

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.3144 and 3145 of 2011

&

M.P.Nos.1,1 of 2011

K.A.Kumaresan

.. Petitioner in
both CRPs.

Vs.

P.Ramesh Babu

.. Respondent in
C.R.P.No.3144 of 2011

P.Neelavathi (died)
1.P.Sargunam
2.P.Panneer selvam
3.P.Nirmala
4.P.Sivakumar
5.P.Ramesh Babu

.. Respondents in
C.R.P.No.3145 of 2011

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal order dated 03.12.2010 in I.A.Nos.133 & 135 of 2010 in O.S.Nos.91 of 2004 & 60 of 2006 on the file of the Additional Special Court, Krishnagiri.

For Petitioner : Mr.H.Adaikala Arockiaraj

For Respondents : Not ready in Notice
in both CRPs.

COMMON ORDER

The Civil Revision Petitions are filed against the fair and decretal order dated 03.12.2010 in I.A.Nos.133 & 135 of 2010 in O.S.Nos.91 of 2004 & 60 of 2006 on the file of the Additional Special Court, Krishnagiri.

2. The issues involved in both the civil revision petitions are one and the same and hence, they are disposed of by this common order.

3. The petitioner is defendant in both the suits in O.S.Nos.91 of 2004 and 60 of 2006. The respondent in C.R.P.No.3144 of 2011 is the plaintiff in O.S.No.91 of 2004 and the respondents in C.R.P.No.3145 of 2011 are the plaintiffs in O.S.No.60 of 2006. The respondents filed the suits for recovery of sum of Rs.1,51,780/- and Rs.3,03,560/- respectively. The petitioner filed written statement on 17.01.2005 in O.S.No.91 of 2004 and filed written statement on 02.09.2006 in O.S.No.60 of 2006 and is contesting the suit. The trial commenced. The respondents let in evidence and filed proof affidavit. The suits were posted for cross-examination of P.W.1. At that stage, the petitioner filed I.A.No.133 of 2010 in O.S.No.91 of

2004 and I.A.No.135 of 2010 in O.S.No.60 of 2006 for rejection of plaint.

4. According to the petitioner, the respondents filed the above suits with deficit Court fee of Rs.11,384/- and Rs.22,767/- respectively. The respondents paid Rs.1.00 at the time of presentation of the suits. After delay of 1750 and 2430 days respectively, the respondents paid Court fee and the suits were numbered and taken on file. As the respondents did not pay the deficit Court fee within the period of limitation, the suits are barred by limitation and prayed for rejection of plaint.

5. The respondents filed counter affidavit and denied all the averments made in the said applications and submitted that the respondents had already filed I.A.Nos.216 & 217 of 2004 in O.S.No.91 2004 and I.A.Nos.212 & 213 of 2006 in O.S.No.60 of 2006 to condone the delay of 1715 and 2360 days and to extend the time to pay the deficit Court fee. The learned Judge on being satisfied with the reasons given by the respondents, allowed the applications for condonation of delay and extension of time. The respondents paid the deficit Court fee and the suits were numbered.

The petitioner did not challenge the said order. The present applications filed by the petitioner for rejection of plaint are not maintainable.

6. The learned Judge considering the averments made in the affidavit, counter affidavit and the judgments relied on by the counsel for the parties, dismissed the applications holding that the Hon'ble Apex Court held that after Court has passed the order in application filed under Section 149 of C.P.C., the application for rejection of plaint is not maintainable.

7. Against the order of dismissal dated 03.12.2010 in I.A.Nos.133 & 135 of 2010 in O.S.Nos.91 of 2004 & 60 of 2006, the present civil revision petitions are filed by the petitioner.

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

9. The grievance of the petitioner is that when the respondents paid the deficit Court fee, the suits were barred by limitation. This contention is untenable. The learned Judge allowed

the applications filed by the respondents for condonation of delay in paying the deficit Court fee and extended the time for paying the deficit Court fee. Only after the said order being passed by the learned Judge, the respondents paid the deficit Court fee and the suits were numbered.

10. The learned Judge considering the judgment of the Hon'ble Apex Court reported in **2009 AIR SCW 5385 (P.K.Palanisamy v. N.Arumugam and another)**, wherein it has been held that the application for rejection of plaint is not maintainable, after application filed under 149 C.P.C. is allowed, dismissed the applications filed under Order VII Rule 11 of C.P.C. In the circumstances, there is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 03.12.2010.

11. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

24.08.2017

Index : Yes/No

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V.M.VELUMANI, J.

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To

The Additional Special Judge,
Krishnagiri.



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& M.P.Nos.1,1 of 2011

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