

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.4370 of 2015

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M.P.No.2 of 2015

&

Transfer C.S.No.113/2016

(Originally O.S.No.3301/2015 filed on the file of III Additional Judge, City Civil Court)

C.R.P.(PD) No.4370/2015 & Tr.C.S.No.113/2016

Mr.R.Doraiswami,
Director-S.G.P.Exim Private Limited,
2nd Floor, Trinity Tower,
30, Conron Smith Road,
Gopalapuram,
Chennai 600 086

... Petitioner/Plaintiff in
Tr.C.S.No.113/2016

vs.

M/s.Kothari Industrial Corporation Ltd,
Rep by its Managing Director
Mr.Pradip D.Kothari, having registered Office
at "Kothari Buildings",
114, Mahatma Gandhi Salai,
Nungambakkam, Chennai 600 034

... Respondent/Defendant
in Tr.C.S.No.113/2016

Prayer in C.R.P.(PD) No.4370/2015: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and judgment dated 29.09.2015 passed by the III Additional Judge, City Civil Court, Chennai in C.M.A.No.82 of 2015 preferred against the order and judgment in I.A.No.8225 of 2015 in O.S.No.3301 of 2015 on the file of IV Assistant City Civil Court, Chennai.

Prayer in Tr.C.S.No.113/2016: Civil suit filed under order VII Rule 1 CPC for a judgment and decree against the defendants: (i) to grant an order of permanent injunction restraining the defendant, its men, representatives, nominee(s) or any person acting on behalf of it from cancelling or revoking the Power of Attorney dated 22.08.2008 granted in his favour; (2) directing the defendant to pay the costs of the suit.

For Petitioner/ : Mr.P.S.Raman, Senior Counsel

Plaintiff for M/s.Rita Chandrasekar

For Respondent / : Mr.S.Sivaraman
Defendant

ORDER

On the date of previous hearing, it was represented on behalf of the petitioner in the revision petition that the revision had become infructuous in view of the order passed by the Hon'ble Supreme Court on 23.09.2015 in SLP Nos.3290 to 3292 of 2015. It was further represented that the petitioner should be permitted to withdraw the civil revision petition. The learned counsel for the respondent raised an objection stating that the civil revision petition could not be allowed to be withdrawn keeping the suit pending. It was contended on behalf of the petitioner that not only the civil revision petition, but the suit filed by the petitioner, namely O.S.No.3301/2015 pending on the file of the III Additional Judge, City Civil Court, Chennai also had become infructuous and that the petitioner was prepared to withdraw the said suit also.

2. In view of the said submissions, this court passed an order on 08.02.2016 withdrawing the suit O.S.No.3301 of 2015 from the file of the III Additional Judge, City Civil Court, Chennai to this court to be heard along with the revision petition. Accordingly, the same has been withdrawn to this court, re-numbered as Tr.C.S.No.113/2016 and listed along with the revision petition.

3. Mr.P.S.Raman, learned senior counsel arguing on behalf of Ms.Rita Chandrasekar, learned counsel on record for the petitioner in the CRP and the plaintiff in the transferred suit, made endorsements on the civil revision

petition and the plaint praying for the dismissal of the civil revision petition as well as the suit as withdrawn. Since the withdrawal of the suit is sought to be made without seeking leave of the court to file a fresh suit, the respondent herein/defendant cannot object such withdrawal. However, the respondent/defendant shall be entitled to pray for cost.

4. The submissions made on both sides are taken into consideration. In view of the fact that the petitioner/plaintiff wants to withdraw the CRP as well as the suit without seeking leave to file a fresh suit, he cannot be prevented from doing so. The plaintiff, who files a suit on the basis of a cause of action, can, at any time, give up the whole or part of the claim. If such claim is given up without the leave of the court, then he shall not be entitled to make a fresh claim on such portion of the claim given up without the leave of the court. Hence the objection raised by the learned counsel for the respondent for granting permission to the revision petitioner/plaintiff to withdraw the revision and the civil suit simpliciter has got to be discountenanced.

5. The learned counsel for the respondent/defendant, who initially opposed the permission sought for to withdraw the CRP and the suit, subsequently prayed for the award of cost. In view of the loss of time and energy, the respondent/defendant, as contended by the learned counsel for the respondent/defendant, is entitled to get cost. This court feels that a sum of Rs.10,000/- shall be the reasonable cost that can be awarded.

Accordingly, the endorsements are recorded. The civil revision

petition in C.R.P.(PD) No.4370/2015 is dismissed as withdrawn. The transferred suit, namely Tr.C.S.No.113/2016 (originally filed as O.S.No.3301/2015 on the file of III Additional Judge, City Civil Court, which has been withdrawn to this court to be heard along with the civil revision petition. is also dismissed as withdrawn. The revision petitioner/plaintiff is directed to pay a sum of Rs.10,000/- as cost to the respondent/defendant.

25.02.2016

Index: Yes/No
Internet: yes/No
srn/asr

To

- 1.The III Additional Judge, City Civil Court, Chennai
- 2.The IV Assistant Judge, City Civil Court, Chennai

P.R.SHIVAKUMAR.J

srn/asr

C.R.P (PD) No.4370 of 2015

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