

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 24.01.2018

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.76 of 2018 and C.M.P.No.329 of 2018

A.Sivakumar

... Petitioner/Defendant

Vs

1 M.Loganayaki
2 D.Santhamani
3 Radhamani

... Respondents/Plaintiffs

This Civil Revision Petition is filed under section 227 of Constitution of India against the order, dated 22.09.2017 passed in I.A.No.1035 of 2017 in O.S.No.116 of 2007 on the file of the III Additional District Judge, Coimbatore.

For Petitioner : Mr.Shivakumar
For Respondent No.1 : Mr.L.Mouli
For Respondents 2 & 3 : No appearance

ORDER

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According to the petitioner, the respondents herein have filed a suit in O.S.No.116 of 2007 against the petitioner before the III Additional District Judge, Coimbatore for specific performance and consequential

permanent injunction. In the aforesaid suit, the petitioner has filed an application in I.A.No.1035 of 2017 seeking permission to file an additional written statement. After considering the contentions of both parties, the trial court dismissed the application by holding that the admission made by the petitioner in the original written statement being attempted to be taken away besides attempting to introduce new set of facts. Challenging the said order, the present Civil revision petition has been filed before this Court.

2 According to the learned counsel for the petitioner, the petitioner was not able to mention the important facts in his written statement and therefore, filed the present application. Further, in the additional written statement sought to be filed, the petitioner has stated that on 9.10.2006 the respondent/plaintiff has paid advance amount for a sum of Rs.1,00,000/- besides the petitioner has received a sum of Rs.5,00,000/- paid by the respondent/plaintiff under the previous sale agreement entered into between the petitioner and the respondent. The said fact is only a defence already stated in the original written statement giving further details in the additional written statement. Therefore, the order of the court below is liable to be set aside.

3 According to the learned counsel for the respondent, the respondent has filed the suit in the year 2007 whereas the instant application has been filed belatedly i.e. in the year 2017. Further, the petitioner sought to introduce new set of facts. Therefore, the court below has rightly dismissed the application.

4 Heard the learned counsel for the petitioner and the learned counsel for the first respondent and perused the materials available on record.

5 The point for consideration in the present Civil revision petition is that whether the additional written statement sought to be filed by the petitioner herein can be allowed. In the additional written statement, the petitioner has furnished additional details that the advance amount has been paid by the respondent/plaintiff on the basis of sale agreement, dated 1.12.2005 entered into between the petitioner and the respondent wherein advance amount of Rs.5,00,000/- has been paid by the respondent/plaintiff and subsequently, the petitioner/defendant has received advance amount of Rs.1,00,000/- from the respondent/plaintiff on 9.10.2016 under the second sale agreement in the aforesaid suit. The learned counsel for the respondent disputed the aforesaid facts.

6 A perusal of the written statement sought to be filed, shows that no new plea has been introduced in the additional written statement. The defence taken by the petitioner in the additional written statement has already been stated in the original written statement. However, the petitioner has furnished additional details by way of additional written statement. If the second respondent has any objections in this regard, can be raised at the time of trial in the suit. The learned counsel for the petitioner also placed reliance on the judgment of the Hon'ble Supreme Court in **OLYMPIC INDUSTRIES VS. MULLA HUSSAINY BHIMI AKBERALLY AND OTHERS [(2009) 15 SCC 528]** wherein the Hon'ble Supreme Court held as under:

"14. In our view, this is also not a ground for which the High Court could interfere with the concurrent orders of the Rent Control Tribunal and reject the application for permission to file additional counter-statement. In our view, even by filing an amendment or additional counter-statement, it is open to the appellant to add a new ground of defence or substituting or altering the defence or even taking inconsistent pleas in the counter-statement as long as the pleadings do not result in causing grave injustice and irretrievable prejudice to the plaintiff or displacing him completely. (See Usha Balashaheb Swami v. Kiran Appaso Swami [(2007) 5 SCC 602] , SCC p. 612, para 27.) Therefore, we are unable to agree with the High Court on this ground as well.

15. It is also well settled that the courts should be more generous in allowing the amendment of the counter-statement of the defendant than in the case of plaintiff. The High Court in its impugned order has also observed that in order to file an additional counter-statement, it would be open to the defendant to take inconsistent plea. The prayer for acceptance of the additional counter-statement was rejected by the High Court on the ground that while allowing such additional counter-statement to be accepted, it has to be seen whether it was expedient with reference to the circumstances of the case to permit such a plea being put forward at that stage.

16. As noted herein earlier, the only ground on which the High Court had rejected the acceptance of the additional counter-statement was (i) by filing of such additional counter-statement, the appellant was introducing a new case; and (ii) the entire trial was to be reopened causing great prejudice to the respondents whose examination was completed. It was also observed by the High Court that the appellant cannot be able (sic allowed) to take such inconsistent plea by filing additional counter-statement after cross-examination of the appellant. In our view, the High Court was in error in interfering with the concurrent orders of the Rent Control Tribunal, as from the fact stated we find that no prejudice was caused to the respondents and even if some prejudice was caused that could be compensated by costs.

18. It is also well settled that while allowing the additional counter-statement or refusing to accept the

same, the court should only see that if such additional counter-statement is not accepted, the real controversy between the parties could not be decided. As noted hereinafter, by filing an additional counter-statement in the present case, in our view, would not cause injustice or prejudice to the respondents but that would help the court to decide the real controversy between the parties. In our view, the High Court was, therefore, not justified in rejecting the application for permission to file additional counter-statement as no prejudice could be caused to the respondent which would otherwise be compensated in terms of costs."

7 In **RAJ KUMAR BHATIA VS. SUBBASH CHANDER BHATIA [CDJ 2017 SC 1415]** the Hon'ble Supreme Court held as under:

"11 This being the position, the case which was sought to be set up in the proposed amendment was an elaboration of what was stated in the written statement. The High Court has in the exercise of its jurisdiction under Article 227 of the Constitution entered upon the merits of the case which was sought to be set up by the appellant in the amendment. This is impermissible. Whether an amendment should be allowed is not dependent on whether the case which is proposed to be set up will eventually succeed at the trial. In enquiring into merits, the High Court transgressed the limitations on its jurisdiction under Article 227. In Sadhna Lodh v National

*Insurance Company*³, this Court has held that the (2003) 3 SCC 524 supervisory jurisdiction conferred on the High Court under Article 227 is confined only to see whether an inferior court or tribunal has proceeded within the parameters of its jurisdiction. In the exercise of its jurisdiction under Article 227, the High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess the evidence upon which the inferior court or tribunal has passed an order. The Trial Court had in the considered exercise of its jurisdiction allowed the amendment of the written statement under Order 6 Rule 17 of the CPC. There was no reason for the High Court to interfere under Article 227. Allowing the amendment would not amount to the withdrawal of an admission contained in the written statement (as submitted by the respondent) since the amendment sought to elaborate upon an existing defence. It would also be necessary to note that it was on 21 September 2013 that an amendment of the plaint was allowed by the Trial Court, following which the appellant had filed a written statement to the amended plaint incorporating its defence. The amendment would cause no prejudice to the plaintiff."

8 In the light of the decisions of the Hon'ble Supreme Court, this Court is of the view that no new plea has been raised in the additional written statement sought to be filed, that too trial has not been commenced yet, in the case in hand. Therefore, no prejudice would be caused to the respondent

D.KRISHNAKUMAR,J.

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if the additional written statement is filed by the petitioner. The objection, if any, can be raised at the time of trial in the suit. Hence, the order passed by the court below is liable to be set aside.

9 In fine, the order passed in I.A.No.I.A.No.1035 of 2017 in O.S.No.116 of 2007 by the learned III Additional District Judge, Coimbatore is set aside. Accordingly, the Civil revision petition is allowed. No costs. At this stage, on the request of the counsel appearing for both side, the learned III Additional District Judge, Coimbatore is directed to dispose of the suit in O.S.No.116 of 2007 as expeditiously as possible preferably, within a period of four months from the date of receipt of a copy of this order.

24.01.2018

Speaking/Non Speaking order

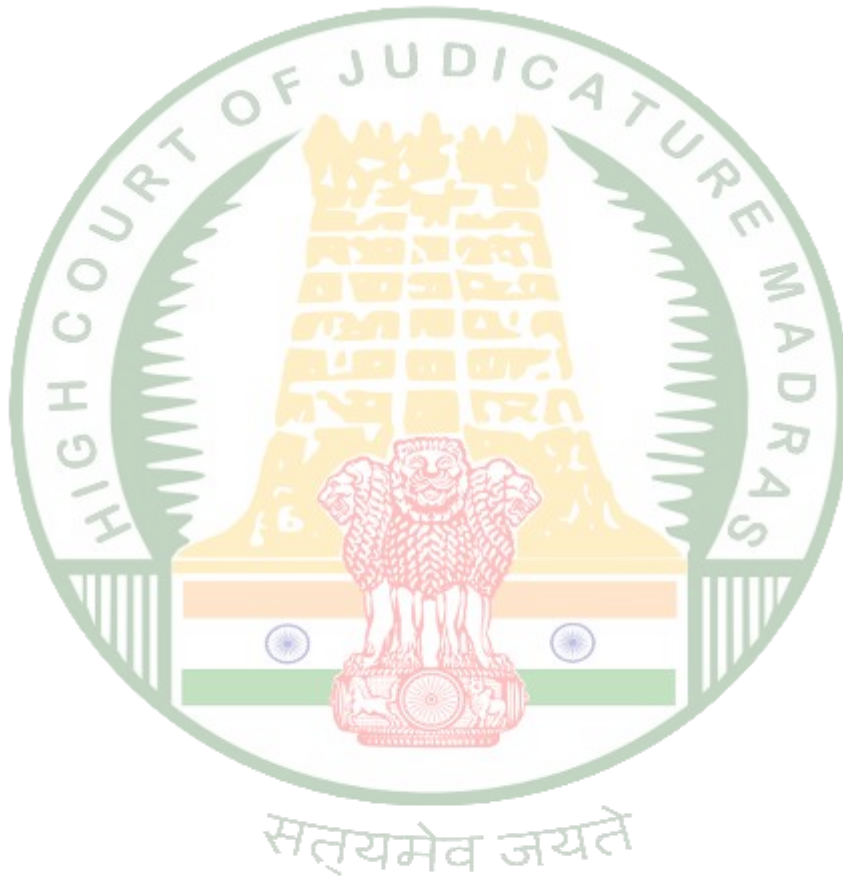
Index: Yes/No

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To

The III Additional District Judge, Coimbatore

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