

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3640 of 2015 and
M.P.No.1 of 2015

D.Murugan

.. Petitioner

Vs.

1.Rajendran

2.R.Nirmala

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 12.01.2015 made in I.A.No.unnumbered of 2013 in O.S.No.149 of 2014 on the file of the Principal District Court, Cuddalore District.

For Petitioner : Mr.T.R.Sundaram

For Respondents : M/S.Chitra Sampath
Senior Counsel for
Mr.A.E.Ravichandran

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 12.01.2015 made in I.A.No.unnumbered of 2013 in

O.S.No.149 of 2014 on the file of the Principal District Court, Cuddalore.

2. The petitioner is first defendant and respondents are plaintiffs in O.S.No.149 of 2014 on the file of the Principal District Court, Cuddalore. Originally, the suit was filed before the II Additional District Court, Tindivanam and numbered as O.S.No.13 of 2010. Subsequently, it was transferred to the Principal District Court, Villupuram and renumbered as O.S.No.15 of 2010. Then the suit was transferred to I Additional District Court, Tindivanam and renumbered as O.S.No.1 of 2012, subsequently, it was transferred to III Additional District Court, Kallakurichi and renumbered as O.S.No.1 of 2014. Thereafter, the suit was transferred to the Principal District Court, Cuddalore and renumbered as O.S.No.149 of 2014.

3. The respondents filed the said suit for recovery of money. When the suit was pending, the petitioner and respondents entered into a compromise memo and filed the compromise memo dated 29.04.2013 on 29.04.2013. The petitioner as first defendant for himself and as a son and power agent of his father/second defendant signed the compromise memo. The first respondent

signed the compromise memo for himself and on behalf of the second respondent, who is his wife. The learned counsel for the petitioner as well as the respondents also signed the memo of compromise. The learned I Additional District Judge, Tindivanam, recorded the memo of compromise on the same day i.e., on 29.04.2013. The petitioner filed an application on 30.10.2013 to set aside the compromise memo recorded on 29.04.2013.

4. According to the petitioner, on 29.04.2013, the last day before vacation at 5.00 p.m., the learned I Additional District Judge, Tindivanam, pressurised the petitioner and his counsel to enter into a compromise, even though the petitioner and his counsel were not agreeable for compromise. The learned Judge directed the counsel for the respondents to prepare the memo of compromise and due to the said pressure, the petitioner and his counsel signed the memo of compromise. The learned I Additional District Judge, Tindivanam, recorded the same on the same day at 7.00 p.m. in his Chamber. The learned Judge has not followed the procedure contemplated under Order 23 Rule 3 C.P.C. The second defendant and second plaintiff did not sign the memo of compromise. Therefore, memo of compromise is not valid and liable to be struck off.

5. The respondents filed counter affidavit and denied the averments made by the petitioner. The application filed by the petitioner to strike off the compromise memo recorded by the learned I Additional District Judge, Tindivanam, is unlawful and void as not contemplated under the provisions of Order XXIII Rule 3 C.P.C. It is referred to the District Court, Villupuram, for numbering the said I.A. by the learned I Additional District Judge, Tindivanam. The learned District Judge, Villupuram, perused the records and without numbering I.A., ordered to send the case records to the III Additional District Court, Kallakurichi. In the interest of justice, it is necessary that the present unnumbered I.A. to be numbered by the District Court, Villupuram, otherwise, the other proceedings cannot be proceeded.

6. The learned Principal District Judge, Cuddalore, considering the averments made in the affidavit, counter affidavit and materials available on record, rejected the application.

7. Against the said order dated 12.01.2015 made in I.A.No.unnumbered of 2013 in O.S.No.149 of 2014, the present Civil Revision Petition is filed by the petitioner/first defendant.

8. The learned counsel for the petitioner reiterated the averments made in the affidavit filed in support of the present application and contentions raised in the grounds of Civil Revision Petition. He contended that on the face of record, it is clear that the procedure under Order XXIII Rule 3 C.P.C. was not followed. The second defendant and second plaintiff did not sign the memo of compromise. The first defendant and first plaintiff have no authority to enter into compromise on behalf of the second plaintiff and second defendant respectively. The learned Judge failed to see whether the Court has jurisdiction to hear other suit proceedings in the compromise, which are outside its jurisdiction. In support of his contentions, the learned counsel for the petitioner relied on the following judgments:

(i) ***CDJ 2016 MHC 5629 (K.Venkatesan and others v. E.Hemantharaj);***

(ii) ***2016 (5) CTC 329 (G.V.Vanitha and others v. K.Dhanasekaran and others);***

(iii) ***Order dated 21.12.2017 made in C.R.P.(NPD)No.4559 of 2017 (S.Sankar v. Sri Vedavinayagar Koil, represented by its Hereditary Trustee, Sanjeevi Chettiar, Nethaji road, Manjakuppam, Cuddalore);***

9. The learned Senior Counsel for the respondents made the following submissions:

(i) The learned I Additional District Judge, Tindivanam, did not pressurise the petitioner to enter into compromise and allegation made against the said Presiding Officer is baseless. The petitioner and respondents compromised the matter and petitioner agreed to pay a sum of Rs.66,00,000/- within a period of six months on or before 31.10.2013. It was agreed that if the petitioner pays the said amount within the time limit, both the petitioner and respondents will withdraw all the suits and criminal proceedings pending between them. If the petitioner and second defendant fail to pay the sum of Rs.66,00,000/-, the suits O.S.No.149 of 2014 and O.S.No.29 of 2014 shall be decreed as prayed for. The petitioner has signed the memo of compromise for himself and on behalf of the second defendant, as his son as well as his power agent.

(ii) The petitioner and first respondent got into witness box in O.S.No.29 of 2014 and stated that the petitioner and respondents compromised the matter and based on the said statement, the learned I Additional District Judge, Tindivanam, recorded the memo of compromise. Memo of compromise was recorded as per the

Order XXIII Rule 3 C.P.C. and there is no violation of any procedure.

(iii) Subsequently, on 01.07.2013, the succeeding Presiding Officer of the Court at Tindivanam, heard counsel for the petitioner and respondents with regard to joint compromise memo and closed eight Interlocutory Applications as infructuous on the ground that compromise petition filed under Order XXIII Rule 3 C.P.C. was recorded in the suit O.S.No.149 of 2014.

(iv) The petitioner after five months from the date of recording compromise memo, gave evidence in O.S.No.29 of 2014, which is pending between the same parties, admitted the compromise and marked the said compromise as Ex.A1 in O.S.No.29 of 2014. The petitioner then filed an application to eschew the said evidence recorded in O.S.No.29 of 2014. The said application was dismissed without being numbered. The petitioner has filed C.R.P.No.3498 of 2014, challenging the said order and subsequently, he has withdrawn the same. The said Civil Revision Petition was dismissed as withdrawn.

(v) The petitioner filed present application on 30.10.2013, one day prior to the last date of payment as per the compromise

memo to pay the amount to the respondents, only to avoid payment of money as agreed upon. He filed the said application before the same Court. The Presiding Officer, who recorded the memo of compromise subsequently, came to the same Court and recused himself from hearing the application. The learned Principal District Judge, Villupuram, transferred the unnumbered application to III Additional District Court, Kallakurichi, who heard the application and posted the same 'for orders' on 09.07.2014. On that day, the petitioner filed a memo stating that he filed Tr.C.M.P.No.569 of 2014 before this Court for transferring the unnumbered application from Villupuram District Court to Cuddalore District Court on the ground that the petitioner will not get any justice if the case is conducted in Villupuram District Court as he made allegations against the Presiding Officer. As per orders of this Court, the learned III Additional District Judge, Kallakurichi, transferred the case to the Principal District Court, Cuddalore, who heard the unnumbered application and after hearing the arguments, considering all the materials on record, rejected the application by elaborate order by giving valid reasons. The petitioner filed the present Civil Revision Petition, challenging the said order. There is no merit in the contentions of petitioner. In support of her contention, the learned Senior Counsel for the respondents relied on the judgment reported

in **1991 II M.L.J.271 (V.S.Balasubramanian v. A.Mariammal and another)**;

10. Heard the learned counsel for the petitioner as well as the learned Senior Counsel appearing for the respondents and perused the materials available on record.

11. The respondents filed suit O.S.No.149 of 2014 for recovery of money against the petitioner and second defendant. They also filed O.S.No.29 of 2014 against the petitioner and second defendant for specific performance of agreement of sale. In addition to these two suits, there are certain criminal proceedings initiated against the petitioner under Section 138 of Negotiable Instruments Act and another proceedings with regard to theft of cheque. During pendency of the present suit, a compromise memo was presented into Court, which was signed by the petitioner and first respondent for themselves and on behalf of the second defendant and second respondent respectively and the same was also signed by their respective counsel.

12. The petitioner and first respondent got into witness box and informed the Presiding Officer in O.S.No.149 of 2014 that they

have compromised the matter. Based on the memo of compromise and statements of the petitioner and first respondent, the Presiding Officer recorded the memo of compromise on 29.04.2013. As per the memo of compromise, the petitioner and second defendant agreed to pay a sum of Rs.66,00,000/- to the respondents within a period of six months from the date of compromise i.e., on or before 31.10.2013. It was agreed between the parties that if the petitioner and second defendant pay a sum of Rs.66,00,000/- to the respondents on or before 31.10.2013, the same will be taken as full and final settlement and all the suits and other proceedings will be withdrawn by the petitioner and respondents. If the petitioner and second defendant failed to pay the agreed amount of Rs.66,00,000/- within the time limit as agreed upon, the suits O.S.Nos.149 of 2014 and 29 of 2014 will be decreed as prayed for. The petitioner and second defendant in the other suit O.S.No.29 of 2014 admitted the memo of compromise and marked the same as Ex.A1 in O.S.No.29 of 2014, after five months of the compromise memo entered into. After such admission, the petitioner had come out with the present application to strike off the memo of compromise on the ground that he has unwillingly signed the memo of compromise on the pressure given by the then Presiding Officer. The petitioner also contended that the memo of compromise is not

valid as the same is not recorded as per Order XXIII Rule 3 C.P.C. These contentions are without merits.

13. It is seen that as per memo of compromise, the petitioner and second defendant agreed to pay a sum of Rs.66,00,000/- within a period of six months from the date of compromise i.e., on or before 31.10.2013. The petitioner filed present application one day before the expiry of outer limit as per compromise memo. It is pertinent to note that on 01.07.2013, the Presiding Officer dismissed eight Interlocutory Applications in the present suit as infructuous in the presence of the petitioner, first respondent and their respective counsel on the ground that memo of compromise was recorded in O.S.No.149 of 2014. At that time also, the petitioner has not stated that he has signed the memo of compromise under the pressure by the Presiding Officer and the said compromise memo is not valid.

14. From the records, it is seen that the learned I Additional District Judge, Tindivanam, who recorded the memo of compromise, on 13.11.2013 recused himself from hearing the unnumbered I.A., as allegations are made against him. The Principal District Judge, Villupuram, then transferred the said I.A. to III Additional District

Court, Kallakurichi. After arguments by the counsel for the petitioner and first respondent, when the I.A. was posted 'for orders' on 09.07.2014, the petitioner filed a memo stating that he has filed Tr.C.M.P.No.569 of 2014 in this Court for transferring the unnumbered I.A. from the Court at Villupuram to some other Court in Cuddalore District, making allegations against the learned III Additional District Judge, Kallakurichi. The above facts and attitude of the petitioner clearly show that the petitioner is in the habit of making allegations against the Presiding Officers.

15. From the materials available on record, it is seen that the petitioner has made allegations against two District Judges. It is not disputed that on 01.07.2013, in the presence of petitioner and his counsel, eight Interlocutory Applications were closed in view of the memo of compromise recorded in the main suit O.S.No.149 of 2014. On 27.09.2013, the petitioner gave evidence in O.S.No.29 of 2014 admitting the memo of compromise and marked the said memo of compromise as Ex.A1. O.S.No.29 of 2014 is now pending between the parties. The petitioner has also filed an application to eschew the said evidence recorded in O.S.No.29 of 2014. Subsequently, the said I.A. was rejected without being numbered.

The petitioner has filed C.R.P.No.3498 of 2014 challenging the said order, but sought permission of this Court to withdraw the said Civil Revision Petition. This Court dismissed the Civil Revision Petition as withdrawn. In view of the same, the evidence given by the petitioner admitting the memo of compromise is on record. The petitioner has not challenged the order dated 01.07.2013, wherein eight Interlocutory Applications were closed based on the admission of the petitioner, first respondent and their counsel that the memo of compromise was recorded in the main suit.

16.The contentions of the learned counsel for the petitioner that the learned Judge committed grave irregularity in rejecting the application on merits without numbering the application and the application can be rejected without numbering only on the ground of maintainability and cannot be rejected on merits, are without merits. The decisions relied on by the learned counsel for the petitioner to substantiate his contentions are not applicable to the facts of the present case. In the decision reported in **CDJ 2016 MHC 5629 (K.Venkatesan and others v. E.Hemantharaj) and 2016 (5) CTC 329 (G.V.Vanitha and others v. K.Dhanasekaran and others)** and order dated 21.12.2017 made in C.R.P.(NPD)No.4559 of 2017 (**S.Sankar v. Sri**

Vedavinayagar Koil, represented by its Hereditary Trustee, Sanjeevi Chettiar, Nethaji road, Manjakuppam, Cuddalore), the Trial Court rejected the unnumbered application on merits without giving opportunity to the petitioners therein and in view of such decisions, this Court set aside the order rejecting the unnumbered applications. In the present case, the petitioner was heard on merits twice. In the first instance, the learned III Additional District Judge, Kallakurichi, heard the matter and posted the application on 09.07.2014 'for orders'. On petition filed by the petitioner in Tr.CMP No.569 of 2014, the application was transferred to the Principal District Court, Cuddalore. Again, the application was heard on merits and was dismissed. In such being the position, the decision reported in ***1991 II M.L.J.271 (V.S.Balasubramanian v. A.Mariammal and another)*** relied on by the learned Senior Counsel for the respondents is squarely applicable to the facts of the present case, in which, this Court has held in Para-3 as follows -

"3. It is seen from the records that though the application was not numbered formally, both sides were heard by the Court below. Even when the application was filed, a copy was served on the advocate for the first respondent/decreed holder, who made an endorsement acknowledging receipt

of copy and prayed for time to file counter. The application was filed on 12.09.1990. Thereafter, it was being adjourned from time to time and ultimately it was heard on 01.07.1991 and the Court passed orders after hearing both sides. Hence, there is no substance in the contention that the application not having been numbered by the Court below, the order passed by the Court below is a revisable one and not appealable under O.43, Rule 1(j) of the Code of Civil Procedure."

17. All the above facts clearly reveal that the petitioner is trying to wriggle out of his commitment to pay a sum of Rs.66,00,000/- as full and final settlement of the claim between the parties. Having admitted on 27.09.2013 in O.S.No.29 of 2014 the genuineness and binding nature of the memo of compromise, it is not open to the petitioner now to seek to strike off the said memo of compromise. It is not the case of the learned counsel for the petitioner that unnumbered application was dismissed without hearing the petitioner on merits. The learned Judge has considered all the above facts and rightly rejected the application filed by the petitioner. There is no reason or circumstances warranting interference by this Court with the order of the learned Judge dated 12.01.2015.

18. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

28.02.2018

Index:Yes

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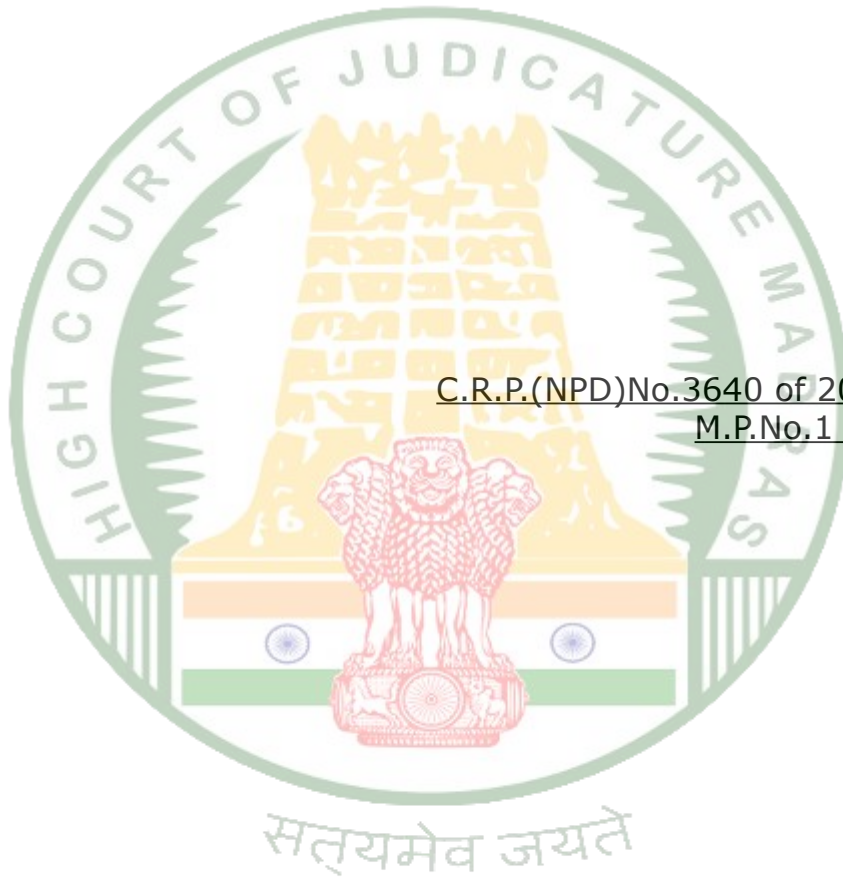
The Principal District Judge, Cuddalore District.



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V.M.VELUMANI,J.

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M.P.No.1 of 2015

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