

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

C.R.P.(PD)No.3100 of 2018

and

C.M.P.No.17094 of 2018

M/s.Tek Smart Group,
Rep. by its Sole Proprietor,
S.Mahesh

...Petitioner

Vs

1. A.R.Suresh
2. Jayalakshmi Ganesan
3. S.Ganapathy
4. R.Murali
5. M/s.Poornaa Firm,
Rep. By its Partner,
Ravirathinam

...Respondents

Prayer: Civil Revision Petition filed Under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 07.08.2018 in I.A.No.469 of 2018 in O.S.No.461 of 2015 on the file of the Court of Principal District Munsif at Alandur.

For Petitioner : Mr.S.V.Jayaraman
Senior Counsel

For Respondents : Mr.S.Thankasivan (for RR1 to 4)
: Mr.K.M.Vijayan, Senior Counsel
: for Mrs.R.T.Shyamala (for R5)

ORDER

The order under challenge in the present revision is rejection of the petitioner's plaint on an application purportedly made under Order VII Rule 11 of C.P.C.

2. It is the grievance of the petitioner herein that based on the liberty granted to the respondents herein by the Hon'ble Apex Court to file an application under Order VII Rule 11 of C.P.C., the Trial Court is not justified in striking off the plaint under Order VI Rule 16 of C.P.C.

3. Mr. S.V. Jayaraman, learned Senior Counsel appearing for the petitioner submitted that even otherwise, Order VI Rule 16 of C.P.C. does not contemplate striking off the entire pleadings and that only a portion of the pleadings can be struck therefrom and in view of the same, the Trial Court was not justified in striking off the entire pleadings.

4. Mr. K.M. Vijayan, learned Senior Counsel appearing for the 5th respondent / Lessor would also place his arguments on the similar lines stating that the Trial Court was not justified in rejecting the plaint in toto. He would further submit that the entire litigation between the parties was on different cause of actions and the same will never amount to an abuse of process of law.

5. Countering the submissions of the learned Senior Counsel Mr.S.Thankasivan, learned counsel appearing for the respondents 1 to 4 submitted that the rejection of the plaint by the Trial Court is justifiable, since Order VI Rule 16 of C.P.C. provides for striking off the entire pleadings in view of the sub section (C) therein. He would also make an alternate submission stating that even otherwise, the Court having found that there was an abuse of process of law, ought to have rejected the plaint in toto by invoking the provisions of Order VII Rule 11 of C.P.C., since such striking off the plaint on the ground of abuse of process of law is permissible under Order VII Rule 11 of C.P.C. also. The learned counsel also submitted that even assuming that the Court had struck off the plaint, by invoking Order VI, Rule 16 instead of Order VII Rule 11 of C.P.C., the same can only be termed as wrong quoting of provision and this Court is justified in setting it right. To sum up, the learned counsel would submit that the entire exercise of litigation in the suit would amount to re-litigation and abuse of process of law and therefore, there was no infirmity in the order under challenge in the present revision.

6. I have carefully considered the submissions made by the respective counsels.

7. It is not in dispute that the order under challenge emanates from an application made by the respondents 1 to 4 herein by exercising the liberty

granted by the the Hon'ble Supreme Court in its order, dated 13.04.2018 passed in S.L.P. No.9603 of 2017. On a perusal of the said order, it is seen that the Hon'ble Apex Court, had granted such a liberty, as follows:

“Having heard learned counsel for the parties, we are of the considered opinion that the High Court could not have exercised the jurisdiction in such a manner. Accordingly, the order passed in review stands annulled. As a result of the annulment of the order, the suit stands revived. It will be open to the respondent-defendant to file an application under Order 7 Rule 11 CPC within a period of two weeks hence, which shall be decided by the trial court within a period of eight weeks from the date of filing of such an application. Needless to emphasize, the trial Judge shall decide the application on its own merit.”

8. Pursuant to the liberty granted, the respondents 1 to 4 herein had also filed an application in I.A.No.469 of 2018 in O.S.No.461 of 2015 under Order VII Rule 11 of C.P.C., to strike off the plaint. The Trial Court, while considering the said application had found that the ground of abuse of process of Court cannot be invoked under Order VII Rule 11 of C.P.C. for the purpose of rejecting the plaint. With such an observation, the Trial Court felt that the provision had been wrongly quoted and therefore, by invoking the provision under Order VI Rule 16 of C.P.C., the entire plaint came to be struck down on the ground of abuse of Court process.

9. This Court is unable to contemplate as to how the Trial Court can construe an application filed under Order VII Rule 11 of C.P.C. to be one under Order VI Rule 16 of C.P.C. It would amount to adding words to the order of the Hon'ble Apex Court wherein, a liberty to file an application under Order VII Rule 11 of C.P.C. alone was granted to the respondents herein and if the Trial Court had found that the plaint is liable to be rejected under Order VI Rule 16 of C.P.C., the only option available was to reject the application filed under Order VII Rule 11 of C.P.C. and cannot substitute the provision of law, which liberty was granted by the Hon'ble Supreme Court. As such, it cannot be said that the application has been made by the respondents 1 to 4 herein by quoting a wrong provision of law.

10. The learned counsel for the respondents 1 to 4 had submitted that even otherwise, the Trial Court ought to have rejected the plaint by invoking Order VII Rule 11 of C.P.C., since the ground of abuse of Court process is a ground available for rejecting the plaint under the same provision. In contra to such a submission, the learned Senior Counsels appearing for the petitioner and the 5th respondent herein would attempt to impress the Court that there was no such an abuse of process of law.

11. Whether there was any process, which could be termed as an abuse, is a question which requires to be determined on various facts and evidence and this Court exercising its revisional powers may not be justified in appreciating such facts at this stage, particularly when it is found that the Court below was not justified in invoking Order VI Rule 16 of C.P.C. for the purpose of rejecting the plaint.

12. Likewise, the question as to whether the entire plaint can be rejected under Order VI Rule 16 of C.P.C. also does not require consideration herein, in view of my earlier findings that the liberty granted to the respondents was only to invoke the provisions of Order VII Rule 11 of C.P.C.

13. The ground raised by the learned counsel for the respondents 1 to 4 that there was an abuse of process of law and the present plaint would amount to re-litigation is a question that requires re-appreciation. In view of the fact that the Trial Court had earlier travelled on the ground that the abuse of process of law was not a ground available under Order VII Rule 11 of C.P.C. The learned senior counsels appearing for the petitioner as well as the 5th respondent have also raised certain preliminary objections stating that the process of law was not abused.

14. In the light of all the foregoing observations, it is my considered view that the Trial Court having invoked the provisions of Order VI Rule 16 of C.P.C. has traversed beyond its scope and is also contrary to the liberty granted by the Hon'ble Apex Court in the order dated 13.04.2018 in S.L.P. No.9603 of 2017. The application under Order VI Rule 11 filed by the respondents 1 to 4 herein requires to be re-looked into. At this juncture, the learned counsel for the respondents 1 to 4 would submit that the parties have been litigating for a very long time and all of them are senior citizens. Such a submission could be set right, if the Trial Court is directed to dispose of the application within a stipulated time. The learned Senior Counsel for the petitioner would also submit that they are in possession of the suit properties, which submission is opposed by the respondents 1 to 4 herein. As such, if the trial Court is directed to dispose of the application filed under Order VII Rule 11 of C.P.C. afresh, within a stipulated time and if the parties are directed to maintain status quo till its disposal, the ends of justice could be secured.

15. For all the foregoing reasons the decree passed by the learned Principal District Munsif at Alandur in I.A.No.469 of 2018 in O.S.No.461 of 2015 dated 07.08.2018 is set aside. Consequently, the application in I.A. No.469 of 2018 is restored and remanded to the file of the learned District Munsif at Alandur for disposal of the same after giving opportunity to both the parties, as expeditiously as possible, in any event within a period of sixty days from the date

of receipt of a copy of this order. Till such disposal, both parties shall maintain status quo. Accordingly, the Civil Revision Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

18.11.2018

Internet:Yes
Index:Yes/No
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To

The learned Principal District Munsif Court,
Alandur.

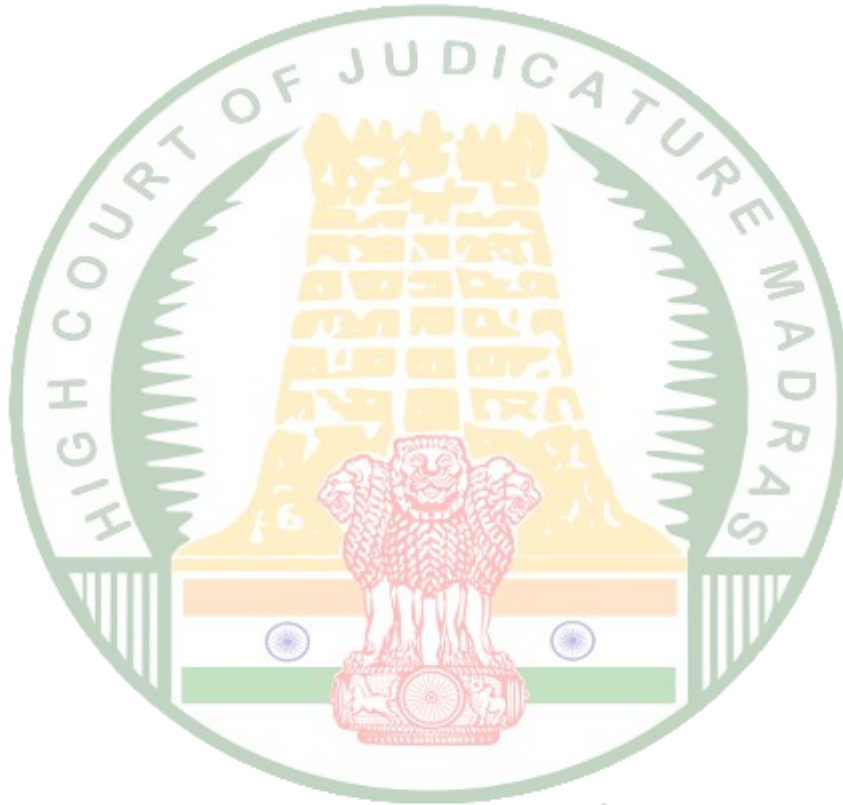


M.S.RAMESH, J.

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