

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)No. 468 of 2018
and
C.M.P.No. 2487 of 2018

Indian Bank
Esplanade Branch,
Rep.by its Branch Manager,
No.6, Esplanade Road,
Chennai - 600 001.

...Petitioner/Plaintiff

Vs.

1.K.Latha
2.K.Indumathi
3.K.Priyadarshini
4.M.Ananthavalli
5.The Executive Engineer & Ado
Special Project Division - II,
Tamilnadu Housing Board Annexe
Building I Floor,
Ashok Nagar, Chennai - 600 083.

...Respondents/Defendants 1 to 5

(R1 to R3 set exparte and 5th Respondent are not necessary
Parties in CRP Hence Notice is given up)

Prayer: Civil Revision Petition filed under Article 227 of the
Constitution of India, against the memo in docket order dated
19.12.2017 passed in memo filed by the 4th defendant in O.S.No.
3564 of 2017 on the file of the V - Assistant City Civil Court,
Chennai.

For Petitioner : Mrs.Hemalatha Suresh

For Respondents : Mr.R.Mohandoss for R4

R1 to R3 & R5 - Given up

O R D E R

The plaintiff in O.S.No. 3564 of 2017 has come up on
revision aggrieved by an order made on a memo filed by the 4th
defendant in the suit converting the suit filed under Order 37
of C.P.C., as an ordinary suit.

2. The suit was laid by the plaintiff seeking recovery of a
sum of Rs.4,95,975/- with subsequent interest at the contractual
rates. The summons in the suit were attempted to be served on

the defendants. Originally, it is seen from the "A" Dairy extracts that on 04.08.2017, the Court ordered issuance of fresh summons to the defendants through Court and post. Private notice was also permitted and the notice was made returnable by 12.09.2017. On 12.09.2017, the affidavit of service was filed. The notice sent to the defendants 1 to 3 were returned unserved and the counsel undertook to enter appearance for the 4th defendant. On 26.10.2017, Mr.R.Mohandoss filed Vakalat for the 4th defendant and another Advocate filed Vakalat for the 5th defendant. Along with Vakalat a memo was filed by the counsel for the 4th defendant stating that no proper summons have been served on the 4th defendant and therefore, there is a non-compliance with the provisions of Order 37 Rule 3. On the said contention, the 4th defendant sought for conversion of the suit into ordinary suit.

3. This was objected to by the plaintiff stating that the Courts summons have been served and therefore, the 4th defendant cannot seek conversion of the suit as an ordinary suit. The Trial Court, however, recorded that the plaintiff had failed to serve summons through Court. On the said finding, the Trial Court had concluded that the plaintiff has failed to comply with the requirements of Order 37 Rule 3(i) of C.P.C., and directed conversion of the suit into an ordinary suit.

4. I have heard Mrs.Hemalatha Suresh, learned counsel for the petitioner and Mr.R.Mohandoss, learned counsel for the 4th respondent. The other respondents have been given up in the revision.

5. Mrs.Hemalatha Suresh, learned counsel for the petitioner /Bank would vehemently contend that Batta was paid for service of notice on 10.08.2017 and therefore, the Trial Court was not right in concluding that the plaintiff has not taken steps. Considering the claim made, I had called for the records. A perusal of the records shows that the counsel for the plaintiff has paid Batta for service of notice through Court and post for the hearing on 12.09.2017 on 10.08.2017. From the return endorsements of the baillif, it is seen that the notice was attempted to be served on the 4th defendant on 24.10.2017. Since the 4th defendant was not available, service has effected by affixture and the same were returned to the Court. Notice sent through post was served on the 4th defendant on 10.10.2017. Private notice sent to the 4th defendant was served on 14.08.2017.

6. Therefore, according to the learned counsel, when there is a proper service of notice, the Trial Court ought not to have converted the suit into an ordinary suit. The provisions of Order 37 have to be strictly complied with. Order 37 Rule 2

stipulates that the summons in the suit shall form 4 and Order 37 Rule 3(i) provides that along with summons the plaintiff shall serve on the defendant, a copy of the plaint and the annexures there to. Therefore, mere service of summons in Form 4 is insufficient. The plaintiff will have to serve the copy of the plaint and the documents filed along with the plaint on the defendants. Unless such service is completed, the suit cannot be proceeded under Order 37 of code. I have perused the records.

7. The Court has ordered fresh notice on 04.08.2017. Batta has been paid by the plaintiff on 10.08.2017 intime. But the Court summons were served by affixture. As regards the service by post, it is seen that the copy of the summons, alone has been sent. The copy of the plaint and the documents were not sent. From the affidavit of service filed by the learned counsel for the plaintiff before the Trial Court on 13.09.2017, it is seen that plaint and the documents were not enclosed even along with the private notice. Therefore, there is a non-compliance with the provisions of Order 37 Rule 3 of the Code. Though the Trial Court has given a wrong reason to the effect that the learned counsel for the plaintiff has not taken steps, the fact remains that the 4th defendant was not served with this plaint and the copies of the documents filed, when the summons were attempted to be served on him. There is a failure to comply with mandatory requirements of Order 37 Rule 3 of C.P.C.

8. In view of the above, I do not think, the Trial Court can be faulted for converting the suit into ordinary suit. No doubt, the reason given by the Trial Court is wrong but at the same time, the conclusion appears to be correct. Therefore, I do not propose to interfere with the said conclusion. This Civil revision petition therefore fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs.

9. Now that the order of the Trial Court converted the suit into an ordinary suit is upheld by this court therefore, there is no need for any further amendment of the plaint. The suit will be treated as an ordinary suit. The Trial court will make endorsement in the plaint regarding the conversion. The 4th defendant shall file her written statement on or before 31.01.2021.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

kkn

To:

The V - Assistant City Civil Court,
Chennai.

+2 Ccs to Mrs.Hemalatha Suresh, Advocate sr 41601.

+1 CC to Mr.R.Mohandoss, Advocate sr 41484.

C.R.P (PD)No. 468 of 2018

and

C.M.P.No. 2487 of 2018

CA (CO)
SP (07/01/2021)



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