.

12.C.R.P.(PD).No.2354 of 2015 has been filed by the defendant challenging the order passed in I.A.No.9571 of 2012 in O.S.No.1870 of 2012 on the file of the II Additional Judge, City Civil Court, Chennai.

13.Since this Court has allowed the C.R.P.(PD).No.2355 of 2015 and directed the trial Court to number the Review Application and dispose of the same, on merits and in accordance with law, the present Civil Revision Petition in C.R.P (PD).No.2354 of 2015 has been withdrawn by the petitioner and the learned counsel for the petitioner made an endorsement to that

effect with liberty to challenge the order passed in I.A.No.9571 of 2012 if required, after the disposal of the Review Application.

14.Hence, the C.R.P.(PD).No.2354 of 2015 is dismissed as withdrawn and liberty is given to the petitioner to challenge the order passed in I.A.No.9571 of 2012, if required. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : No  
Internet : Yes  
va

**24.06.2015**

**Note: The Registry is directed to return the original application in Review Application SR.No.60799 of 2014 in I.A.No.9571 of 2012 in O.S.No.1870 of 2012 to the counsel for the petitioner.**

To

The II Additional Judge,  
City Civil Court, Chennai.

**M.DURAIWAMY,J.**  
va

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and M.P.Nos.1 & 1 of 2015**

**24.06.2015**