

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.231 of 2016

&

C.M.P.No.1119 of 2016

1.Dr.K.Natarajan
2.K.Balakrishnan
3.M/s.Suntex Processing Mills Pvt. Ltd.,
Registered office at
No.979, Ground Floor
53rd Street, T.V.S.Colony
Anna Nagar West Extension
Chennai – 600 101

... Petitioners

vs.

K.Krishna Perumal

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to strike down the plaint in O.S.No.5235 of 2015 on the file XIII Asst. Judge City Civil Court, Chennai.

For Petitioners : Mr.P.T.Perumal

ORDER

This civil revision petition has been filed under Article 227 of the Constitution of India for striking off the plaint in O.S. No. 5235 of 2015 pending on the file of XIII Assistant Judge, City Civil Court, Chennai on the premise that the jurisdiction of the Court was barred by Section 10GB of the old Companies Act, 1956 and that the new Companies Act, 2013 enacted, which has repealed the Companies Act, 1956 also contains a provision under Section 430 excluding such jurisdiction of the Civil Courts in such company matters.

2. The reliance made by the petitioner under Section 430 of the Companies Act, 2013 has been pre-empted by the respondent/plaintiff by making an averment that the said Section had not come into force as it was not notified till the filing of the suit. However, the learned counsel for the petitioner would contend that Section 465 of the Companies Act, 2013 contains a proviso that until notification, the repealed Companies Act, 1956 shall continue to operate and that hence, the bar of Civil Courts jurisdiction provided under Section 10GB of the Companies Act, 1956 squarely applies to the suit in question. In short, the crux of the contention of the petitioner is that the suit filed before the trial Court is one barred by a statute.

3. There is a specific provision in the Code of Civil Procedure,

namely Order VII Rule 11 dealing with rejection of plaint on various grounds. One of the grounds mentioned therein for rejection of plaint is that the suit should appear, from the statement found in the plaint, to be barred by law. For better appreciation Rule 11 under Order VII CPC is re-produced:

"11. Rejection of plaint

The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- ¹[(e) where it is not filed in duplicate; (f) where the plaintiff fails to comply with the provisions of rule 9];*

4. The contention of the petitioners squarely fall within the

ambit of Sub-Clause (b). Hence, the petitioner can very well file a petition under Order VII Rule 11 CPC before the trial Court praying for the rejection of the plaint on the ground that the suit is barred by law. Of course, there are a few judgments which say that when suits are filed in the Courts without jurisdiction and when suits are filed disregarding the bar provided under a statute, the High Court can exercise its extraordinary power under Article 226 of the Constitution of India or its power of superintendence over subordinate Courts under Article 227 of the Constitution of India to strike off the plaint. But, it is also a celebrated principle enunciated in a number of judgments, which this Court deems unnecessary to be cited herein that when an effective and efficacious alternative remedy is available, the extraordinary jurisdiction of the High Court either under Article 226 or under Article 227 of the Constitution of India shall not be exercised. The only exception provided for such rule of prudence is the infringement of a fundamental right and cases of parties approaching the Court for enforcement of their fundamental rights. In such a case, despite the availability of the alternative remedy, the Court, being the guardian of the fundamental rights conferred by the Constitution, shall protect their interest by exercising the extraordinary power.

5. This is not a case which comes under the exceptional

category and this case comes under the general category in which the availability of an effective and efficacious alternative remedy shall be the ground on which the Court shall decline the relief sought for under Article 227 of the Constitution of India.

For the above said reason, the revision petition is dismissed. However, the petitioner shall be at liberty to approach the trial Court with a petition under Order VII Rule 11 CPC. In case he fails in such an attempt, then there shall be no impediment for him to approach this Court under Article 227 of the Constitution of India. No costs. Consequently, the connected miscellaneous petition is closed.

05.02.2016

Index: Yes/No
Internet: yes/No
gpa

To
XIII Asst. Judge
City Civil Court, Chennai

P.R.SHIVAKUMAR.J.,

gpa

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