

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD).No.894 of 2018
and CMP.No.4871 of 2018

M/s.Dhanalakshmi Srinivasan Hotel
Private Limited,
Thuraiyur Road,
Perambalur - 621 212

.. Petitioner

Vs

M/s.Rameesh Associates Private Limited,
Represented by its Managing Director
SPR Ramesh,
8-A, BBC Homes, 1st Floor,
18, South Boag Road,
T.Nagar, Chennai - 600 017.

.. Respondent

PRAYER

Civil Revision Petition filed under Article 227 of the
Constitution of India against the fair and decreetal order dated
05.01.2018 made in IA.No.11122 of 2017 in OS.No.2336 of 2017 on the
file of the VII Additional City Civil Judge, Chennai.

For Petitioner : Mr.S.Ramachandran

ORDER

The Civil Revision Petition is taken up for final disposal at the admission stage itself.

2. According to the revision petitioner, the defendant made a request, hence plaintiff submitted a consolidated bill on 04.12.2013. Legal notice was issued by the plaintiff on 23.08.2014. According to the revision petitioner, the respondent has filed a suit in OS.No.2336 of 2017 for recovery of money for a sum of Rs.21,75,826/- against the revision petitioner. In the aforesaid suit, the revision petitioner has filed an application in IA.No.11122 of 2017 under Order 7 Rule 11 of the Civil Procedure Code to reject the plaint. According to the revision petitioner, the aforesaid suit is barred by limitation. But without considering the contention of the revision petitioner, the court below has erroneously dismissed the said application. Against the said order, the revision petitioner has filed the present Civil Revision Petition before this Court.

3. The learned counsel for the revision petitioner would submit that perusal of the averments would clearly shows that the

respondent has requested the defendant by submitting a consolidated bill on 04.12.2013. Thereafter only received a legal notice on 23.08.2014 and the filed the present suit on 24.04.2017. Therefore, the aforesaid suit is barred by limitation. Hence, the order 7 Rule 11 (d) of the Civil Procedure Code would attract. Hence, the claim is liable to be rejected.

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

5. The issue involved in the present Civil Revision Petition is whether application can be allowed under Order 7 Rule 11 (d) of the Civil Procedure Code is barred by limitation. The respondent has filed the suit in OS.No.2336 of 2017 on the file of the VII Additional City City Court, Chennai for recovery of the aforesaid amount. The revision petitioner filed the instant application to reject the plaint by raising the ground there is no cause of action to show that the suit has been filed within three years period. According to the revision petitioner, admittedly bill has been submitted on 04.12.2013 and thereafter legal notice was sent on 23.08.2014. Therefore, the aforesaid suit is barred by

limitation. It is the case of the respondent that the cash amount has been paid by the respondent on 15.10.2016 to the petitioner. Eventhough the revision petitioner has denied the receipt of the said cash, the same is disputed fact, only be decided at the time of trial, by adducing oral and documentary evidence. Therefore, this Court cannot entertain the Civil Revision Petition. At this stage, this Court cannot go into disputed fact. Hence, the impugned order of the court below is confirmed. There is no error or illegality in the impugned order.

6. The Civil Revision Petition is dismissed with above observations. Consequently, the connected miscellaneous petition is closed. No costs.

15.03.2018

Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

lok

To

The VII Additional City Civil Judge,
Chennai.



WEB COPY

D. KRISHNAKUMAR J.,

lok



CRP(PD).No.894 of 2018
and CMP.No.4871 of 2018

WEB COPY

15.03.2018