

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.07.2015

CORAM

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

C.R.P.(PD)No.2645 of 2015 &
M.P.No.1 of 2015

1.M/s.Athiappa Chemicals (P) Limited,
Represented by its Managing Director,
Admin Office at AF 18,
8th Street, 11th Main Road,
Anna Nagar, Chennai – 600 040.

2.K.A.Ganapathi

... Petitioners

v.

Sri Meenakshi Agencies,
A Partnership Firm,
Represented by its Managing Partner,
Balasubramanian

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 28.10.2014 passed in I.A.No.101 of 2014 in O.S.No.94 of 2013 on the file of learned II Additional District Judge at Salem.

For Petitioner : Mr.R.Manivannan_

O R D E R

Challenging the fair and final order passed in I.A.No.101 of 2014 in O.S.No.94 of 2013 on the file of II Additional District Court, Salem, the defendants have filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.94 of 2013 for recovery of money together with interest. The defendants filed their written statement. Subsequently, the defendants filed an application in I.A.No.101 of 2014 under Order VII, Rule 11 of CPC to reject the plaint. The plaintiff contested the application.

3. The Trial Court, after taking into consideration the case of both the parties, dismissed the application.

4. Aggrieved over the same, the defendants have filed the present Civil Revision Petition.

5. The learned counsel appearing for the petitioners submitted that since there is no cause of action for filing of the suit, the plaint is liable to be rejected. The learned counsel further submitted that solely on this ground, the plaint should have been rejected by the Trial Court.

6. On a perusal of the plaint, which is annexed in the typed set of papers, it is clear that the plaintiff has made averments with regard to the transactions at paragraph Nos. 2 to 6. Paragraph No.7 is the cause of action paragraph wherein, the plaintiff has stated about the cause of action for filing of the suit. In the affidavit filed in support of the application before the Trial Court, the defendants have taken so many defences which can be decided only after the trial of the suit.

7. Since I am of the view that there is averment with regard to the cause of action for the filing of the suit, the stand taken by the learned counsel for the petitioner that there is no cause of action for filing of the suit cannot stand. However, the burden of proof lies on the plaintiff to establish their case by oral and documentary evidences. Mere averment in the plaint is not sufficient to decree the suit.

8. The learned counsel appearing for the revision petitioners in support of his contention relied upon an unreported judgment dated 03.07.2012 made in **Civil Appeal No.4841 of 2012 (Church of Christ**

Charitable Trust v. M/s.Ponniamman Educational Trust) of the Hon'ble Supreme Court wherein the Hon'ble Ap[ex Court held that in the absence of cause of action or filing of the suit, the plaint can be rejected.

9. In the case on hand, as already stated, there is cause of action for the filing of the suit and therefore, the judgment relied upon by the learned counsel for the petitioners is not applicable to the present case. The other averments stated in the affidavit filed in support of the petition can be decided only after the trial of the suit. The Trial Court, after taking into consideration the case of both the parties, rightly found that there is cause of action in the suit for the plaintiff to proceed with the case. The finding of the Trial Court is perfectly correct.

10. In view of the above, I do not find any reason to interfere with the order passed by the Trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. The Trial Court shall take into consideration the written statement filed by the defendants and decide the suit in O.S.No.94 of 2013, on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order this order.

With these observations, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : No
Internet : Yes

15.07.2015

Rj

To

The II Additional District Judge,
Salem.

M. DURAISWAMY,J.,

Rj

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