

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3490 of 2016
& C.M.P.No.17769 of 2016

M.Angappan

.. Petitioner

Vs.

1. Murthy
2. Chittibabu
3. Varalakshmi
4. Sathish
5. Suresh
6. Suthi
7. Sulochana
8. Sathiyamarayanamurthy

..

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 26.08.2016 made in I.A.No.175 of 2015 in O.S.No.188 of 2009 on the file of the District Munsif Court, Sholinghur.

For Petitioner : Mr.D.Rajagopal

For Respondents : Mr.A.Gowthaman

ORDER

This Civil Revision Petition has been filed against the order and decretal order dated 26.08.2016 made in I.A.No.175 of 2015 in O.S.No.188 of 2009 on the file of the District Munsif Court, Sholinghur.

2. The petitioner is the plaintiff and the respondents are the defendants in O.S.No.188 of 2009. The petitioner filed a suit for permanent Injunction. The respondents filed written statement along with counter claim on 18.03.2010. The petitioner filed reply statement in the month of April 2010. After filing of the reply statement, the respondents filed I.A.No.175 of 2015 for amendment of written statement containing counter claim stating that inspite of due diligence they could not have stated the facts, now sought for, by way of amendment.

3. The petitioner opposed the said application on the ground that if amendment is allowed, the entire character of the suit and counter claim will be changed. The relief sought for is barred by limitation.

4. The learned Judge on considering the averments mentioned in the affidavit, counter affidavit, materials available on record allowed the application holding that the relief sought for is not barred by limitation and by amendment, the petitioner will not be prejudiced. The amendment sought for is pre-trial amendment and inspite of due diligence, the respondents could not have included the averments now sought for to be included in the counter claim.

5. Against the said order dated 26.08.2016 made in I.A.No.175 of 2015 in O.S.No.188 of 2009, the present civil revision petition is filed.

6. Heard the learned counsel for the petitioner, learned counsel for the respondents and perused the materials available on record.

7. The contention of the learned counsel for the petitioner is that the learned Judge failed to see that new relief sought for is barred by limitation, but, decided the issue stating that claim is not

barred by limitation and failed to see that by amendment nature of the suit itself is changed.

8. From the materials on record, it is seen that the respondents have filed petition for amendment based on the averments in the reply statement filed by the petitioner. The amendment is sought for before commencement of trial. It is well settled that when the amendment is sought for before commencement of trial, it has to be considered liberally. In view of the well settled legal proposition, I hold that there is no illegality or irregularity in the order passed by the learned Judge warranting interference by this Court. It is open to the petitioner to file additional reply statement to the amendment raising all the objections available to him including a plea that counter claim is barred by limitation. If such plea of limitation is raised by the petitioner, the trial court is directed to consider the same on merits and pass orders without being influenced by the order dated 26.08.2016 made in I.A.No.175 of 2015 and this Order.

9. In the result, this Civil Revision Petition is dismissed. Since the suit is of the year 2009, the trial Court is directed to

dispose of the suit in O.S.No.188 of 2009 as expeditiously as possible, in any event, not later than three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

28.06.2017

Speaking Order/Non-speaking Order
Index :Yes/No
av / ssd

To

The District Munsif Court,
Sholinghur.

V.M.VELUMANI, J.

av/ssd

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