IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2016

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

CRP (PD) No.1460 of 2013
and
M.P.No.1 of 2013

1. P.Ramasami
2. Parvathi Ammal
3. Ramesh .. Petitioners

Vs.

Nagai Sivasakthi Benefit Fund Limited
represented by its Managing Director,
Mr.R.K.Ravi
No.8, Santhana Pillai Lane,
Nagapattinam. .. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order passed in I.A.No.6 of 2013 in O.S.No.9 of 2004 dated 08.01.2013 on the file of learned District Judge, Nagapattinam and allow the said I.A., by allowing this Civil Revision Petition.

For Petitioners : Mr.A.Muthukumar

For Respondent : Mr.P.Valliappan

<u>O R D E R</u>

The Petitioners/Defendants have focused the instant Civil Revision Petition as against the Order dated 08.01.2013 in I.A.No.6 of 2013 in O.S.No.9 of 2004 passed by the learned District Judge, Nagapattinam.

2. The Learned District Judge, Nagapattinam, while passing the Impugned Order on 08.01.2013 in I.A.No.6 of 2013 in O.S.No.9 of 2004 (filed by the Petitioners/Defendants 1 to 3) had observed the following:-

Heard. In Class III of Para 38 and Para 39 of the Remand Order of the Hon'ble High Court, Madras in A.S.No.886/2006, dated 01.11.2012, it is stated as follows:-

"38(3) The third point is decided to the effect that the lower court should have ordered for appointment of an auditor as Commissioner for taking accounts for the purpose of rendering justice.

39. Accordingly, the matter is remitted back to the lower court with the following direction.

The Lower Court shall do well to see that a qualified auditor is appointed as Commissioner to go into the accounts which were already produced and to be produced

> *by both sides relating to the loans borrowed by D1 to D3 and also the chits subscribed by D1 to D3 and also D1's two sons and two daughters-in-law and furnish his report where upon, both sides shall be permitted to file their objections and also adduce additional evidence both oral and documentary; whereupon the court has to decide the issues untranmelled and uninfluenced by any of the observations made by this Court in this judgment.*

and opined that under the circumstances, the Additional Written Statement seeking relief of Judgment and decree for the amount to be paid by the Auditor as payable to the Defendants, at this stage could not be entertained and dismissed the petition.

3. Assailing the correctness, validity and legality of the Impugned Order dated 08.01.2013 in I.A.No.6 of 2013 in O.S.No.9 of 2004 passed by the learned District Judge, Nagapattinam, the Revision Petitioners/Defendants 1 to 3 have filed the present Civil Revision Petition before this Court primarily contending that the trial court had failed to appreciate that filing of Additional Written Statement would not prejudice the case of the Respondent/Plaintiff in any manner.

4. The Learned Counsel for the Revision Petitioners contends that

by mere filing of Additional Written Statement by the Defendants, they are not entitled for any Decree, unless it is established in evidence that they are entitled for the same.

5.In effect, the plea taken on behalf of the Petitioners is that the trial court had not properly appreciated the ambit of the main suit for accounting were both parties are similarly situated and unfortunately, the trial court had not looked into the necessary facts of the case in a proper and real prospective.

6. Lastly, it is the case of the Petitioners that once the suit was remanded by this Court (as an Appellate Court) wherein a direction was issued to permit the parties to adduce the evidence, then, permitting parties to file an Additional Written Statement and reply is an automatic one.

7. Per contra, it is the submission of the Learned Counsel for the Respondent/Plaintiff that this Court in A.S.No.886 of 2006 filed by the Respondent/Plaintiff as an Appellant, had only directed the trial court to appoint a qualified Auditor as Commissioner to go into accounts, which were already produced and to be produced by both sides and relating to

the loans borrowed by D1 to D3 and also the chits subscribed by D1 to D3 etc., and in fact, this Court had not permitted the Petitioners/Defendants to file the Additional Written Statement before the trial court under Order 8 Rule 9 of Code of Civil Procedure.

8. Yet another contention of the Learned Counsel for the Respondent/Plaintiff is that in the Additional Written Statement sought to be filed by the Petitioners/Defendants 1 to 3 before the trial court in I.A.No.6 of 2013, a plea was made to the Court to pass a Decree in their favour in regard to the counter claim and the said plea is impermissible in Law.

9. At this juncture, this Court very pertinently points out that the Respondent/Plaintiff/Fund had filed a suit in O.S.No.9 of 2004 on the file of trial court seeking for passing of a decree against the Revision Petitioners/ Defendants 1 to 5 therein for payment of amount of Rs.11,87,915/- and also sought a charge of the properties offered as securities by way of attachment before the Judgment, for which a separate Application was filed etc.,

10. Before the trial court, 1st Defendant filed a Written Statement (which was adopted by D2 and D3). Also 4th and 5th Defendants had filed separate Written Statements.

11. After contest, the suit in O.S.No.9 of 2004 on the file of learned District Court, Nagapattinam was dismissed on 20.06.2006. As against the dismissal of the suit, the Respondent/Plaintiff preferred an Appeal in A.S.No.886 of 2006 as an Appellant against the Revision Petitioners/D1 to D3 and other Defendants. This Court on 01.11.2012 had disposed of the Appeal by remitting the matter back to the trial court by issuing necessary directions as stated earlier.

12. On behalf of the Petitioners /D1 to D3, it is brought to the notice of this Court that a report dated 25.03.2013 was filed by the Auditor Commissioner in O.S.No.9 of 2004 on the file of trial court. (Even prior to the filing of the report by the Auditor Commissioner, the Revision Petitioners/Defendants had reportedly filed I.A.No.6 of 2013 in O.S.No.9 of 2004).

13. In this connection, this Court significantly points out that Order

8 Rule 9 of Code of Civil Procedure speaks of 'Subsequent Pleading'. It cannot be gainsaid that Additional Written Statement ought not to set up a new set of facts and it should not be at direct variance with the Original Written Statement so as to completely change the character of the main suit. No wonder, the Application/Petition, namely, I.A.No.6 of 2013 has filed under Order 8 Rule 9 of CPC. It cannot be treated by any stretch of imagination to be a one under Order 6 Rule 17 of CPC. Admittedly, an Application/Petition filed under Order 6 Rule 17 of CPC and Order 8 Rule 9 of CPC are contextually a different one in the considered opinion of this Court.

14. It is to be remembered that the principle under Order 8 Rule 9 of CPC is that no pleading subsequent to the filing of Written Statement shall be presented by a party before the Court of Law except with permission of the said Court.

15.In regard to the filing of Additional Written Statement is concerned, the ingredients of Order 8 Rule 9 of CPC provide an ample power to the Court of Law to grant leave to file Additional Written Statement in regard to the defence/defences to be taken by a party. Also, it cannot be forgotten that even subsequent development/event by means of rejoinder can be pressed into service by a party concerned in the form of Additional Pleadings, but the only rider is subsequent Pleadings setup by the party ought not to be inconsistent with the defence/defences taken earlier.

16.By allowing the I.A.No.6 of 2013 in O.S.No.9 of 2004 on the file of trial court certainly, no prejudice or hardship or misery would be caused to the Respondent/Plaintiff in the considered opinion of this Court. Even in the subsequent Pleadings, viz.,in I.A.No.6 of 2013 in O.S.No.9 of 2004 on the file of trial court, the Revision Petitioners / Defendants had raised a plea of counter claim even that can also be looked into by the trial court at the time of determination of the main suit and in this regard necessary issues can be framed by the concerned Court. Further, safe in exceptional cases a counter claim may not be permitted to be incorporated by means of an amendment under Order 6 Rule 17 of Code of Civil Procedure Code as per decision of **Hon'ble Supreme Court (Ramesh Chand Ardawatiya V. Anil Panjwani) reported in (2003) 7 Supreme Court Cases 350 at Special Page 367.** Further, Order 8 Rule 6A of Code of Civil Procedure permits filing of counter claim in respect of any suit without any fetters, as opined by this Court. After all, for the counter claim, purportedly set up by the Revision

Petitioners/Defendants, they have to pay the requisite Court fee if any in this regard. As such, *ipso facto* the trial court cannot dismiss the I.A.No.6 of 2013 in O.S.No.9 of 2004 on the file of trial court at the threshold itself by citing the Paragraph Nos.38 and 39 of this Court's Judgment in A.S.No.886 of 2006 dated 01.11.2012.

17. Unfortunately, in the instant case, the trial court in I.A.No.6 of 2013 in O.S.No.9 of 2004 has dismissed the Petition and that the reasons assigned by it for dismissing the Petition perse are not legal. Therefore, this Court to prevent an aberration of justice and in furtherance of substantial cause of justice interferes with the Order passed in I.A.No.6 of 2013 on the file of learned District Judge, Nagapattinam and sets asides the same. Consequently, the Civil Revision Petition succeeds.

18. In the result the Civil Revision Petition is allowed. The Order dated 08.01.2013 in I.A.No.6 of 2013 on the file of learned District Judge, Nagapattinam is set side by this Court for the reasons assigned by this Court in this Revision. It is abundantly made clear that the Order passed by this Court in the present Civil Revision Petition would not

preclude the respective parties to raise all factual and legal pleas before the trial court in O.S.No.9 of 2004, if they so desire/advised and in this regard trial court shall provide enough opportunities to them.

19. The trial court is directed to take into account the subsequent pleading (Additional Written Statement) filed by the Revision Petitioners/Defendants and to proceed further of the main suit in O.S.No.9 of 2004 in the manner known to Law and in accordance with Law. In case, if the trial court opines that the Revision Petitioners/Defendants are required to pay necessary Court fee in the counter claim, then, it may pass necessary Orders in this regard as per Law. Consequently, connected Miscellaneous Petition is closed. No costs.

04.02.2016

Index : Yes/No
Internet : Yes

ssd

M.VENUGOPAL, J.

ssd

To

The Learned District Judge,

Nagapattinam

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