IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON: 25.07.2017

ORDERS PRONOUNCED ON: 24.11.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P (PD) NO.1674 OF 2017
AND CMP NO.7863 OF 2017

Nagai Sivasakthi Benefit Fund Ltd.,
Nagapattinam,
By its Managing Director
R.K.Ravi S/o. Kuzhandaivelu Pathar,
No.8, Santha Pillai Lane,
Nagapattinam,
Nagapattinam Taluk & Munsif ... Petitioner

Vs.

1.P.Ramasamy
2.R.Parvathy Ammal
3.R.Ramesh
4.Muthuselvan
5.Soundarajan ... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order passed by the District Court at Nagapattinam, dated 24.03.2017 in I.A.No.68 of 2014 in O.S.No.9 of 2004.

For Petitioner : Mr.P.Valliappan

For Respondents 1-3 : Mr.A.Muthukumar

ORDER

This Civil Revision Petition is directed against the dismissal of the interlocutory application filed to set aside the Audit Report submitted by the Auditor; to eschew the evidence let in by him; to appoint a fresh Auditor to scrutinize the accounts'; and to submit a fresh report.

2. The petitioner is the plaintiff. They filed a suit for recovery of money against the respondents / defendants. The suit was dismissed and on appeal, it was remanded back for appointment of an Auditor to go through the accounts. Further, a direction was issued to appoint a qualified Auditor as Commissioner and both the parties were permitted to adduce additional evidence, both oral and documentary and thereafter, decide the suit on merits. Accordingly, an Auditor was appointed and he filed an interim report. In the said interim report, the Auditor had sought for documents, which were not available before the Court. The parties have submitted certain documents, but not all the documents. Thereafter,

the Auditor has filed a final report, to which the petitioner / plaintiff have filed elaborate objections.

3. It is seen that the respondents / defendants have filed a petition to file additional written statement. The Trial Court has rejected the same and on revision in CRP (PD) No.1460 of 2013 dated 04.02.2016, this Court has permitted the respondents herein / defendants to file additional written statement and also permitted them to make counter claim, on payment of necessary Court fee, in accordance with law.

4. In the meanwhile, the petitioner / plaintiff have elaborately cross examined the Commissioner viz., C.W.1. He has put in all the questions relating to the accounts. Thereafter, they filed an application to scrap the report filed by the Auditor and eschew the evidence and also to appoint a fully qualified Auditor afresh. The said application was dismissed by the Trial Court. Against which, the present Civil Revision Petition is filed.

5. The learned counsel for the petitioner / plaintiff would contend that the Auditor has sought for certain documents, which are very vital to prove his case. Whereas, without those documents, a report came to be filed, which will seriously deprived the claims of the petitioner / plaintiff. The Auditor's report is not a complete one and has been filed without verifying the documents, which were sought by the petitioner / plaintiff before the Court. Therefore, in order to provide fair opportunity, the petitioner / plaintiff seeks to set aside the report of the Auditor.

6. Per contra, learned counsel for the respondents / defendants would contend that the Auditor has filed his report on 25.03.2013 and the petitioner / plaintiff have filed their objections on 30.03.2013. They have not raised any whisper about the production of documents or non consideration of the documents, which are now sought to be relied on, by the petitioner / plaintiff. On the other hand, elaborate objections on the merits of the case were made and elaborate cross examination was also done thereafter. At this stage, when the matter is posted for judgment, the interlocutory application was filed for filling up the gaps. Such an attempt shall not be entertained.

7. I have considered the rival contentions and perused the materials available on record.

8. Admittedly, the report was filed by the Auditor as early as 2013. The petitioner / plaintiff have also filed their objections within a week's time. They have not found any defect in the Auditor's report, in so far as the non-production of documents are concerned. On the other hand, objections were raised on the findings of the Auditor, based on all the documentary evidences. Further, an elaborate cross examination was also made against the contents of the report. Having availed the opportunity to cross examine the Auditor, the petitioner / plaintiff have filed the interlocutory application, after one year. The Trial Court has categorically discussed the issues raised by the petitioner / plaintiff in detail. The objections for relying on the Commissioner's report was that certain ARC proceedings were not considered. Apart from that, the petitioner / plaintiff have marked Ex.A67 series through the Auditor. At that time, they have not raised any material points. On the other hand, both the parties have argued on the merits and demerits of Ex.C1 - Commissioner / Auditor's report and the matter was posted for judgment. The Trial Court,

having discussed all these points and the procedure followed in the examination of C.W.1, has found that the grievance of the petitioner / plaintiff is not natural and baseless and accordingly dismissed the same.

9. It is well settled law that the documents, which are marked before the Court and the party marking the documents was examined in detail, it cannot be objected at a later point of time, as incomplete or inadmissible. In the instant case, the petitioner / plaintiff has filed an appeal and got the matter remanded for appointment of an Auditor to verify the accounts. It is his duty to produce all the relevant documents pertaining to the accounts relied on by him. Even in the preliminary report, the Auditor has pointed out that certain documents were not produced for perusal. In spite of the same, the petitioner / plaintiff has not produced any documents, which he now wants to rely on. Three years have passed by and in the meanwhile, by an order of this Court, additional written statement as well as counter claim was filed. After an elaborate cross examination of the Commissioner (C.W.1) arguments were made on merits. When the matter is posted for judgment, the prayer of the petitioner / plaintiff to set aside the report is an after thought and it is not sustainable.

10. A perusal of the interlocutory application as well as the objections filed by the petitioner / plaintiff, does not indicate that the Commissioner's report is lacking material details. Moreover, the petitioner/plaintiff have not set out any valid reasons to set aside the report filed by the Commissioner / Auditor. Such an attempt is nothing but to fill up the *lacuna* and to conduct a re-trial over the merits of the claim as contended by the learned counsel for the respondents. It is true that the interlocutory application is maintainable at any stage, but it cannot be for an ulterior motive to protract the proceedings.

11. In the instant case, the materials reveals that ample opportunity was given to the petitioner / plaintiff and the petitioner / plaintiff also have availed that opportunity. At this distance point of time, after making their submissions on the merits of the Auditor's report, the petitioner / plaintiff cannot turn around and seek for setting aside the report, which was received in evidence. I do not find any discrepancy in the order passed by the Trial Court.

12. In fine, the Civil Revision Petition is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

24.11.2017

Index : Yes/No
Internet : Yes/No
TK

To

The District Court
Nagapattinam.

M.GOVINDARAJ, J.

TK

PRE-DELIVERY ORDER MADE IN C.R.P (PD) NO.1674 OF 2017

24.11.2017