

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) Nos.3592 to 3594 of 2013

&

M.P.No.1,1 and 1 of 2013

S.K.M.Egg Products Exports (India) Ltd.,
Represented by its Managing Director Sivakumar
Having its registered office at
185, Chennimalai Road
Erode – 1 and its
Factory at Cholangapalayam
Erode

... Petitioner
in all the revisions

vs.

V.Jothimani
Wife of C.Selvaraj
Proprietorix
M/s.Aravind Associates
Door No.62, First Floor
Thangaperumal Street
Gandhiji Road, Erode

... Respondent
in all the revisions

Civil Revision Petition filed under Article 227 of the Constitution
of India against the order dated 25.04.2013 made in I.A.No.968, 969

and 970 of 2012 in O.S.No.205 of 2012 on the file of the learned Principal District Judge, Erode.

For Petitioner : Mr.A.Jenasenan

For Respondent : Mr.N.Manokaran

ORDER

The defendant in the original suit is the petitioner in the Civil Revision Petitions. The suit was filed by the respondent in the Civil Revision Petitions for recovery of money allegedly due to it from the revision petitioner alongwith interest and cost. But, the plaint came to be presented with insufficient Court fee stamps. Hence, the plaint was returned by the trial Court for re-presentation after supplying the necessary Court fee stamps. The respondent/plaintiff re-presented the plaint with a petition under Section 149 CPC to extend the time for payment of the deficit Court fee. The same was allowed and the thirty days time was granted for payment of deficit Court fee. Within the said thirty days time initially allowed by the trial Court, the respondent herein/plaintiff was not able to mobilize funds to pay the deficit Court fee. Hence, she filed a second petition for extension of time for payment of deficit Court fee. The said petition was allowed and further

time of 14 days was granted for payment of deficit Court fee. Within that 14 days time granted by the trial Court, the deficit Court fee was supplied and accordingly, the plaint was numbered as a suit. On service of summons, the revision petitioner herein/defendant in the original suit entered appearance and filed a written statement contending that the suit was barred by limitation, among other grounds. Subsequently, the revision petitioner/defendant filed I.A.No.968 of 2012 and I.A.No.969 of 2012 under Section 151 CPC to recall the orders passed by the trial Court extending the time for payment of deficit Court fee. In addition, the revision petitioner herein/defendant filed I.A.No.970 of 2012 under Order VII Rule 11 CPC for the rejection of the plaint.

2. The learned trial Judge, heard all the three applications jointly and dismissed them by a common order dated 25.04.2013. It is as against the said common order and the decreetal orders passed in the above said interlocutory applications, the present civil revision petitions came to be filed.

3. The arguments advanced on both sides are heard. The copy of the impugned common order and the decreetal orders and also the

documents produced in the form of typed-set of papers are also perused and taken into consideration. Section 149 of the Code of Civil Procedure reads as follows:

“149. Power to make up deficiency of court-fees.

Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.”

4. According to the said provision where the whole or any part of the fee prescribed for any document has not been paid, the Court in its discretion could permit payment of such Court fee and thereby condone the delayed payment of the Court fee. If the same is done by the Court, then it shall have the effect as if the Court fee had been paid in the first instant itself. In ***P.K.Palanisamy Vs. N.Arumugham and Another***, reported in ***(2009) 9 Supreme Court Cases 173***, the Supreme Court held that the extension of time for payment of Court fee under Section 149 CPC is a matter between the party, who is liable

to pay the Court fee and the Court and that the opposite party cannot have anything to say.

5. In view of the said decision of the Supreme Court, it shall be no longer open to the revision petitioner/defendant to contend that the order granting extension of time for payment of deficit Court fee should be recalled. Suppose the revision petitioner/defendant had chosen to approach the High Court under Article 227 of the Constitution of India against the said order, such petition would have been decided on its own merits. But, here the revision petitioner/defendant has chosen to approach the very Court which granted the extension of time, with a petition under Section 151 CPC for recalling such an order. The question of the Civil Court recalling its order after disposal of the application for extension of time shall not arise. If at all the revision petitioner/defendant is of the view that the suit was not properly instituted because of the filing of the plaint with deficit Court fee, without even accompanied by an application to sue as an indigent person and such deficit Court fee came to be supplied only **after the time for filing the suit expired,** the revision petitioner/defendant can very well take a defence plea in the written statement on the ground of the suit being barred by limitation and

contest the suit. In stead of doing it, the revision petitioner/defendant has chosen to invoke the inherent powers of the Civil Court to recall the orders which have been passed in the petitions seeking extension of time. The seeking of extension of time cannot be even stated to be an abuse of process of Court, so as to enable the revision petitioner to seek an order under Section 151 CPC. Hence, this Court finds no error and moreover no exercise of jurisdiction not conferred on the Court below or failure to exercise jurisdiction conferred on the Court below warranting an interference with the orders passed in I.A.Nos.968 and 969 of 2012. Hence, orders dismissing I.A.Nos.968 and 969 of 2012 deserve to be spared and they are to be confirmed.

6. So far as I.A.No.970 of 2012 filed under Order VII Rule 11 CPC is concerned, the grounds on which the revision petitioner/defendant sought rejection of plaint are as follows:

- 1) The plaintiff had no locus standi to file the suit;
- 2) The suit was filed with insufficient stamps, which was rectified subsequently; and
- 3) The suit is barred by limitation.

7. So far as the first contention is concerned, it is the contention of the revision petitioner that M/s.Aravind Associates is a Proprietary concern and the respondent/plaintiff is not its Proprietor. The said plea is not also a concrete plea. The revision petitioner chose to make such a plea on the premise that one T.Jagadesh alone was dealing with the defendants on behalf of M/s.Aravind Associates. When the plaintiff has filed the suit in her own name in her capacity as Proprietrix of M/s.Aravind Associates, the defendant cannot contend that the suit is not maintainable and the plaint has got to be rejected on the sole ground that M/s.Aravind Associates was being represented by someone else. The revision petitioner cannot contend that the respondent/plaintiff cannot maintain her suit for the recovery of money allegedly due from the revision petitioner on the business transaction. If at all the revision petitioner has any objection to her claim, it shall be pertaining to the merits of the case and the same will not go to the root of the case so as to enable the revision petitioner to seek the rejection of the plaint at the threshold.

8. In fact, a proprietary concern is not a juristic person and strictly speaking, no suit can be filed in the name of the proprietary concern as a plaintiff. What Order XXX Rule 10 permits is that in case

a person is carrying on a business in a name or style other than his name, then **such person may be sued** in such name or style as if it were a firm name. So concession extended to a partnership firm is applied to a proprietary concern also so far as such proprietary concern shall be made a party defendant. It will be clear from a comparison of the earlier rules under the very same order and Rule 10. The earlier rules deal with the partnership firms and especially Rule No.1 says that any two or more persons claiming or being liable as partners and carrying on business, **may sue or be sued** in the name of the firm and in case such proceedings are initiated in the name of the firm by the partners, then the opposite party shall have the right under Rule 2 to seek disclosure of the names of the partners of the firm filing the suit. So far as a suit against the partnership is concerned, though it is instituted against the firm in the name of the firm, as per Rule 3 it shall be in effect a suit against all the partners. Rule 6 says, when partners are sued in the name of the firm, they shall appear individually in their own names. Even if a person who is sued as a partner wants to appear to contest that he is not a partner of the firm, he can enter appearance under protest as per Rule 8. A clear difference is seen from the language of Rule 1 under Order XXX of the Code of Civil Procedure, which permits the partners to sue in the

name of the firm or others **to sue the partners in the name of the firm**, whereas Rule 10 enables only the persons dealing with the proprietary concern to sue the Proprietor in the name of the Proprietary concern and it does not permit the Proprietor to sue in the name of the Proprietary concern. Even if a false claim might have been made, that shall not be a ground for rejection of plaint and it shall be a valid ground of defence for the defendant in such a suit. Hence, the first ground false flat and deserves rejection.

9. So far as the second contention is concerned, it is covered by the discussions regarding the plea made in the petition filed as I.A.Nos.968 and 969 of 2012.

10. Regarding the third contention, the question of limitation is a mixed question of law and fact, which has got to be raised and decided as an issue in the suit. Suppose, the plaint averments themselves prima facie show that the suit is barred by limitation, then the defendant can seek the rejection of the plaint on that ground. Here, it is a contentious issue as to whether the suit is barred by limitation or not, which cannot be decided based on the pleadings alone and it has got to be decided after allowing the parties to lead evidence. When

evidence is to be led for rendering a decision on a particular issue, that cannot be the ground on which the plaint shall be rejected. On that score alone, the third ground deserves to be rejected.

11. For all the reasons stated above, this Court comes to the conclusion that the order of the trial Court dismissing I.A.No.970 of 2012 cannot be interfered by exercising the power of superintendence of this Court over the subordinate courts under Article 227 of the Constitution of India.

Based on the findings recorded supra, all the three Civil Revision Petitions are dismissed. However, there shall be no order as to costs. It is made clear that the revision petitioner shall have the right to raise all the pleas of defence available to it in the suit and such issues have to be decided by the trial Court without being influenced by any of the observations made by this Court in this order. Consequently, the connected miscellaneous petitions are closed.

04.02.2016

Index: Yes/No
Internet: yes/No
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To

The Principal District Judge
Erode

P.R.SHIVAKUMAR.J.,

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