

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.576 of 2015
& M.P.No.1 of 2015

M/S.Enmas GB Power Project Ltd.,
Rep. by its Managing Director
IV Floor, Guna buildings (Main)
No.443, Anna salai, Teynampet
Chennai-600 008.

.. Petitioner

Vs.

M/S.Kamakotti Industries
Represented by its Managing Partner
Mr.S.Jayaraman
No.1, BHEL Ancillary Estate
BHEL Post, Ranipet-6
Vellore District.

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 23.09.2014 made in I.A.No.7 of 2014 in O.S.No.29 of 2013 on the file of the II Additional District and Sessions Court, Vellore.

For Petitioner : Mr.T.K.S.Gandhi
For Respondent : M/S.M.R.Sakunthala

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 23.09.2014 made in I.A.No.7 of 2014 in O.S.No.29 of 2013 on the file of the II Additional District and Sessions Court, Vellore.

2. The petitioner is the defendant and respondent is the plaintiff in O.S.No.29 of 2013 on the file of the Principal District Court, Vellore. The respondent filed said suit for recovery of money. The petitioner filed I.A.No.7 of 2014 under Order VII Rule 11 of C.P.C. for rejection of plaint on the following grounds:

(i) No cause of action has arisen within the territorial jurisdiction of the Court;

(ii) Non joinder of necessary party namely, Dalkia, Utilities Services P/C, Elizabeth House, 56-60, London road, Staines, Middlesex, TW184BQ, United Kingdom;

(iii) The suit is not filed by a competent person on behalf of the respondent;

(iv) The respondent has not complied with Order III Rule 1 and 2 of C.P.C.;

3. According to the petitioner, all the transactions of the respondent company were taken place within their office at Chennai and therefore, prayed for rejection of plaint.

4. The respondent filed counter affidavit and contended as follows:

(i) Machineries were inspected by the petitioner's technicians and Engineers only at respondent's factory office at BHEL, Ancillary Estate, Ranipet, before despatch;

(ii) Certain machineries were taken delivery from BHEL, Ancillary Estate, Ranipet;

(iii) There is no privity of contract between the respondent and Dalkia, Utilities Services P/C, Elizabeth House, 56-60, London road, Staines, Middlesex, TW184BQ, United Kingdom and they are not necessary parties;

(iv) The respondent is a partnership firm, represented by the Managing Partner and Managing Partner is a competent person to sue on behalf of the respondent.

The respondent submitted that the petitioner has not made out any case for rejection of plaint. Therefore, they prayed for dismissal of the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit, plaint and documents filed along with the plaint, dismissed the application.

6. Against the said order of dismissal dated 23.09.2014 made in I.A.No.7 of 2014, the present Civil Revision Petition is filed by the petitioner/defendant.

7. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

8. The petitioner has filed present application under Order VII Rule 11 of C.P.C. for rejection of plaint. It is well settled that the Court while considering the said application has to consider only the averments made in the plaint and the documents filed along with the plaint. The averments made in the written statement or the documents relied on by the defendant cannot be taken into consideration for rejection of plaint. In the present case, the respondent in para-4 and 7 of the plaint stated cause of action for filing the suit is before the Principal District Court at Vellore. Whether these averments are correct or not can be decided only

after appreciating evidence let in by the parties. The respondent has filed partnership deed and Managing Partner filed suit representing the respondent firm.

9. The contention of the petitioner that the suit is to be rejected for non joinder of party by name Dalkia, Utilities Services P/C, Elizabeth House, 56-60, London road, Staines, Middlesex, TW184BQ, United Kingdom, is not a valid ground for rejection of plaint as per the ingredients of Order VII Rule 11 of C.P.C. The learned Judge has properly considered all the above aspects and dismissed the application by giving cogent and valid reason. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 23.09.2014.

10. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

WEB COPY

22.12.2017

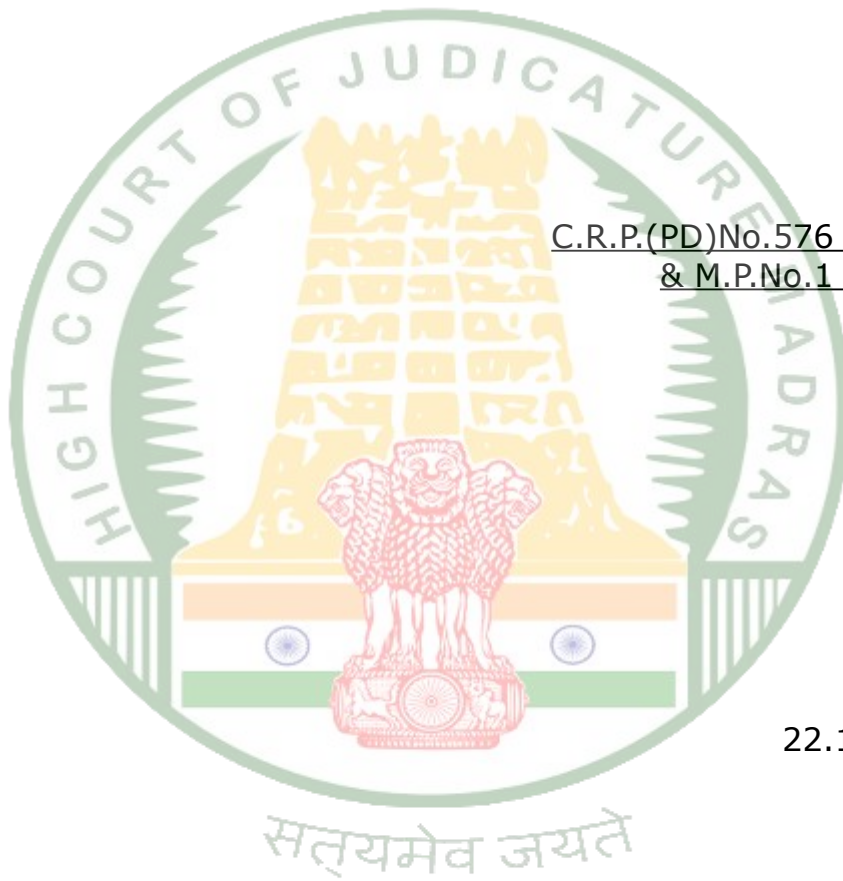
Index : Yes/No
kj

To

II Additional District and Sessions Court, Vellore.

V.M.VELUMANI, J.

kj



C.R.P.(PD)No.576 of 2015
& M.P.No.1 of 2015

22.12.2017

WEB COPY