

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Dated : 21.01.2019****CORAM :****THE HONOURABLE MR. JUSTICE M.S.RAMESH****CRP.(PD).No.2379 of 2017
and
C.M.P.No.11224 of 2017**

Sahaya Sujith Kumar,
Proprietor,
M/s.4S Food Machine Multiprocess,
No.6B, Nethaji Street,
Mogappair Road,
Padi, Chennai-600 050.

.. Petitioner

V.

A.Jordan,
M/s.Lalith Food Machines,
19/45, Gangai Amman Koil Street,
Korattur,
Chennai-600 080.

.. Respondent

PRAYER : Civil Revision Petition is filed under Section 227 of the Constitution of India, to set aside the fair and decreetal order passed by the learned III Additional District Judge, Thiruvallur at Poonamallee in I.A.No.17 of 2017 in O.S.No.231 of 2015, dated 24.03.2017.

For Petitioner : Mr.R.Sathish Kumar

For Respondent : Ms.E.Santhanalakshmi

ORDER

The rejection of the petitioner's application filed under Order 7 Rule 11(a) of the Civil Procedure Code is impugned in the present revision.

2. Heard Mr.R.Sathish Kumar, learned counsel for the petitioner and Ms.E.Santhanalakshmi, learned counsel for the respondent.

3. It is the case of the learned counsel for the petitioner that when the respondent's application for registration of patent rights was pending, the relief sought for in the suit would not be maintainable, in view of the provisions of the Patents Act, 1970. It is his further submission that since the respondent is yet to derive any right under the Patents Act, no cause of action has arisen and as such, the plaint requires to be rejected on that ground also. In other words, the petitioner herein has invoked the provisions under Order 7 Rule 11(a) and 11(d) of CPC., for having the plaint rejected.

4. The learned counsel for the respondent, on the other hand would submit that, the suit has not been instituted for infringement of patent right under Patents Act, 1970. According to the learned counsel, she has not invoked any of the provisions of the Patents

Act and since the petitioner herein was their erstwhile employee, who has started rival business using their technical know-how and that there was a non disclosure agreement between the employer and the employee. By applying the general law, the petitioner herein would not be entitled to carry on a rival business and as such, the learned counsel would submit that, the instant suit is an injunction suit and not an infringement suit and therefore, there is no bar under any law, much less the Patent Act, for instituting the present suit for permanent injunction. By reiterating the averments in the plaint and the justification given by the trial Court, while refusing to reject the petitioner's application under Order 7 Rule 11(a) of CPC., the learned counsel sought for dismissal of the Civil Revision Petition.

5.I have given careful consideration to the submissions made by the respective counsels.

6.Insofar as the ground raised by the petitioner that there is a bar for filing a civil suit in view of Section 11(A)(7) of the Patents Act is concerned, the plaint averments were looked into in this regard. An overall reading of the averments in the plaint suggests that the parties were closely related to each other and that the petitioner was earlier inducted as an employee of the respondent

firm. Some of the averments in the plaint alleges that the petitioner herein had illegal access to the nuances of the business manufacturing activities and had illegally used them for the purpose of running his rival business. Though the plaint averments refers to pendency of the application made by the respondent herein for registration of the patent design and copy rights of their alleged invention, the grievance of the respondent for seeking the relief of permanent injunction seems to be that there was a breach of trust by the petitioner herein during his employment with them. The averments in the plaint conspicuously indicates that the respondent had violated their trust and service conditions when he was under their employment. As pointed out by the learned counsel, the respondent herein had not invoked the provision of Patents Act for instituting the suit but have referred to the application made under Patents Act for registration of his invention. On such averments, it cannot be said that the suit has been filed for infringement of Patent and as such, I am unable to endorse the submissions of the learned counsel for the petitioner that there is a bar under Section 11(A)(7) of the Patents Act. As such it could be said that the suit has been instituted by invoking the general law and not for infringement under the Patents Act. While that being so, it cannot be said that the plaint is liable to be rejected under Order 7 Rule 11(a) of the Civil Procedure Code.

7. Insofar as the ground that there was no cause of action for filing the present suit is concerned, I am unable to accept such a contention also, for the foregoing reasonings which are reiterated hereunder:

1) The plaint averments go to show that the petitioner herein was an erstwhile employee.

2) The averments also state that the CADD drawings and other designs were illegally taken by the petitioner herein, which came to be used for the purpose of conducting his rival business.

3) When the respondent herein was of the view that though these acts do not entitle the petitioner herein to run a rival business, it cannot be said that there was no cause of action to maintain the suit for injunction.

As such, this ground raised by the learned counsel for the petitioner to have the plaint rejected under Order 7 Rule 11(a) of CPC., on the ground that there was no cause of action, also fails.

8. The trial Court, while rejecting the petitioner's application had also felt that the grounds raised in the application require to be elaborately tested during the course of trial and I do not find any infirmity in such a finding.

9. For all the foregoing reasons, I do not find any reason to interfere with the order of the trial Court made in I.A.No.17 of 2017 in O.S.No.231 of 2015 dated 24.03.2017. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

10. It is also made clear that all the observations made in the present order are only for the purpose of answering the various grounds raised by both the counsels and that the trial Court shall not cite or rely on any of the observations made in this order, as a precedent, while determining the suit finally. The petitioner is at liberty to raise all the grounds raised in the present revision before the trial Court also. The trial Court shall endeavor to dispose of the suit in O.S.No.231 of 2015 as expeditiously as possible.

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21.01.2019

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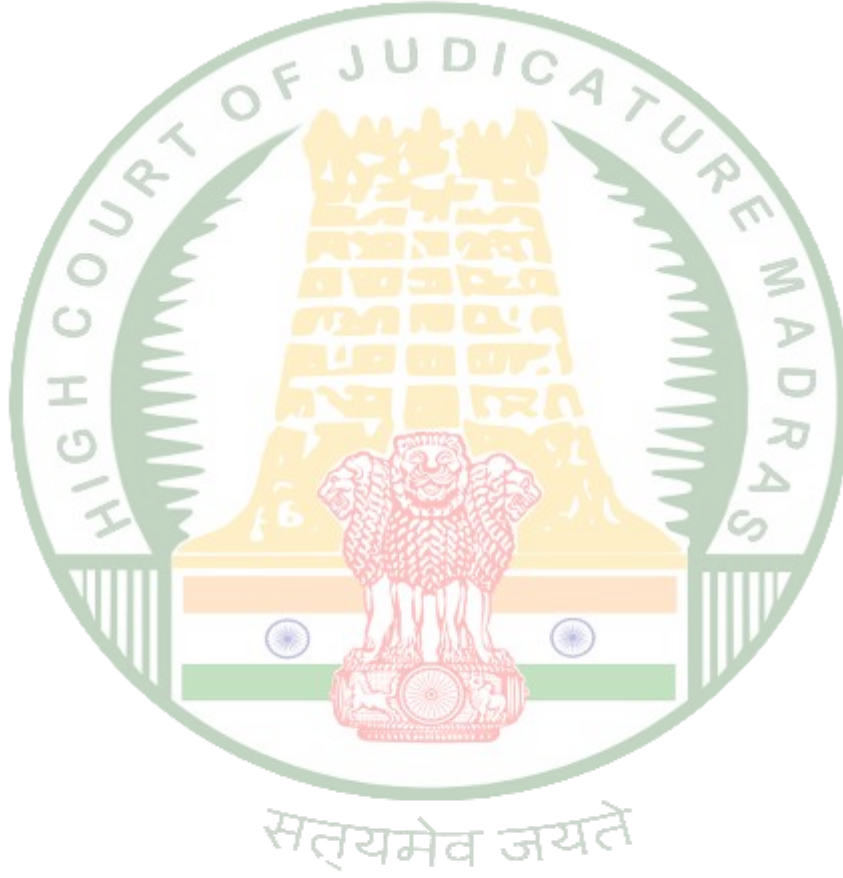
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Speaking order

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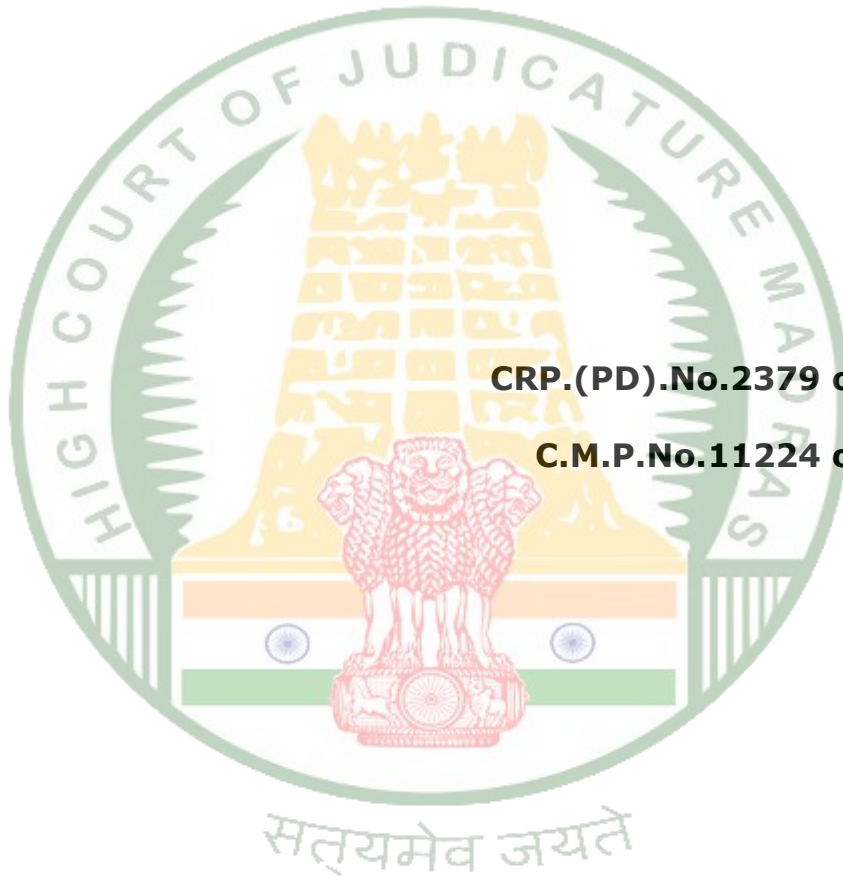
The III Additional District Judge,
Thiruvallur at Poonamallee.



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M.S.RAMESH.J,

DP



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