



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.07.2021	Pronounced on: 12 .07.2021
-------------------------	----------------------------

Coram::

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN

A.No.151 of 2021
in C.S.No.168 of 2020

M/s.RKKR Steels Private Limited.,
Represented by its Director Mr.Ritesh Rai,
No.6/13, North Avenue,
Kesava Perumal Puram,
Chennai – 600 028.

... Applicant

/versus/

M/s.Radha Vyapar (India) Pvt. Ltd.,
Represented by Mr.Yashpal Sharma,
No.18/39, Sembudoss Street,
Chennai – 600 001

... Respondent

Prayer:

Judge's summons under Order 7 Rule 11 of the Code of Civil Procedure,
1908 read with order 23 Rule 1 and order 14 Rule 8 of the O.S Rules.

- This application should not be treated as urgent?
- To pass an order rejecting the plaint in C.S.(Comm).No.168 of 2020.

For Plaintiff : Mr.S.R.Raghunathan

For Defendant : Mrs. Chitra Sampath, Senior Counsel
for M/s.AAV Partners.

ORDER

The application to reject the plaint in C.S.(Com.Div) No.168 of 2020 is filed by the defendant on the ground that in respect of the same transaction, the plaintiff herein instituted a Civil Suit before this Court which was assigned C.S.Diary Number 24542 of 2018. Later, the plaintiff thought fit to withdrawn it got the plaint rejected on 27th March, 2019. While rejecting the plaint, this Court has not granted any permission or liberty to institute a fresh suit in respect of the same subject matter of the claim. Therefore, the plaintiff is disentitled to maintain the present suit as per Order XXIII Rule (1) of C.P.C.

2. According to the applicant, the reading of the plaint and the document filed by the plaintiff show that the present suit is barred under Order XXIII Rule (1) of CPC. To the notice, to produce a copy of the plaint referred in paragraph No.14 of the plaint and the notice to produce the order of the High Court referred in paragraph No.16 of the plaint did not evoke any response from the plaintiff, hence the suit is liable to be rejected under Order VII Rule 11 (d) of C.P.C.

3. The Learned Counsel appearing for the applicant/defendant submitted that Order VII Rule 11 (d) of C.P.C says the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. Whereas, Order XXIII Rule (4) of C.P.C makes clear that where the plaintiff abandons any suit or part of the claim under sub-rule (1) or withdraw from a suit or part of a claim without permission referred to in sub-rule (3), he shall be precluded from instituting, any fresh suit in respect of such subject matter or such part of the claim.

4. Whereas, the Learned Senior Counsel appearing for the plaintiff submitted that, the previous plaint which was instituted on 18.06.2018 was withdrawn before it was numbered and taken on file in view of the compromise entered between the parties. Since, the defendants failed to honour their commitments as per the terms of the compromise, the present suit came to be filed. In the affidavit filed for withdrawal of the plaint and refund of the Court fees, the plaintiff has reserved the liberty to file fresh suit in case, if the settlement terms are not honoured. Accepted the plea, this Court vide order dated 23.04.2019, rejected the plaint in CSD No.24542 of 2018 and ordered refund of the Court fees. Therefore, there is no bar under any law to file the present suit.

Order XXIII Rule (1) of C.P.C reads as below:-

1. Withdrawal of suit or abandonment of part of claim: *(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:*

Provided that where the plaintiff is a minor or other person to whom the provisions contained in Rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An Application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied,—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3).

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

5. Sub-Rule (1) of Rule (1) in the above order permits the plaintiff to abandon his suit or part of the claim against all or any of the defendants. Under Sub-Rule (3) the court if satisfied, that there are sufficient grounds for allowing the plaintiff to institute a fresh suit, for the subject matter of the suit or part of the claim, grant permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of the claim. The Sub-Rule (4) makes clear that where the plaintiff withdraws from a suit or part of a claim without permission referred to in sub rule (3), the plaintiff shall be liable for such costs as the court may award and shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim.

6. In the present case, the order of the Learned Master in the Application No.2411 of 2019 and Application No.2412 of 2019 in CSD.No.24542 of 2019 dated 23.04.2019 does not speak about any permission or liberty to file fresh suit on the same subject matter or such part of the claim.

However, in the affidavit filed along with the application, the plaintiff have

sought for permission to withdraw and liberty to file fresh suit if the terms of settlement are not honoured.

7. The terms of settlement which the plaintiff refers form part of the plaint document. The learned counsel appearing for the applicant/defendant pointing out the discrepancies in the said document morefully about the date of its execution and inconsistency in the pleadings of the plaintiff about its date of execution raised serious doubt about the genuineness of this document. Further, reading out the cause of action paragraph of the present plaint and the cause of action paragraph of the prior plaint submitted that, both are identical and there is no reference about the deed of settlement for the plaintiff to say that the present suit is on a different set of facts and cause of action. In response to this submission, the Learned Counsel for the plaintiff submit that in the plaint, the filing and withdrawal of the earlier plaint is disclosed. No specific order permission or leave is required in case of un-numbered plaint.

8. On considering the rival submissions and on perusal of pleadings and documents relied, this Court finds from the affidavit filed in Application No.2411 of 2018 in un-numbered suit CSD.No.24542 of 2018, the previous plaint was withdrawn by the respondent herein citing the deed of compromise

which was alleged to have entered between the disputing parties on 11.06.2014. (In the plaint paragraph No.16, it is stated that the actual date of deed of settlement is 11.06.2018 but wrongly stated as 11.06.2014). Regarding the actual date of execution of the said document there are inherent inconsistency in the deed itself and same can be appreciated only in the Trial. The learned counsel for the Applicant states that even assuming the deed of settlement was entered on 11.06.2018, the plaint has been signed only thereafter i.e., on 18.06.2018 and presented in Court on 19.06.2018. Therefore, the reason stated in the application to withdraw the plaint is false. Whereas the learned counsel for the respondent given some explanation for presenting the plaint and later withdrawing it. Whether the said explanation is plausible is also matter for appreciation after trial.

9. Thus, the plea raised by the applicant is a mixed question of law and facts. Whether the present suit is barred under Order XXIII Rule (1) (4) of C.P.C., in view of the rejection of earlier un-numbered plaint and whether omission to grant liberty to the plaintiff to file fresh suit, despite liberty sought by the plaintiff in the application to withdraw will non suit the plaint are issues substantially depend on the proof of the alleged deed of settlement is suit

document No.10 which according to the plaintiff had given him fresh cause of

action to sustain the present suit.

10. Therefore, this Court is of the view that the facts laid through the pleadings does not warrant rejection of plaint summarily without examining witnesses. The issue whether suit is maintainability in view of the bar under Order XXIII Rule (1) sub-rule (4) of C.P.C., shall be one of the issues for trial along with other issues for the Court to decide after cumulative appreciation of evidence.

11. With the above observations, the Application No.151 of 2021 is closed. No costs.

Sd./-G.J.J
12.07.2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

JJ 13/07/21