

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2021

C O R A M

**THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN**

C.R.P.(PD) No.640 of 2021

P. Sandeep

... Petitioner

Vs.

1. A. Vijay Ratheesh,

2. Arjunan

... Respondents

**Prayer:** This Civil Revision Petition filed under Article 227 of the Constitution of India praying for to expunge the remarks made in fair and decreetal order dated 12.12.2019 in Tr.O.P. No.147 of 2019 on the file of the Court of the Principal Judge, City Civil Court, Chennai.

WEB COPY

For Petitioner

... Mr.Sunil @ Sunil Prakash  
(For K.P. Santhosh)

For Respondent

... No Appearance

\*\*\*\*\*

**ORDER**

The Civil Revision Petition has been filed under Article 227 of the Constitution of India praying for to to expunge the remarks made in fair and decreetal order dated 12.12.2019 in Tr.O.P. No.147 of 2019 on the file of the Court of the Principal Judge, City Civil Court, Chennai.

2. The case of the petitioner is that the petitioner has filed the suit in O.S. No.3066 of 2018 on the file of the III Assistant City Civil Court, Chennai for recovery of money against the respondents 1 and 2 under Order XXXVII of C.P.C. In the suit, leave applications have not been filed in time and the cases were posted for Judgment. Under such circumstances, the respondents have filed three Interlocutory Applications before the Court below seeking for (i) to set aside the Ex-parte Judgment under Order IX Rule VII of C.P.C. (ii) leave to defend the petition and (iii) to strike out the 2nd respondent filed under Section 151 of C.P.C. When the petitions were taken up for enquiry, it is alleged that when the learned counsel for the petitioner raised several questions about the maintainability of the petitions, the learned Judge has put questions towards the counsel for the petitioner in order to harass and to

insult him. While the counsel for the petitioner produced the relied Judgments before the Court below questioning the maintainability of the petitions, the Court below confronted with the learned counsel for the petitioner. Due to the said question raised by the Court below, the petitioner got upset on the questions raised by the Court below and hence, the petitioner has moved Tr.O.P.Nos.147 and 148 of 2019 before the Principal Judge, City Civil Court, Chennai. The Court below after considering the submissions made by both parties, by its order dated 12.12.2019 allowed the petition by transferring the suit in O.S.Nos.3066 and 3067 of 2018 to I Assistant City Civil Court, Chennai from the III Assistant City Civil Court, Chennai after making its remarks on the issue. In view of the remarks made by the Court below on the issue of the case, the learned counsel for the petitioner has filed the present Civil Revision Petition to expunge the remarks made in the aforesaid order.

3. The learned Counsel for the petitioner would submit that the learned Judge ought not to have expressed any opinion on the merits of the suit as that would embarrass the Trial Court and the petitioner. He further submitted that the learned Judge passed uncharitable comments

against the petitioner without affording opportunity to the petitioner based on the docket entry made by the Presiding Officer in the notes paper and the same was also not necessary on the character of the petitioner at that stage.

4. It has been further submitted that the learned Judge exceeded its jurisdiction by recording a finding that the suit promissory note were executed only by the 1st defendant. How in summary suit a non-executant was impleaded as a party? Is not known. When such being thing, objecting for granting leave seriously might have invited some comments by the Presiding Officer. Impleading a non-executant as a Defenant and seeking a summary decree is prima facie, mischievous. Under such circumstances, it cannot be contented that the plaintiff is a bona-fide person. The above mentioned findings rendered by the learned Judge is contrary to the provisions of Section 126 of Contract Act and also Law laid down by our Hon'ble High Court. Further, the above findings are rendered without advancing any arguments and hence, the learned Judge travelled beyond the scope of the petition for transfer of suit. The learned Judge failed to follow the principles of Law laid down

by the Constitution Bench of Hon'ble Apex Court wherein it has categorically held that Court should not make any pronouncement on any question unnecessary for disposal of the particular case.

5. The learned Counsel further submitted that the learned Judge failed to visualize that such observation in the transfer petition may affect the enquiry of the main suit pending before the Sub-Court and the petitioner. The findings of the learned Judge is contrary to the facts of the case which is traceable by way of the plaint averments and the documents pertaining to the matter in dispute. Hence, this Civil Revision Petition has been filed to expunge the remarks made in fair and decreetal order dated 12.12.2019 in Tr. O.P. No.147 of 2019 on the file of the Principal Judge, City Civil Court, Chennai.

6. Heard, the learned counsel appearing for the petitioner as well as perused the material available on record.

7. On a perusal of the record, it is seen that the petitioner has filed Tr.O.P.No.147 of 2019 on the file of the Principal Judge, City Civil

Court, Chennai seeking for to transfer the suit in O.S. No.3066 of 2018 from the III Assistant City Civil Court, Chennai, to any other City Civil Court due to friction with the Presiding Officer. After considering the submissions made by both parties, The Principal Judge while passing the order has made the following observation:

*“ ..... No doubt, though the suit was filed summarily, in both the cases, the suit promissory notes were executed only by the 1<sup>st</sup> defendant. How in a summary suit, a non-executant was impleaded as a party? Is not know. When such being the thing, objecting for granting leave seriously might have invited some comments by the Presiding Officer. Impleading a non-executant as a defendant and seeking a summary decree is prima facie, mischievous. Under such circumstances, it cannot be contended that the plaintiff is a bona-fide person. Even otherwise, the learned Trial Judge made comments about the merit in open Court. It is to be reserved in mind for orders. By disclosing or pointing out the lacuna in the case of the plaintiffs, the learned Judge invited unnecessary comments and culminated into transfer application with serious allegation.*

The Court below after making the aforesaid observation, recorded its opinion as follows:

*“ 5. Though the allegations are invented for the purpose of petition and exaggerated one, this Court is of the considered view that by dismissing the transfer petitions, it would pave way for unnecessary embarrassment to the Judicial Officer, it will lead unnecessary unfair comments on him. Under such circumstances, this Court is of the considered view that it is better to transfer the cases from the file of the said Court.*

The above observation made by the Court below could not be considered as wrong and it would not prejudice to the petitioner why because the Court below has made the aforesaid observations based on elaborate docket entry made by the Presiding Officer in the Notes paper and facts and circumstances of the case. However, this Court is of the view that the I Assistant City Civil Court, Chennai is directed to proceed with the case without taking the observation made by the Courts below and pass appropriate order in accordance with law.

8. In the result, the Civil Revision petition is dismissed with the above direction. Consequently, connected miscellaneous petition is closed if any. No costs.

**24.03.2021**

Lbm

Index: Yes/No.

Speaking/Non-Speaking order

Internet: Yes/No.

C.R.P.(PD) No.640 of 2021

**V.BHAVANI SUBBAROYAN, J.,**  
**lbm**

To:  
The Principal Judge,  
City Civil Court, Chennai.



C.R.P.(PD) No.640 of 2021

WEB COPY

24.03.2021