

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:20.10.2015

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.R.P.PD.No.4228 of 2015

and

M.P.Nos.1 & 2 of 2015

1.M/s.Sri Sivasakthi Chit Funds
a registered partnership firm rep.
by the partnership
1.P.Karthikeyan
2.K.Vivekanandan
3.Tmt.K.Chitra Devi and
4.Tmt.K.Eswari

2.Mr.P.Karthikeyan
3.K.Vivkenandan
4.Tmt.K.Chitra Devi
5.Tmt.K.Eswari

... Petitioners

Versus

1.Mr.V.Radhakrishnan
2.Mr.Mylsamy
3.Mr.Mahalingam
4.Mr.Dayalal

..Respondents

Prayer: Revision petition is filed as against the rejection of the plaint in an un-numbered Suit in O.S.CFR No.17588 of 2015, dated 13.10.2015 on the file of the District Court, Coimbataore.

For Petitioners : M/s.M.Aravind Subramaniam

ORDER

Invoking the provisions of Article 227 of the Constitution of India, the petitioners Chit Funds have come forward with this revision, challenging the order of the trial Court, dated 13.10.2015, rejecting the plaint on the ground that it seems to be against the public policy and that there is no cause of action against the defendants.

2.It is significant to note here that the revision petitioners/plaintiffs Chit Funds, have filed an un-numbered suit on the file of the learned District Judge, Coimabtoe, under Order 7 Rule 1 and Order 20 Rule 13(1) of C.P.C. seeking the following reliefs.

a.Framing a scheme for administration of the plaintiff either by appointing an independent advocate receiver or a committee comprising of an advocate and either of the two partners as receiver for recovering the dues payable to the plaintiff as mentioned in annexure I hereto and for disbursal of dues payable by the plaintiff as mentioned in annexures 2a and 2b and render the accounts for such recoveries made and

b. Grant such other and further reliefs as this Court may deem fit and proper in the circumstances of the case.

3.The learned District Judge, Coimbatore in his order, dated 13.10.2015, has observed that the plaint averments do not indicate that the Chit Funds firm has been registered as required under Section 4 of the Chits Funds Act, 1982. No document has been filed along with the plaint to show that the chit business was done with due registration.

4.He has also observed that the provisions of Section 12 of the Chit Funds Act, 1982, operate as a bar from transacting any other business by the petitioners Chit Funds. He has also observed that there is no justification for filing the suit as against the defendants by arraying them as representatives of creditors and debtors as the case may be.

5.It is also manifested from the order impugned that the plaint documents do not show that there is any cause of action as against the defendants named herein or the unnamed defendants and that no relief has been claimed against them.

6.It is palpable that no relief has been claimed as against the defendants.

7.As afore stated, the suit has been filed to frame a scheme for better administration of the

plaintiffs firm either by appointing an independent advocate receiver or a committee comprising of an advocate and either of the two partners as receiver for recovering the dues payable to the plaintiffs as mentioned in the annexure I hereto and for disbursal of the dues payable by the plaintiff as mentioned in annexures 2a and 2b and to render accounts for such recoveries made.

8.In paragraph Nos.10 and 11 of the plaint, the plaintiffs firm has stated that the plaintiff has to realise more than Rs.1,81,03,950/- from various subscribers, who had to pay and the names of such debtors are mentioned in annexure I.

9.It is also to be noted that the plaintiffs are bound to pay a sum of Rs.1,07,04,150/-, which is in the nature of monthly subscription of the chit amount paid by various subscribers.

10.It has to be pointed out that the defendants 1 and 2 in the plaint, who are the respondents here represent the substantial debtors.

11.In paragraph No.5 of the plaint, it is stated that so far, the plaintiffs firm have conducted more than 120 chits successfully, which were already

successfully terminated and at present about 40 groups of chits are in open and in circulation amongst the subscribers, who have subscribed to various chits.

12. For the reasons stated above, the plaintiffs firm wants to frame a scheme for the better administration of the plaintiffs firm by way of appointing an independent advocate receiver as afore stated.

13. It is an admitted fact that the plaintiffs firm have never sought for any relief as against the defendants. Since the suit is filed to frame a scheme, the learned District Judge has at first necessarily to number the plaint and then issue summons to the respondents/defendants.

14. During the course of his arguments, Mr. Aravind Subramaniam, learned counsel appearing for the revision petitioners, has drawn the attention of this Court to the decision between ***Hindustan Petroleum Corporation Limited represented by its Senior Regional Manager-Retail, Coimbatore Retail Region, A.P. Arcade (Singapore Plaza), Coimbatore, vs. C.M. Hariraj and another ((2002) 1 MLJ 684)***, wherein, a learned Single Judge of this Court, has observed in paragraph No.18 as under:-

"18. It is therefore evidently clear that the trial Court has gone into the merits of the contentions raised by the parties and ultimately rejected the plaint. No doubt, number of decisions have been cited on either side relating to the rejection of the plaint under O.7, Rule 11 of Civil Procedure Code and also the maintainability of the revision petitions under Art.227 of the Constitution of India. When the rejection of the plaint amounts to a decree and only appeal would lie, the question whether the plaintiff would be entitled to a renewal of lease for a further period of ten years is a matter of question that has to be adjudicated only after hearing both sides. The property, no doubt, belonged to defendants 2 and 3 and the 1st defendant was the purchaser of the property in 1996 and similarly the question whether the earlier lease agreement between defendants 2 and 3 would be binding on the 1st defendant and whether the 1st defendant can be compelled to execute a lease deed are matters that can be decided only after hearing both sides. When this being the state of affairs, it is unfortunate that the trial Court has rejected the plaint on the ground that there was no mutual contract between the plaintiff and the 1st defendant. When the 1st defendant had purchased the property from defendants 2 and 3, he stepped into the shoes of defendants 2 and 3 and therefore, the only question whether the 1st defendant is bound by the earlier agreement of lease is a matter that can be thrashed out only after hearing the parties and not in the summary way. Further more, O.7, Rule 11 of the Civil Procedure Code provides only limited ground for rejection of the plaint and I am of the view that the Court below has come to the conclusion as if there is no cause of action for the plaintiff to file the suit and ultimately rejected the same as well as rejected the petition. The question whether there is any cause of action or not can be ultimately decided only after issue of notice to the other

side and the Court cannot act as a spokesman of the defendants. Similarly, the contentions raised by the defendants may be well founded; but that is not the stage to be considered. Hence, I am of the view that the rejection of the plaint as well as the petition by the Court below without notice to the opposite party is not sustainable under law. When there is an error apparent on the face of the record and as it was opposed to natural justice, I am of the view that interference under Art.227 of the Constitution of India becomes absolutely necessary. Normally, the rejection of the plaint amounts to a decree and on appeal has to be filed; but in this case, without any notice and without hearing of the other side, the order was passed by the Court below and, as such, the inherent jurisdiction of this Court can be exercised and hence, the points are answered accordingly."

15. In this paragraph, a crucial issue was arisen as to whether an appeal would arise as against the rejection of the plaint under Order 7 Rule 11 or revision would lie. While answering to the above said question, the learned Single Judge has observed as under:-

"The question whether there is any cause of action or not can be ultimately decided only after issue of notice to the other side and the Court cannot act as a spokesman of the defendants."

16. Similarly, the contentions raised by the

defendants may be well founded; but that is not the stage to be considered. Hence, I am of the view that the rejection of the plaint as well as the petition by the Court below without notice to the opposite party is not sustainable under law. When there is an error apparent on the face of the record and as it was opposed to natural justice, I am of the view that interference under Art.227 of the Constitution of India becomes absolutely necessary. Normally, the rejection of the plaint amounts to a decree and an appeal has to be filed; but in this case, without any notice and without hearing the other side, the order was passed by the Court below and, as such, the inherent jurisdiction of this Court can be exercised and hence, the points are answered accordingly.

17. On coming to the instant case on hand as argued by Mr. Aravind Subramaniam, the learned trial Judge has taken suo motu vakalath on behalf of the defendants and went wrong in rejecting the plaint. With reference to the finding of the trial Court that there is no cause of action as against the defendants, this Court would like to point out that the question as to whether there is any cause of action or not can be decided only after issuance of summons to other side and the Court below cannot suo motu act as a spokesman of the defendants.

18.Keeping in view of the above facts, this Court finds that it may be expedient to allow this revision petition at the admission stage itself and it may be better to give a direction to the learned District Judge to number the suit and issue summons to the defendants.

19.Accordingly, the revision petition is allowed. The learned District Judge is hereby directed to take the plaint on his file after numbering the same and to issue summons to the defendants after following necessary procedures as contemplated under the Code of Civil Procedure and dispose of the same on merits. However, there will be no order as to costs. Connected M.Ps. are closed.

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20.10.2015

Index:Yes/No.

Internet:Yes/No.

T. MATHIVANAN, J.

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