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C.R.P.(PD).No.720 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2021

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**

**C.R.P.(PD).No.720 of 2021**

**and**

**C.M.P.No.5992 of 2021**

M/s.Nandhi Dall Mills,  
Rep. by S.A.kumar,  
A Partnership firm,  
D.No.270, Narasimman Road,  
Shevapet, Salem – 636 002.

.. Petitioner

Vs.

N.Sankarapandi

..Respondent

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 13.07.2020 made in I.A.No.596 of 2018 in O.S.No.13 of 2018 on the file of the Principal District Munsif Court, Salem.

For Petitioner : Mr.K.Sathish Kumar

For Respondent : Mr.C.Balaji

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## **ORDER**

The challenge in this Revision is to the order of the learned Principal

District Munsif, Salem dated 13.07.2020 made in I.A.No.596 of 2018.

2. The petitioner filed the suit in O.S.No.13 of 2018 seeking a mandatory injunction directing the defendant to complete erection of the remaining machineries of the Rice Puttu Mavu Mill and gasifier plant within the premises of the plaintiff at Shevapet, Salem.

3. According to the plaintiff, it had entered into a oral agreement with the defendant for supply and erection of machinery for gasifier plant and Rice Puttu Mavu Mill. The total cost of the contract is Rs.1 Crore 22 Lakhs and according to the plaintiff, the entire consideration has been paid.

4. Claiming that the defendant had not completed erection as agreed to, the plaintiff has come up with this suit seeking a mandatory injunction to complete the erection. The plaintiff had valued the suit at Rs.3,000/- and paid a Court fee of Rs.90/-. Along with the suit, an application has been filed in I.A.No.33 of 2018 seeking appointment of Commissioner to inspect



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the property and note down the physical features of the suit property, machineries, electrical equipments and appliances, amenities and power supply lines in the suit property.

5. Upon service of summons the defendant came up with the instant application in I.A.No.596 of 2018 under Order VII rule 11 of Code of Civil Procedure seeking rejection of the plaint on the ground that the suit has not been properly valued and the plaintiff in the guise of mandatory injunction is actually seeking specific performance of the agreement and therefore, the suit should be valued under Section 42 of the Tamil Nadu Court Fees and Suits Valuation Act and proper court fees should be paid.

6. The trial Court upon consideration of the materials available on record, concluded that the plaintiff ought to pay court fees for the value of the machinery that was not supplied. Though, the defendant had contended that the plaintiff is liable to pay Court fee for the entire value of the machinery to be supplied, the trial court concluded that the plaintiff could value the suit on the total value of the machineries or the value of the



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machineries left un-supplied by the defendant and pay the proper Court fees on the said value. It is this order which is subject matter of challenge in this Revision.

7. I have heard Mr.K.Sathish Kumar, learned counsel appearing for the petitioner and Mr.C.Balaji, learned counsel appearing for the respondent.

8. Mr.Mr.K.Sathish Kumar, learned counsel appearing for the petitioner would vehemently contend that as a defendant, the respondent cannot dictate terms as to what is the relief the plaintiff should seek.

9. I am unable to agree with the contention of the learned counsel for the petitioner. It is open to the defendant to point out the error in the valuation and require the plaintiff to make good the error. Order VII Rule 11 of the Code of Civil Procedure empowers the Court to decide the correctness of the valuation adopted by the plaintiff and if the Court comes to a conclusion that the suit is under valued, it can always correct the



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valuation and make good the defect in the court fee. The trial court has, after all, at the instance of the defendant exercised the said power and directed the plaintiff to value the suit properly and pay the proper court fee.

**10.** I do not see any error of jurisdiction or a material irregularity in the exercise carried out by the trial court. The provisions of Order VII Rule 11 (b) can be either invoked by the Court *suo moto* or at the instance of a party defendant. It is clear to my mind that the valuation of the suit at Rs.3,000/- and payment of court fees of Rs.90/- is *ex facie* incorrect. The plaintiff actually has sought for the relief of mandatory injunction instead of seeking the relief of specific performance of the agreement for supply and erection of the plant. The plaintiff should have sought for the relief of specific performance. The trial Court had seen the game plan of the plaintiff and had directed the plaintiff to value the suit properly and pay the Court fee at the value of machineries un-supplied.

**11.** In view of the above, I am of the considered opinion that the order of the trial Court needs no interference at the hands of this Court. The



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Revision therefore fails and it is accordingly **dismissed**. It is made clear that the plaintiff is required to value the suit in respect of un-supplied machineries and pay the Court fee on such valuation. Such an exercise shall be done by the plaintiff within a period of four (4) weeks from the date of the uploading of the copy of this order in the website. No costs. Consequently, the connected miscellaneous petition is closed.

**09.11.2021**

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Index : No

Internet : Yes

Speaking order



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To

WEB COPY The Principal District Munsif,  
Salem.



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**R.SUBRAMANIAN, J.**

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