

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1382 of 2014
& C.M.P.No.1 of 2014

Subramani Naidu

.. Petitioner

Vs.

Duraisamy Achari

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 23.01.2014 made in I.A.No.522 of 2012 in O.S.No.41 of 2008 on the file of the court of the District Munsif, Gudiyatham, Vellore District.

For Petitioner : Mr.T.Dhanyakumar

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 23.01.2014 made in I.A.No.522 of 2012 in O.S.No.41 of 2008 on the file of the District Munsif Court, Gudiyatham, Vellore District.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed a suit for recovery of money. The petitioner filed written statement on 06.06.2008 and is contesting the suit. After framing issues, the trial was commenced. The respondent let in evidence and PW1 was examined in chief and the suit was posted for cross-examination of PW1. At that stage, the petitioner filed I.A.No.522 of 2012 under Order 7 Rule 11 (c) & Section 151 of CPC to reject the plaint on the ground that the respondent paid the deficit Court fee beyond the time granted by the Court, without getting order, by filing application under Section 149 of C.P.C. The suit is barred by limitation.

3. The learned Judge, considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application, holding that the question of limitation is mixed question of law and fact and that should be decided only by way of appreciating the evidence before the Court of law and at the stage of cross-examination of P.W.1, the plaint cannot be rejected on the sole ground that the respondent did not pay the Court fee, after obtaining the order, by filing an application under Section 149 of C.P.C.

4. Against the said order, dated 23.01.2014 made in I.A.No.522 of 2012 in O.S.No.41 of 2008, the present civil revision petition is filed by the petitioner/defendant.

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

6. From the materials available on record, it is seen that the petitioner is seeking to reject the plaint on the ground that the suit is barred by limitation. The question of limitation is mixed question of law and fact and the same can be decided only after appreciating the evidence let in by the parties. In the present case, whether the respondent paid the deficit court fee within the time limit granted by the Court or not cannot be decided during cross-examination of P.W.1. The learned Judge has given valid reason for dismissing the application. There is no illegality or irregularity in the order passed by the trial Court, dated 16.12.2013, warranting interference by this Court.

V.M.VELUMANI, J.

av/rns

7. In the result, this Civil Revision Petition is dismissed. Further the Civil Revision Petition is of the year 2014 and no notice was ordered to the respondent. As the suit is of the year 2008, the learned District Munsif, Gudiyatham, Vellore District is directed to dispose the suit in O.S.No.41 of 2008, as expeditiously as possible, in any event, not later than two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

06.06.2017

Index : Yes/No

av/rns

To

The District Munsif, Gudiyatham,
Vellore District.

C.R.P.(PD)No.1382 of 2014
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