



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (PD) (MD) .No.1025 of 2019
and C.M.P. (MD) .No.5662 of 2019

Soundarrajan .. Petitioner/1st Respondent/Plaintiff

Vs.

1.S.Ramachandran .. 1st Respondent/Petitioner/1st Defendant

2.Velusamy

3.Jasmine Mumtaj

The District Superintendent of Police (Crime Branch)
The District Superintendent of Police Office,
Theni, Theni District.

4.The Superintendent of Police

The District Superintendent of Police Office,
Theni, Theni District.

5.The Sub Registrar,

Sub Registrar Office, Theni,
Theni District.

6.Suruliammal

7.The State of Tamilnadu

Rep. by the District Collector,
Theni, Theni District.

8.Sathiyapriya @ Surulijakkammal

J.Vijayapandi (Died)

.. Respondents 2 to 9/

Respondents 2 to 9/ Respondents 2 to 9

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 11.03.2019 made in I.A.No.375 of 2017 in O.S.No.195 of 2014 on the file of District Munsif Court, Theni.



For Petitioner: Mr.A.Arumugam for M/s.Ajmal Associates
For Respondents: Mr.D.Balamuruga Pandi for R1
Mr.M.Murugan for R5
Government Advocate

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ORDER

This civil revision petition has been filed challenging the order passed by the learned District Munsif, Theni, in I.A.No.375 of 2017 in O.S.No.195 of 2014, dated 11.03.2019.

2.The case of the revision petitioner is that the respondent herein filed an application under Order 8 Rule 6 A for filing the counter claim. But however, no separate application has been filed under Order 8 Rule 9 CPC for taking leave of the Court to file the additional written statement along with the counter claim. The learned counsel fairly submits that if the counter claim has been filed along with main written statement, there is no need for seeking any leave. However in the present case, the respondent No.1/defendant No.1 has filed written statement on 08.04.2015, whereas the present application has been filed seeking permission to file counter claim on 11.08.2017 that almost about after the lapse of two years and four months.

3.Order 8 Rule 9 states as follows:

"Subsequent pleadings- No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off or counter-claim] shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same."

4.Therefore, by referring the above provision, the learned counsel contend that the respondent No.1/defendant No.1 should have file the application to grand leave to permit the respondent No.1/defendant No.1 to file the additional written statement along with counter claim, whereas in the present case, no such leave was granted, no such application was filed. In such circumstances, the impugned order has to be set aside.

5.If at all, liberty may be granted to the defendant No.1 to approach the Court below to take appropriate permission / leave to file the additional written statement along with counter claim.

6.On the other hand, the counsel for the respondent No.1 submitted that if the Court comes to an conclusion to set aside the impugned order, liberty may be given to the respondent



No.1/defendant No.1 to approach the Court below to file appropriate application under Order 8 Rule 9 of CPC to take appropriate leave to file the additional written statement along with counter claim.

7.Taking into consideration of the submission of both counsels, this Court is of the view in terms of Order 8 Rule 9, if any additional written statement ought to be filed by any of the defendant subsequent to the filing of the written statement, it is just and necessary to take the leave of the Court to file any additional pleadings like additional written statement / counter claim, etc., In the present case, no such application is filed. It is admitted by both parties.

8.In the above circumstances, this Court is of the view that it is just and necessary for the interest of justice to invoke Article 227 of the Constitution of India to set aside the order passed by the Court below dated 11.03.2019 and permit the respondent No.1/defendant No.1 to approach the court below to file appropriate application under Order 8 Rule 9 of CPC to take the additional written statement along with the counter claim on record.

9.Accordingly, the order dated 11.03.2019 made in I.A.No.375 of 2017 in O.S.No.195 of 2014 on the file of District Munsif Court, Theni, is set aside and the respondent No.1/defendant No.1 is permitted to approach the court below to file appropriate application under Order 8 Rule 9 of CPC to take the additional written statement along with the counter claim on record. In the event of any application is filed, the court below is directed to consider the said application and expedite the trial. Further, the counsel for the revision petitioner is also permitted to file objections if any.

10.With this directions this Civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

TM



To

1.The District Munsif, Theni.

2.The Section Officer,-2 copies

V.R.Section,

Madurai Bench of Madras High Court,

Madurai.

+1 CC to M/s.D.BALAMURUGAPANDI, Advocate (SR-86524[F] dated 13/09/2019)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-86659[F] dated 13/09/2019)

C.R.P. (PD) (MD) .No.1025 of 2019

12.09.2019

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