

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.07.2018**Pronounced on : 11.06.2019**

Coram:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**C.R.P.(NPD)No.958 of 2018 and
C.M.P.No.5128 of 20108

1. R.V.Subramaniam Chettiya, Charities Trust,
Rep. by its Managing Trustee,
R.Badri Narayanan
 2. R.Badri Narayanan
 3. A.Chennakrishnan
 4. Anantha Subramanian
 5. A.B.Venugopal Chettiar
 6. A.B.Sudarsanam
- ... Petitioners

Vs.

1. M/s.Mass Promoters
a firm by Managing Partner
S.Ashik Hussain
30/11-A, S.M.Layour,
Hasthampatty, Salem – 7.
 2. The District Collector,
Collectorate Compound,
Salem – 1.
- ... Respondents

Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the decreetal order dated 16.11.2017 made in P.O.P.No.7 of 2016 by the learned IInd Additional District Judge, Salem.

For Petitioner : Mr.T.Srikrishna Bhagawat for
M/s.P.Subba Reddy
For Respondent : Mr.S.Saravanan for R1
R2 – Notice served – No Appearance

ORDER

The petitioner is defendant in the suit and respondent in impugned order and 1st respondent is plaintiff and petitioner in the impugned proceedings. The first petitioner is Trust, petitioners 2 to 4 are trustees and petitioners 5 & 6 are former trustees of the first petitioner Trust. The Trust owned land and building, which was leased out to the first respondent partnership firm and the respondents alleged to have constructed commercial complex in the land. Subsequently, the first petitioner Trust was taken over by the Hindu Religious and Charitable Endowment Department (in short "HR & CE") in the year 2013. Now the properties are under the control of HR & CE and therefore the first petitioner Trust is nothing to do with the properties. The first respondent/lessee wanted to report the leasehold right and reimbursement of the amount paid to the first petitioner/Trust. Since the first respondent partnership firms have no means to pay Court fee to file a suit, have filed a petition in P.O.P.No.7 of 2016 under Order XXXIII Rule 1 of CPC to permit the first respondent partnership firm to sue against the petitioners as indigent

person and to grant exemption in payment of Court fees. The said petition was allowed by order dated 16.11.2017, by the learned II Additional District Judge, Salem, and permitted the first respondent to prosecute the lis informa pauperis and the office was directed to take the suit on file, if it is otherwise in order. Challenging the above order made in P.O.P.No.7 of 2016, the petitioners have filed the present civil revision before this Court.

2 According to learned counsel for petitioners, the first respondent partnership firm is not a registered firm and they have sublet the properties to various tenants and collected huge sums of money and they have sufficient means to pay the Court fee and therefore they are not entitled to file the suit as indigent person. Further the learned counsel would submit that the lease agreement was not entered into with the first respondent partnership firm and it was actually entered into with the individuals and after entering into the agreement, they formed the first respondent partnership firm, which is also not registered. Therefore unregistered partnership firm cannot file a suit against the petitioners. The learned II Additional District Judge failed to consider the fact that the first respondent partnership firm despite having sufficient means and in order to evade

payment of the Court fee, has filed the petition and permitted the first respondent to sue as indigent person and thereby, the learned Judge has failed to consider the scope and object of Order XXXIII Rule 1, which warrants interference.

3 According to learned counsel appearing for the first respondent, the first respondent is the registered partnership firm and the first petitioner Trust leased out its properties to the first respondent and entered into an agreement on 05.04.2009, since the above agreement was not executed with the competent persons, subsequently another agreement was executed on 10.04.2009 and on the basis of the said agreement, the first respondent spent huge sums of money for constructing commercial complex in the land owned by the first petitioner Trust. Now the first petitioner Trust is under the control of HR & CE Department and therefore the first respondent issued legal notice on 10.04.2014 terminating the lease agreement and called for reimbursement of the expenses and return of advances, for which, the petitioners 2 to 6 and others have replied with false allegations. The first respondent has not possessed any property, except, the suit properties and it is not in a position to pay the Court fee and further the first respondent firm has not executed any

agreement within three months prior to the filing of the suit. Therefore, the first respondent firm was permitted to sue as indigent person. The learned Judge, after following the procedures as contemplated under Order XXXIII Rule 1 CPC, permitted the first respondent to file a suit as indigent person, which does not call for any interference.

4 Heard the learned counsel appearing on either side and perused the materials available on record.

5 It is not in dispute that the properties of the first petitioner Trust had been leased out to the first respondent firm and subsequently, the first petitioner Trust has been taken over by HR & CE Department. The first respondent had sent a legal notice to the respondents 2 to 6 and they replied with false allegations and hence the first respondent has filed a petition under Order XXXIII Rule 1 CPC to sue as indigent person and the Court also allowed the same. The main objection of the petitioners for allowing the above petition is that the first respondent firm is not a registered one, but, it is seen that the first respondent while filing the plaint before the Court below has annexed FORM – C of the firm, which shows that the firm is registered

one. Further it was contended on behalf of the petitioner that the first respondent despite having sufficient means, in order to evade payment of Court fee, has filed petition under Order XXXIII Rule 1 CPC. It is seen that Managing Partner one Mr.Ashik Hussain was examined as P.W.1 and he was subjected to cross examination by the petitioners and at that time suggestion was put that the first respondent firm has sufficient means to pay the Court fee. The above suggestion put before P.W.1 by the petitioners was totally denied and nothing has been elicited from cross examination of P.W.1. The petitioners, to prove their contention that the first respondent firm has sufficient means to pay the Court fee, has not produced any oral or documentary evidence. The Court below after careful scrutiny, has allowed the first respondent to sue as indigent person.

6 It is needless to say that if once the Court allowed the first respondent to sue as indigent person, it does not mean that the first respondent need not pay the Court fee. When the first respondent impleaded the District Collector, either the Government can prove that the first respondent is not indigent person at any stage or even the petitioners can prove with documentary proof that the first respondent has sufficient means to pay the Court fee at any stage of pending suit

and if any one of the persons proved the fact that the first respondent has sufficient means to pay the court fee, then the Court can ask the first respondent, who was allowed to file a suit as indigent person, to pay the Court fee immediately. Even otherwise, the Court would ask the first respondent to pay the Court fee, if it succeeded in the suit. Under these circumstances, when the first respondent filed a petition seeking to sue as indigent person and the Court after scrutiny of facts granted the prayer, the petitioners having not proved with documentary proof that the first respondent despite having sufficient means, has not paid the Court fee and filed the petition to permit the firm or indigent person, this Court does not find any illegality or infirmity in the order passed by the learned II Additional District Judge, Salem, and the same does not call for any interference of this Court.

12 Accordingly, the civil revision petition is dismissed. Consequently connected miscellaneous petition is closed. No costs.

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Index: Yes/No

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To

The II Additional District Judge, Salem.

P.VELMURUGAN, J.,

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**Pre-Delivery Order in
C.R.P.(NPD)No.958 of 2018**

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