IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 14.09.2018

CORAM:

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P. (PD) No. 2895 of 2010
and
MP. No. 1 of 2010

Bhuvaneshwari ...Petitioner

Vs

1.The City Union Bank Ltd.,
Rep. by its Branch Manager,
149, T.S.R. (Big) Street,
Kumbakonam - 612 001 and
Having its branch office at
Brough Road, Erode.

2. M/s.Raji Thangam Textiles Ltd.,
Raji Thottam,
Vilakethi,
Sivagiri Via, Erode District.

3.K.Chinnasamy
4.K.Palanisamy
5.G.Kalaivani
6.Minor G.Mahima
7.Minor Mahisha
8.R.Prabha Devi ...Respondents

PRAYER: Civil Revision Petition filled under Article 227 of Constitution of India to set aside the Fair and Decretal order dated 12.07.2010 made in I.A.No.27 of 2010 in O.S.No.334 of 2007 on the file of the first Additional District Court, Erode.

For Petitioners: Mr.N.Manokaran

For Respondents: Mr.R.S.Varadharajan
for M/s.Ram & Raja Associates
for R1
: No appearance for R2 to R8

O R D E R

The Civil Revision Petition is filed challenging the order dated 12.07.2010 in I.A.No.27 of 2010 in O.S.No.334 of 2007 on the file of the I Additional District Court, Erode, in and by which, the learned Judge has dismissed the application filed by the petitioner to effect post-trial amendment to the pleadings.

2. The suit has been filed by the revision petitioner herein and her late mother-in-law against the bank, the company, the legal representatives of the original Managing Director L.Gopala Krishnan and the elder brothers and daughters of the late Rajaram, to direct the defendants to pay a sum of Rs.5,36,84,545/- with accrued interest at the rate of 18% per annum on Rs.2,54,55,000/- from date of suit till date of realisation.

3. The suit is proceeded on the premise that the plaintiff and her late husband, viz., Rajaram had started a partnership firm in the name and style of Raji Thangam Textile Processing Mill, which was thereafter converted into second defendant-Company. While the firm was still in existence on 18.01.1995, the plaintiff and her late husband had borrowed some money from the bank by executing promisory notes. They had availed loan from the Bank under the caption "Open Cash Credit" as well as "Term Loan". It is the case of the plaintiff that subsequently, the firm had converted into second defendant-Company. A Memorandum of Hypothecation was created after the death of her husband, as if he had hypothecated the assets in favour of the first respondent-Bank and had also created the Memorandum of Equitable Mortgage. These documents were denied by the revision petitioner. She would also contend that L.Gopala Krishnan was appointed as Chairman, post her husband's death, by active collusion with the Branch Manager of the first respondent-Bank and that they have been selling hypotheca without remitting the amounts into the Company's account and they have also not been remitting the profits into the Company's account. Thereafter, it appears that the winding up proceedings were initiated against the Company, and the Bank had also moved the recovery proceedings and added to that, they had received notices from the Excise Department and other Government Department for the dues incurred during the Chairmanship of the said Gopala Krishnan. The sum and substance of the plaint was that the Officials of the Bank and the said Gopala Krishnan colluded in depriving the second respondent-Company of its legal dues. Therefore, the suit has been filed.

4. The said suit was resisted by the first respondent-Bank inter-alia contending that the petitioner herein has not disclosed how the suit is being filed when the liquidation proceedings of the second respondent- Company, are pending before the Court. They also put forward the contention that since the Debt Recovery Tribunal proceedings were being hotly contested, the present suit would result in multiplicity of proceedings.

5. The suit was filed in the year 2007. On 20.01.2010, the petitioner came forward with the impugned petition seeking to make the following amendments to the pleadings:

(1) In para No.3 after the first sentence add the following sentence

"The plaintiff is a shareholder holding 50 shares of the 2nd defendant firm. Hence, she is entitled to file a suit against the Bank and others to get the suit amount in the credit of the 2nd defendant".

(2) In para No.14 of the plaint last but 3rd line insert Nos.1,3 to 7 before the words "the defendants" and add the word after the words "jointly and severally" "and given credit to the 2nd defendant firm".

(3) In para No.17 of the prayer column add the words in prayer No.(a)

"to the 2nd defendant's firm account" after the word "to pay".

6. This application, though not contested by the first respondent-Bank, has been dismissed by the learned First Additional District Judge, Erode , on the ground that the amendment is delayed, and the petitioner had effected two earlier amendments, but had not thought it fit to make the amendment as sought for now and that the matter is posted in the list.

7. Mr.N.Manokaran, the learned counsel for the petitioner would argue that the amendment does not in any manner change either the subject matter or the relief that has been sought for.

8. Mr.R.S.Varadharajan, the learned counsel appearing for M/s.Ram and Rajan Associates, the learned counsel for the first respondent-Bank has made the following submissions:

1) By this amendment, the petitioner is trying to convert the suit into a representative capacity suit, and

2) The application is barred by limitation.

9. The learned counsel for the first respondent has also relied upon a judgment of the Hon'ble Supreme Court in Civil Appeal No.5567 of 2008 in the case of South Konkon Distilleries and another -vs- Prabhakar Gajanan Naik and others, dated 09.09.2008.

10. On hearing the arguments of the learned counsel on either side and perusing the papers, it appears that the first respondent-Bank is presuming that by giving effect to the first amendment that has been sought for, the character in which the revision petitioner/plaintiff was filing the suit, undergoes a change from that of an individual capacity to one as a representative one.

11. I am unable to countenance the above argument for the reason that in the entire pleadings, the revision

petitioner has contended that the second respondent-Company has been depirved of its dues on account of the collusion between the officials of the first respondent-Bank and the said Gopala Krishnan, whose legal heirs have been impleaded, are respondents 5 to 7 herein. The first amendment only seeks to describe the petitioner and does not in any manner bring about the change in the natrue and character of the suit. The second and third amendments also do not change either the character or the nature of claim made by the revision petitioner.

12. As regards the plea of limitation, the same has been taken in the written statement on the subject matter of the suit and the amendment does not give a fresh lease of life to the suit, as no new period has been included.

13. There is no quarrel with reference to the judgment cited by the learned counsel for the first respondent. However, since the amendment does not in any way change the pleadings or the defence of the respondents, the same does not apply to the facts of the instant case.

14. I find that the learned First Additional District Judge has not applied his mind to the facts of the case and has simply proceeded on the premise that the amendment is delayed. As regards the two earlier amendments, those amendments have been effected only to bring on record the legal representatives of the deceased Gopala Krishnan as well as the legal representatives of the petitioner's husband, namely, her children as defendants 8 and 9 in the proceedings. In the affidavit filed in support of the impugned petition (though they it is not happily worded), the revision petitioner has pleaded an oversight which, in the given circumstances, this Court is inclined to accept.

15. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed. Considering the fact that the suit has been filed as early as in the year 2007, the First Additional District Judge, Erode is directed to try and conclude the proceedings expeditiously, not later than six months from the date of receipt of a copy of this order.

Sd/--
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

srn

To
The I Additional District Court, Erode.

+1cc to M/s.Ram & Raj Associates, SR.No.63766
+1cc to Mr.N.Manokaran, Advocate SR.No.63985

sm:4.10.2018

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