

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.4468 of 2015
and M.P.No.1 of 2015

M/s.Sathyasai Engineering Co.
Rep. by its Proprietor
V.R.Swaminathan
No.131, Linghi Chetty Street
1st Floor, P.B.No.M252,
Chennai-1.

... Petitioner

Vs

M/s.Sri Ganesh Electricals
Rep. by its Proprietor M.Ganesan
'Varalakshmi Illam'
No.1/1, Aalaiyamman Koil Street
Teynampet, Chennai-18.

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 20.07.2015 passed in I.A.No.8548 of 2015 in O.S.No.10015 of 2010 on the file of the III Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Manickavel
For Respondent : Mr.K.Seetha Ram

ORDER

The plaintiff in the Original Suit No.10015 of 2010 pending on the file of the III Additional Judge, City Civil Court, Chennai is the petitioner in the present revision. The suit was filed for recovery for a total sum of Rs.10,21,372/- being the value of the goods delivered and the interest calculated at the rate of 24% per annum up to the date of filing of the suit. The suit was originally filed as C.S.No.963 of 2008 on the Original Side of the High Court and after the enhancement of the pecuniary jurisdiction

of the City Civil Court, the same was transferred to the file of the City Civil Court and renumbered as O.S.No.10015 of 2010. While preparing the proof affidavit, according to the petitioner, a calculation mistake was found which resulted in claiming a sum of Rs.8,51,143.42 as the balance amount of principal, whereas the actual amount as per the correct calculation was only Rs.6,80,205/- and that hence it became necessary for the petitioner/plaintiff to file an application under Order VI Rule 17 of C.P.C. to amend the plaint regarding the amount for which the decree was sought for. The application was resisted by the respondent/defendant contending that the application was only a ruse for prolonging the case and the reason assigned could not be genuine. The learned trial Judge, after hearing both sides, sustained the objection raised by the respondent and dismissed the application, namely, I.A.No.8548 of 2015 filed by the petitioner herein seeking permission to amend the plaint. It is as against the said order of the trial Court dated 20.07.2015 made in I.A.No.8548 of 2015, the present Civil Revision Petition has been filed.

2. Notice before admission was given. The respondent has entered appearance through counsel. Counsel for both parties advanced the arguments on the merits of the Civil Revision Petition at the time of admission itself.

3. This Court also, after hearing such arguments and upon perusing the records produced in the form of typed set of papers, is of the view that the Civil Revision Petition can be disposed of at the stage of admission itself. Accordingly, the submissions made on both sides are taken into consideration.

4. No doubt, the petitioner herein/plaintiff chose to file the suit making a claim for a larger amount on the premise that outstanding principal was Rs.8,51,143.42. Now, the petitioner/plaintiff has come forward with a prayer seeking permission to amend the plaint by which, no attempt is made to enhance the claim and on the other hand, the plaintiff wants to reduce the claim by about Rs.2,00,000/-. The only contention raised by the respondent is that the calculation mistake alleged in the affidavit is not true and the same is only a ruse to prolong the case as long as possible. It is the contention of the learned counsel for the respondent that the claim having been made based on the statement of accounts, the petitioner/plaintiff cannot be permitted to amend the plaint in respect of the amount of claim made in the suit, though such proposed amendment may result in reduction of the claim made in the original plaint.

5. It cannot be assumed that the statement of accounts itself cannot contain wrong entries or wrong calculations. A person suing for money can give up a portion of the claim. When such attempt is made to give up a portion of the claim, even the Court cannot prevent the plaintiff. The consequence of such an act on the part of the plaintiff in giving of a portion of the claim shall be that he shall not be entitled to make a future claim in respect of the claim given up, unless the leave of the Court to claim it separately is obtained. In the case on hand, the petitioner besides seeking amendment resulting in reduction of the claim made in the suit, has not sought for any leave to claim the portion of the claim given up separately. Hence, the respondent cannot have any valid objection for the proposed amendment. If at all,

the amendment will show the statement of accounts in bad light, the respondent shall have every right to contend before the Court below that the statement of accounts is not genuine. The question of correctness or otherwise of the statement of account is a matter to be gone into at the time of trial and not in an enquiry in the petition seeking amendment of the plaint. The learned Trial Judge has not appreciated the above said aspects in proper perspective and the same has resulted in an erroneous order dismissing the application filed by the petitioner herein/plaintiff for amendment. The impugned order of the trial Court cannot stand the scrutiny of this Court and the same has to be interfered with and set aside.

6. In the result, the Civil Revision Petition succeeds and the same is allowed. The order of the trial Court dated 20.07.2015 made in I.A.No.8548 of 2015 in O.S.No.10015 of 2010 is set aside. I.A.No.8548 of 2015 shall stand allowed. The petitioner/plaintiff shall have two weeks time to carry out the amendment and file the amended copy of the plaint. No costs. Consequently, connected Miscellaneous Petition is closed.

25.02.2016

Index : Yes
Internet : Yes
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To
The III Additional Judge,
City Civil Court, Chennai

P.R.SHIVAKUMAR, J.

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