



WEB COPY



CRP.PD.No.259/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.PD.No.259/2019 and CMP.No.2050/2019

[Video Conferencing]

Nagarajan

.. Petitioner

Vs.

1.Muthusamy

2.Kumaravel

3.Rajagopal

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution to set aside Fair and Final Orders dated 12.12.2018 passed in I.A.No.145/2018 (I.A.No.40/2018 on the file of Principal District Court, Namakkal) in OS.No.125/2017 on the file of Sessions (Fast Track Mahila) Judge, Namakkal.

For Petitioner	:	Mr.R.Nalliyappan
For Respondents	:	No appearance

ORDER

- (1) The present Civil Revision Petition is filed as against the order passed the order in IA.No.145/2018 in OS.No.125/2017 by the Court of Sessions (Fast Track Mahila) Judge, Namakkal.
- (2) The brief facts that are necessary for the disposal of revision are as



CRP.PD.No.259/2019

follows.

- (3) The petitioner is the defendant in the Suit in OS.No.125/2017. The respondents as plaintiffs, filed the said Suit claiming damages to the tune of Rs.10 lakhs along with interest.
- (4) It is stated in the plaint, that in respect of a property of the respondents/plaintiffs, the revision petitioner had entered into a Sale Agreement for a consideration of Rs.10,20,000/-per acre. It is admitted that a sum of Rs.5 lakhs was received by the respondents/plaintiffs as advance on the date of agreement. Though the revision petitioner/defendant agreed to complete the same within 11 months, it is stated that the Sale of Agreement got frustrated on account of certain developments. Hence, the revision petitioner herein filed a Suit in O.S.No.72/2010 for recovery of the amount that was paid by him under the Agreement as advance.
- (5) Though the Suit filed by the revision petitioner/defendant in OS.No.72/2010 on the file of Sub Court, Namakkal was dismissed. The revision petitioner/defendant filed AS.No.99/2011 before the District Court Namakkal and its Appellate Court decreed the Suit partly by directing the return of the advance amount. It is admitted



WEB COPY



CRP.PD.No.259/2019

that the respondent/plaintiffs did not file any Cross-Suit or a counter claim regarding any damages for breach of contract. Instead, the respondents/plaintiffs filed SA.No.965/2012 and the same was also dismissed on the ground that the claim towards damages cannot be sustained without any counter claim in the Suit. It is seen that in the earlier proceedings, the Lower Appellate Court and this Court have held that a mere claim towards damages cannot be adjusted towards amount payable to the revision petitioner which was originally given to the respondents/plaintiffs as part of sale consideration. The Suit in OS.No.125/2017 is contested by the revision petitioners raising several issues.

- (6) It was stated in the written statement that the Suit in OS.No.125/2017 is barred by *res judicata* and that it is time barred. The revision petitioners also filed an application in IA.No.145/2018 under Order VII Rule 11 C.P.C., for rejection of plaint. The said application was dismissed. Aggrieved by the same the above Civil Revision Petition is filed.
- (7) This Court has time and again repeatedly held in several judgments that even a question of law which involves disputed question of



WEB COPY



CRP.PD.No.259/2019

facts cannot be considered to reject the plaint. Further the plaint can be subjected only on the basis of averments made in the plaint.

- (8) In the present case the contention of the revision petitioner that the judgment and decree in the earlier Suit will operate *res judicata*, cannot be sustained. The earlier Suit filed by the revision petitioner for return of advance money, of course, was defended by the respondents/plaintiffs on the ground that they are entitled to claim damages, from the revision petitioner for the breach of contract. However, the issue is not considered by the Court earlier in the Suit filed by the revision petitioner on merits. Even this Court while dismissing the Second Appeal, observed that the claim for damages in the Suit for recovery of advance amount cannot be sustained without a counter claim. The claim for damages as such was not considered on merits. Therefore, the issue decided earlier was not anything connected with the issues that arise for consideration in the present suit filed by the respondents. Question of limitation cannot be considered in the present case as a pure question of law. It has been repeatedly held by the Hon'ble Supreme Court in several judgments that the Court cannot reject the plaint on the



WEB COPY



CRP.PD.No.259/2019

ground of limitation, on the basis of the documents and materials supplied by the defendant or on the factual information furnished by the defendants in the written statement.

- (9) For deciding an application under Order VII Rule 11 CPC, the Court is expected to consider only the plaint averments and not anything else. In such circumstances, the contention of the petitioner that the suit is barred by limitation has to be adjudged after framing issues. Hence, this Court is not inclined to interfere with the order passed by the lower Court dismissing the application filed under Order VII Rule 11 CPC. While dismissing the revision petition, this Court gives liberty to the revision petitioners to agitate the same at the time of trial after framing necessary issues. In other words, this judgment will not stand in the way of lower Court deciding the issues regarding limitation while disposing of the suit itself. No costs. Consequently, connected miscellaneous petition is closed.

18.11.2021

cda

Internet : Yes



CRP.PD.No.259/2019

To

- 1.The Principal District Court, Namakkal.
- 2.The Sessions (Fast Track Mahila) Judge, Namakkal.

S.S.SUNDAR, J.,

cda

CRP.PD.No.259/2019

18.11.2021