

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.04.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD)No.1325 of 2018 and
CMP.No.6922 of 2018

Dr.Venkatesan Petitioner

Vs.

M.K.Selvaraj ... Respondents

Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.1088 of 2017 in O.S.No.170 of 2017 dated 15.02.2018 on the file of the District Munsif Court, Nagappattinam and consequently reject the suit.

For Petitioner : Mr.M.L.Ramesh

ORDER

The civil revision petition has been filed against the fair and decreetal order passed in I.A.No.1088 of 2017 in O.S.No.170 of 2017 dated 15.02.2018 on the file of the District Munsif Court, Nagappattinam.

2 The revision petitioner is defendant in the suit in O.S.No.170 of 2017 filed by the respondent herein for mandatory injunction and restraining

the defendant from creating any encumbrance on the suit property, on the file of the learned District Munsif, Nagapattinam.

3 The revision petitioner/defendant filed an interlocutory application under Order 7 Rule 11 of C.P.C. seeking rejection of plaint on the ground that no cause of action has arisen for filing the suit and the respondent/plaintiff is doing forum shopping and the suit is totally abuse of process of law.

4 The trial Court after hearing the arguments advanced on either side, dismissed the application in I.A.NO.1088 of 2017, by an order dated 15.02.2018 by observing that the plaintiff has disclosed the cause of action and that the plaint could not be rejected.

5 Heard the learned counsel for the petitioner and perused the materials placed before the Court.

6 According to the learned counsel for the revision petitioner/defendant, there is an order of the Hon'ble Supreme Court dated 12.08.2016 in S.L.P.No.31556 of 2010, directing the respondent/plaintiff to

vacate and hand over the possession of the premises within one month and thereafter, the revision petitioner/defendant shall construct new superstructure and hand over one shop for rent to the respondent/plaintiff within a period of six months from the date of handing over the possession of the premises. By an order dated 12.02.2018 of the Hon'ble Supreme Court, the revision petitioner obtained order of extension of further period of six months to comply with the order dated 12.08.2016, and the same is expires only in the month of August 2018. Hence the suit is liable to be rejected.

7 It is the contention of the revision petitioner/defendant that, if at all, the respondent/ plaintiff has any grievance with regard to non compliance of the order of the Hon'ble Supreme Court dated 12.08.2016, he has to approach the same Court by way of filing contempt petition and not by way of suit and that the respondent/plaintiff is doing forum shopping as per his own wish and also no cause of action has arisen for filing the suit. Hence the plaint is necessarily be rejected.

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8 On a careful perusal of the records, it reveal that the revision petitioner/defendant obtained an order of extension of further period of six months to comply with the order dated 12.08.2016, through the order dated

12.02.2018 and the same is expires in the month of August 2018. But, at the same time, it is not the ground to reject the plaint. It is pertinent to refer Order VII Rule 11 dealing with rejection of plaint.

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

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) Where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provisions of rule 9*

[Provided that the time fixed by the Court for the correction of the valuation of supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation of supplying the requisite stamp papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]"

9 It is well settled proposition that at the time of deciding any application under Order VII Rule 11, the Court has to look into averment of the

plaint and documents annexed with, but not the defence taken by the defendant and the documents produced by the defendant. In the case on hand, the plaint discloses the cause of action and the suit claim was correctly valued and correct court fee was paid. Hence this Court does not find any illegality or infirmity in the order dated 15.02.2018 made in I.A.No.1088 of 2017 in O.S.No.170 of 2017 passed by the learned District Munsif, Nagapattinam.

10 In the result, the civil revision petition is dismissed. Consequently connected miscellaneous petition is closed. No costs.

Index:Yes/No

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To

The District Munsif, Nagapattinam.

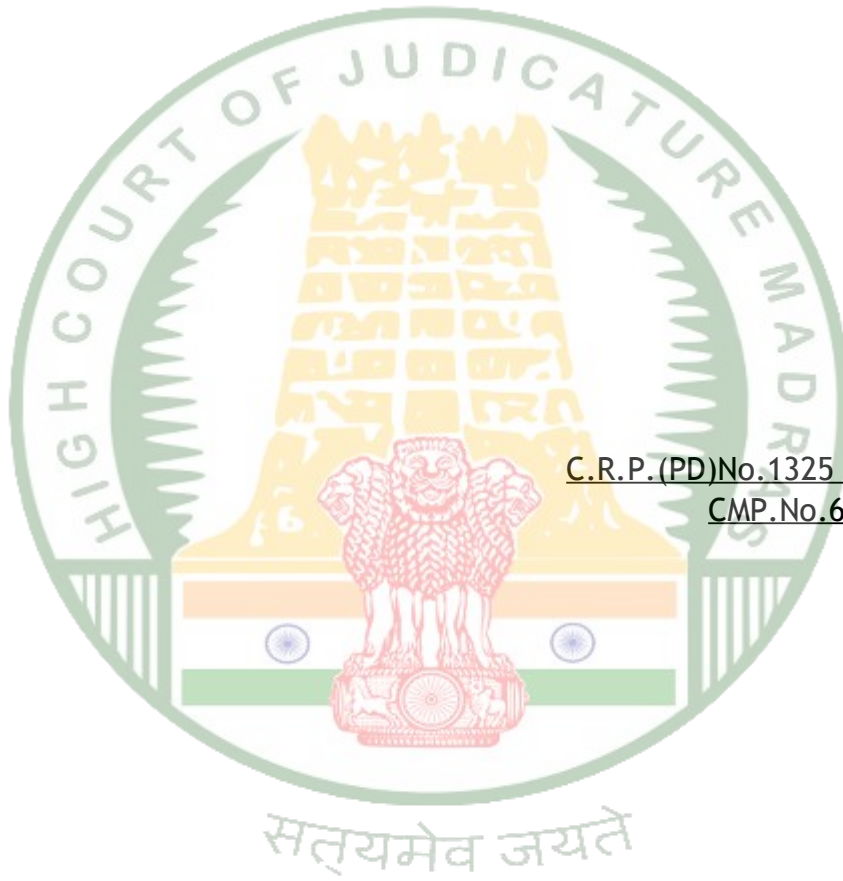
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P.VELMURUGAN, J.,

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13.04.2018