

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.08.2020
CORAM:
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
C.R.P.No. 2231 of 2018

M.Venkatesan

..Petitioner

Vs.

SBI Cards and Payments Services Pvt. Ltd.,
Having Office at No.141, 10th Floor, T.V.H.Agnitio Park,
Kandanchavadi, Chennai - 600 096. ..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for records of the lower court and set aside Order dated 02.04.2018 in O.S.S.R.No.1457 of 2018 in the file of the District Munsif Court, Ambattur.

For Petitioner : Mr.B.Deepak Narayanan

For Respondent : Mr.S.Namasivayam

O R D E R

The plaintiff in an unnumbered suit has come up with this revision, questioning the rejection of the plaint on the ground there is an alternative remedy available under the criminal law.

2. The endorsement made by the District Munsif for rejection of the plaint reads as follows:-

" Where the plaint averments disclose criminal allegations on the part the defendant and when the plaintiff is got an efficacious remedy before the criminal jurisdiction form and further, the plaint relief is barred U/s 41(h) of the Specific Relief Act, 1963 how the plaint is maintainable before this Court has to be explained? Hence, returned. One month period for representation."

3. Upon representation the learned District Munsif rejected the plaint stating that the suit is barred under Section 41(h) of the Specific Relief Act. The order of the District Munsif reflects total inability to comprehend the scope of the criminal proceeding and the civil proceeding. The relief sought for in the suit is for permanent injunction restraining the defendants from collecting the amount due if any from the plaintiff except under due process of law and render justice.

4. In several cases, the same action can give rise to a cause of action for an injunction suit apart from constituting an offence under any of the provisions of the Indian Penal Code. If a particular action constitutes an offence under the Indian Penal Code it does not mean that relief of permanent injunction cannot be sought for before the Civil Court. It is rather shocking that the learned District Munsif did not even consider the difference between the relief of permanent injunction and a criminal prosecution. The Courts are empowered to grant permanent injunction to prevent breach of contract or any illegal act. It cannot be said that merely because that illegal act is made punishable under IPC a suit for injunction would be barred. Criminal prosecution which is cure cannot be better relief than Permanent Injunction which is preventive. The reference to 41(h), in my opinion is only misconceived. No doubt, the order passed by the learned District Munsif being one under Order 7 Rule 11 has to be treated as a decree and an appeal would lie. This Court has held that such a rejection of the plaint without notice can be interfered with under Article 227 of the Constitution of India in Kuppusamy Vs. Palanisamy reported in 2019 (2) CTC 912 .

5. In view of the same, this Civil Revision petition is allowed, the order of the learned District Munsif rejecting the plaint is set aside, the learned District Munsif is directed to take the suit on file and proceed with it in accordance with law. No costs.

Sd/-
Assistant Registrar
/true copy/
Sub Asst. Registrar

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To:-

1.The District Munsif Ambattur.

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