

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R. SHIVAKUMAR

**C.R.P.[PD] No.950 of 2014
and
M.P.Nos.1 of 2014 and 1 of 2015**

G.Jaya ... Petitioner/Respondent No.2

.. Vs ..

1. E.Dinakaran ... 1st Respondent/Plaintiff
2. The Chairman,
Tamil Nadu Slum Clearance Board,
No.6, Kamarajar Salai,
Chennai - 600 005. ... 2nd Respondent/Defendant

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, praying for an order to strike off the suit in O.S.No.6512 of 2012 pending on the file of XIV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.T.K.Kulasekaran
For R-1 : No Appearance
For R-2 : Mr.M.Perumal

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ORDER

The arguments advanced by Mr.T.K.Kulasekaran, learned counsel for the petitioner are heard.

2. The petitioner in the revision petition filed under Article 227 of the Constitution of India is the defendant No.2 in O.S.No.6512 of 2012 pending on the file of the learned XIV Assistant Judge, City Civil Court, Chennai. Of course, the suit came to be filed by the first respondent herein only against the second respondent herein for a bare injunction. But subsequently, as per the admission made by the learned counsel for the revision petitioner, the revision petitioner got impleaded as defendant No.2 in the said suit. Having got impleaded as defendant No.2, the revision petitioner can raise all the pleas of defence in the written statement to be filed in the suit. However, without filing a written statement, the revision petitioner chose to prefer the present revision under Article 227 of the Constitution of India for striking off the plaint on the ground that the suit is barred by a statutory provision and also on the ground of the suit being an abuse of process of Court.

3. When the suit is barred by a statutory provision, the revision petitioner shall have the opportunity of filing a petition under Order VII Rule 11 of CPC for rejection of the plaint. Though abuse of process of Court is not one of the grounds mentioned in Order VII Rule 11 of CPC for seeking the rejection of plaint, it has now been recognised by judicial legislation, the power of superintendence of the High Courts over the Subordinate Courts under Article 227 of the Constitution of India can be invoked for striking off the plaint filed in abuse of process of Court. When one contends that the institution of the suit itself, in a Court of law, is an abuse of process of Court, the Courts shall be slow in accepting such a contention as there are ample opportunities for the defendants to resist the suit on the basis of the ordinary provisions of law. There may be exceptional cases in which the suit might have been filed in such a way that Order VII Rule 11 of CPC may not be attracted. But at the same time, it will be a clear abuse of process of Court on the face of the proceeding itself. Only in such cases wherein the abuse of process of Court is apparent on the face of the proceedings, the extraordinary power of the High Court under Article 227 of the Constitution of India to strike off the plaint shall be exercised. Such cases may be cases by the same party filed in several

Courts with a clear intention of prolonging the litigations or preventing the Courts from rendering a decision. There may be also cases in which a decree or an interim order could be sought to be obtained nominally against the parties therein, whereas in effect there shall be an order or decree against a person, who is entitled to resist it, without making such a person a party to such a proceeding. If such abuse of process of Court is apparent on the face of the record, this Court shall be justified in exercising the power to strike off the plaint under Article 227 of the Constitution of India. For every supposed abuse of process of Court, resorting to Article 227 of the Constitution of India itself will be an abuse of process of Court. Hence, this Court is not in a position to accept the contention of the petitioner, that too, after the petitioner got impleaded as a party defendant in the suit that the institution of the suit itself was an abuse of process of Court for seeking an order striking off the plaint by an order of this Court under Article 227 of the Constitution of India.

4. The other ground is that the suit itself is barred by a statutory provision and that hence, the plaint shall be struck off. The said ground is squarely covered by Order VII Rule 11 of CPC. Once a specific provision is there providing a statutory remedy, recourse to

the extraordinary jurisdiction of the High Court under Article 227 of the Constitution of India, should be prevented, by disallowing such a petition, on the ground of availability of an effective and efficacious alternative remedy in the form of a petition seeking rejection of the plaint.

5. Hence, on both the grounds, the petition is bound to fail and the revision petition deserves to be dismissed. Accordingly, the civil revision petition is dismissed. However, it is made clear that the petitioner shall be at liberty to move a petition under Order VII Rule 11 of CPC for rejection of the plaint on the ground that the suit is barred by a provision of law if the petitioner is advised so, she can elect her right to seek such an remedy. Otherwise the petitioner can try to get a judgment on merit, by contesting the case as she has already filed a written statement and issues have already been framed. No costs. The connected miscellaneous petitions are closed.

04.02.2016

Index :Yes
Internet :Yes
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P.R. SHIVAKUMAR, J.

Jrl

To

XIV Assistant Judge, City Civil Court,
Chennai.

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