

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **17.10.2019**

Pronounced on : **22.10.2019**

Coram

THE HONOURABLE MR. JUSTICE **R.SURESH KUMAR**

C.R.P (NPD) No.3331 of 2019

K.P.Selvah @ Panner Selvam .. Petitioner

vs.

1. Atlee
(Director & Writer)

2. M/s. AGS Entertainment Pvt., Ltd., (Corporate Office)
Rep.by its Managing Director,
Old No.54, New No.34, Thirumalai Road,
T.Nagar, Chennai - 600 017.

3. M/s. South Indian Film Writers' Association
Rep. by its President,
Plot.L-33-Flat I, 2nd Floor,
L.I.G Bharathidasan Colony,
K.K.Nagar, Chennai - 600 078.

.. Respondents

Petition filed under Article 227 of the Constitution of India, to set aside the order, dated 20.08.2019 as regards refusing liberty to the petitioner for filing a fresh suit in I.A.No.7/2019 in O.S.No.2464 of 2019 on the file of the XIV Assistant City Civil Court, Chennai and allow the revision petition with costs.

For Petitioner : Mr.R.Sathish Kumar

For Respondents : Mr.P.V.Balasubramanian
for M/s.BFS Legal for R1
Mr.Srinath Sridevan for R2

ORDER

This Revision Petition has been filed against the fair and decretal order passed in I.A.No.7 of 2019 in O.S.No.2464 of 2019 by the XIV Assistant City Civil Judge at Chennai, by order, dated 20.08.2019.

2. The Revision Petitioner before this Court is the plaintiff, who filed the suit in O.S.No.2464 of 2019 before the trial Court for the following relief :

"The plaintiff therefore pray that this Hon'ble Court may be pleased to pass a Judgment and decree against the Defendant in favour of the plaintiff :

a. To grant an order of permanent injunction restraining the defendants, his men, or agents or servant or anybody claiming under them from take movie based on plaintiff story registered in "South Indian Film Writers Association" bearing Registration No.005004 of 2018 on 10.10.2018 in title name of "Kalki".

b. grant an order of permanent injunction restraining the defendants, his men or agents or servant or anybody claiming under them from releasing of the said Movie "Thalapathy 63" or any other title based on plaintiff story bearing Registration Number 005004 of 2018 on 10.10.2018 in title name of "Kalki".

3. On filing of the said suit, which was admitted and summons

were issued to the defendants, who are the respondents herein, on receipt of summons, the respondents entered appearance in the suit.

4. The first respondent is the first defendant and the second respondent is the second defendant in the suit. These respondents / defendants filed two applications in the said suit. I.A.No.5 of 2019 was filed by the second respondent / second defendant under Order VII Rule 11(d) and 11(a) of CPC to reject the plaint. Like that, the first respondent / first defendant also filed an Interlocutory Application in the said suit in I.A.No.6 of 2019, of course this I.A also was filed under Order VII Rule 11 (a) & (d) of CPC to reject the plaint.

5. In the said two Interlocutory Applications, i.e. I.A.Nos.6 and 5 of 2019 filed by the respondents 1 and 2, i.e., defendants 1 and 2 respectively, counter affidavit had been filed by the revision petitioner / plaintiff and when the said Interlocutory Applications were pending consideration, the revision petitioner / plaintiff filed the present Interlocutory Application, i.e., I.A.No.7 of 2019 on 17.07.2019 under Order XXIII Rule 1 r/w Section 151 of CPC, seeking the permission of the trial Court to withdraw the suit with liberty to file a fresh suit before the appropriate forum.

6. In the said application in I.A.No.7 of 2019, both the

respondents 1 and 2, i.e., defendants 1 and 2 had filed counter affidavit separately and arguments seems to have been advanced by both sides. After hearing both sides, the learned Judge in the said I.A.No.7 of 2019 passed the order on 20.08.2019, whereby, the learned Judge permitted the revision petitioner / plaintiff to withdraw the suit as sought for, however the permission sought for from the court below to file a fresh suit before the appropriate forum has been rejected or such permission was denied, thereby I.A.No.7 of 2019 was partly allowed and partly dismissed. Therefore against the disallowed portion, in other words, order not permitting the petitioner / plaintiff to institute a fresh suit before the appropriate forum, the revision petitioner / plaintiff filed the present revision, invoking the superintendence power of this Court under Article 227 of the Constitution, that is how the present revision has come up before this Court.

7. On the day of admission of this revision, Advocates for R1 and R2 entered appearance through caveat and preliminary arguments were heard from the learned counsel for the revision petitioner as well as the respondents 1 and 2. At the request of the learned counsel for the respondents, the matter has been posted for further hearing and

accordingly it came up for hearing on 17.10.2019, on that date arguments were advanced by the learned counsel for the revision petitioner as well as the learned respective counsel appearing for R1 and R2. In so far as R3 is concerned, even before the Court below they stood exparte and here also in view of the decision going to be taken in this revision, which is not going to be adverse in nature against the third respondent and more over, in effect, the third respondent seems to be a formal party as he has not chosen to contest even I.A.No.7 of 2019 before the court below, the notice / presence of the third respondent in this revision is hereby dispensed with.

8. As has been projected by the revision petitioner / plaintiff, the case of the plaintiff / revision petitioner is that, he claimed to be a story writer-cum-Assistant Director and he claimed to have penned a story based on Tamil Nadu State Women Football team and coach sometime between June 2017 and November 2017 and he claimed to have sent a soft copy of the story he penned, for the safeguard purpose, to his Gmail address on 01.12.2017 and thereafter, he claimed to have had discussions with cine field personalities at various point of time during the year 2017-2018 and ultimately he registered the said story with the title "Kalki", at the third respondent

organisation, namely, M/s. South Indian Film Writers' Association at Chennai on 10.10.2018 with Registration No. 005004 of 2018.

9. It is the further case of the revision petitioner / plaintiff before the trial Court as projected in the plaint that, subsequently he came to know that, with the similar story line a feature film called "Thalapathy 63", was said to be taken with the Directorship of the first respondent by the production company, i.e., the second respondent and after coming to know the said fact, the plaintiff / revision petitioner claimed to have raised the issue with the first and second respondent and he further claimed that, on behalf of the first respondent, his assistant met the revision petitioner / plaintiff more than once and some talks claimed to had taken place and ultimately nothing had been materialised and the first and second respondents proceeded to shot the film with the famous film artists of Tamil feature film industry. Only in the said circumstances, the plaintiff / revision petitioner had to approach the trial Court by filing the suit for the aforesaid prayer of injunction.

10. Therefore the sum and substance of the case of the revision

petitioner / plaintiff before the trial Court, as projected in the plaint, was that, his story claimed to have been penned by him some time in between June and November 2017 and registered on 10.10.2018 with the third respondent, had been used or utilised by the first and second respondent to take the movie, namely, "Thalapathy 63", and despite efforts having been taken by the revision petitioner / plaintiff to redress his grievance amicably with the respondents 1 and 2, those attempts had become in vein, therefore he had to approach the Court below for the relief set out therein.

11. However the contra case of the respondents 1 and 2, who are the defendants 1 and 2 in the trial Court who are the only contesting respondents, that, the first respondent is the Director-cum-story writer of the story called "Vathiyar" which was registered by the first respondent at the third respondent on 04.07.2018 with Registration No. 004889. Therefore the story line claimed to have been penned by the plaintiff / revision petitioner and registered with the third respondent on 10.10.2018 with title "Kalki", is a subsequent registration, whereas the first respondent had already penned his story "Vathiyar" and registered on 04.07.2018 at third respondent, based on which, the movie was produced by the second respondent production

house and therefore, absolutely, there had been no cause of action available for the plaintiff / revision petitioner to lay the suit before the Court below.

12. It is also the case of the first respondent and also the case of the second respondent that, the suit filed by the plaintiff / revision petitioner before the Court below is barred under law in view of Section 62 of the Copyright Act, 1957 which expressly provided that, copyright infringement can be decided only by the District Court and in the city of Chennai under the provisions of the Commercial Courts Act, such suit can only be laid before this Court in the Commercial Division and therefore the very suit filed by the plaintiff / revision petitioner before the Court below is barred by law, besides lack of cause of action, as has been stated above.

13. On these two grounds, both the respondent 1 and 2, who stood as defendant 1 and 2 in the suit, had filed the aforesaid I.A.Nos.6 and 5 of 2019 respectively, invoking Order VII Rule 11(a) and (d) r/w Section 151 of CPC to reject the plaint, where, after having been completed the pleadings, the trial Court taken up for hearing and infact the hearing of the respondents 1 and 2 herein who were the

8/48

petitioners in the said I.As, was completed and only for the arguments of the plaintiff / revision petitioner who stood as respondents in both the Interlocutory Applications was pending, at that last movement the present I.A., i.e., I.A.No.7 of 2019 was filed by the revision petitioner / plaintiff under Order XXIII Rule 1 of CPC, where the respondents 1 and 2 herein, who were the respondents 1 and 2 in the said Interlocutory Applications, also seems to have taken a stand that, the said application, requesting the permission of the Court below to withdraw the suit can be allowed, but at the same time, liberty sought for by the plaintiff / revision petitioner to institute a fresh suit on the same cause of action cannot be granted. Accordingly the trial Court decided the issue in I.A.No.7 of 2019 instead of deciding the I.A.Nos.5 and 6 of 2019 to reject the plaint, thereby, of course, the trial Court, according to the respondents 1 and 2, permitted the petitioner / plaintiff to withdraw the suit and also rightly rejected his claim to file a fresh suit.

14. With these case and counter case, the parties have been before this Court in this revision.

15. Heard Mr.R.Sathish Kumar, learned counsel appearing for

the revision petitioner / plaintiff who would submit that, when the suit was laid for the prayer of permanent injunction, on receipt of suit summons, defendant 1 and 2 entered appearance and they have taken an initiative by filing I.A.Nos.5 and 6 of 2019 under Order VII Rule 11(a) and (d) r/w Section 151 of CPC to reject the plaint, where suitable counter affidavits were filed by the revision petitioner / plaintiff and those applications were pending.

16. The learned counsel would submit that, it is the specific stand of respondents 1 and 2 herein before the trial Court that, the suit is barred under law, in view of the specific provision under Section 62 of the Copyright Act, under which, the Court, where the suit was laid, does not have jurisdiction to try the suit, since it is an alleged infringement of copyright. Though an issue on cause of action was also raised by the respondents in the said Interlocutory Application, the case of the plaintiff / revision petitioner, according to the learned counsel, was that, the suit was laid as if that the trial Court has got jurisdiction to try the suit, despite the fact that, there has been an allegation against the defendants that, they violated the copyright or infringement of copyright, though that had not been expressly stated in the plaint. Therefore, realising the said mistake, for want of

10/48

jurisdiction since the Court below, where the suit was laid, had no jurisdiction to try the suit, the plaintiff was advised to file an application to seek permission to withdraw the suit and file it before the appropriate forum and accordingly, I.A.No.7 of 2019 was filed under Order XXIII Rule 1 of CPC.

17. The learned counsel for the revision petitioner has also submitted that, while permitting the petitioner /plaintiff to withdraw the suit, the trial Court ought to have permitted the petitioner / plaintiff to institute a fresh suit before the proper forum and when the said liberty or permission was sought for, as has been contemplated under Order XXIII, the same has been specifically rejected or denied by the trial Court in the order impugned, which is unjustifiable and unlawful. Therefore only against the said dis-allowed portion in the impugned order denying the liberty / permission sought for by the plaintiff to institute a fresh suit, the present revision petition has been filed, he contended.

18. Per contra Mr.Srinath Sridevan, learned counsel appearing for the second respondent / D2, which is the production company of the film concerned, has made elaborate submissions.

19. In support of his contention, Mr.P.V.Balasubramaniam,

learned counsel appearing for R1, who is the Director of the film concerned, has also made supportive submissions for the learned counsel for R2 and in effect the submissions made and the grounds urged by both the counsels are almost similar as both are supporting each other and made a combined onslaught on the revision petitioner / plaintiff by stiffly opposing the move of the revision petitioner to file this revision invoking Article 227 of the Constitution.

20. The four main grounds urged on behalf of the respondents 1 and 2 by the learned respective counsels are as follow :

(i) That the revision petitioner ought not to have invoked the superintendence power of this Court under Article 227 by filing this revision, since there is an alternative appeal remedy available to the revision petitioner / plaintiff under CPC. In this context they rely upon Section 96 as well as Section 105(1) of CPC.

(ii) In view of the specific appeal remedy available against the impugned order, the revision petitioner cannot maintain this revision petition, therefore this revision itself is not maintainable.

(iii) There is no cause of action for laying

the suit itself, as admittedly the petitioner / plaintiff claimed to have registered his story with the third respondent on 10.10.2018, whereas the story of the first respondent was registered on 04.07.2018.

(iv) The trial Court, as a matter of fact, could not have decided I.A.No.7 of 2019 without deciding I.A.Nos.5 and 6 of 2019 filed by the respondents 2 and 1, as those applications were filed under Order VII Rule 11(a) and (d) of CPC to reject the plaint, where pleadings completed, arguments advanced by the respondents 1 and 2 herein, who were the petitioners in the said I.A and if those Interlocutory applications are decided on merits, the issue as to whether the suit was barred by a law or the suit was laid without cause of action could have been decided. Against such order, if it is passed by the trial Court, the parties could have worked out their remedy, instead having kept the said applications undecided, the lower Court ought not to have decided the present application, i.e., I.A.No.7 of 2019 filed under Order XXIII Rule 1 of CPC.

21. They also urged yet another ground that, if at all Order XXIII

Rule 1 of CPC is invoked by the plaintiff and if the Court found that, there exist any formal defect, then on the satisfaction of the same, the Court can permit the plaintiff to withdraw the suit and here in the case in hand, admittedly there has been no formal defect, therefore the learned Judge rightly rejected the plea of the plaintiff / revision petitioner to have a liberty to institute a fresh suit on the same cause of action before the appropriate forum. The learned Judge did not find any formal defect, as the very application, i.e., I.A.No.7 of 2019 itself was filed by the revision petitioner / plaintiff admittedly on the ground that, it had chosen a wrong forum and in view of Section 62 of Copyright Act, the Court below does not have jurisdiction to entertain the suit and try the same.

22. On merits also, the learned counsel made submissions stating that, the suit itself had been laid with ulterior motive to extract money from the respondents 1 and 2 knowing well that, they produced the movie concerned on the story line of the first respondent which was admittedly registered with the third respondent on 04.07.2018, i.e., three months prior to the alleged registration of his story by the plaintiff / revision petitioner and therefore the plaintiff / petitioner cannot seek indulgence of this Court even on the merits of the case.

23. By urging the aforesaid grounds, the learned counsel

appearing for respondent 1 and 2 made detail submissions.

24. After conclusion of the arguments, the learned counsel since requested the Court to permit them to file written submissions, such permission was also granted and accordingly, the counsel for the plaintiff / petitioner and the counsel for the respondents 1 and 2 / defendants 1 and 2 separately filed written submissions. Those written statements filed by them had been gone through and the points urged therein are almost reiteration of the arguments advanced by the learned counsel at the time of oral arguments submitted before this Court.

25. In support of the contention, on behalf of the respondents, they relied upon certain decisions of the Hon'ble Apex Court as well as this and other High Courts, which are :

(i) Shipping Corpn. of India Ltd., v. Machao Brothers, (2004) 11 SCC168

(ii) Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society, 2019 SCC Online SC 1292

(iii) Tarachand Bapuchand v. Gaibihaji Ahmed Bagwan, AIR 1956 15/48

Bom 632

(iv) Pillariseti Cotilingam v. State of Andhra Pradesh, AIR 1961

AP 488

(v) Selvam Estates v. Thangapandia Maharajan, 1991 MLJ 421

(vi) Sadhu Ram v. Anto Devi and others, 2000 SCC Online P&H

153

(vii) K.S.Bhoopathy and Ors v. Kokila and Ors., AIR 2000 SC

2132

(viii) Shalini Shyam Shetty v. Rajendra Shankar Patil, (2010) 8

SCC 329

26. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

27. The first contention since raised on behalf of the respondents was that, the revision itself is not maintainable, in view of the appellate remedy available in CPC, first let me take the said ground for decision.

28. The learned counsel for the respondents by heavily relied

16/48

upon Section 96 and 105(1) of CPC made the said submissions. To have a better understanding, Section 96 reads thus :

96. Appeal from original decree :

"(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any court exercising original jurisdiction to the court authorized to hear appeals from the decisions of such court.

(2) An appeal may lie from any original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the court with the consent of parties.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by courts of small causes, when the amount or value of the subject matter of the original suit does not exceed ten thousand rupees."

Section 105 reads thus : सत्यमेव जयते

"105. Other orders

(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any

order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand, from which an appeal lies does not appeal therefore, he shall thereafter be precluded from disputing its correctness."

29. Before dwell into the said contention on the maintainability raised by the learned counsel for the respondents by citing Sections 96 and 105 of CPC, let me take the word "decree" as explained in Section 2(2) of CPC, which reads thus :

"decree" means the formal express of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include -

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation – A decree is preliminary when

further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit, it may be partly preliminary and partly final;

30. In this context, it is to be noted that, here the order passed by the trial Court, which is impugned herein, is an order passed under Order XXIII Rule 1 of CPC and in order to appreciate the same, the Order XXIII Rule 1 is extracted hereunder :

"1. Withdrawal of suit or abandonment of part of claim—

(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the

effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other persons.

(3) Where the Court is satisfied,—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff—

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim

under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.]"

31. If we look at Order XXIII Rule 1, it makes very clear that, the plaintiff has got two rights, one is to abandon the claim or part of the claim another is to seek permission to withdraw from the suit. Under Order XXIII Rule (1) (1), such an abandonment is permissible and under Order XXIII Rule (1) (3) such withdrawal is permissible.

32. Even though the said application in I.A.No.7 of 2019 was filed under Order XXIII Rule (1) of CPC, it can only be construed as an application filed only under Order XXIII Rule (1) (3) and not under Order XXIII Rule (1) (1) of CPC.

33. Under Order XXIII Rule (1) (3) of CPC, the power has been given to the Court that, if the Court is satisfied that a suit must fail by reason of some formal defect, or that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim, the Court may grant the plaintiff permission to withdraw from such suit with liberty to institute a fresh suit in respect

of the subject matter of such suit. Therefore the power now exercised by the trial Court, as reflected in the impugned order, is the power under Order XXIII Rule (1) sub-rule (3). The sub-rule (3) has two limbs, the first limb is clause (a), where, if the Court satisfied that the suit must fail for some formal defect, the plaintiff can be permitted to withdraw the suit to file a fresh suit. Under clause (b) of the sub-rule (3), the Court has also got a power by which, if there are sufficient reasons to the satisfaction of the Court, the plaintiff can be allowed to institute a fresh suit for the same subject matter.

34. Here in the case in hand, since Order XXIII Rule (1) sub-rule (3) was exercised and if any order is passed under that rule, whether that will amount to a decree within the meaning of Section 2(2) is to be looked into.

35. Section 2(2) of CPC makes it clear that, a decree means a formal expression of an adjudication, where the Court conclusively determines the rights of the parties in any matters in controversy in the suit.

36. Here in the case in hand, the rights of the parties in the suit

filed before the Court below, whether has been conclusively determined after adjudication, is yet another question, which arose for consideration.

37. Before the trial Court, I.A.No.7 of 2019 was filed by the revision petitioner / plaintiff stating the reason that, in the suit filed by him, Copyright Act is involved, therefore the suit is barred by law. The relevant portion of the affidavit filed in support of I.A.No.7 of 2019 reads thus :

"I submit that in this above case the copyright Act is involved hence my suit barred by law hence this Hon'ble Court has no jurisdiction to try this case. I further state that due to above fact myself decided to file fresh suit before the appropriate forum.

5. I submit that, I prayed before this Hon'ble Court to allow me to withdraw the above suit with liberty to file fresh suit before the appropriate forum."

38. In the said Interlocutory Application, counter affidavit separately were filed by R1 and R2. In the counter affidavit, the R1 has made the following averments :

"5. I submit that in the present instance, the contesting defendants have raised serious issues touching upon jurisdiction of the Court as well as a bar under law, dis-entitling the plaintiff from continuing with the suit. These issues are not in the category of 'Formal Defects' and as such does not fall under Order XXIII Rule 1(3) of the Code. Similarly, it also cannot be pleaded by the plaintiff that there are sufficient grounds for institution of a fresh suit. The defendants have raised a plea that there is no cause of action for the present suit. When the present suit itself lacks cause of action, the question of sufficient cause for a fresh suit does not arise at all. This be so, both the cardinal requirements of Order XXIII Rule 1(3) of the Code are not satisfied and the plaintiff cannot be granted liberty merely to escape from the outcome of a possible rejection of the plaint in accordance with Order VII Rule 11 of the Code. Therefore the instant application is liable to be allowed without granting liberty to the petitioner to file a fresh suit while withdrawing the suit in O.S.No.2464 of 2019."

39. Like that, in I.A.No.7 of 2019, R2 has also filed a counter,

where he has made the following averments :

"Assuming without admitting that the suit is on copyright even on the plaint allegations, the first respondent's script is earlier and secondly that no suit on copyright can be filed before this Hon'ble Court.

The suit is also not to be initiated before this Hon'ble Court. This is a jurisdictional issue which goes to the root of the matter."

40. Therefore it is the claim of the plaintiff before the Court below that, for want of jurisdiction, he wanted to withdraw the suit and file it before the appropriate forum, for which he sought permission to withdraw the suit with a liberty to file a fresh suit. It is the understanding of the respondent 1 and 2 also and they have taken a stand before the court below through their respective counter affidavit, that, it is purely a jurisdiction issue and therefore the suit cannot be maintained before the Court below. But at the same time, respondent 1 and 2 raised an issue that, there is no formal defect available in the plaint in order to invoke Order XXIII Rule (1) sub-rule (3)(a) and therefore such a liberty need not be given to the plaintiff to withdraw the suit and file a fresh suit.

41. The said Interlocutory Application in the aforesaid

circumstances was considered and decided by the learned Judge in the impugned order, where the learned Judge has given the reason that, the present I.A.No.7 of 2019 was filed belatedly and there has been no reason given by the plaintiff / petitioner to file the petition with delay, therefore in the said circumstances, the Court not found any merit to grant permission for filing fresh suit for the same cause of action, hence the permission to withdraw the suit was given, whereas permission with a liberty to file fresh suit was denied. The reason cited by the learned Judge in the impugned order reads thus :

"15. This suit was filed on 8.4.19 and I.A.5/19 was filed on 6.6.19 and the IA.6/19 was filed on 11.6.19 and in both the IA's the same issue regarding jurisdiction of this court was raised and while these petitions were pending for the common argument this petitioner has filed this petition under Order 23 rule 1.

16. Moreover this petitioner himself alleged in his plaint that this disputed movie is decided to release on 27.10.19 then what prevent him to file this petition earlier. The petitioner neither in his petition nor in his argument has cited single reason for such delay in filing this petition under Order 23 rule 1 of CPC.

17. Hence in this circumstances this court not

found any merit to grant permission for filing fresh suit for the same cause of action. Hence in this circumstances this petition is partly allowed and the petitioner is permitted to withdraw his suit and at the same time the permission for filing fresh suit for the same cause of action is denied. Moreover both respondent has stated that they have no objection for withdrawing the suit and hence cost not ordered."

42. On reading of the order passed by the trial Court, which is impugned herein, it cannot be construed that the impugned order is a decree within the meaning of Section 2(2) of CPC.

43. In this context, if we look at Section 96 of the Code, it also makes it clear that, an appeal shall lie from every decree passed by any Court exercising original jurisdiction, an appeal may lie from an original decree passed *ex parte* also. Therefore as against the impugned order, no regular appeal under Section 96 of the CPC as has been contemplated therein, in the opinion of this Court, can be filed.

44. Like that, Section 105 also under the heading "other orders"

would not any way enable the plaintiff / petitioner to file an appeal.

45. More over, if we look at Order XXIII Rule 1 of CPC, the scheme made therein is very clear and unambiguous. Under Order XXIII Rule 1, there are five sub-rules. Rule (1) speaks about abandonment of claim, Rule (2) speaks about abandonment of such claim by minor or on his or her behalf, therefore we are not concerned about sub-rule (1) and (2). Sub-rule (3) only speaks about withdrawal of suit on two grounds. Clause (a) makes it clear that, if the court satisfied that, the suit was failed by reason of some formal defect, court may grant the plaintiff permission to withdraw from such suit with liberty to institute a fresh suit. Clause (b) of sub-rule (3) enables the Court, if it is satisfied that, there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter, Court may grant the plaintiff permission to withdraw from such suit with liberty to institute a fresh suit in respect of subject matter of such suit.

46. Therefore here in the case in hand, I.A.No.7 of 2019 filed by the plaintiff / revision petitioner was to be considered only under sub-rule (3) of Rule (1) of Order XXIII and not beyond that. Therefore if an order is passed under Order XXIII Rule (1) sub-rule (3), such order

28/48

cannot be treated as a decree within the meaning of Section 2(2) of CPC, where from regular appeal under Section 96 of CPC cannot be preferred against such order. Therefore the said contention raised by the learned counsel appearing for R1 and R2 as a preliminary issue that, the revision itself is not maintainable, cannot be accepted.

47. In this context, the learned counsel for the respondents have relied upon a very recent decision of the Hon'ble Apex Court reported in **2019 SCC Online SC 1292 : (2019) 5 CTC 696** in the matter of **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society**, where the learned counsel have very much relied upon para 13 and 14, which reads thus :

"13. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil Procedure and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil

courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which the respondents 1 and 2 invoked the jurisdiction of the High Court. That is why, a 3 member bench of this court, while overruling the decision in *Surya Dev Rai v. Ram Chander Raj* [(2003) 6 SCC 675], pointed out in *Radhey Shyam v. Chabbi Nath* [(2015) 5 SCC 423] that "orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial / civil courts."

14. Therefore wherever the proceedings are under the code of Civil Procedure and the forum is the Civil Court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of

appeal is provided under the Code of Civil Procedure itself."

48. By relying upon the said decision, the learned counsel have vehemently contended that, in view of the said law having been declared so, that too in a very recent Judgment, the plaintiff / revision petitioner, having not exhausted the appellate remedy, cannot straight away invoke the superintendence power of this Court under Article 227 of the Constitution and therefore the revision itself is not maintainable.

49. I have gone through the said Judgment of the Hon'ble Apex Court referred to above in entirety.

50. In fact, it is one of the celebrity Judgment of the Apex Court, particularly in the context of the author of the Judgment, who, on behalf of the Bench, wrote this Judgment as his maiden Judgment in the Hon'ble Apex Court and has upheld and reiterated the principle that, in respect of cases falling under the category, where alternate remedy is available before Civil Courts, in terms of provisions of Code of Civil Procedure, which may involve suits and other proceedings before Civil Courts, the availability of an appellate remedy in terms of

the provisions of CPC, may have to be construed as a mere total bar. This Court, no doubt, is bound by the said principle.

51. But here in the case in hand, the alternative remedy, according to the learned counsel for respondents 1 and 2, claimed to have been available for the revision petitioner / plaintiff, is under Section 96 of the CPC to file a regular appeal. I have given my elaborate reasons that, the order impugned is not a decree, within the meaning of Section 2(2) of the CPC, therefore regular appeal under Section 96 is not available or not permissible to be preferred and therefore the principle set out in the aforesaid celebrity Judgment of the Apex Court cannot be made applicable to the facts of the present case.

52. Therefore this Court has no hesitation to hold that, the objection raised on behalf of the respondents that, the revision is not maintainable under Article 227 of the Constitution, in the given facts and circumstances of this case, is unsustainable and unacceptable, therefore this Court holds that, this revision is maintainable.

53. Now the only question to be gone into by this Court in this

revision is, as to whether, the trial Court, in the impugned order, while allowing the revision petitioner /plaintiff to withdraw the suit, can deny the permission / liberty sought for by the petitioner / plaintiff to institute a suit on the same set of fact / subject matter before the appropriate forum.

54. In order to answer the aforesaid question, let me take the understanding of the parties before the trial Court in respect of the suit laid by the plaintiff / petitioner and the application filed by him, i.e., I.A.No.7 of 2019 as well as the applications filed by them, i.e., I.A.Nos.5 and 6 of 2019.

55. In the plaint, though the entire issues have been narrated by the plaintiff, he has not specifically expressed with the words that, his copyright on the story which he claimed to have been registered on 10.10.2018 has been infringed by the respondents 1 and 2, however has stated that, he penned the story sometime between June and November 2017 and he had sent an e-mail to that effect for himself on 01.12.2017 and thereafter he had discussions with so many film personalities in the film industry about the said story and ultimately he registered the said story with the title "Kalki", with the third

33/48

respondent on 10.10.2018. His further allegation in the plaint was that, since the first respondent claimed to have penned a story and registered the story in the name of "Vathiyar" with the third respondent on 04.07.2018 which is nothing but the story line of the plaintiff and therefore based on such alleged infringed story, the first and second respondent cannot proceed with the film and therefore the plaintiff had claimed to have approached the trial Court for a prohibitory injunction.

56. It is a fact to be noted that, the respondent 1 and 2, i.e., defendant 1 and 2 in the suit had filed separate applications, i.e., application in I.A.Nos.6 and 5 of 2019 in the said suit, where both have taken a same stand for invocation of Order VII Rule 11 of CPC to reject the plaint.

57. Where, they have unmistakably taken a stand that, the suit is barred by law, as in view of the express provision, i.e., Section 62 of the Copyright Act, suit could not have been laid before the Court below and it should have been filed before the concerned jurisdictional Court, which, in so far as the Chennai city is concerned, the Commercial Division of the Madras High Court, i.e., before this Hon'ble Court. The

relevant portion of the affidavit averment of the second defendant in

I.A.No.5 of 2019 reads thus :

"6. Even otherwise, the plaint is barred under Law Section 62 of the Copyright Act, 1957 expressly stated that suit on copyright can only be laid before the District Court. As per Section 2(4) of CPC, in the city of Madras, the Hon'ble High Court Original side is deemed to be the District Court.

7. Hence, this Hon'ble Court is not the proper forum for this suit.

8. The petitioner submits that a suit for alleged infringement of alleged copyrights of the plaintiff is covered by Section 62 of the Indian Copyright Act. Hence, the plaintiff should file this suit before the Hon'ble Madras High Court only. Hence under Section 62 (2) of the Copyright Act this Hon'ble Court has no jurisdiction to entertain this suit. Hence this suit is barred under Section 62 of the Copyright Act. Thus, the plaint is liable to be rejected under Order VII Rule 11(a) and Order VII Rule 11(d) of CPC."

58. Similar averments in a different form, of course, had been

made by the first respondent / first defendant in the affidavit filed in support of his I.A., i.e., I.A.No.6 of 2019, which reads thus :

"10. Therefore the plaint in present suit O.S.No.2464 of 2019 ought to be rejected on the following grounds :

a. No Jurisdiction : Section 62 of the Copyright Act, 1957 states that the jurisdiction of Court over matters in respect of Copyright infringement shall be instituted in the District Court having jurisdiction. I also submit that as per Section 2(4) of the Code of Civil Procedure, the term 'District' includes the local limits of the original civil jurisdiction of a High Court. It is therefore clear that the jurisdiction for filing of this suit lies in the High Court and this Hon'ble Court has no jurisdiction to entertain this suit. As per Section 2(c)(xvii) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, any dispute arising out of intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits is included in the meaning of 'Commercial dispute'. The plaintiff has made a claim in respect of his story and the same

would fall within the meaning of commercial dispute and therefore the proper forum is that of the High Court. I submit that as per the proviso to Section 7 of the Act, all suits and applications relating to commercial disputes of a specified value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court provided that all suits and applications relating to commercial disputes, stipulated by an Act to lie in a court not inferior to a District Court, and filed or pending on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court. The above provisions clearly make out that the dispute of the plaintiff lie within the jurisdiction of the High Court and not even the District Court."

59. Moreover in the counter affidavit filed by the respondents in I.A.No. 7 of 2019 also similar stand was taken by the respondents and the relevant portion of the counter affidavit of these respondents have already been extracted herein above.

60. That apart, yet another ground was raised by the

respondents that, there has been no cause of action. For the said ground, they relied upon the plaint averment and the claim of the plaintiff and stated that, he admittedly registered his story only on 10.10.2018, whereas the first respondent registered his story on 04.07.2018.

61. In this context, I am not inclined to express any opinion about the claim and counter claim made by the plaintiff / petitioner and the respondent 1 and 2, especially the first respondent as to the date of registering their story before the third respondent, in view of the fact that, the plaintiff in the plaint has specifically averred at para 6 of the plaint stating the following :

"6. Plaintiff submit that, plaintiff write the story related to Tamil Nadu State Women Food Ball Team and Coach" and he was started to write in the year of 2017 June and he was complete the story in the month of November 2017 and same was he sent the soft copy of the story for the safe guard to his Gmail on 01.12.2017. Plaintiff submit that, on 31.12.2017 he called to one of the heroin of tamil cine industry and discussed about his story. The plaintiff submits that he has written the complete script of the

story in the year of 2017 and the plaintiff has taken more than 6 month to complete the entire script of the story."

62. The plaintiff claimed that, he penned the story between June and November 2017 and for safeguard purpose, he himself sent the story to his own mail address, i.e., Gmail on 01.12.2017. In view of these controversies as to who penned the story and who registered first and who is having the proof to claim the author of the story is concerned are all the matters to be decided by a competent Court only after full fledged trial and therefore this Court makes it very clear that, no expression is made by this Court about the claim and counter claim of the parties in respect of the story of the film concerned.

63. Then why I have referred all these averments made by the parties in so far as the date of registration of the story claimed by both side is because, the respondents through their respective counsel have made elaborate and vehement contention that, there had been no cause of action for the plaintiff / revision petitioner to file a suit in view of the fact that, admittedly he claim that, he registered his story only on 10.10.2018, whereas the first respondent registered his story on

04.07.2018. However the question of cause of action cannot be decided merely on the basis of these two dates, as the plaintiff has also claimed that, he himself sent the story to his Gmail address on 01.12.2017 and he has filed the said Gmail copy also as Document No.2 along with the plaint. Therefore it is a matter of trial, where the said issue can be decided, therefore this Court, only for the limited purpose to show that, whether there has been a cause of action or not to file the said suit, though the same had been raised by the respondents / defendants since had not been decided by the trial Court, as before such exercise, the trial Court inclined to entertain I.A.No.7 of 2019 and by thus wanted to give a quietus, the said issue since had not been decided, it cannot be said at this juncture, whether the plaintiff has got a cause of action to lay the suit or not, especially in the context of disposing this Revision Petition.

64. Now let me take into the provisions, i.e., Order XXIII Rule (1) CPC, which has already been extracted. I have already said that, we are not concerned about sub-rule (1) and (2) of Rule (1), but we are concerned only about sub-rule (3). If we look at the language used by the legislature in sub-rule (3), as I stated earlier, there are two limbs, namely clause (a) and clause (b). Clause (a) speaks about

40/48

formal defect, where much arguments were advanced by the respondents to state that, since there has been no formal defect, the application under Order XXIII Rule (1), i.e., I.A.No.7 of 2019 ought not to have been allowed by the trial Court.

65. But at the same time, both the respondent 1 and 2, in their respective counter in I.A.No.7 of 2019 before the trial court, had raised no objection in permitting the plaintiff to withdraw the suit. This infact has been recorded by the learned trial Court Judge, in the impugned order stating that, "both respondent has stated that they have no objection for withdrawing the suit and hence cost not ordered". But at the same time, their only objection before the trial Court was that, while allowing the plaintiff to withdraw the suit, he should not be permitted or he should not have the liberty to file a fresh suit in respect of the same subject matter.

66. Assuming that, such an objection was raised by the respondent 1 and 2 and having accepted the same, since the trial Court has denied such permission to the plaintiff, whether such denial is sustainable or not is the pertinent question to be answered in this revision.

67. The language used in sub-rule (3) of Rule (1) of Order XXIII is very crucial for determination of the aforesaid issue. As I stated earlier, the second limb, i.e., clause (b) of sub-rule (3) states that, if the Court satisfied that, there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of the suit, it may grant the plaintiff, permission to withdraw from such suit with liberty to institute a fresh suit in respect of the subject matter of such suit.

68. Therefore once the Court satisfies either on the ground of the first limb, i.e., clause (a) of sub-rule (3) or under the ingredients of the second limb, i.e., clause (b) of sub-rule (3), the Court can permit the plaintiff to withdraw the suit, of course with liberty to institute a fresh suit.

69. In other words, once the Court satisfies either under clause (a) or (b) of sub-rule (3), Court, while permitting the plaintiff to withdraw the suit, shall also give the liberty to institute a fresh suit in respect of the subject matter of such suit.

70. Suppose without filing an application and without getting a liberty to file a suit as contemplated under clause (3), if the plaintiff either abandons the suit under sub-rule (1) of Rule (1) or withdraws the suit under sub-rule (3), the plaintiff shall, not only be liable for such cost, as the Court may award, but also shall be precluded from institution of any fresh suit.

71. Therefore sub-rule (3) should be read in conjunction with sub-rule (4), where it makes mandatory that, while withdrawing the suit, the plaintiff must get permission or liberty to file a fresh suit.

72. When such permission or liberty is sought for and Court is satisfied under sub-rule 3(a) or 3(b) to give such permission to withdraw, it is coupled with liberty or permission to institute a fresh suit. In other words, when the Court grants permission to withdraw the suit under Order XXIII Rule (1) (3), such permission shall go with liberty or permission to institute a fresh suit in respect of the same subject matter.

73. Therefore in view of the no objection made by respondents 1 and 2, which is evidenced from their own counter affidavit filed in

43/48

I.A.No.7 of 2019 and the same having been recorded by the learned Judge in the impugned order as has been extracted above, the trial Court, while allowing the application of the petitioner / plaintiff under Order XXIII Rule (1) (3) of CPC, permission / liberty ought to have also been given, as the permission to withdraw the suit under such sub-rule (3) of Rule (1) of Order XXIII is always coupled with the permission and liberty to institute a fresh suit.

74. Therefore this Court holds that, denial of such permission to file a fresh suit, while permitting the plaintiff to withdraw the suit, as has been made in the impugned order, is erroneous.

75. Moreover, in the present case, it is everybody's case, at least at one point of time that, the trial Court does not have jurisdiction to try the subject matter of the suit, which is an alleged infringement of copyright, as this is evidenced from the very understanding of the respondent 1 and 2 also, who made similar averments in the respective counters, which has been extracted herein above.

76. When that being so, the trial Court also, instead of waiting for the plaintiff to file an application under Order XXIII Rule (1), could

have invoked Order VII Rule 10 of CPC to return the plaint to be presented to the Court, in which the suit should have been instituted.

77. Here in the case in hand, admittedly the subject matter of the suit should have been instituted only before the concerned Court, which has jurisdiction in view of Section 62 of the Copyright Act and also under the provisions of the Commercial Courts Act, 2015. Therefore on coming to know the fact that, the suit has been wrongly laid before the Court below, it ought to have invoked Order VII Rule 10 and could have returned the plaint to be presented before the proper court. If such an action had been taken by the trial Court, it would have been a mere return of plaint under Order VII Rule 10, based on which, the plaintiff could have availed his remedy by instituting the suit before the appropriate forum.

78. However, the said action since have not been taken, the plaintiff seems to have invoked Order XXIII Rule (1), which has been entertained and the power of the trial Court under Order XXIII Rule (1) (3) since have been exercised, such power should have been exercised only in the manner prescribed in that sub-rule itself, where, as I have explained above, when the court satisfies that there are reasons under

45/48

clause (a) or (b) of sub-rule (3) of Rule (1) of Order XXIII, the Court while exercising the power to permit the plaintiff to withdraw the suit, should have given such liberty, as the permission to withdraw the suit and giving liberty to institute the suit are inseparable in the context of the language used in sub-rule (3) of Rule (1) of Order XXIII.

79. In view of the aforesaid facts and circumstances, the Judgments referred to by the learned counsel appearing for the respondents 1 and 2, as has been listed out above, would not advance the case of the respondents herein in the given context and circumstances of the case.

80. Therefore this Court is of the considered view that, the trial Court in the impugned order, while allowing the petitioner / plaintiff to withdraw the suit, ought to have permitted him to institute a fresh suit before the appropriate Court on the same subject matter of the suit, in view of the language used in Order XXIII Rule (1) sub-rule (3) of CPC. Failure to give such a liberty and rejection of such plea made by the plaintiff, in the impugned order, is nothing but an erroneous exercise of power by the trial Court. In that view of the matter, this Court is also of the considered view that, the impugned order, in so far as it disallowing the petitioner / plaintiff to get such liberty is to be interfered with and to be set aside.

81. In the result, the impugned order in disallowing the petitioner / plaintiff from instituting a fresh suit in respect of the subject matter of such suit, while allowing him to withdraw the said suit, is hereby set aside and accordingly, this Civil Revision Petition is allowed.

82. It is made specifically clear that, this Court has not expressed any view on the merits of the suit as to whether there had been any infringement of copyright as claimed by the plaintiff and whether the plaintiff has got any right to claim remedy as has been sought for in the plaint, since those issues are completely under the domain of the Court, where, if any suit is instituted afresh, to decide on merits, of course after full fledged trial.

Resultantly, this Civil Revision Petition is allowed as indicated above, with no order as to costs.

सत्यमेव जयते

22-10-2019

Index : Yes

Speaking order

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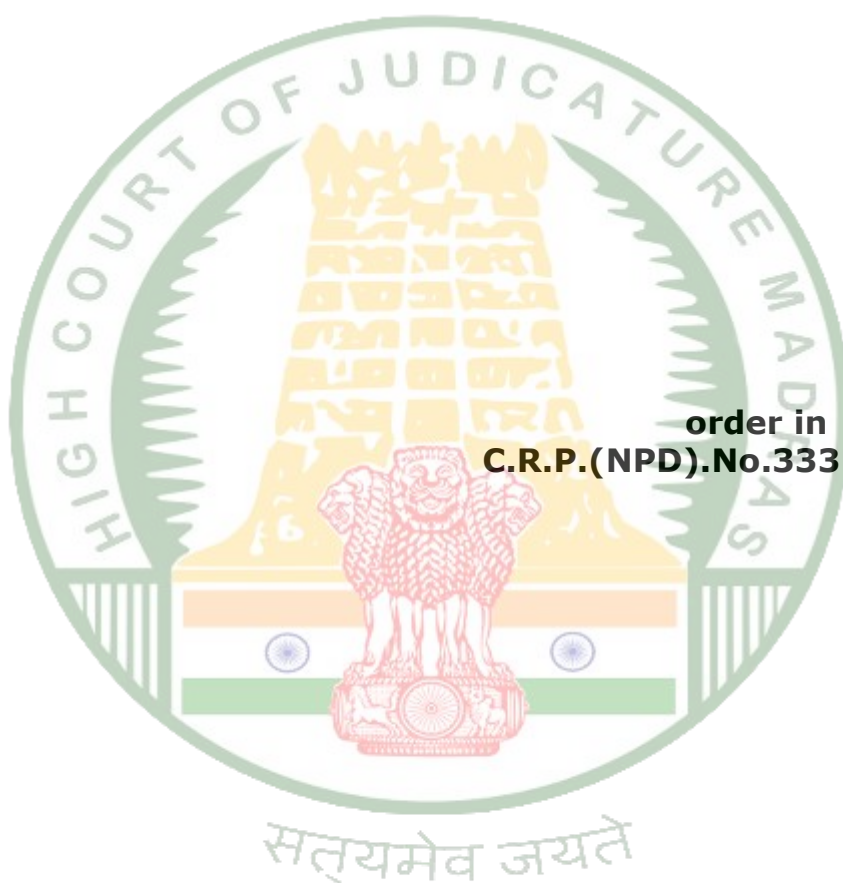
To
The XIV Assistant City Civil Court
Chennai.

47/48

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R.SURESH KUMAR, J

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**order in
C.R.P.(NPD).No.3331 of 2019**

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22-10-2019