

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2017

CORAM

THE HONOURABLE Mr. JUSTICE M.SUNDAR

C.R.P.No.837 of 2017
and CMP.No.4124 of 2017

R.R.Subramaniam

.. Petitioner

vs.

1.S.Sivasamy

2.S.Mylsamy

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order fair and final order made in I.A.No.220 of 2015 in O.S.No.857 of 2011 dated 18.08.2015 on the file of the II Additional District Munsif, Coimbatore.

For Petitioner : Mr.Debenington for
M.S.Charles

ORDER

Sole defendant in the Trial Court is the revision petitioner before this Court.

2. Sole defendant in the suit is the lone revision petitioner before this Court. The two plaintiffs in the Trial Court are the two respondents before this Court. Main suit is one for permanent and mandatory injunctions. It is not necessary to set out those factual details here, considering the limited scope of this Civil Revision Petition.

3. For the sake of convenience and clarity, parties in the revision petition are referred to by their respective ranks in the suit in the trial Court .

4. Sole defendant in the Trial Court, took out an application in I.A.No.220 of 2015, under Order VIII Rule 9 of the Code of Civil Procedure, 1908 (hereinafter referred as 'C.P.C.' for brevity) with a prayer to grant leave to file additional written statement and receive the same.

5. There are two reasons given by the sole defendant for filing of additional written statement. One reason is that some documents were left out in the original written statement, that was filed as early as 12.08.2011. The other reason given is that the plea of limitation has not been raised in the original written statement.

6. After hearing both sides, the learned Trial Judge by an order dated 18.08.2015 dismissed the application holding that the additional written statement cannot be permitted to be filed for such reasons under Order VIII Rule 9 C.P.C.

7. I have perused the order of the Trial court.

8. I am unable to see any infirmity or illegality in the same, owing to reasons that I would spell out in the paragraphs infra.

9. With regard to the plea of limitation, the same need not be set up as a defence. That is very clear even from a bare reading Section 3 of the Limitation Act which reads as follows:

“(1) subject to the provisions contained in sections 4 to 24(inclusive), every suit instituted appeal preferred and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(2) For the purpose of this Act:-

(i) in an ordinary case, when the plaint is presented to the proper officer:

ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

iii) in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator;

b) any claim by way of a set off, or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted

i) in the case of set off, on the same date as the suit in which the set off is pleaded;

ii) in the case of a counter claim, on the date on which the counter claim is made in Court;

c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that Court.”

Therefore, the Trial Court will look into the plea of limitation even though it has not been set up as defence, if it is raised in the argument.

10. The above observation will suffice to safeguard the interest of the sole defendant in the Trial court qua plea of limitation.

11. With regard to documents said to have been left out, it is seen that no documents have been filed with the additional written statement and therefore, the plea is untenable.

12. Therefore, as stated supra, I find no infirmity in the order that has been called in question. Civil Revision Petition fails and is dismissed. Consequently, Civil Miscellaneous Petition is closed.

04.04.2017

Index:Yes/No
Internet:Yes/No
kkd

To

The II Additional District Munsif,
Coimbatore.

M.SUNDAR,J

kkd

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