

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. (PD) 2735 of 2016

and

C.M.P. 14080 of 2016

S.Sadasharam

... Petitioner

Versus

1. N.Raghunathan

2. G.Navaneethakrishnan

3. K.R.Kannan

... Respondents

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the order dated 06.01.2016 passed in I.A. 53 of 2015 in O.S. 18 of 2014 on the file of Addl. Subordinate Judge Court, at Chengalpattu.

For Petitioner : Mr.M.Velmurugan

For Respondent : Mr.K.Pandurangan

ORDER

This Civil Revision Petition has been filed against the order dismissing the petitioner's application filed under Order 7 Rule 11 of C.P.C. to reject the plaint.

2. The petitioner is the 3rd defendant in the suit. The Suit has been filed seeking for damages. According to the petitioner, he is a practising advocate, and he has issued only a legal notice to the plaintiff on the instructions of defendants 1 and 2. For that, he cannot be made liable for damages, and no cause of action arise against the petitioner. However, the Trial Court has dismissed the application, on the ground that, only during trial, the Court can see whether any cause of action arisen for filing a suit. Challenging the same, the present Civil Revision Petition has been filed.

3. I have heard and considered the rival submissions of learned counsel appearing for petitioner as well as learned counsel appearing for respondents and perused the records carefully.

4. The petitioner is a 3rd defendant in the suit, and he sought to reject the plaint in respect of petitioner/3rd defendant alone, on the ground that, there is no cause of action arises against him. It is a settled law, the plaint cannot be rejected partially, if the suit survives against the other defendants, the

Trial Court should be permitted to proceed with the plaint. The remedy available to him only under Order 16, Rule 16 to strike off the plaint not under Order 7 Rule 11 of C.P.C. The Hon'ble Supreme Court of India, in the case of ***Sejal Glass Limited Vs. Navilan Merchants Pvt. Ltd.*** reported in **2018 (11) SCC 780**, has held as follows :-

"8. We are afraid that this is a misreading of the Madras High Court judgment. It was only on the peculiar facts of that case that want of Section 80 C.P.C. against one defendant led to the rejection of the plaint as a whole, as no cause of action would remain against the other defendants. This cannot elevate itself into a rule of law, that once a part of a plaint cannot proceed, the other part also cannot proceed, and the plaint as a whole must be rejected under Order 7 Rule 11. In all such cases, if the plaint survives against certain defendants and/ or properties, Order 7 Rule 11 will have no application at all, and the suit as a whole must then proceed to trial.

9. *If only a portion of the plaint, as opposed to the plaint as a whole is to be struck out, Order 6 Rule 16 C.P.C. would apply.*

It is clear that Order 6 Rule 16 would not apply in the facts of the present case. There is no plea or averment to the effect that, as against the Directors, pleadings should be struck out on the ground that they are unnecessary, scandalous, frivolous, vexatious or that they may otherwise tend to prejudice, embarrass or delay the fair trial of the suit or that it is otherwise an abuse of the process of the court."

In the above circumstances, the petitioner cannot maintain a present petition. However, if at all, the petitioner is having any grievance that, there is no cause of action arises against him, it is always open to the petitioner to file a petition under Order 6 Rule 16 to strike of the plaint. Without filing such application, the petitioner cannot maintain an application under Order 7 Rule 11 of C.P.C. Therefore, I find no merit in this Civil Revision

Petition. However, a liberty is granted to the petitioner to file necessary application to strike off the plaint, if he so desires.

7. In the result, this Civil Revision Petition stands dismissed with the above direction. No costs. Consequently, the connected Civil Miscellaneous Petition in C.M.P. 14080 of 2016 is closed.

10.01.2020

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

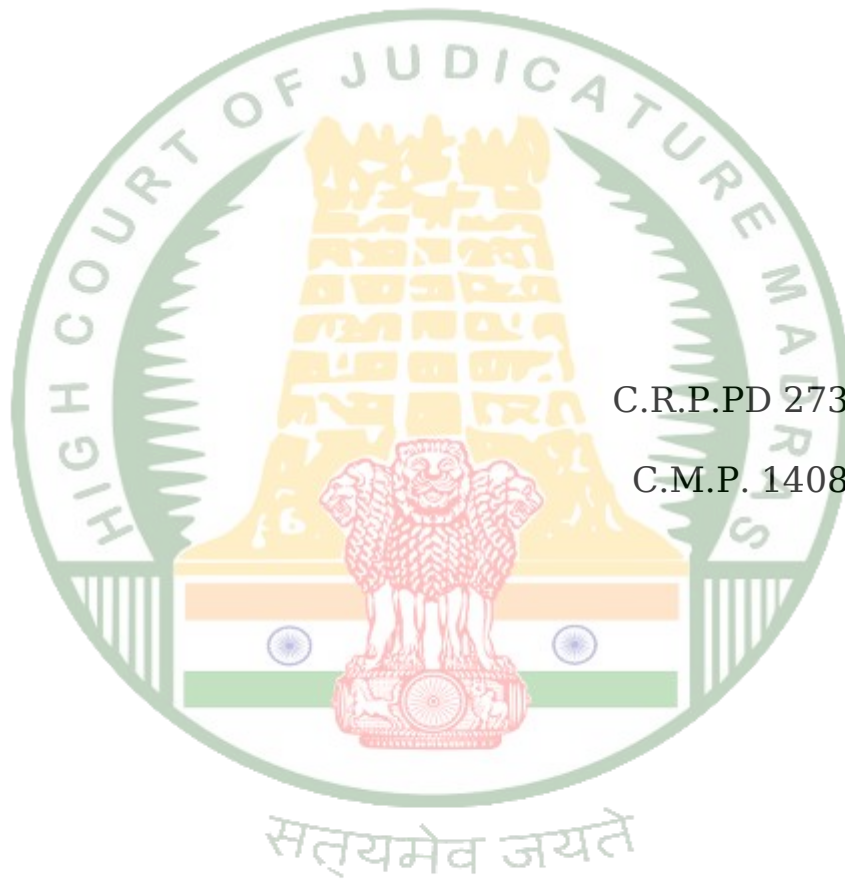
Addl. Sub-Judge,
Chengalpattu.



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V.BHARATHIDASAN,J.

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