IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2017

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(PD).No.4584 of 2012
and M.P.No.1 of 2012

1. C.Meenambal (Deceased)
2. R.Chandrasekar
3. Radhika Chandrasekar .. Petitioners

Vs.

Buharia Holdings Pvt., Ltd.,
"Buharaia Towers",
7th Floor, No.5, Moores Road,
Chennai – 600 006. .. Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 09.10.2012 made in I.A.No.8729 of 2012 in O.S.No.7182 of 2010 on the file of III Additional City Civil Court, Chennai.

For Petitioners : Mr.K.Rajasekaran

For Respondent : No appearance

O R D E R

The Civil Revision Petition is filed against the fair and decretal order dated 09.10.2012 made in I.A.No.8729 of 2012 in O.S.No.7182 of 2010 on the file of III Additional City Civil Court, Chennai.

2. The petitioners are the defendants and respondent is the plaintiff in O.S.No.7182 of 2010 on the file of the III Additional City Civil Court, Chennai. The respondent filed suit against the first petitioner/Meenambal for recovery of a sum of Rs.24,28,200/- based on two promissory notes dated 14.10.1999 for Rs.15,00,000/- and Rs.2,80,000/-. The third petitioner filed written statement on 12.11.2010 and is contesting the suit.

3. Pending suit, before filing written statement, the said Meenambal died and the petitioners 2 & 3 were impleaded as her legal heirs. Pending C.R.P., the second petitioner also died and third petitioner is the only legal heir of the petitioners 1 & 2. The learned counsel for the petitioners filed a memo to that effect.

4. The respondent filed I.A.No.8729 of 2012 under Section 20 of the Negotiable Instruments Act read with Section 151 C.P.C. to permit him to fill the name of the respondent as payee and name of the first petitioner as drawer in the demand promissory note dated 14.10.1999.

5. According to the respondent, the said Meenambal executed a promissory note in blank and authorised the respondent to fill up the names of the drawer and drawee. The said Meenambal did not raise any objection regarding the execution of the promissory note dated 14.10.1999.

6. The third petitioner filed counter affidavit and denied all the averments made in the application and submitted that execution of the promissory note itself is denied by her in the written statement. The said promissory note is forged one, no authority was given to the respondent to fill up the promissory note. Even if there is any authority to fill up the blanks, the same ought to have been exercised within the reasonable time and before filing of the suit. After the death of drawer, the authority, if any given is extinguished.

7. The learned Judge considering Section 20 of the Negotiable Instruments Act and judgment reported in (1962) 1 MLJ 306 Madras High Court (M.P.Rm.Irulandi Mudaliar v. Syed Ibrahim and others) relied on by the learned counsel for the respondent, allowed the application.

8. Against the said order dated 09.10.2012 made in I.A.No.8729 of 2012, the present civil revision petition is filed by the petitioners/defendants.

9. The learned counsel for the petitioner reiterated the averments made in the counter affidavit as well as the grounds of revision. He submitted that the learned Judge failed to consider the judgment relied on by the petitioners reported in ***AIR 1983 Madras 368 (Sesharal Bajna v. V.C.Subramanian)*** and contended that a blank in promissory note must be filled up within reasonable time and cannot be filled up after filing of suit and after death of the executant.

10. Though notice served on the respondent and his name has been printed in the cause list, there is no representation on

behalf of the respondent either in person or through counsel.

11. Heard the learned counsel for the petitioner and perused the materials available on record.

12. As per Section 20 of the Negotiable Instruments Act, a holder of negotiable instrument is entitled to fill up the blanks. It is well settled that holder of negotiable instrument must fill up the blanks within reasonable time. In the judgment reported in ***AIR 1983 Madras 368 (Sesharal Bajna v. V.C.Subramanian),*** in para-7, it has been held as follows:

> "7. Therefore, the more important point for consideration is, whether the plaintiff is entitled to fill up the blanks long after the filing of the suit. I have carefully considered this argument and I am of opinion that until the drawee's name is inserted before the filing of the suit the instrument is not a promissory note in the eye of law. In other words, unless the plaintiff or the holder exercises the authority under Section 20 of the Act and until it is filled up, it does not import a contract with him and he cannot recover the amount on the instrument. The English law on this subject is that the instrument must be filled up within a reasonable

time and strictly in accordance with the authority given. When the holder does not exercise the authority in filling up the blanks, he can of course derive no benefit from it. The American decisions go to the extent of holding that this act is an utter nullity and no advantage can accrue to him even to the extent of the authority given to him. In Griffith v. Dalton, 1940-2 KB 264, it has been held that 'the prima facie authority to fill in the date given by S.20 of the Bills of Exchange Act, 1882, to the person in possession of the cheque, must at common law, be exercised within a reasonable time', in M.N.P.L. Firm v. Kirman Gyan, (1912) 17 Ind Cas 916 (1) the Lower Burma Chief Court held that 'a payee can fill in a blank inchoate instrument and sue on it himself after filling it or endorse it to someone: but no decree can be passed on a blank instrument not containing the name of the payee'. In Brijbhusan Pande v. Ramjanam Kuer, AIR 1932 Pat 324, a single Judge has held that where the instrument does not mention the name of the payee at all, no decree can be passed on such instrument. It is, of course, stated therein that the payee can fill in the blank instrument and unless he does so, he is not entitled to bring a suit and obtain a decree. In Rangaswami Reddi v. K.Doraiswami Reddi, ILR (1957) Mad 978 : (AIR 1957 Mad 715),

> a Division Bench of our High Court held that the remedy of the promisee is to file a suit on the original cause of action and that he can treat the promissory note as a security or voucher... .. ”

13. From the various judgments referred in para-7 extracted above, it is clear that the holder of negotiable instrument must be filled up the blanks within reasonable time and he must file the suit only after filling up the promissory note. The holder of promissory note is not entitled to decree based on the incomplete promissory note and the remedy available to the said person is to file a suit on the original cause of action. In the present case, promissory note is dated 14.10.1999 and the respondent has filed suit on 01.04.2001, without filling up the names of the drawer and drawee. Only in the year 2012, the respondent has filed the present application to permit him to fill up the blanks in the promissory note. A long before the said application being filed, the executant i.e. first defendant Meenambal died. The learned Judge failed to consider the long delay in filing the application seeking permission to fill up the promissory note and death of the executant and committed irregularity in allowing the application.

14. In the result, the Civil Revision Petition is allowed by setting aside the order of the learned Judge dated 09.10.2012 made in I.A.No.8729 of 2012. No costs. Consequently, connected Miscellaneous Petition is closed.

16.08.2017

Index:Yes/No

Speaking/Non-speaking order

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To

The III Additional City Civil Court,
Chennai.

V.M.VELUMANI,J.

Kj

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