

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) No. 3712 of 2019

and

C.M.P. No. 24374 of 2019

S. Manikandan Petitioner

-Vs-

1. Arulmigu Pachaimman and
Vembuliamman Thirukoil Seva Trust,
Represented by PC. Saranya, Managing Trustee,
No. 1, Kandappa Street,
Choolai,
Chennai - 112.

2. P. C. Saranya

3. P.C. Abirami

4. Dr. E. Sakthivel

5. Mr. N. Kumaravel

6. Mr. N. Eswarachandaravel

7. Dr. S. Muthukumaravel

8. The Commissioner,
Greater Chennai Corporation,
Chennai - 600 003.

9. The Chairman and Managing Director,
Chennai Metropolitan Development Authority,
Talamuthu Natarajar Maligai,
Gandhi Irwin Salai,
Chennai - 600 008.

... Respondents

Prayer : Petition filed under Article 227 of the Constitution of India to strike off the plaint in O.S. No. 7492 of 2019 on the file of the III Assistant City Civil Court, Chennai.

For Petitioner : Mr. T. Natarajan

ORDER

This Civil Revision Petition has been filed with the prayer to strike off the plaint in O.S. No. 7492 of 2019 on the file of the III Assistant City Civil Court, Chennai.

2. Admittedly, the first defendant preferred the present revision with the aforesaid prayer to strike off the plaint for some grounds raised in this revision.

3. Whatever be the grounds raised by the revision petitioner, which, according to him, are the grounds to be considered for the purpose of striking of the plaint itself, can very well be agitated by him

by filing an appropriate application under Order VII Rule 11 of the Civil Procedure Code.

4. In this context, the law is well settled that, when there is a statutory remedy in the Civil Procedure Code itself, a litigant without exhausting the same cannot directly approach the High Court concerned by invoking superintending power under Article 227 of the Constitution of India.

5. This principle has been reiterated and amplified in the recent decision of the Hon'ble Supreme Court reported in **2019 (5) CTC 696** in the matter of **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others V. Tuticorin Educational Society and others**, wherein their Lordships have held at Para No. 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."

6. In view of the settled legal position, the revision petitioner cannot move this Court invoking Article 227 of the Constitution of India to strike off the plaint. Instead, the petitioner can very well agitate the same issue by filing an application under Order VII Rule 11 of the Civil Procedure Code before the Court below.

7. In that view of the matter, this Court is not inclined to entertain this Civil Revision Petition, accordingly the same is dismissed. However, the dismissal of this revision will not preclude the revision petitioner to file an appropriate application under Order VII Rule 11 of the Civil Procedure Code to strike off the plaint before the trial Court, if he is advised to do so.

8. In that case, once such petition is filed by the revision petitioner, the same can be entertained if it is otherwise in order and can be disposed of on merits and in accordance with law within a period of two months thereafter.

R. SURESH KUMAR, J.

vji

9. With these observations, this Civil Revision Petition is dismissed. Consequently connected Miscellaneous Petition is also closed. No costs.

15.11.2019

Index: Yes / No

Speaking order / Non speaking order

vji

To

1. The III Assistant City Civil Court,
Chennai.
2. The Commissioner,
Greater Chennai Corporation,
Chennai - 600 003.
3. The Chairman and Managing Director,
Chennai Metropolitan Development Authority,
Talamuthu Natarajar Maligai,
Gandhi Irwin Salai,
Chennai - 600 008.

**C.R.P. (PD) No. 3712 of 2019
and**

C.R.P. (PD) No. 3712 of 2019

C.M.P. No. 24374 of 2019



WEB COPY