



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.04.2018

Pronounced on : 22.06.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.2767 of 2015

and

M.P. (MD) No.1 of 2015

1.M/s.K.M.Safi & Co.,
Through one its Partner,
M.Rafi Ahamed ..1st Revision Petitioner/1st Defendant

2.M.Mohammed Yunus ..2nd Revision Petitioner/ Defendant

vs

1.M/s.Dindigul Steel Rolling Mills (P) Ltd.,
Through its Director,
S.Mohana Sundaram ..1st Respondent /Plaintiff

2.M/s.Fathima Steel Corporation,
Office at M/s.Safi & Co., .. 2nd Respondent/2nd Defendant

3.Rafi Ahammed .. 3rd Respondent/3rd Defendant

PRAYER: Civil Revision is filed under Article 227 of the Constitution of India, against the order in I.A.No.44 of 2015 in O.S.No.39 of 2013 dated 23.11.2015 on the file of the learned Additional District Judge-II, Thoothukudi, dismissing the petition to appoint an Advocate Commissioner with the help of chartered accountant to examine and finalize the accounts of the Revision Petitioners/Petitioner 1 and 4/ Defendant 1 and 4 and the Respondent.

For Petitioners : Mr.B.N.Raja Mohamed
For Respondents : Mr.S.Kadarkarai (for R1)

No Appearance (for R2 & R3)

ORDER

The unsuccessful defendants before the Court below are before this Court, as Revision petitioners seeking to set aside an order made in I.A.No.44 of 2015 in O.S.No.39 of 2013.

<https://hcservices.ecourts.gov.in/hcservices/>

2.The facts in nutshell are as following that the above Suit in O.S.No.39 of 2013 came to be filed by the respondent / plaintiff



for recovery of money on the basis of certain bills alleged to have been defaulted by the Revision petitioners.

3. It is the case of the plaintiff Rolling Mill that the revision petitioners herein are in due to pay certain amount towards the respondents. The revision petitioners /defendants claiming that they are not liable to pay any amount to the plaintiff / respondent.

4. In the said suit the revision petitioners filed the above I.A.No.44 of 2015 seeking for appointment of an Advocate Commissioner so as to ascertain the account transactions and to prepare a corresponding Statement of Account / Evaluation Report between the revision petitioners and the respondent, so as to give a clear picture with regard the transactions made in their business. Appointment of an Auditor to assist the Advocate Commissioner was also sought by the revision petitioners.

5. Whereas the said application was rejected by the trial Court holding that the application is not maintainable as sought for amounts to collect evidence. Aggrieved over the dismissal of the said application, revision petitioner is before this Court challenging the same.

6. The prime contention projected for appointment of the Advocate commissioner is that it is indispensable to conduct an Evaluation as to the unfair trade practices adopted by the respondent plaintiff and to appraise the book of accounts that were dealt during the business transactions between the respondent and the revision petitioner.

7. I heard Mr.B.N.Raja Mohamed, learned counsel for the revision petitioners and Mr.S.Kadarkarai, learned counsel for the 1st respondent and perused the entire materials available on records. No representation on behalf of the respondents 2 and 3.

8. The learned counsel for the Revision petitioners would submit that the appointment of Advocate Commissioner is necessary for the purpose of appraising statement of accounts that was maintained during the course of business between the revision petitioner and the defendant. Only on such appraisal and filing of an assessment Report, the unfair trade practice followed by the respondents would come to Lime Light, such that would enable the Court to come to a proper conclusion.

9. Per contra, the learned counsel for the 1st respondent would submit that the revision petition is liable to be dismissed inlimine for the reason, since intended to get appointed an Advocate Commissioner and to collect evidence through him.

10. On careful perusal of the records, this Court is of the opinion that there is much force in the contention of the respondents. It is apparent from the averments made in the



supporting affidavit filed in the above I.A. and the purpose put forth by the revision petitioners to appoint an Advocate Commissioner is to assess the records with the aid of auditor and to submit a statement of accounting the transactions taken place between the Revision petitioners and the respondents.

WEB COPY

11.It is needless to say that at any cost an Advocate Commissioner cannot be appointed for the purpose of collection of evidence. It is the duty of the parties to adduce oral and documentary evidence to substantiate their claim and they cannot seek for appointment of an Advocate Commissioner to collect evidence.

12.It is noteworthy that a commissioner is sought to be appointed to divulge the trade practice taken place between the parties. In any stretch of imagination an appointment of Advocate Commissioner cannot be allowed for the said purpose of deciding the types of the dealing and its nature taken place in the course of business.

13.It is seen that the trial Court has rightly dismissed the revision petitioners' application by holding that the Evaluation or unfair trade practice or the pertaining transactions in a business are required and liable to be established only by Oral and Documentary evidence to be adduced on either side at the time of trial and an Advocate Commissioner cannot be appointed for the same. This Court finds no infirmity or irregularity over the above said finding and decision of the Trial Court.

14.In the result, this Civil Revision Petition fails and the same is hereby dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

The Additional District Judge-II,
Thoothukudi.

+1cc to Mr.S.Kadarkarai, Advocate, SR.No.69284.

order made in
C.R.P. (MD) (PD) No.2767 of 2015
and
M.P. (MD) No.1 of 2015
22.06.2018