

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).Nos.2600, 2601 & 2602 of 2018

&

C.M.P.No.15614 of 2018

Sri Venkatesh & Co.,

...Petitioner

Vs

1.The Madras Stock Exchange Ltd.,
Rep. by its Director
Mores Street, Chennai – 600 001

2.The Bombay Stock Exchange Ltd.,
Rep. by its Director
Bombay.

3.Karvy Computershare Private Ltd.,
The unit of Hero Moto Corp Ltd,
(Formerly Hero Honda,
unit and Modialkalies,) सत्यमेव जयते
Plot No.17 to 24, Vithal Rao Nagar,
Madhapur,
Hyderabad – 500 081.

4.Karvy Computershare Private Ltd.,
The unit of Reliance Industries Ltd,
(Formerly Reliance Industries Ltd,)
Plot No.17 to 24, Vithal Rao Nagar,

Madhapur, Hyderabad – 500 081.

5.M/s.Adinath Textiles Ltd.,
Rep. by its Director,
Village Bholapur,
P.O.Sahabana,
Chandigarh Road,
Ludhiana-141 123.

6.M/s.Gujarat Godrej Ltd.,
the unit of M/s.Godrej Soaps Ltd.,
rep. by its Director,
No.247/1,G.I.D.C. Industrial Estate,
Sachin, District Surat – 344 230.

7.M/s.Sand Plast India Ltd.,
Rep. by its Director,
No.B-77, Raman Marg,
tilak Nagar,
Jaipur – 302 004.

8.M/s.Ray Mounds Synthetics Ltd.,
Dhun Building,
No.175-1, Mount Road,
Chennai – 600001.

9.TSR Darashaw Private Ltd.,
The unit of TATA Motors Ltd.,
(Formerly M/s.Telco, the unit of
Computer Age Management Service (P) Ltd.,
No.6-10 Haji Moosa Patrawala Industrial Estate 20,
Dr.E.Moses Road,
Near Famous Studio Mahalaxmi
Mumbai – 400 011.

10.M/s.Atma Steels,
C/139/142, Industrial Area
No.1, Bulland Shahr Road,
Ghaziabad,
Pincode – 201 001.

11.M/s.Modi Alkalis, Mas Services (P) Ltd.,
No.C-3 Sadppinig Centre,
Sardarjan Devp Area,
New Delhi – 16.

12.Karvy Computershare Private Limited
Unit of Reliance Capital Limited
(Formerly Reliance Capital,
the unit of M/s.Computer Age
Management Service (P) LTD.)
madhura Estates,
Municipal No.1-9/13/C,
Plot No.13 & 13C, Survey No.74 & 75,
madhapur village, Hyderabad-500 081
Andhra Pradesh

13.Karvy Computershare Private Limited
Unit of M/s.Reliance Petro 'C'
the unit of M/s.Computer Age
Management Service (P) LTD.,
madhura Estates,
Municipal No.1-9/13/C,
Plot No.13 & 13C, Survey No.74 & 75,
madhapur village, Hyderabad-500 081
Andhra Pradesh

14.Sharepro Services (India) Pvt Ltd.,
Unit of M/s.Larser & Toubro Ltd.,
(Formerly M/s.Larsen & tubro Ltd.,
the unit of M/s.Computer Age
Management Services (P) Ltd.,)
13 AB, Samhita Warehousing Complex,
2nd floor, Near Sakinaka Telephone Exchange,
Andheri-Kurla Road, Sakinaka,
Andheri(E), Mumbai-400 072.

15.Canbank Mutual Fund – canshare,
Rep. by its General manager,
Orient house,
Adi marzanpatti,
Bombay – 400 038.

16.M/s.Nirlon Synthetic fibres & Chemicals
Nirlon House,
Rep. by its Director,
No.254-B, Dr.Annie Besant Road,
Worli, Bombay-400 025.

17.M/s.Orkay Silk Mills,
SBI – Buildings,
1st Floor, Bank Street,
Fort, Bombay – 400 023.

18.M/s.Bindal Agro,
being the unit of M/s.Computer Age,
Management Service (P) Ltd.,
No.606, A & B Buildings,
Laxmi Bhavan, Mount Road,
Chennai-600 002.

... Respondents

Prayer in C.R.P.No.2600 of 2018: Civil Revision Petition is filed under Article 227 of the Constitution of India against fair and decreetal order dated 11.12.2017 in I.A.No.12251 of 2017 in O.S.No.6929 of 2014 on the file of the Hon'ble I Assistant City Civil Court at Chennai.

Prayer in C.R.P.No.2601 of 2018: Civil Revision Petition is filed under Article 227 of the Constitution of India against fair and decreetal

order dated 11.12.2017 in I.A.No.12252 of 2017 in O.S.No.6929 of 2014 on the file of the Hon'ble I Assistant City Civil Court at Chennai.

Prayer in C.R.P.No.2602 of 2018: Civil Revision Petition is filed under Article 227 of the Constitution of India against fair and decreetal order dated 11.12.2017 in I.A.No.12253 of 2017 in O.S.No.6929 of 2014 on the file of the Hon'ble I Assistant City Civil Court at Chennai.

For Petitioner : M/s.Anil Rel Wani
For Respondent 3: Mr.S.Ramasubramaniam
For Respondents
1, 2, 4 to 18 : Ex parte

ORDER

The above Civil Revision petitions are filed challenging the order passed in I.A.Nos.12251, 12252 and 12253 of 2017 in O.S.No.6929 of 2014 for:

- a)for recalling the plaintiff's side evidence.
- b)to reopen the plaintiff's side evidence.
- c)seeking leave to receive an additional documents.

The brief narration of the facts which have culminated in the filing of the above Civil Revision Petitions are as follows:

The plaintiff/revision petitioner is a Stock and Share broker and from the contents of the plaint it is seen that on 18.04.1991, when his staff were proceeding in an auto rickshaw from the office to the Stock Exchange for delivering the day's documents, one of the brief case was left back in the vehicle by oversight and got lost therefore the shares with certificates issued to various parties for transfer had been lost. Despite the best efforts the plaintiff was unable to obtain the documents.

2. Therefore, following the procedure, the plaintiff had written to the various companies, which had issued the share certificates with copies to the stock exchange office in Madras and Bombay requesting them to issue duplicate share certificates and also requesting them not to effect the transfer of the shares which had been detailed in the schedule therein. To the same, all the companies responded stating that they would do so. They had also directed the plaintiff to obtain an order of an injunction restraining them from effecting the transfer. Therefore the plaintiff had filed the first suit O.S.No.7452 of 1996

which was originally filed before this Court as C.S.No.729 of 1991 and later transferred to the file of the III Assistant City Civil Court and re-numbered as O.S.No.7452 of 1996. The plaintiff had impleaded all the companies besides the Stock Exchanges.

3.The suit was filed for an injunction restraining the defendants from effecting or dealing with the share certificates, which had been detailed in the schedule A of the plaint, till the duplicate share certificates are issued in lieu of the lost certificates by the defendants. The plaint contains the schedule which gives the details of the company, certificate numbers of the shares along with their distinctive numbers, the holder's name and number of shares. This suit was decreed ex parte on 19.08.1998. Despite obtaining an order of injunction the companies did not come forward to issue duplicate share certificates and hence the present suit has been filed for a mandatory injunction directing the defendant companies to issue duplicate certificate to plaintiff as per the particulars given in the schedule.

4.The said suit was contested only by the 3rd defendant who had

filed a written statement, wherein they had taken a plea of non-joinder of necessary parties since the registered share holders were not made parties to the suit, the suit was under valued and therefore Court fee paid was incorrect and thirdly, there is no allegations against the 3rd defendant in the said suit. Arguments were advanced and completed and the matter was posted for reply arguments of the plaintiff/revision petitioner.

5. At this juncture, the revision petitioner had come forward with the application subject matter of this revision. The said application has been filed on the following basis as contained in the petition which read as follows:

"The 3rd defendant in his written arguments took a fresh plea that the plaintiff is not true and law full owner of the share certificates, which was not at all stated in their written statement.

5. I state that as the 3rd defendant has disputed my title only in his written argument, it is imminent for me to file the delivery note and voucher of the shares of the 3rd defendant company."

6. The said application was opposed by the 3rd defendant and

ultimately, the learned I Assistant Judge has dismissed the application stating that the reasons claimed in the affidavit was false. Challenging the said order the revision petitioner is before this Court.

7.It is seen from the written statement which was filed on 08.02.2016, that the 3rd defendant had only raised a plea that the plaintiff had not added the necessary parties namely the registered share holders. Apart from that, the contents of the written statement was that the suit was under valued and consequently the Court fee was not properly paid and that the 3rd defendant had also issued necessary speaking orders as far as the missing shares were concerned. The 3rd defendant also questioned the loss of the shares and had put the plaintiff to strict proof of the same.

8.However, nowhere in the written statement, had the 3rd defendant questioned the locus standi of the revision petitioner to file the suit. In the written arguments, for the first time the 3rd defendant has submitted that the revision petitioner is not entitled to the relief since he is not the registered holder. They had specifically averred that since the plaintiff had failed to prove their ownership to the

schedule share certificates they are not entitled to the issue of the duplicate share certificates. Such a plea has not been taken in the written statement.

9.Be that as it may, the plaintiff has come forward with the specific case that they had been operating as an agent and had purchased shares from other agents to sell to clients which is a recognized mode of share transfer. So the manner in which the suit shares had come into their custody are the documents that are now sought to be filed to corroborate their claim.

10.Heard the counsels on the either side. It is needless to state that the marking of the documents would ultimately be subject to the proof and relevancy and liberty being given to the defendants to cross examine the plaintiff with reference to the documents. The respective companies would have originally issued the shares only after receiving applications/share transfer forms duly executed by the share holders and therefore by allowing this application the defendants are in no way going to be prejudiced. Duplicate shares will be issued only after cross-checking their registers. Further these documents are only filed

to show how the plaintiff/revision petitioner had come to possession of the share certificates and their locus to submit these shares for transfer. In these circumstances, I am of the opinion that the order passed by the learned I Assistant City Civil Judge is erroneous. The order is set aside and the Civil Revision Petitions are allowed.

11.The documents will be received and marked subject to the proof and relevancy and the 3rd defendant will be given liberty to cross examine the witness with reference to the documents that are going to be marked.

12.Considering the fact that the suit had been filed as early as in the year 2014 and it was at the stage of arguments when the I.A.Nos.12251 to 12253 of 2017 was filed, the suit will be disposed of within a period of two months from the date of receipt of a copy of the order.

13.It is informed that the suit has been now adjourned to June 2019, either parties are permitted to file a necessary applications before the Court below to advance the hearing and on such application

the learned Judge would advance hearing.

The above Civil Revision Petitions are allowed on the above lines.
There shall be no order as to costs. Consequently, connected Civil
Miscellaneous Petition is also closed.

06.03.2019

kan
Index : Yes/No
Speaking order/non-speaking order

To,

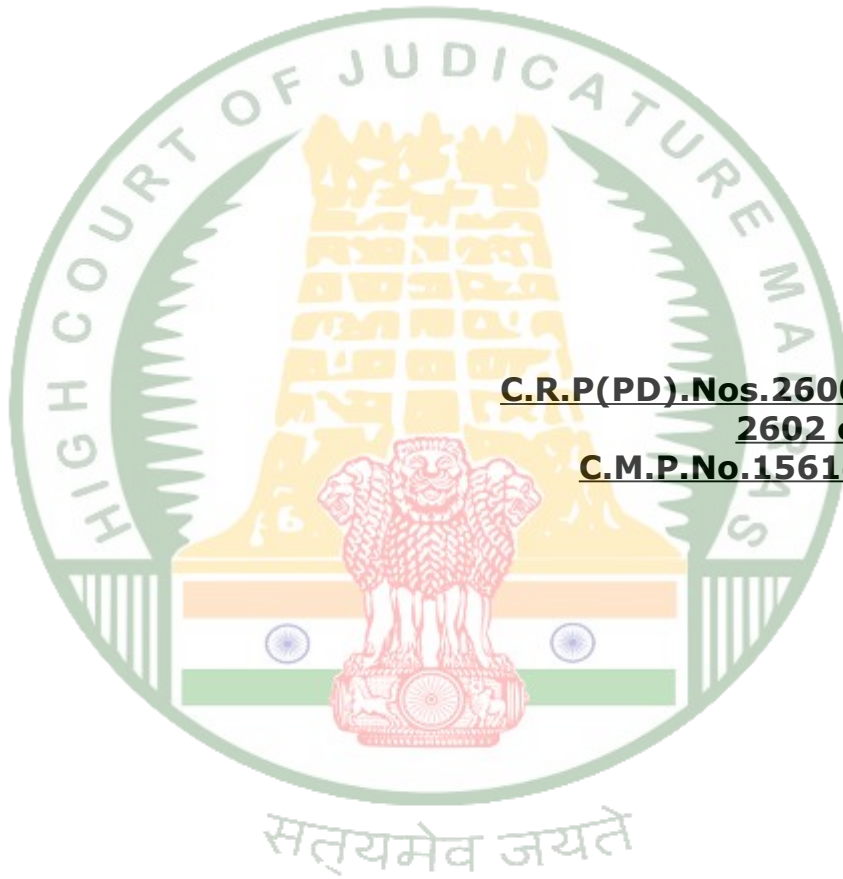
The I Assistant City Civil Judge,
Chennai.



WEB COPY

P.T.ASHA, J.,

kan



**C.R.P(PD).Nos.2600, 2601 &
2602 of 2018 &
C.M.P.No.15614 of 2018**

WEB COPY

06.03.2019