

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2620 of 2015
and M.P.No.1 of 2015

1.Southern Agrifurane Industries(p)Ltd,
Represented by Mr.Augustine Paulraj
Finance and Accounts
Office at M.G.M. Centre
No.1, 9th street Dr.Radha Krishnan salai
Mylapore, Chennai-600 004.

2.Vinbros & Co., Unit-II
Represented by its
Power of Attorney K.Vasudevan

.. Petitioners

Vs.

M/S.Alankar Wines Pvt.Ltd.,
Represented by its Managing Director
Ganesan having its office
at No.1 M.G.road, Muthialpet
Puducherry.

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 08.01.2015 made in I.A.No.683 of 2014 in O.S.No.144 of 2012 on the file of the III Additional District Court, Puducherry.

For Petitioners : Mr. V.M.G.Ramakkannan

For Respondent : Mr.T.M.Naveen for K.P.Jotheeswaran

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 08.01.2015 made in I.A.No.683 of 2014 in O.S.No.144 of 2012 on the file of the III Additional District Court, Puducherry.

2. The petitioners are the plaintiffs and respondent is the defendant in O.S.No.144 of 2012 on the file of the III Additional District Court, Puducherry. The petitioners filed said suit for recovery of money. The petitioners are describing the respondent/defendant as Alankar Wines Pvt. Ltd. represented by its Managing Director, Ganesan. The said Ganesan filed written statement stating that he is not a member or Director or Managing Director of M/S.Alankar Wines Pvt. Ltd., and the suit is liable to be dismissed as the same is filed against wrong person. The trial commenced and the petitioners filed proof affidavit. Before marking the document and cross-examination, the petitioners filed I.A.No.683 of 2014 for amendment of the plaint as per the details set out in the application i.e., in the short cause title and long cause title in the description of the defendant as "M/S.Alankar Wines Pvt. Ltd., represented by its Managing Director, Ganesan", to delete the name "Ganesan" and wherever the name "Ganesan" is found.

3. According to the petitioners, only said Ganesan was representing the respondent company describing him as its Managing Director. Even before filing of the suit, he was negotiating with the petitioner as Managing Director of defendant company. Only when the petitioners were preparing for cross-examination, it was found that the said Ganesan is claiming that he is not a Managing Director of the respondent company. In view of the same, amendment is necessary to delete the name of Ganesan.

4. The said Ganesan filed counter statement and opposed the said application.

5. The learned Judge considering the materials available on record, dismissed the application on the ground of delay as the petitioners have come out with the application after commencement of trial.

6. Against the said order of dismissal dated 08.01.2015 made in I.A.No.683 of 2014 in O.S.No.144 of 2012, the present Civil Revision Petition is filed by the petitioners.

7. Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record.

8. The petitioners filed suit against the respondent/private limited company. The petitioners described the respondent as represented by its Managing Director Ganesan. According to the petitioners, only the said Ganesan was dealing with them on behalf of the respondent company describing him as Managing Director. Now in the written statement filed in the typed set of papers, it is seen that the said Ganesan, who has filed written statement on behalf of the respondent company, has not stated in the verification portion in what capacity, he has filed written statement on behalf of the respondent. If he is not a member or Director or Managing Director or Principal Officer or authorised signatory of the respondent, he cannot file written statement on behalf of the respondent company. Similarly, Ganesan only filed counter statement. Again, he has not stated that whether he is representing respondent company or not. A Company incorporated as per the Companies Act, can be represented by its Managing Director even without naming the Managing Director.

9. The learned Judge failed to consider the above facts and also the fact that trial is at the initial stage i.e., only proof affidavit filed by the petitioners as P.W.1, dismissed the application. The

documents are yet to be marked and cross-examination of P.W.1 is not commenced. For the above reason, the impugned order of the learned Judge is liable to be set aside and it is hereby set aside.

10. In the result, the Civil Revision Petition is allowed. The petitioners are directed to carry out the amendment within three weeks from the date of receipt of a copy of this order. In view of the fact that Ganesan claimed that he is not a member or Director or Managing Director of the respondent company, it is open to the petitioners to take appropriate proceedings to strike off the defence of the respondent as it is not mentioned in the written statement in what capacity the person has signed and filed into Court. No costs. Consequently, connected Miscellaneous Petition is closed.

25.01.2018

Index:Yes/No

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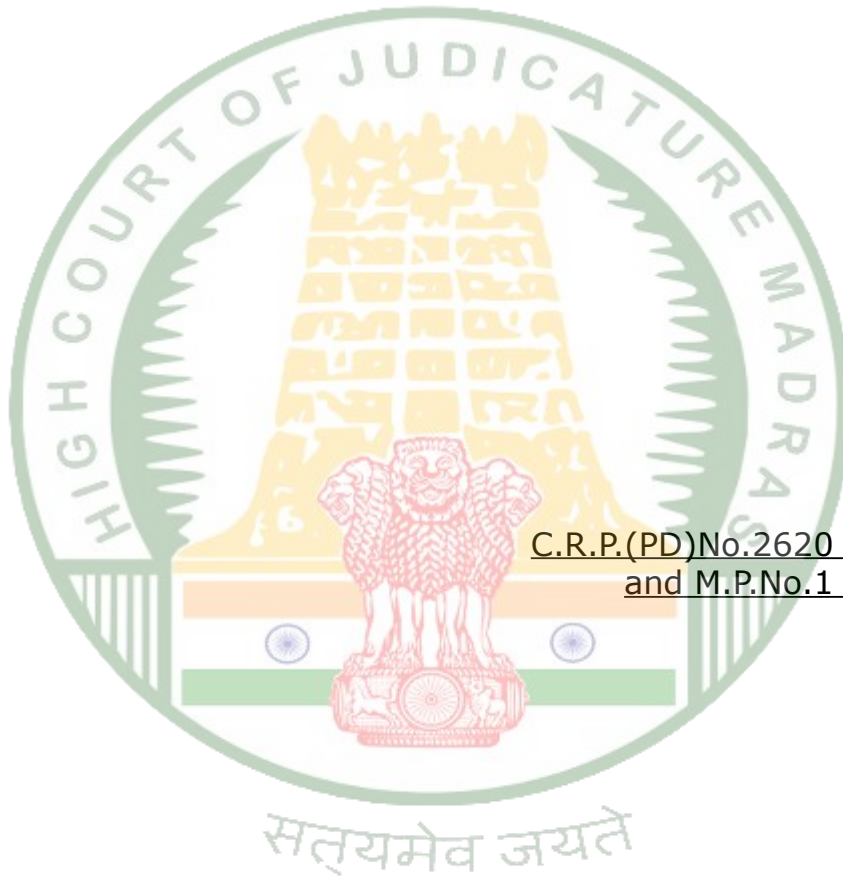
To

The III Additional District Judge
Puducherry.

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V.M.VELUMANI,J.

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