

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.116 of 2014
and M.P.No.1 of 2014

R.Dasappan

... Petitioner

Vs.

Thangavelu

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 21.10.2013 made in I.A.No.61 of 2013 in O.S.No.609 of 2012 on the file of IV Additional District and Sessions Court, Coimbatore.

For Petitioner : Mr.P.Saravana sowmiyan

For Respondent : Mr.K.Moorthy

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 21.10.2013 made in I.A.No.61 of 2013 in O.S.No.609 of

2012 on the file of IV Additional District and Sessions Court, Coimbatore.

2. The petitioner is the plaintiff and respondent is the defendant in O.S.No.609 of 2012. The respondent filed suit for recovery of money and for permanent injunction restraining the respondent from initiating any legal action against the petitioner on the basis of post dated cheque, dated 30.06.2012, for a sum of Rs.25,00,000/- as the same was not issued for any debt or enforceable liability and consequently, directing the respondent to deliver the post dated cheque, dated 30.06.2012 to the petitioner. The respondent filed I.A.No.61 of 2013 under Order VII Rule 11 of C.P.C. read with Section 151 C.P.C. for rejection of plaint.

3. According to the respondent, the petitioner entered into an agreement of sale for sale of the property of the respondent. As per the understanding between the petitioner and respondent, the petitioner sold the property to one M/S.Saravana Estates Private Limited having office at door No.20, Jangpura Extension, New Delhi-110 014, represented by its Director Mr.C.S.Vaithiyanathan, S/o. Sankaranarayanan, by the deed of sale dated 20.02.2012 for a total

sale consideration of Rs.3,58,87,500/-. In respect of the said transaction, the petitioner has to pay a sum of Rs.1,63,75,500/- to the respondent. The petitioner agreed to return the said amount and issued a cheque bearing No.478492, dated 30.06.2012 on 20.05.2012 for a sum of Rs.25,00,000/- drawn on Punjab National Bank, as a part payment towards sale consideration in his favour. On presentation, the said cheque was returned with an endorsement "today's opening balance insufficient and payment stopped by the drawer". The respondent has initiated criminal proceedings against the petitioner. After filing of the criminal proceedings, the petitioner filed the present suit. In the circumstances, the present suit is barred under Section 41(d) of the Specific Relief Act. So the suit is barred by law and no cause of action arose for the suit. In the circumstances, the plaint is to be rejected under Order VII Rule 11 C.P.C.

4. The petitioner did not file any counter. The counsel for the petitioner contended that he will argue the matter without filing counter in the said application. He submitted that there is no understanding between the petitioner and respondent and denied that based on understanding, the property was sold to

M/S.Saravana Estates Private Limited. The property sold to M/S.Saravana Estates Private Limited is not the property of the respondent. The two cheques issued by the petitioner is not for enforceable liability and the suit for injunction is maintainable.

5. The learned Judge considering the averments made in the plaint, affidavit, contention of the learned counsel for the petitioner and the judgment relied on by the respondent reported in **CDJ 2012 MHC 1205 (Joseph Raj v. Baby Jeroma)**, came to the conclusion that the relief of injunction is barred by law. The learned Judge further held that the plaint cannot be rejected in part by invoking Order VI Rule 16 C.P.C. and struck off the plaint in respect of the relief of injunction.

6. Against the said order dated 21.10.2013 made in I.A.No.61 of 2013, the present Civil Revision Petition is filed by the petitioner.

7. Heard the learned counsel for the petitioner and respondent and perused the materials available on record.

8. The point for consideration in the present Civil Revision Petition is whether the Court has *suo moto* power to invoke Order VI

Rule 16 C.P.C. to strike off the plaint. Order VI Rule 16 C.P.C. reads as follows:

Order VI Rule 16 C.P.C.

“16. Striking out pleadings— The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading—

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.]”

9. A reading of the provision reveals that there is no *suo moto* power conferred on the Court under this provision to strike off the pleadings. The Court can exercise this power only when a party files an application to strike off the pleadings. This Court must give an opportunity to other party to rebut the contentions raised in the application. Only when the Court comes to the conclusion that the pleadings of the party is liable to be struck off for any of the grounds mentioned in Order VI Rule 16 C.P.C., the Court can strike off the pleadings at any stage of the suit.

10. It will be useful to refer Order XVI Rule 14 C.P.C., which reads as follows:

Order XVI Rule 14 C.P.C.

"Court may of its own accord summon as witnesses strangers to suit. — Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary (to examine any person, including a party to the suit), and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document."

The Court has power under this Rule to summon any person on its own motion. But the Court must be satisfied that the evidence of such person is necessary to decide the issue in the suit. The words "on its own motion", is not included in Order VI Rule 16 C.P.C.

11. The Hon'ble Apex Court in para-25 of its judgment reported in **(2013) 9 SCC 349 (S.Malla Reddy v. Future Builders Cooperative Housing Society and others)** held as follows:

"25. Order 6 Rule 16 CPC has been substituted by the CPC (Amendment) Act, 1976. This provision deals with the amendment or striking out of the pleadings, which a party desires to be made in his opponent's pleadings. In other words, the plaintiff or the defendant may ask the Court for striking out the pleadings of his opponent on the ground that the pleadings are shown to be unnecessary, scandalous, frivolous or vexatious. This Rule is based on the principle of ex debito justitiae. The Court is empowered under this Rule to strike out any matter in the pleadings that appears to be unnecessary, scandalous, frivolous or vexatious or which tends to prejudice, embarrass or delay the fair trial of the suit."

In the said judgment, it has been held that the plaintiff or defendant may ask the Court for striking off the pleadings of his opponent on the ground that the pleadings are shown to be unnecessary, scandalous, frivolous or vexatious or which tends to prejudice,

embarrass or delay the fair trial of the suit.

12. In view of the judgment of the Hon'ble Apex Court as referred to above, only when a party seeks striking off the pleadings of his opponent, the Court can consider the same and pass orders as per Order VI Rule 16 C.P.C. In the present case, the respondent did not file any application for striking off the pleadings of the petitioner. He filed application under Order VII Rule 11 C.P.C. to reject the plaint on the ground that the claim of the petitioner is barred by law as per Section 40(1)(d) of Specific Relief Act. The learned Judge held that a part of the claim of the petitioner is maintainable and only a part of the claim is barred by law. The learned Judge having correctly held that the plaint cannot be rejected in part ought to have dismissed the application filed by the respondent. On the other hand, the learned Judge struck off a part of the relief claimed by the petitioner alleged to exercising the power under Order VI Rule 16 C.P.C. As already stated above, the Court has no *suo moto* power to invoke Order VI Rule 16 C.P.C. The learned Judge has passed impugned order under Order VI Rule 16 C.P.C., when he has no power to strike off the pleadings without the party asking for the same and thereby, committed irregularity.

13. For the above reason, the Civil Revision Petition is allowed by setting aside the fair and decretal order dated 21.10.2013 made in I.A.No.61 of 2013. No costs. Consequently, connected Miscellaneous Petition is closed.

01.11.2017

Index:Yes/No

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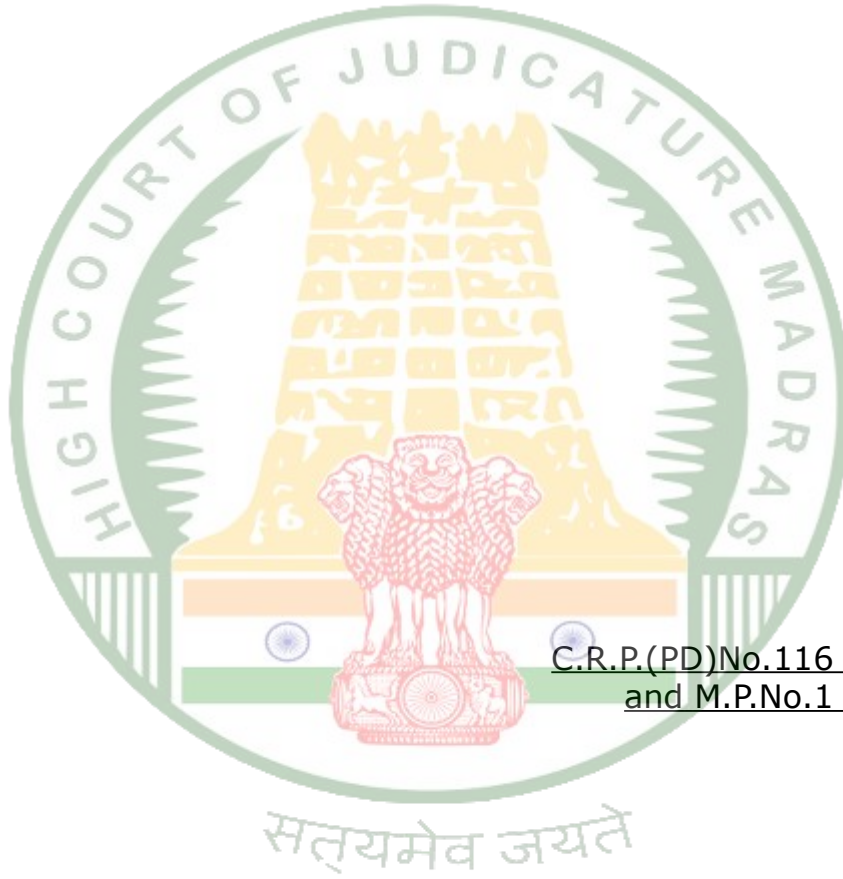
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V.M.VELUMANI,J.

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