IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: .26.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD). No.3160 of 2018
and CMP No.18103 of 2018

S.Babu .. Petitioner

Vs.

1. M.Mohan
2. R.Anbu
3. J.Tamil Selvi ... Respondents

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 06.08.2018 in I.A.No.183 of 2017 in O.S.No.22 of 2013 on the file of the III Additional District Court, Tirupattur.

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For Petitioner : Mr.T.M.Hariharan

For Respondents : Mr.P.Gopalakrishnan

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ORDER

The revision is at the instance of the defendants in O.S.No.22 of 2013, challenging an order made in I.A.No.183 of 2017, an application to reject the plaint under Order VII Rule 11 of the Code of Civil Procedure on the following grounds:

i. That the plaintiff has filed an earlier suit for permanent injunction and the said suit was withdrawn in December 2012 without reserving the right to file a suit for specific performance. Therefore, the suit is barred under Order II Rule 2 of the Code of Civil Procedure.

ii. That the Deficit Court fee was not paid within the time granted by the trial Court.

2. The trial Court dismissed the application on the conclusion that the Court fee was paid within time granted and the question whether the earlier suit for injunction would debar the plaintiff from prosecuting the suit for specific performance has to be decided only after trial. Aggrieved, the

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defendant has come up with this revision.

3. I have heard Mr.T.M.Hariharan, learned counsel appearing for the petitioner and Mr.B.Gopalakrishnan, learned counsel appearing for the respondents.

4. Since doubts were raised regarding the payment of Court fee, I had called for the records. The certified xerox copy of the original plaint has been forwarded by the trial Court. A perusal of the same shows that the plaint was presented on 04.07.2013 and it was returned on 06.07.2013 with the following three defects:

i. Correct Court fee to be mentioned in the plaint

ii. Corrections to be carried out in the copy of the plaint

iii. Deficit Court fee to be affixed. Time one month

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5. The said plaint was represented on 14.08.2013 with the delay of 9 days in representing it. The delay was condoned. Thereafter, it is seen from the endorsement of the counsel dated 14.08.2013 that the plaint is represented after compliance. The next return is on 19.08.2013 wherein the

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endorsement by the Court office is as follows:

> ***"Previous returns 1 and 2 not complied with.*** *Hence returned. Time one month."*

6. The plaint is represented on 22.08.2013 carrying out the corrections required. It is also seen that the suit was numbered on 27.08.2013 after the Registry had made an endorsement that the entire Court fee has been paid. It is therefore clear from the above that the Court fee required was paid within the time granted by the Court and the delay if any in payment was condoned by the Court. Therefore, the claim of the petitioner that the Court fee was not paid within the time granted by the Court is not correct. The trial court has rightly recorded that the Court fee was paid within the time granted. The second ground for rejection does not survive.

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7. As regards the first ground for rejection, Mr.T.M.Hariharan, learned counsel appearing for the petitioners would submit that the said ground has not been considered at all.

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8. In any event, I am of the opinion that the said ground cannot form a basis for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, particularly after the pronouncement of the Supreme Court that an earlier institution of the suit for injunction would not, in all circumstances, bar a subsequent suit for specific performance. Hence, both the grounds alleged for rejection of the plaint fail and trial Court was justified in dismissing the application. I do not see any reason to interfere with the order of the trial Court. The Civil Revision petition therefore fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

26.08.2020

vum
Index: /No
Speaking order

To

1. The III Additional District Court,
   Tirupattur.

2. The Section Officer,
   VR Section,

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Madras High Court,
Chennai

R.SUBRAMANIAN, J.

vum

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