



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.01.2018
Delivered on : 28.03.2018

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P. (PD) (MD) No.637 of 2011
and
M.P(MD) .No.2 of 2011

S.Rengarajan

... Revision Petitioner/Petitioner
Plaintiff

vs.

1. M/s.Ulivera Carbides and Selicon,
A Partnership Firm represented by its
Managing Partner M.Gandhi,
S.o.A.R.Manickam Chettiar,
11/12, Trichy Pudukkottai Road,
Mathur Village,
Pudukkottai District.

2. M.Gandhi

3. R.Ramu

4. M.Valliammai

5. M.Ananda Thandavan

... Respondents/Respondents/
Defendants

PRAYER: Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 29.09.2008 made in I.A.No.396 of 2008 in O.S.No.215 of 2004 on the file of the District Munsif cum Judicial Magistrate, Keeranoor.

For Petitioner : Mrs.J.Maria Roseline

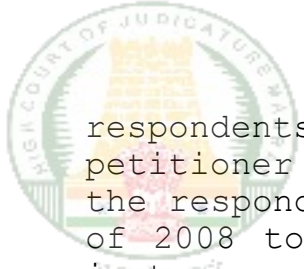
For R1 & R2 : Mr.M.Ramaratnam

For R5 : No Appearance

ORDER

This petition has been filed against the fair and decreetal order dated 29.09.2008 made in I.A.No.396 of 2008 in O.S.No.215 of 2004 on the file of the District Munsif cum Judicial Magistrate, Keeranoor.

2. The brief facts of the case is that the petitioner has filed the suit for recovery of a sum of Rs.72,858/- which is due from the



respondents/defendants by way of electricity dues paid by the petitioner to the Tamilnadu Electricity Board which was payable by the respondents. At this stage, the petitioner has filed I.A.No.396 of 2008 to direct the respondents to let in evidence in the first instance.

3.The petitioner contended that since the claim of the petitioner is substantially admitted by the respondents in the written statement, the respondents shall be directed to let in evidence in the first instance. Hence, the petitioner had filed the present application.

4.The learned counsel for the respondent submitted that the claim of the petitioner was not admitted by them in the written statement and hence the petitioner cannot compel or force the respondent to begin the trial by letting in evidence and prays for dismissal of the application.

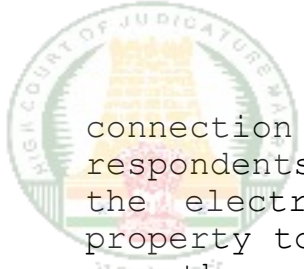
5.After hearing both sides, the Trial Court has dismissed the application. Aggrieved over the same, the petitioner has come forward with this revision petition.

6.The learned counsel for the petitioner submitted that the lower Court misconstrued the averments made in the written statement and erred in holding there is admission of the claim of the petitioner by the respondent.

7.Heard both sides and perused the documents available on record.

8..The issue in this Civil Revision Petition is that the revision petitioner, who is the plaintiff in the suit has filed an application under Order 18 Rule 1 and Section 151 of CPC. Since the respondent/defendant has admitted the claim in the written statement, this petitioner sought for a direction to let in evidence by the respondents. Based on the fact that the petitioner being the plaintiff has made a plea that the respondent/defendant let in evidence in the first instance and the petition filed by the petitioner as a plaintiff in the suit was dismissed. Against which, the Civil Revision Petition has been preferred.

9.I.A.No.396 of 2008 preferred by the petitioner plaintiff for a direction by the trial Court, directing the respondent/defendant to let in evidence in the first instance based on his admission of claim in the written statement. The respondent in the counter statement has stated that there is no such admission by him in the statement and he cannot be compelled to let in evidence at the first instance. It is observed from the plaint that the suit has been filed by the petitioner for recovery of money from the respondent alleging that electricity dues are payable to the tune of RS.1,15,734/- was not paid by the respondents to the Tamilnadu Electricity Board and since the property in which the electricity



connection in question was purchased by the petitioner from the respondents. But in the written statement though the amount due to the electricity board is admitted on the date of the sale of property to the petitioner, the respondent disowned his liability to pay the said amount to the petitioner towards electricity dues. Hence as per the provisions of Order 18 Rule the general rule of evidence and the party on whom the onus lies should begin the trial. Hence considering the nature of the relief sought by the plaintiff/petitioner the onus is upon the petitioner to begin the trial by letting in evidence to substantiate the suit claim. Further in terms of Section 102 of the Evidence Act also the initial onus is always on the plaintiff and only then the onus shifts to the defendants to prove those circumstances if any which would disentitle the plaintiff to the same. Hence on the mere statement made by the respondent in his written statement, the petitioner cannot sought for such a direction directing the respondents to begin the trial. It is observed from the records that the suit was filed in the year 2004 and this I.A was also filed in the year 2008 and the said petition was dismissed and against which this CRP has been preferred and till date it is pending only for deciding the issue who has to let in evidence first.

10.This suit was filed on 07.10.2004 and the written statement was filed on 05.04.2005 and this application in I.A.No.396 of 2008 filed in the year 22.09.2008 at the time when the case was ready for trial. When the petitioner/plaintiff has filed the suit claiming for a relief should place his case before the Court at the earliest. But sticking on to the statement made by the respondent, a petition has been filed and when the same was dismissed he should have proceeded with the case. But he has filed this petition and this petition is pending here for another 8 years which proves that the petitioner is not interested in proceeding with the case.

11.In the result, this civil revision petition is dismissed and the trial Court is directed to proceed with the case and dispose of the suit in O.S.No.215 of 2004 within a period of six months without giving any opportunity for either party to file any such petitions. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif cum Judicial Magistrate,
<https://hcservices.ecourts.gov.in/hcservices/>
 Keeranoor.



2. The Record Keeper,
V.R.Section, (2 Copies)
Madurai Bench of Madras High Court,
Madurai.

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+1CC to Mr.D.Senthil, Advocate in SR.No.58814,
+1CC to Mrs.J.Maria Roseline, Advocate in SR.No.59110.

TM

DS/SV/MMS/SAR-2 :17.05.2018: 4P/6C

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M.P (MD) .No.2 of 2011
28.03.2018