

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2017

CORAM

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

CRP(PD)Nos.4015 and 4548 of 2011 and
M.P.Nos.1 and 1 of 2011

1. Karpagam
2. Duraisamy
3. V.Kumar
4. Nagavalli .. Petitioners in CRP No.4015 of 2011

1. R.Veerappan
2. R.Devandran
3. R.Arunagiri .. Petitioners in CRP No.4548 of 2011

..Vs..

1. M.Palani
2. M.Shanmugam .. Respondents in CRP Nos.4015
and 4548 of 2011

Prayer:-

Civil Revision Petitions filed under Article 227 of Constitution of India to set aside the order dated 16.03.2011 passed in I.A.Nos.24 and 25 of 2011 in O.S.No.67 of 2008 on the file of learned Subordinate Judge, Tambaram, Chennai respectively.

For Petitioners : Mr. Ravikumar Paul for
Mr.Adhithya

For Respondents : Mr.N.R.Anantharamakrishnan

COMMON ORDER

These petitions are filed to set aside the order dated 16.03.2011 passed in I.A.Nos.24 and 25 of 2011 in O.S.No.67 of 2008 on the file of learned Subordinate Judge, Tambaram, Chennai respectively.

2. The petitioners in C.R.P.No.4015 of 2011 are the defendants 5 to 8 and the petitioners in C.R.P.No.4548 of 2011 are the defendants 9 to 11, the respondents in both the CRPs are the plaintiffs in O.S.No.67 of 2008. The respondents filed a suit originally against the defendants 1 to 3 claiming compensation. The 1st respondent filed written statement in the month of February 1999. During the service stage of summons, the 2nd respondent was reported as dead. The legal representatives of the 2nd respondent, petitioners in C.R.P.No.4015 of 2011, who were brought on record, were impleaded as respondents/defendants 4 to 8 as per order passed in I.A.No.752 of 2004. Consequently during the pending of the suit, the 1st respondent also died on 19.01.2006. The petitioners in CRP No.4548 of 2011 were impleaded as legal representatives of the 1st respondent as defendants 9 to 11. As per order passed in I.A.No.543 of 2006, the petitioners filed a memo dated 06.02.2004 adopting the written statement filed by the 1st respondent and the said memo was recorded by the court. Trial commenced, parties were let in evidence and the suit was

posted for arguments. At that stage, the petitioners in CRP No.4015 of 2011 have filed an application in I.A.No.24 of 2011 and the petitioners in CRP No.4548 of 2011 have filed an application in I.A.No.25 of 2011 against the respondents seeking permission to file additional written statement.

3. According to the petitioners, after change of counsel, the present counsel has stated that additional written statement has to be filed with additional necessary facts.

4. The respondents filed counter and opposed the said applications. According to the respondents, only to fill up lacuna, the present applications are filed. The petitioners have come out with the present petitions after commencement of trial when the suit is posted for arguments with a new case.

5. The learned Judge considering the averments in the plaint and the relief sought for in the suit, averments in the written statement, especially, filed by the 1st respondent and additional written statement sought to be filed, affidavit and counter affidavit dismissed the applications holding that the petitioners ought to have filed additional

written statement at the earlier stage and having adopted written statement filed, they are not entitled to seek permission to file additional written statement containing inconsistent and a new plea.

6. Against the said common order dated 16.03.2011 made in I.A.Nos.24 and 25 of 2011, the the present two civil revision petitions have been filed.

7. Heard the learned counsel for the petitioners, learned counsel appearing for the respondents 1 and 2 and perused the materials placed on record.

8. From the materials on record, it is seen that the respondents have filed a suit claiming compensation. The 1st defendant has denied his liability to pay compensation and also took a plea that claim is barred by limitation. After being impleaded as defendants 4 to 11, the petitioners have filed memo dated 06.02.2007 and adopted the written statement filed by the 1st defendant.

9. According to the petitioners after change of counsel, their present counsel advised them to file additional written statement with averments made therein. The reason given by the petitioners is not a valid reason

and has filed applications belatedly, after commencement of trial. The learned Judge having gone through the original written statement and additional written statement held that plea of limitation was already taken by the 1st defendant and that the petitioners are introducing a new case contrary to the plea taken in the written statement filed already. The learned Judge on considering the materials placed on record has come out with the conclusion that the petitioners are taking inconsistent plea, which they are not entitled to.

10. For the above reasons, the civil revision petitions are devoid of merits and the same are dismissed. No costs. Consequently connected miscellaneous petitions are closed.

20.06.2017

ssd
Index :Yes / No
Internet:Yes / No
Speaking Order/Non Speaking Order

To
The learned Subordinate Judge,
Tambaram, Chennai

V.M.VELUMANI,J

ssd

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M.P.Nos.1 and 1 of 2011

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