

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.04.2017

Pronounced on : 02.06.2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. PD No.3007 of 2015
and M.P.No.1 of 2015**

1.Mrs.Kalithai

2.P.Ramachandran

...

Petitioners

Vs

1.P.Karunanidhi

2.Ms.Seethalakshmi

3.Ramasamy

4.The Member Secretary

Chennai Metropolitan Development Authority,

No.1, Gandhi Irwin Road,

Egmore,

Chennai – 600 008.

5.M/s.Flexopack Private Ltd.,

Rep.by its Director,

Mrs.S.Pushpam

S/o S.Semmalai,

No.311/19, Alaguvinnagar Koil Street,

Alagapuram,

Salem – 636 016.

...

Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and final order dated 05.06.2015 made in I.A.No.443 of 2013 in O.S.No.61 of 2013 on the file of the Principal District Judge of Kancheepuram District at Chengalpattu.

For Petitioners : Mr.N.C.Ramesh
Senior Counsel
for Mr.N.Damodaran

For Respondents : Mr.V.Anand

ORDER

This Civil Revision Petition is filed against the fair and final order dated 05.06.2015 made in I.A.No.443 of 2013 in O.S.No.61 of 2013 on the file of the Principal District Judge of Kancheepurram District at Chengalpattu.

2. The petitioners are the defendants 1 & 6, first respondent is the plaintiff and the respondents 2 to 5 are defendants 2 to 5 in the suit in O.S.No.61 of 2013 on the file of the Principal District Judge of Kancheepurram District at Chengalpattu. The 1st respondent originally filed suit in C.S.No.141 of 2011 on the file of this Court for specific performance of agreement of sale dated 13.12.2007 and 20.05.2009 or in alternative, directing the petitioners and respondents 2 & 3 to repay the advance amount of Rs.71,00,000/- with interest @ 15% per annum and to grant a permanent injunction restraining the petitioners and respondents 2 to 6 from anyway alienating, dealing or encumbering the suit property to any 3rd party/parties. The plaint in C.S.No.141 of 2011

was returned by this Court on the ground that the suit properties does not fall within the original territorial jurisdiction of this court and therefore the suit is not competent in this Court. Consequently, the plaint is ordered to be returned to the first respondent/plaintiff for presentation before the court of competent jurisdiction.

3. On 14.02.2013, the learned counsel for the first respondent took the return from the Registry of this Court and on 15.02.2013, re-presented the same before the District Court of Kancheepuram at Chengalpattu. The Registrar of the District Court returned the plaint on 19.02.2013 for compliance of various defects pointed out therein. On 18.03.2013, the first respondent re-presented the plaint adding two reliefs, claiming Rs.40 lakhs each being cost of construction of compound wall and medical bill paid for the medical expenses of Mr.T.K.Pandithurai who is the owner of the property. The first respondent also re-presented the original plaint returned by this Court. After various returns, suit was numbered as O.S.No.61 of 2013. From the summons and copy of the plaint served on the petitioners, it is seen that the new plaint has been presented before the District Court, Kancheepuram at Chengalpat with new averments and new reliefs. The new averments and new reliefs were not found in the original plaint

served on the petitioners by this Court while C.S.No.141 of 2011 was pending before this Court.

4. In view of the above facts, the petitioners filed I.A.No.443 of 2013 under Order VII Rule 11 CPC to reject the plaint. According to the petitioners, the first respondent has suppressed various material facts, i.e. Cancellation of Power of Attorney executed by the owner T.K.Pandithurai. The first respondent was informed about the cancellation of Power of Attorney, in the reply notice dated 03.09.2009. Further, T.K.Pandithurai, owner of the property and the second respondent Power of Attorney have sent separate replies to the notice issued by the first respondent. The first respondent has stated that both T.K.Pandithurai and the second respondent Power of Attorney have sent common reply. These facts amounts to suppression of materials facts. The suit presented before the District Court is barred by limitation. The first respon, in Para 19 (B) of the new plaint stated that the order of this Court dated 21.01.2013 was filed alongwith the plaint but no such order was filed alongwith the plaint. This Court has returned the plaint in C.S.No.141 of 2011 to be re-presented in competent court. After taking return of the plaint, the first respondent has to re-present the same before the competent court and proceed with his case based on the

averments made in the plaint. It is not open to the petitioners to amend the plaint by adding new averments and new relief or delete the averments already made without leave of the Court.

5. The first respondent filed counter and denied all the averments made in the affidavit filed in support of the petition and stated that the plaint can be rejected only if the contents mentioned in ground (a) to (f) in Order 7 Rule 11 CPC based on various averments made in the affidavit, the plaint cannot be rejected. The objections raised by the petitioners can be decided only after the trial by letting in evidence and plaint cannot be rejected in a summary manner without detailed examination. The reply notice dated 03.09.2009 wherein it has been stated that power has been cancelled on 30.06.2008 itself are all beyond the scope of the present petition under Order 7 Rule 11 CPC. Whether the first respondent has approached this Court with clean hands or not, whether the plaint is not genuine cannot be decided based on some documents relied on by the first petitioner/first defendant. The present plaint is a fresh plaint and the earlier plaint filed before this Court is saved by the operation of limitation Act as the first respondent has re-presented in the appropriate court diligently without any laches after taking return from this Court.

6. The petitioners filed reply affidavit to the counter filed by the first respondent denying various averments made in and reiterated the averments in the affidavit filed in support of I.A.No.443 of 2016 and prayed for rejection of the plaint on the ground that the first respondent has made unauthorised amendments without leave of the court for amending the plaint with a new prayer which amounts to filing of fresh suit on the same is barred by limitation.

7. The learned Judge, considering the averments in the affidavit, counter affidavit, reply affidavit and averments in the plaint, arguments of the learned counsel for the parties, dismissed the application holding that the suppression of facts, misrepresentation and fraud will not be a ground for rejection of plaint; the limitation point is a mixed question of law and facts which can be decided only by considering the facts let in by the parties and plaint cannot be rejected on the ground that the petitioners were served only with copy of the new plaint. The said ground is not prescribed as one of the ground under Order 7 Rule 11 CPC. The amendment and additional prayer mentioned in the new plaint are not incorporated in the original plaint.

8. Against the order of dismissal dated 05.06.2015 made in I.A.No.443 of 2013 in O.S.No.61 of 2013, the present Civil Revision Petition has been filed.

9. The learned Senior Counsel for the petitioners submitted that this Court returned the plaint in the suit filed by the first respondent in C.S.No.141 of 2011 to be re-presented before the competent court. The first respondent made additions and included new prayers which amount to filing of fresh suit and will not be presentation of the plaint returned by this Court and the same is barred by limitation. The first respondent cannot amend and include the new prayer without permission or leave of the Court. Mr.T.K.Pandidurai, original owner of the property sent a reply dated 03.09.2009 to the first respondent which is filed as Doc.No.13 alongwith the plaint. The averments in the said reply has become part and parcel of the plaint as the said document is filed under Order 6 Rule 14 (1) CPC. In the said notice, T.K.Pandidurai, specifically stated that power given to the first respondent has been cancelled and fresh agreement of sale dated 20.05.2009 is not binding on him. The first respondent had deliberately suppressed this fact and played fraud on the court. Any omission to mention any one of material fact would render pleading bad and it will be no pleading at all or cause of action for the

suit. Failure on the part of the plaintiff to mention material facts as well as misrepresentation will be playing fraud on the court and clear abuse of process of law. The learned Judge ought to have considered the contents of document No.13, reply notice issued by T.K.Pandidurai, the same being part of the plaint and as per provisions of Order 7 Rule 11 CPC, the Court has to take into account the averments contained in the plaint and the documents filed alongwith the plaint while deciding the application under Order 7 Rule 11 CPC for rejection of the plaint. The plaint is liable to be rejected on the ground of abuse of process of court. The learned Senior Counsel further contended that first respondent has not complied with Order 5 Rule 2 and Order 7 Rule 9 CPC. As per these provisions, the first respondent has to serve the correct plaint as admitted by the court and taken on file.

10. The learned Senior Counsel relied on the Full Bench judgment of this Court reported in ***2006 (4) CTC 805 [B.Suresh Chand v. State of Tamil Nadu]*** and submitted that the learned Judge has committed an irregularity in not exercising his power properly as he failed to consider the ratio in the Full Bench judgment referred to above. The learned Judge has not even considered the Full Bench judgment which was relied on by

the learned counsel for the petitioner and the learned Judge ought to have followed the ratio of the Full Bench judgment of this Court.

11. From the records, it is seen that while presenting the plaint which was returned by this court before the District Court, Chengalpet, the first respondent has made many alternations and introduced new prayer. The first respondent has not only presented the plaint returned by this Court but also filed anew plaint alongwith the original plaint returned by this Court. When the petitioners filed I.A.No.443 of 2013 for rejection of plaint, the first respondent filed I.A.No.777 of 2014 seeking permission to amend the plaint, as mentioned in the petition. When the petition was taken up for hearing, it was pointed out by the learned District Judge that the amendment sought for in the plaint are not found in the original plain taken on file by the District court, Chengalpet while numbering O.S.No.61 of 2013. The learned counsel for the first respondent made an endorsement in I.A.No.777 of 2014 that the petition may be dismissed as withdrawn. The petitioners and other defendants opposed the said permission sought for by the first respondent. The learned Judge, taking into consideration that the first respondent has not sought for permission for filing fresh petition on the same subject matter, dismissed the said application as withdrawn. Inspite of being put

on notice, the new plaint filed by the first respondent was not taken on file and the first respondent deliberately served only the new plaint alongwith summons. By serving a copy of the plaint which is not on file, the first respondent has failed to comply with Order 5 Rule 2 and Order 7 Rule 9 CPC. This violation on the part of the first respondent to comply with the said provision is a ground for rejection of plaint as per Order 7 Rule 11 (f) CPC. The learned Senior Counsel relied on the following judgments –

(i) 2002 (2) SCC 445 [Gurdial Singh v. Raj Kumar Aneja]

13. A pleading, once filed, is a part of the record of the Court and cannot be touched, modified, substituted, amended or withdrawn except by the leave of the Court. Order 8 Rule 9 of CPC prohibits any pleadings subsequent to the written statement of a defendant being filed other than by way of defence to a set-off or counter-claim except by the leave of the Court and upon such terms as the Court thinks fit. Section 153 of CPC entitled "General power to amend" provides that the Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or

issue raised by or depending on such proceeding. Order 6 Rule 17 of the CPC confers a discretionary jurisdiction on the Court exercisable at any stage of the proceedings to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The rule goes on to provide that all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Unless and until the Court is told how and in what manner the pleading originally submitted to the Court is proposed to be altered or amended, the Court cannot effectively exercise its power to permit amendment. An amendment may involve withdrawal of an admission previously made, may attempt to introduce a plea or claim barred by limitation, or, may be so devised as to deprive the opposite party of a valuable right accrued to him by lapse of time and so on. It is, therefore, necessary for an amendment applicant to set out specifically in his application, seeking leave of the Court for amendment in the pleadings, as to what is proposed to be omitted from or altered or substituted in or added to the original pleadings.

(ii) 2012 (4) CTC 308 [The Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust]

6) It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the Court, insufficiently stamped and not rectified within the time fixed by the Court, barred by any law, failed to enclose the required copies and the plaintiff fail to comply with the provisions of Rule 9, the Court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order VII Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial.

8) While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of

action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.

(iii) 2013 (11) SCC 531 [Bhaskar Laxman Jadhav & Ors. v. Karamveer Kakasaheb Wagh Education Society & ors.]

44. It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision making to the Court. True, there is a mention of the order dated 2nd May 2003 in the order dated 24th July 2006 passed by the JCC, but that is not enough disclosure. The petitioners have not clearly disclosed the facts and circumstances in which the order dated 2nd May 2003 was passed or that it has attained finality.

(iv) 2010 (14) SCC 38 [Ramjas Foundation and anr. v. Union of India & Ors.]

21. The principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial

forums. The object underlying the principle is that every Court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have bearing on adjudication of the issue(s) arising in the case.

12. Per contra, the learned counsel for the first respondent submitted that the petitioners have not made out any case for rejection of plaint. The ground raised by the petitioners are not the ground for rejection of plaint as per Order 7 Rule 11 CPC. Not mentioning material fact or misrepresentation will not be a ground for rejection of plaint. The allegation that the first respondent has suppressed the material fact, misrepresented or committed a fraud or abuse process of law can be decided only after conclusion of trial by considering the evidence let in by the parties. The learned counsel for the first respondent further submitted that the first respondent has paid court fee or Rs.33,00,000/- and the first respondent unintentionally served copy of the new plaint and it is not deliberate and wanton and the first respondent may be given an opportunity to serve the correct plaint. It is the duty of the court before issuing of summons to the defendant to verify whether the plaintiffs have filed corrected copy of the plaint as admitted by the Court.

13. The learned counsel for the first respondent also submitted that after presentation of the plaint in the District Court, Chengalpet, the same was returned for maintainability and at that time, no issue was raised with regard to any compliance or Order 7 Rule 9 CPC. The learned counsel for the first respondent relied on the following judgments –

(i) AIR 2003 SC 189 [Salem Advocate Bar Association, Tamil Nadu v. Union of India]

16. Our attention has been drawn to Order 7, Rule 11 to which clauses (c) and (f) have been added which enable the Court to reject the plaint where it is not filed in duplicate or where the plaintiff fails to comply with the provisions of Rule 9 of Order 7. It appears to us that the said clauses being procedural would not require the automatic rejection of the plaint at the first instance. If there is any defect as contemplated by Rule 11 (e) or non-compliance as referred to in Rule 11 (f), the Court should ordinarily given an opportunity for rectifying the defects, and in the event of the same not being done the Court will have the liberty or the right to reject the plaint.

(ii) AIR 2011 AP 14 [Vadla Narasimhaiah and Ors v. Vadla Kondaiah and Ors.

4. Further, the grounds on which the plaint has to be rejected are dealt with under Order VII Rule 11, CPC and as per the said provision of law, it is only when the plaint does not disclose a cause of action or the relief claimed is under-valued or the suit itself is barred by any law.

(iii) AIR 1956 Hyderabad 133 [Radakishen v. Wall Mohammed]

3. We have given careful consideration to the arguments advanced. In the first argument of the appellant, we do not see any force. The general power of attorney clearly refers to Akola transactions. There is nothing in the plaint to show that the suit matter relates to any Akola transactions. Shri Nandapurkar, the learned advocate for the plaintiff very candidly conceded that the plaint does not show that the subject-matter of the suit relates to Akola transactions.

When the general power of attorney does not authorise Balkishen to take action in other transactions excepting Akola transactions, we

fail to understand how he could sign the present plaint. We are therefore of the opinion that the general power of attorney given does not embrace the suit transaction and cannot therefore help the appellant.

We do not altogether agree with the second contention of the learned advocate that the plaint could not be rejected under O.7 R.11, CPC. No doubt, O.7 Rule 11 give instances of the rejection of the plaint in cases of non-disclosure of causes of action, undervaluation of the relief claimed, insufficiency of court-fees or claim being barred by any law; the instances given, in our opinion, cannot be regarded as exhaustive of all the cases in which a court can reject a plaint or as limiting the inherent powers of the court in respect thereof.

14. Heard the learned Senior Counsel appearing for the petitioners, respondents and perused the materials available on record.

15. The contention of the learned Senior Counsel for petitioners that the plaint is liable to be rejected on the ground of suppression of material fact, misrepresentation, fraud and abuse of process of law has considerable force. The Full Bench of this Court in the judgment reported in **2006 (4) CTC 805** *cited supra* has categorically held that

omission to mention even any one of the material fact would render the pleading bad and amount to their being no pleading or cause of action for the suit. In the present case, by reply notice dated 03.09.2009 filed as Document No.13 alongwith the plaint, late T.K.Pandithurai, original owner has categorically stated that Power of Attorney dated 12.10.2007 appointing the second respondent as his agent was cancelled by registered deed of cancellation dated 30.06.2008 bearing Document No.943 of 2008 and that the registered agreement of sale dated 20.05.2009 registered as Document No.2434 of 2009 is not binding on him. He also denied having received various amounts as alleged by the first respondent and has stated that he received only Rs.5,00,000/- as advance. The first respondent has not mentioned these facts in the plaint which are primary and basic facts for deciding the issue in the suit. The decree for specific performance is the discretionary relief. When a plaintiff suppresses the material fact, it amounts to playing fraud on the court and amounts to abuse of process of court. The Full Bench judgment of this Court referred to above is squarely applicable to the facts of the present case and plaint is liable to be rejected.

16. The further contention of the learned Senior Counsel for the petitioners that the plaint is liable to be rejected for not complying with

Order 5 Rule 2, Order 7 Rule 9 CPC is acceptable. Order 5 Rule 2 and Order 7 Rule 9 of CPC read as follows–

Order 5 Rule 2 CPC

2. Copy of plaint annexed to summons.-

Every summons shall be accompanied by a copy of the plaint.

Order 7 Rule 9 CPC

9. Procedure on admitting plaint.- *Where the Court orders that the summons be served on the defendants in the manner provided in rule 9 of Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within seven days from the date of such order along with requisite fee for service of summons on the defendants.*

17. A reading of the above provisions clearly shows that the first respondent has to serve the corrected copy of the plaint on the defendants. The reason behind Order 5 Rule 2 and Order 7 Rule 9 CPC is to enable the defendants to put forth their case properly. When a copy of the plaint not admitted by the Court is served with the defendants, it is a ground for rejection as per Order 7 Rule 11 (f) CPC which reads as follows –

Order 7 Rule 11 (f) CPC

11. Rejection of plaint - *The plaint shall be rejected in the following cases:—*

- (a)
- (b)
- (c)
- (d)
- (e)
- (f) *where the plaintiff fails to comply with the provision of Rule 9.*

18. The learned counsel for the first respondent has admitted that copy of the plaint as admitted by the Court was not served on the petitioners. According to the first respondent, it is the duty of the Court to verify whether the plaintiffs have filed correct copy of the plaint to be served on the defendants. This contention is contrary to the above provisions. It is the duty of the plaintiffs to file correct copy of the plaint and to take steps to serve on the defendants. If it is the duty of the Court to verify and serve the correct copy of the plaint on the defendants, Order 7 Rule 11 (f) CPC becomes redundant. Order 7 Rule 11 (f) CPC clearly stated that if the plaintiff fails to comply with Order 7 Rule 9 CPC, the plaint can be rejected. As per Rule 9, it is the duty of the plaintiff to take steps to serve the summons on the defendant alongwith copy of the

plaint, as contemplated under Order 5 Rule 2 CPC. The first respondent cannot blame the court for not serving the correct copy of the plaint on the petitioners and other defendants.

19. The learned Judge has not considered Order 5 Rule 2, Order 7 Rule 9 and Order 7 Rule 11 (f) CPC in proper perspective manner and erred in holding that the plaint cannot be rejected on the ground the petitioners were served only a copy of the new plaint namely wrong plaint. These reasoning is contrary to the provisions of Order 7 Rule 11 (f) CPC. The contention of the learned counsel for the first respondent that the first respondent has paid court fee of Rs.33,00,000/- and he must be given opportunity to serve the copy of the correct plaint on the petitioners and other defendants deserves no merits. In the present case, the first respondent has deliberately took steps and served wrong copy of the plaint. This is not a case wherein the first respondent has not taken steps under Order 7 Rule 9 CPC. On the other hand, the first respondent has taken steps to serve the summons as per Order 7 Rule 9 CPC but deliberately filed copy of the new plaint which was not taken on file and first respondent was put on notice that the additions and new prayer were not found in the original plaint which was taken on file by the Court. Further, in addition to non-compliance of Order 5 Rule 2 and Order 7

Rule 9 CPC, the plaint is liable to be rejected on the ground of suppression of materials facts and abuse of process of law. In these circumstances, the judgments relied on by the learned counsel for the first respondent are not applicable to the facts of the present case.

20. This Court has got extraordinary discretionary powers under Article 227 of the Constitution of India to reject the plaint when it is brought to the notice of the Court that the plaint presented before the lower court is clear abuse of process of court. The said power is judicial as well as administrative power having over all supervisory power over the subordinate courts. When the lower court fails to exercise its power properly and when there is dereliction of duty causing injustice to a party, this Court can exercise its extraordinary discretionary power under Article 227 of the Constitution of India. It will be useful to refer the following judgments –

(i) **1998 (3) SCC 573 [K.Moddi Vs. and others]**, wherein at paragraph 44, it has been held as follows:-

“44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata. But if the same issue is sought

to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding."

(ii) 2013 (6) CTC 809 [N.A.Chinnasamy and another Vs. S.Vellingirinathan], wherein at paragraphs 38, 50 and 52, it has been held as follows:-

"38. As the revision petition has been filed under Article 227 of the Constitution of India, it being the superintending power of the High Court over all subordinate Courts, including Tribunals, this Court can interfere, only if there is clear abuse of process of Court, based on the averments or pleadings of the plaint. If it is established that the suit has been filed as an abuse of process of Court, in order to prevent the abuse of process of court and to avoid miscarriage of justice, this Court has to order strike off the plaint. The Hon'ble Supreme Court in the decisions referred to above has categorically ruled that where there is abuse of process of Court or filing the suit itself is contrary to justice and against public policy, this Court has to exercise its power under Article 227 of the Constitution. If it is a frivolous or vexatious suit, as per the pleadings of the plaint and the Court process is being wasted, this

Court has to exercise its power under Article 227 of the Constitution of India to strike off the plaint. However, such jurisdiction should be exercised sparingly. When the Court is satisfied that there is no chance of the suit succeeding, as held by the Hon'ble Apex Court in K.K. Modi v. K.N. Modi (cited supra), petition filed under Article 227 of the Constitution of India, has to be allowed by this Court, to prevent abuse of process of law and to meet the ends of justice.

(iii) **2013 (1) LW 491 [N.Babu Vs. S.Shanmugam and others]**, wherein at paragraphs 23 and 25, it has been held as follows:-

“23. In the judgment in Southern and Rajamani Transport Private Limited v. R. Srinivasan (2010 (4) CTC 690), it has been held as follows:

“29. From the cumulative reading of the decisions referred to supra, it is easily discernible that Article 227 of the Constitution of India can be invoked by every High Court under the guise of superintendence, on the following grounds :

(a) to prevent abuse of process of law

(b) to prevent miscarriage of justice

(c) to prevent grave injustice

(d) to establish both administrative as well as judicial power of High Court.”

25. Further, though an alternative remedy is available to the revision petitioner, for striking off the suit under Order 21 Rule 97 of the Code of Civil Procedure, when it is a clear case of re-litigation and abuse of process of Court and when the facts are not controverted and admitted by the plaintiff/first respondent, the Court can exercise the extraordinary jurisdiction of the Court under Article 227 of the Constitution of India and strike off the plaint

and as a matter of fact, this Court and Honourable Supreme Court held that the right conferred under Article 227 must be exercised very sparingly and it is also settled law that when the suit is a clear abuse of process, the suit can be struck off by resorting to the provisions of Article 227 of the Constitution of India.”

(iv) 2009 (2) CTC 57 [Dindigul Pettai Sathangudi Shatriya Nadar Uravinmurai and another Vs. Selvaraj and another], wherein at paragraphs 11, 20, 21 and 23, it has been held as follows:-

“11. As per the above said dicta, if a party has initiated a vexatious or frivolous litigations in order to harass the other party, the Court can nip the attempt in the bud itself, irrespective of the stage of such proceedings.

20. In considered opinion of this Court, whenever this Court finds any abuse of process of Courts and if the proceedings initiated are possessing the elements of frivolousness and vexatiousness, this Court can very well pass appropriate orders, invoking Article 227 by exercising supervisory jurisdiction.

21. Following the dictum in Surya Dev Raj's case (supra) the interest of justice, it is also to be observed that in all the cases it need not be held that a particular party has to exhaust the alternative remedy and however every case depends upon its nature, facts and circumstances.

23. As far as the scope of exercising the supervisory jurisdiction under Article 227 is concerned, the duty of this Court is to infer or discern any vexatious or frivolousness in the proceedings initiated.”

21. For the above reasons and in view of the Full Bench judgment,

other judgments relied on by the learned Senior Counsel for the petitioners and judgments referred by him with regard to abuse of process of court, I hold that the order of the learned Judge is liable to be set aside holding that the learned Judge has not properly exercised the power conferred on him and has not properly appreciated the provisions of Order 5 Rule 2, Order 7 Rule 9 and Order 7 Rule 11 (f) CPC.

22. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

02.06.2017

Speaking/Non-speaking order
Index : Yes
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To

The VII Additional Judge,
City Civil Court,
Chennai.

V.M.VELUMANI, J.

rgr

**Pre-delivery order in
CRP PD No.3007 of 2015**

02.06.2017