

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.11.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr.C.M.P.No.442 of 2020

S.Padmini

.. Petitioner/Defendant

-vs-

S.Arumuga Nainar

.. Respondent/Plaintiff

Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code, to withdraw the O.S.No.69 of 2020 from the file of Sub Court, Tuticorin and to transfer the same to any one of the competent civil Courts in Chennai.

For Petitioner :: Mr.J.Nagarajan

For Respondent :: Mr.Adithya Varadarajan

ORDER

Heard learned counsel for the parties through video conferencing due to the Covid-19 pandemic.

2. This transfer civil miscellaneous petition has been filed by Mrs.S.Padmini seeking to withdraw the O.S.No.69 of 2020 from the file of the Sub Court, Tuticorin and transfer the same to any one of the competent civil Courts in Chennai, on the ground that the respondent/plaintiff has wrongly filed the suit in O.S.No.69 of 2020 before the Sub Court, Tuticorin seeking a decree against the petitioner/defendant for repayment of a sum of Rs.1,16,800/- stating that the petitioner/defendant had borrowed a sum of Rs.1,00,000/- on 10.3.2019 from the house of the respondent/plaintiff at Tuticorin.

3. Learned counsel appearing for the petitioner submitted that a mere perusal of the plaint filed under Order VII, Rule 1 of the Civil Procedure Code before the Sub Court, Tuticorin clearly shows that the respondent/plaintiff has clearly admitted that the petitioner/defendant has been working as an Auditor in the Cooperative Department in Chennai. After making the averment that the petitioner/defendant is serving as Auditor in the Cooperative Department at Chennai, the entire plaint failed to mention the cause of action as to how the same can be filed

before the Sub Court, Tuticorin. When the petitioner/defendant has been permanently residing in Chennai, as per Section 20 of the Code of Civil Procedure, the suit ought to have been filed only in Chennai, therefore, the suit pending on the file of the Sub Court, Tuticorin is liable to be transferred to any one of the competent civil Courts in Chennai.

4. Mr. Adithya Varadarajan, learned counsel appearing for the respondent/plaintiff, attempting to dissuade the Court not to entertain the plea for transfer, submitted that the petitioner/defendant, while serving as Auditor in the Cooperative Department in Tuticorin, had borrowed the said amount, but there is no pleading made by the respondent/plaintiff to attract the jurisdiction of the Sub Court, Tuticorin.

5. Section 20 of the Code of Civil Procedure, reads as follows:-

"20. Other suits to be instituted where defendants reside or cause of action arises.-Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

[Explanation].- A corporation shall be deemed to carry on business at its sole or principal office in [India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

6. A perusal of the above provision clearly shows that the respondent/plaintiff ought to have filed the suit only in Chennai, since the petitioner/defendant has been residing and staying in Chennai. Therefore, the transfer civil miscellaneous petition stands allowed and the suit in O.S.No.69 of 2020 is withdrawn from the file of the Sub Court, Tuticorin and transferred to the file of the Principal Judge, City Civil Court, Chennai for disposal on merits and in accordance with law. Consequently, C.M.P.No.9447 of 2020 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge
Tuticorin
2. The Principal Judge
City Civil Court, Chennai

+1 cc to M/s.Adithya Varadarajan, Advocate Sr.No. 35805

+1 cc to M/s.J.Nagarajan, Advocate Sr.No. 35833

Tr.C.M.P.No.442 of 2020

SR(CO)
RMP(27/11/2020)

सत्यमेव जयते

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