

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.06.2018

CORAM

The Hon'ble Mr.Justice **P.VELMURUGAN**

CRP(PD)No.3433 of 2017

and

C.M.P.Nos.15945 and 17316 of 2017

1.M/s.Syndicate Bank,
Rep. by its
Managing Director,
Head Office, Manipal,
Karnataka 576 119.

2.The General Manager,
Personnel Department,
Syndicate Bank,
Head Office, Manipal,
Karnataka 576 119.

3.The General Manager,
Syndicate Bank,
Regional Office,
Armenian Street,
Chennai 600 001.

.. Petitioners

vs. सत्यमेव जयते

G.Raj

.. Respondent

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Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 28.07.2017 passed in I.A.No.74 of 2017 in O.S.No.1317 of 2016 by the learned XVIII Judge, City Civil Court, Chennai.

For Petitioner ... Mr.P.Ranganathan

For Respondent ... Mr.M.Ramamoorthy

ORDER

The Civil Revision Petition has been filed by the petitioners to set aside the order and decretal order dated 28.07.2017 passed in I.A.No.74 of 2017 in O.S.No.1317 of 2016 by the learned XVIII Judge, City Civil Court, Chennai.

2. The petitioners herein are the defendants and the respondent herein is the plaintiff.

3. The brief facts of the case are as follows:

(i)The respondent / plaintiff filed a suit in O.S.No.4555 of 2012 on the file of the XV City Civil Court, Chennai and the said suit was transferred to XVIII City Civil Court, Chennai and renumbered as O.S.No.1317 of 2016 against the petitioners / defendants seeking mandatory injunction directing the defendants to give notional increments to the plaintiff for the period of his non employment i.e. from 31.05.1991 to 30.12.1996 and calculate the salary to give effect to notional increment for the periods in November 1991, November

1992, November 1993, computer increment in 1993, November 1994, November 1995 and November 1996 and fit him in appropriate pay scale on and from 30.12.1996, the date on which, he was reinstated in service as per the order passed by this Court in W.P.No.17225 of 1991 and credit into the plaintiff's account actual amount payable to him and for a consequential permanent injunction restraining the defendants from withholding the difference of monetary benefits payable to the plaintiff after giving notional increments for the period of non employment i.e. from 31.05.1991 to 30.12.1996 and calculate the salary to give effect to notional increment for the periods in November 1991, November 1992, November 1993, computer increment in 1993, November 1994, November 1995 and November 1996 and fit him in appropriate pay scale on and from 30.12.1996, the date on which, he was reinstated in service as per the order passed by this Court in W.P.No.17225 of 1991.

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(ii) Pending suit, the petitioners herein/defendants filed I.A.No.74 of 2017 under Order 7 Rule 11 CPC to reject the plaint as barred by limitation and the same was dismissed by the Court below by the order dated 28.07.2017. Feeling aggrieved by the said order, the present civil revision petition has been filed by the petitioners.

4. According to the petitioners, the suit is barred by limitation. The respondent joined in the year 1973 in the petitioners' Bank as a Clerk. He was promoted as Assistant Manager on 3.6.1985. As he submitted altered bills for his travelling expenses, a charge sheet was issued against him. The petitioners' Bank ordered enquiry on 21.07.1990 and based on the enquiry report, he was dismissed from service. Against which, the respondent preferred an appeal before the Appellate Authority and the same was dismissed. Hence, the respondent filed W.P.No.17225 of 1991 before this Court. This Court by order dated 29.10.1996 directed the petitioner's bank to reinstate the respondent in service. Accordingly he was reinstated in service without back wages but, with continuity of service. The respondent has not given any representation and there was no direction by this Court to the petitioners to consider the representation. The respondent without claiming any part payment of the due amount within three years i.e from the year 1996 or from the date of disposal of the writ petition, filed a suit in the year 2012 and the same is barred by limitation and contrary to the provisions of Sections 18 and 19 of the Limitation Act, 1963. Hence, the petitioners filed I.A.No.74 of 2017 under Order VII Rule 11 CPC to reject the plaint as the suit is barred by limitation. The trial Court without considering the case of the

petitioners erroneously dismissed the application holding that the question of limitation is mixed position of law and a suit cannot be dismissed without ascertaining certain facts and it can be done only at the trial.

5.The learned counsel for the petitioners submitted that there is no cause of action for the suit as the respondent was properly paid as per the order passed by this Court. He retired on 31.08.2010. As per the Banking Regulation Act, the documents have been destroyed after a period of seven years. Moreover, the respondent, without claiming any due or part payment within a period of three years i.e. from the date of passing of the order in the year 1996, filed the suit in the year 2012. Hence, the suit is barred by limitation.

6.The learned counsel for the respondent submitted that as per the order passed by this Court in W.P.No.17225 of 1991, the petitioners' Bank reinstated the respondent in service and the petitioners ought to have paid gross salary of Rs.20,772.13 as on 30.12.1996. But, the respondent was paid gross salary of Rs.5,492/- as on 30.12.1996. Hence, the respondent made representations dated 25.07.2002, 12.12.2009 and 20.09.2010 to the petitioners

seeking for the relief of continuity of service, in respect of pay and other attendant benefits and the same have not been considered by the petitioners' Bank. Except no other option, the respondent has filed the suit. Therefore the suit is not barred by limitation. The trial Court after perusing the records, rightly dismissed the application filed by the petitioner. Hence, the civil revision petition is liable to be dismissed.

7. Heard the submissions made by learned counsel for the petitioners and the learned counsel for the respondent and perused the materials available on record.

8. It is well settled law while dealing with the application filed under Order 7 Rule 11 of CPC, the Court has to look into the plaint averments to see as to whether it discloses the cause of action. At the time of deciding an application filed under Order 7 Rule 11 of CPC, the defence taken by the defendants need not be looked into.

9. A perusal of records reveal that as per the order passed in W.P.No.17225 of 1991, the petitioners' Bank reinstated the respondent in service and thereafter, the respondent made several representations to the petitioners' Bank and at last, the respondent filed the suit.

Moreover, at the time of deciding an application filed under Order 7 Rule 11 of CPC, the trial Court has to see as to whether the plaint discloses the cause of action and the suit is barred by limitation or not. The defence, which is put forth by the petitioners/defendants has to be decided only at the time of conclusion of trial, after letting-in evidence by both sides and not now. Therefore, the relief sought for by the petitioners cannot be granted at this stage in the application filed by the petitioner and the matter can be decided by the Court below at the later stage i.e., after completion of the trial in the suit. Hence, there is no illegality or infirmity in the order passed by the trial Court below.

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

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Index:Yes/No

Speaking Order:Yes/No

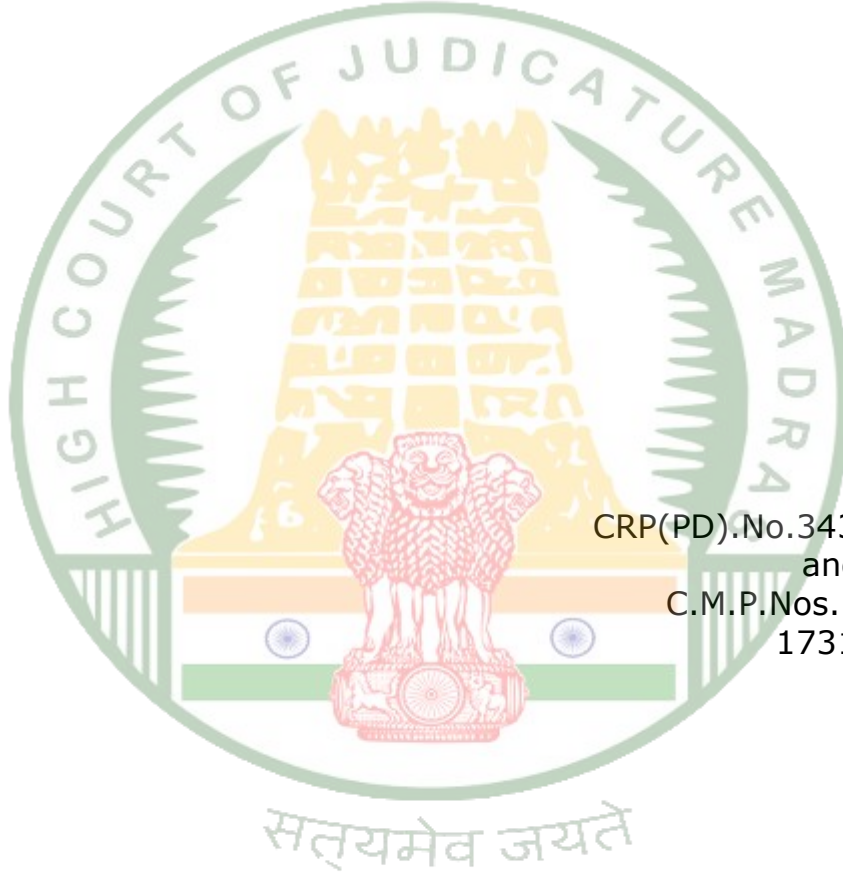
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To

The Registrar,
City Civil Court,
Chennai.

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P.VELMURUGAN.J,

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