

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 16.12.2020]

[PRONOUNCED ON : 30.12.2020]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P. PD.No.2039 of 2020

and

C.M.P.No.12817 of 2020

K.Maruthai

... Petitioner/Defendant

.. Vs ..

Vel Construction,
Rep. by its Proprietor Veeravel,
S/o.Thanga Anandan,
No.18, MRK Road,
Srimushnam, Cuddalore District.

... Respondent/Plaintiff

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 27.08.2020, made in I.A.No.1771 of 2019 in O.S.No.220 of 2019, on the file of the III Additional District and Sessions Court, Cuddalore at Vridhachalam.

For Petitioner : Mr.R.Sethuvarayar

For Respondent : Mr.Rajarajan

ORDER

This Civil Revision Petition is filed by the petitioner/defendant under Article 227 of the Constitution of India, against the fair and decreetal order dated 27.08.2020 passed by the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam, in I.A.No.1771 of 2019 in O.S.No.220 of 2019.

2. The defendant is the revision petitioner herein. The respondent herein/plaintiff has filed the above said suit in O.S.No.220 of 2019 before the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam, for the relief of recovery of money due to the tune of Rs.31,97,873/-. The plaint proceeds on the basis that in respect of the schedule property, there was a builders agreement for construction of house in the suit property and the respondent herein/plaintiff has completed the construction and handed over the possession to the

revision petitioner herein/defendant and the defendant has also paid a portion of the amount and for the balance amount, the suit was filed.

3. The defendant entered appearance and also filed an interlocutory application in I.A.No.1771 of 2019 under Order 7 Rule 11 of CPC to reject the plaint and the said application was dismissed by the learned III Additional District and Sessions Judge, Cuddalore at Vrindhachalam. As against the dismissal order passed by the learned trial Judge, the present civil revision petition has been preferred by the defendant.

4. The main contention of the revision petitioner/defendant to reject the plaint is that the plaintiff has filed the suit based on the two forged documents, one is construction agreement dated 07.04.2016 and another one is cheque, which was misused from OM Sakthi Traders and hence, there is no real cause of action for the suit and even assuming that the construction agreement is true, the suit is barred by limitation. The learned trial Judge has disallowed the said contention and dismissed on the ground that it is a matter for trial.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent/Caveator.

6. After hearing the rival submissions and perusing the documents, the case of the revision petitioner/defendant before the trial Court is that the plaint was filed by the plaintiff for recovery of money for a sum of Rs.31,97,873/- against the revision petitioner/defendant based on the unregistered forged construction agreement. The suit was filed by the plaintiff based on the two documents, one is alleged construction agreement dated 07.04.2016 and another one is alleged cheque for a sum of Rs.15,00,000/- which was given to OM Sakthi Traders, Buvanagiri, for business transaction and thereby, respondent herein/plaintiff has misused the cheque.

7. According to the revision petitioner/defendant, the plaint was constructed based on the forged and fabricated documents and hence, the revision petitioner herein has filed an interlocutory application in

I.A.No.1771 of 2019 in O.S.No.220 of 2019 for rejection of the plaint under Order VII Rule 11 of CPC.

8. The respondent herein/plaintiff colluded with OM Sakthi Trader and misused the alleged cheque along with four other cheques, in which the plaintiff used one cheque for filing the above suit and through other four cheques, the respondent herein/plaintiff and his friends, have filed a case under Section 138 of the Negotiable Instruments Act against the revision petitioner/defendant in various Courts. Hence, the revision petitioner/defendant has lodged a complaint with the Buvanagiri police station and the said complaint was registered in Crime No.123 of 2019 for the offences under Sections 420, 406, 465, 1209b), 506(i) of IPC, in which, the respondent herein/plaintiff arrayed as an accused No.1.

9. Further, it is alleged that the respondent herein/plaintiff has already misappropriated a sum of Rs.1,28,30,395/- from the Bank loan account which belongs to the revision petitioner/defendant, his wife and his father. In which, the revision petitioner lodged a complaint before the

District Crime Branch, Ariyalur, and the said complaint was registered in Crime No.03 of 2019 for the offences under Sections 120(b), 419, 420, 409, 424, 465, 466, 468, 477A and 506(ii) of IPC and which was challenged by the respondent herein through quash petition in CrI.O.P.No.25329 of 2019 and the above quash petition was dismissed by this Court.

10. During the course of the argument, the learned counsel for the revision petitioner/defendant would contend that (1) there is no cause of action, (2) the entire suit was filed based upon the two forged documents viz., unregistered construction agreement dated 07.04.2016 and the alleged cheque for a sum of Rs.15,00,000/- and hence, the same is not enforceable, (3) the plaint documents are forged documents, (4) the schedule of the property belongs to the wife of the defendant and not belongs to the defendant and therefore, there is no cause of action.

11. Per contra, the learned counsel for the respondent/plaintiff would submit that the suit property is no doubt, stands, in the name of the

wife of the defendant and for which, there was a building agreement between the parties and part of the payment has been made and for the balance of the unpaid amount, the suit has been laid and made submissions in support of the order passed by the trial Court.

12 (a). Admittedly, the suit was filed for balance of the amount in connection with the construction of the building in the suit property which stands in the name of the wife of the defendant. According to the plaint averment, the suit was filed for balance of the amount unpaid as agreed between the parties and not in connection with the suit property and therefore, the defendant being a party to the plaint document viz., the suit construction agreement, the suit is held to be maintainable.

12 (b). According to the revision petitioner/defendant, the suit agreement itself is a forged one. As per the plaint document, the defendant has paid Rs.80,00,000/- towards the plaintiff account and hence, it is a matter for evidence that has to be let in during the time of trial.

13 (a). The next contention is that whether the suit builders agreement is true and genuine, as contented by the plaintiff or forged and fabricated as projected by the defendant, is the disputed question of fact, for which, evidence has to be let in during the time of trial.

13 (b). The next plea raised by the revision petitioner/defendant is that the alleged cheque payment are misused and it never intended to be given to the defendant and those cheques have been given to the money transaction and the same was alleged to have been misused. Yet again, this point is for matter of evidence.

13 (c). It is to be stated that as per the plaint averment, the defendant is alleged to have paid a sum of Rs.2,25,000/- on 12.01.2017 and within three years, the suit has been filed and hence, the last contention raised by the learned counsel for the revision petitioner that the money claim under the suit is barred by limitation cannot be sustainable.

13 (d). All the points that have been raised on behalf of the revision petitioner/defendant are in the nature of mixture question of law and facts and hence, only through proper trial, the same can be decided.

14. In this view of the matter, the order dated 27.08.2020 passed by the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam, in I.A.No.1771 of 2019 in O.S.No.220 of 2019, is hereby confirmed and the Civil Revision Petition is dismissed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

30.12.2020

Index : Yes
Internet : Yes
Jrl

To

III Additional District and Sessions Court,
Cuddalore at Vridhachalam.

WEB COPY

RMT.TEEKAA RAMAN, J.

JRL



Order made in
C.R.P. PD.No.2039 of 2020

WEB COPY 30.12.2020