

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr.C.M.P.No.997 of 2019

Ravi C.Krishnan

..Petitioner

Versus

Vijay R.Vakharia

..Respondent

Prayer: Petition has been filed under Section 24 of the Civil Procedure Code praying to withdraw O.S.No.5095 of 2019 from the file of XVI Additional City Civil Court, Chennai, (Fast Track Court, Chennai) and to transfer the same to any other District Court in Chennai.

For Petitioner : Mr.Raghuram

For Respondent : K.Surya Sankar

O R D E R

Heard the parties through Video Conferencing due to COVID-19 pandemic.

2. Mr.Ravi C.Krishnan/plaintiff/petitioner herein has filed this Transfer Civil Miscellaneous Petition seeking to transfer O.S.No.5095 of 2019 from the file of XVI Additional City Civil Court, Chennai (Fast Track Court, Chennai), to the file of any other District Court in Chennai. The above said suit was filed by the plaintiff/petitioner herein seeking for recovery of money from the defendant/respondent herein to the tune of Rs.78,46,357/-.

3. Learned counsel appearing for the plaintiff/petitioner herein submitted that originally the suit was instituted before this Court in C.S.No.194 of 2018 and in the said suit, he has also filed an application No.2674 of 2018 seeking a direction to the defendant/respondent herein to furnish security of the suit

claim. After the service of notice, this Court, by order dated 05.04.2018, directed the defendant/respondent herein to furnish security on or before 03.06.2018. Thereafter, counsel for the defendant was changed and through another counsel, Application Nos.7776 and 7777 of 2018 were filed seeking to condone delay in filing applications to set aside the exparte order and in the said proceedings, the plaintiff has also filed a counter affidavit taking a stand that applications filed by the defendant are not maintainable. Even prior to the filing of above applications by the defendant, the plaintiff has filed an application to amend the plaint in Application No.6637 of 2018 and in the said application, suit claim was sought to be amended from Rs.78,46,357/- to 1,07,69,779/- as he did not calculate the interest for the period from 10.12.2012 to 27.08.2015. Thereafter, this case was not listed for hearing and subsequently, due to change in pecuniary jurisdiction, this case was transferred to the file of XVI Additional City Civil Court, Chennai, and renumbered as O.S.No.5095 of 2019. Application filed by the plaintiff/petitioner herein was renumbered as I.A.No.1 of 2019 and the applications filed by the defendant/respondent herein to condone the delay was renumbered as I.A.Nos.2 and 3 of 2019. When the case was initially posted for hearing on 21.08.2019, it was adjourned for hearing on 27.09.2019 for service of notice on the parties. On 27.09.2019, both counsel were present and the matter was adjourned to 01.10.2019 for enquiry in I.A.No.1 of 2019 filed by the plaintiff seeking to amend the plaint and again, the same was adjourned to 18.10.2019. On 18.10.2019, when the plaintiff/petitioner herein completed his arguments, counsel appearing for defendant sought to club their matters pending in I.A.Nos.2 and 3 of 2019 seeking to condone the delay in filing application to set aside the exparte order.

4. Learned counsel for the plaintiff/petitioner herein argued that the defendant/respondent herein in the suit is repeatedly mentioning to the Court through his counsel that the orders reserved in I.A.No.1 of 2019 need not be pronounced and the Court has to hear I.A.Nos.2 and 3 of 2019 and only thereafter, orders have to be passed in all the pending IAs. Therefore, apprehending that the learned lower Court is going to rehear the matter in I.A.No.1 of 2019 (already reserved) on the basis of application filed by the respondent to reopen the arguments in I.A.No.1 of 2019, the plaintiff/petitioner herein has filed this transfer petition seeking to transfer O.S.No.5095 of 2019 from the file of learned XVI Additional City Civil Court, Chennai, to any other District Court at Chennai.

5. Learned counsel for the defendant/respondent herein argued that as per the direction of this Court dated 25.02.2020, learned lower Court had submitted the order passed in I.A.No.1 of 2019 in a sealed cover and thereafter, this Court, by order dated 09.03.2020, directed the Registrar (Judicial) to send back the order in a sealed cover which has not been pronounced by the learned XVI Additional Judge, City Civil Court, Chennai, on or before 10.03.2020, and on receipt of the same, learned XVI Additional City Civil Court was directed to pronounce the order in I.A.No.1 of 2019 in O.S.No.5095 of 2019 on 12.03.2020. Pursuant to the direction of this Court, learned lower Court also has pronounced the order in I.A.No.1 of 2019 on 12.03.2020 itself. Therefore, apprehension of the learned counsel for the plaintiff/petitioner herein that the learned lower Court without pronouncing the orders in I.A.No.1 of 2019 has started hearing the case filed by the defendant/respondent herein in I.A.Nos.2 and 3 of 2019 vanishes and hence, nothing survives in the present transfer petition and the same may be closed.

6. I find merit on the above said submissions. The plaintiff/petitioner herein has filed this transfer petition apprehending that although learned lower Court has reserved the orders in I.A.No.1 of 2019 filed by him seeking to amend the plaint, without pronouncing the orders in the said application, it has entertained the applications filed by the defendant/respondent herein in I.A.Nos.2 and 3 of 2009 seeking to condone the delay in filing of application to set aside the exparte order. However, it is seen from the records that on the earlier occasion, when the matter was taken up on 25.02.2020, this Court directed the Registry to call for the order, that has been kept pending in a sealed cover. Pursuant to the order passed by this Court, learned lower Court has submitted the orders passed in I.A.No.1 of 2019 in O.S.No.5095 of 2019 in a sealed cover. Again, this Court, by order dated 09.03.2020, directed the Registrar (Judicial) to send back the order in a sealed cover, which has not yet been pronounced by the learned XVI Additional Judge, City Civil Court, Chennai, on or before 10.03.2020, and on receipt of the same, the learned XVI Additional Judge, City Civil Court, Chennai, was directed to pronounce the order in I.A.No.1 of 2019 of 2019 in O.S.No.5095 of 2019 on 12.03.2020. Now, as per the directions of this Court, order has been pronounced by the learned XVI Additional Judge, City Civil Court, Chennai. Therefore, apprehension of the plaintiff/petitioner herein that without pronouncing the orders in I.A.No.1 of 2019 filed by him, learned lower Court has started hearing the case filed by the defendant/respondent herein in I.A.Nos.2 and 3 is eroded. Thus, nothing survives in

the present transfer application and accordingly, it is closed.
It is for the parties to work out their remedy before the
learned lower Court in accordance with law.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

XVI Additional City Civil Court, Chennai.

Tr.C.M.P.No.997 of 2019

AJS (CO)
KKV/19/12/2020



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