



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.2599 of 2016 (PD)&C.M.P.(MD)No.12260 of 2016

Theni Agro Farms Private Limited,
Having Office at "Soundaryam",
30, Bharathi Colony,
First Street,
Peelamedu,
Coimbatore,
Through its Managing Director,
V.Srinivasaragavan,
S/o. Late N.Venkata Ramanujam,
Bharathi Main Road,
Door No.43, N.R.T.Nagar,
Theni Town,
Theni District.

.. Petitioner

Vs.

R.R.B.Energy Limited,
Having its Office at 164, Trichy Road,
First Floor,
Opposite to D.S.P. Office,
Palladam,
Through its Branch Manager,
Palladam.

.. Respondent

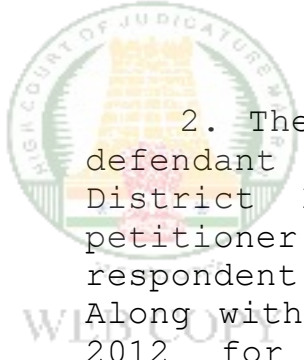
PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, against the order, dated 12.09.2016, passed in I.A.No.366 of 2016 in O.S.No.2 of 2012, by the learned District Munsif, Uthamapalayam.

For Petitioner : Mr.G.Jeganathan

For Respondent : Mr.R.Subramanian

ORDER

This Civil Revision Petition is filed against the order, dated 12.09.2016, passed in I.A.No.366 of 2016 in O.S.No.2 of 2012, by the learned District Munsif, Uthamapalayam.



2. The petitioner is the plaintiff and the respondent is the defendant in the suit in O.S.No.2 of 2012, on the file of the District Munsif Court, Uthamapalayam, Theni District. The petitioner filed the suit for mandatory injunction directing the respondent to remove the encroachments in the suit property. Along with the suit, the petitioner has also filed I.A.No.303 of 2012 for appointment of Advocate Commissioner. The said application was ordered and an Advocate Commissioner was appointed. He inspected the suit property and filed his report on 05.04.2014. The petitioner filed his objection to the report of the Advocate Commissioner on 21.04.2014. Subsequently, he filed I.A.No.117 of 2015 for re-issuance of warrant of Commission. The said application was allowed on 27.07.2015 and the petitioner was directed to pay a sum of Rs.3,000/- as remuneration to the Advocate Commissioner. On 11.03.2016 when the said application was taken up for hearing, the Advocate Commissioner represented that no remuneration was paid. Therefore, the matter was adjourned to 14.03.2016 and 24.03.2016. Even on 24.03.2016, the Advocate Commissioner represented that the remuneration was not paid to him. In view of the said representation by the Advocate Commissioner, I.A.No.117 of 2015 was dismissed on 24.03.2016. Hence, the petitioner filed I.A.No.366 of 2016 to restore I.A.No.117 of 2015, which was dismissed on 24.03.2016, on the ground that he was staying in Andhra Pradesh for two months and therefore, he did not pay the remuneration amount to the Advocate Commissioner.

3. The learned District Munsif, Uthamapalayam, considering the averments mentioned in the affidavit and the materials available on record, vide order dated 12.09.2016, dismissed the application holding that the suit is ripe for trial and intention of the petitioner is only to drag on the proceedings.

4. Against the said order dated, 12.09.2016, the petitioner has come out with the present Civil Revision Petition.

5. The learned counsel for the petitioner submitted that the petitioner could not pay remuneration to the Advocate Commissioner, as he was out of Station and even now, the petitioner is willing to pay the remuneration to the Advocate Commissioner.

6. The learned counsel for the respondent submitted that the petitioner only with a view to drag on the proceedings, filed the application and the suit is ripe for trial and at that stage, he has filed the application without any valid reason.

7. I have considered the submissions of the learned counsel appearing for the parties and perused the materials available on record.



8. The petitioner originally filed I.A.No.303 of 2012 for appointment of Advocate Commissioner. The said application was allowed. The Advocate Commissioner inspected the property and filed his report on 05.04.2014 and filed objection to the said report and filed I.A.No.117 of 2015 for re-issuance of warrant of commission. The said I.A. was allowed on 27.07.2015. The petitioner did not pay remuneration to the Advocate Commissioner, in spite of opportunity being given to him for making payment to the Advocate Commissioner. In view of the same, the petition was dismissed. The petitioner filed the present I.A. to set aside the order of dismissal on the ground that he was in Andra Pradesh for two months. The said reason is not valid to set aside the order of dismissal.

9. From the materials available on record, it is seen that the petitioner is Theni Agro Farms Private Limited and the application filed by the petitioner was allowed on 27.07.2015 and till 24.03.2016, the petitioner did not pay remuneration to the Advocate Commissioner. It is not the case of the petitioner that from 27.07.2015 to 24.03.2016, the petitioner is not in station. In the circumstances, the learned District Munsif, Uthamapalayam, has considered all the materials and dismissed the application, by giving cogent and valid reason. There is no illegality or irregularity in said the order warranting interference by this Court.

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

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

The District Munsif,
Uthamapalayam, Theni District.

+1 cc to M/s.C.Jeganathan, Advocate in SR.No.5751

+1 cc to M/s.R.Subramanian, Advocate in SR.No.5835

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CSL/CMMSA/15.02.2017 :3P/4C

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